



Mr  
173

Regulations  
for the Treatment of Confidentiality, Dispute Resolution,  
Compliance and Enforcement

2009

*LTA-REG-0002*

Republic of Liberia

Liberia Telecommunications Authority

Mr  
173

## TABLE OF CONTENTS

	<u>Page</u>
PART I: PRELIMINARY .....	1
1.1 Preamble.....	1
1.2 Purpose .....	1
1.3 Scope of Application .....	1
1.4 Terms and Definitions used in the Regulations.....	1
PART II: CONFIDENTIALITY .....	2
2.1 Introduction.....	2
2.2 Provisions Applicable to All Information Submitted Under these Regulations.....	2
2.3 Provisions Applicable to Confidential Information.....	3
2.4 Review of LTA Decisions regarding Confidentiality .....	5
PART III: DISPUTE RESOLUTION .....	6
3.1 LTA Procedures.....	6
3.2 Provisions Applicable to All Dispute Resolution Proceedings .....	6
3.3 Binding Effect of Initial Submissions .....	10
PART IV: COMPLIANCE AND ENFORCEMENT.....	10
4.1 Purpose .....	10
4.2 Submission of Information.....	11
4.3 LTA Enforcement Powers.....	11
4.4 Liability for Failure to Comply.....	11
4.5 Interim Directive to Cease and Desist.....	11
4.6 Enforcement Measures .....	11
4.7 Time Limitations .....	12
PART V: APPLICATION .....	12
5.1 Short Title and Date of Entry Into Force.....	12

## **PART I: PRELIMINARY**

### **1.1 Preamble**

These Regulations have been developed by the Liberia Telecommunications Authority (the "LTA") pursuant to the *Telecommunications Act, 2007 of the Republic of Liberia* (the "Act").

### **1.2 Purpose**

The purpose of these Regulations is to establish procedures for interactions between and among the LTA, service providers and other stakeholders in the telecommunications sector, in relation to the interconnection of telecommunications networks including telecommunications facilities and telecommunications services.

### **1.3 Scope of Application**

The provisions of these Regulations apply to all service providers.

### **1.4 Terms and Definitions used in the Regulations**

The terms used in this Regulation are defined in this Section 1.4 or are otherwise applied as defined in the Act or related Regulations including the Interconnection Regulation. For ease of reference, definitions for some terms used in this Regulation have been provided below. In the event of a conflict between definitions provided in this Regulation and the Act, the definitions in the Act will apply.

**"access"** means the making available of telecommunications facilities and equipment, or services or both facilities and services by one service provider to another service provider, for the purpose of providing interconnection, and includes access to network elements and associated facilities, access to physical infrastructure including buildings, ducts and masts, and access to network software systems including operational support systems;

**"co-location"** means accommodation of two or more switches, transmission equipment and antennas or other electronic communications equipment, or power generation equipment in, or on a single building tower or other structure for the purposes of interconnecting communications networks or for other telecommunications purposes;

**"dominant service provider"** means a service provider designated to have significant market power or otherwise to be dominant in one or more telecommunications service markets pursuant to Sections 27 (d) and 36 of the Act;

**"essential facility"** means a telecommunication facility owned by a service provider (including an Interconnection Provider) which cannot feasibly, whether economically or technically be substituted and is declared to be an essential facility by the Authority;

**“interconnection”** means the physical and logical linking of telecommunications networks used by the same or a different service provider in order to allow the users of one service provider to communicate with users of the same or another service provider, or to access the facilities and/or services of another service provider. For the purposes of the Act and this Regulation, the term interconnection includes ‘access’, meaning the making available of telecommunications facilities or services by one service provider to another for the purpose of providing telecommunications services;

**“interconnection dispute”** means a dispute between two or more parties who are service providers, regarding the reasonableness of a request for interconnection under the Act.

**“service provider”** means a person or entity under permit or license by the LTA that provides a telecommunications service to the public or that owns or operates a telecommunications network used to provide telecommunications services to the public;

**“significant market power”** means a position of economic strength, acting either individually or jointly with others, permitting a service provider to act to an appreciable extent independently of customers or competitors, or otherwise constituting a position of dominance in one or more identified telecommunications service markets; and

**“telecommunications facility”** means any facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications.

## PART II: CONFIDENTIALITY

### 2.1 Introduction

2.1.1 This section sets out the procedures and standards that the LTA will generally apply with respect to information which is requested and/or submitted under these Regulations and under any other regulations adopted by the LTA.

## 2.2 Provisions Applicable to All Information Submitted Under these Regulations

### 2.2.1 Requests for Information

- (a) All information submitted to the LTA by any service provider or other party pursuant to the Act, these Regulations, or any rules, decisions, orders, notices or guidelines issued by the LTA, must be accurate, complete and responsive to the LTA request.
- (b) Service providers and other parties must respond promptly and completely to any request from the LTA for information and in any event within a period

which is no longer than twenty-one (21) calendar days from the date of the request unless LTA directs otherwise.

- (c) Any failure by a service provider to comply with any LTA information request, and any destruction, disposal, falsification or concealment of requested documents or information, constitutes a contravention of these Regulations for which the LTA may take enforcement action under Section 4.2 of these Regulations.

## **2.3 Provisions Applicable to Confidential Information**

### **2.3.1 Request for Confidential Treatment of Information**

- (a) A person submitting information to the LTA, pursuant to the requirements of the Act, these Regulations or other related rules, decisions, orders, notices or guidelines may request that the information submitted be treated as confidential. All information for which a service provider is seeking confidential treatment must be provided separately from the documents which do not contain confidential information and be clearly marked "confidential". The LTA may not accept requests to treat all information submitted as confidential. Parties should take reasonable measures to minimize the amount of information for which they request confidential treatment.
- (b) In the absence of a properly supported confidentiality request, all information submitted to the LTA shall be deemed to be appropriate for disclosure.

### **2.3.2 Standards Governing Grant of Confidential Treatment**

- (a) In deciding whether to grant a request for confidential treatment, the LTA will consider the following factors:
  - i) whether the information for which the requesting party (referred to as the "Requesting Party" in this Part II) requests confidential treatment contains commercially sensitive information (including information that is subject to a pre-existing non-disclosure agreement with a third party); or
  - ii) whether the disclosure of the information would have or would be likely to have a material adverse impact on the Requesting Party; or
  - iii) whether the disclosure of the information is, on balance, required in the public interest,or any combination of the above factors.

- (b) The LTA generally considers information to be commercially sensitive if:
  - i) it is not otherwise available to the public; or
  - ii) the Requesting Party has demonstrated that disclosure would cause harm to the service provider, including by providing an inappropriate commercial benefit to the service provider's competitors; or
  - iii) it is information that describes the Requesting Party's business procedures, technical or financial matters, information proprietary to the service provider, and practices, plans or its assessment of market conditions or similar matters are likely to be commercially sensitive.

### 2.3.3 Standards Governing Confidentiality:

- (a) All information for which the LTA grants a request to treat as confidential under Section 2.3.1:
  - i) must be provided by the Requesting Party only to the LTA, which may consider the information for purposes of resolving any matter under these Regulations or any related rules, decisions, orders or notices issued by the LTA, but which shall restrict access and disclosure to LTA personnel or contractors involved in resolution of the matter; and
  - ii) will be excluded from all documents which are either provided to another party to the proceeding or made publicly available; and
  - iii) will be protected by LTA personnel or contractors against improper disclosure or use, to the extent reasonably possible.

### 2.3.4 Denial of Confidential Treatment

- (a)
 

If a request for confidential treatment is rejected by the LTA, the LTA will provide written reasons for its decision.
- (b) If the Requesting Party fails to take either of the actions described in subsections 2.4.1 (a) (i) or (ii) within the specified period, the LTA will deem the Requesting Party to have withdrawn its request for confidential treatment of the information. In this case the LTA may consider, and where it deems appropriate, disclose the information provided.
- (c) This clause 2.3 shall not affect the general obligation on service providers or other parties to interconnection proceedings to provide complete and accurate information to the LTA.

- (d) the LTA shall not disclose the information that is the subject of proceedings under Section 2.4.1, or any revised confidentiality request, while those remain pending.

2.3.5 LTA may, in its sole discretion, make a preliminary decision on a request for confidential treatment, after which the Requesting Party may provide additional information to assist the LTA in issuing a final decision.

## **2.4 Review of LTA Decisions regarding Confidentiality**

### **2.4.1 Right to Review**

- (a) Any Requesting Party that has a confidentiality request rejected pursuant to Section 2.3.4 may:
  - i) submit a request to LTA for reconsideration (" the Reconsideration Request") within fourteen (14) calendar days of receipt by the Requesting Party of the statement of reasons for the rejection;
  - ii) submit a revised confidentiality request, that takes account of the LTA's determination (including by reducing the scope of the confidentiality request) within fourteen (14) calendar days of receipt by the Requesting Party of the statement of reasons for the rejection;
  - iii) in the event that a Reconsideration Request is submitted and the LTA does not change its rejection of confidential treatment following the Reconsideration Request, file for review of the LTA's decision pursuant to section 81 of the Act ("a Judicial Review") within sixty (60) calendar days of receipt by the Requesting Party of the decision by LTA on the Reconsideration Request; or
  - iv) in the event that a Reconsideration Request is not submitted, file for a Judicial Review within sixty (60) calendar days of receipt by the Requesting Party of the statement of reasons for the rejection.
- (b) When filing a Judicial Review, the Requesting Party shall copy the LTA on all correspondence and materials relevant to the Judicial Review.
- (c) The LTA will take reasonable steps to notify all relevant parties in the event it receives a Reconsideration Request or on becoming aware that a decision is under Judicial Review.
- (d) A party may file for a Judicial Review of any matter that is the subject of a Reconsideration Request. In such a case, the party must immediately notify

the LTA in writing of the Judicial Review at which time the Reconsideration Request shall be stayed pending a final determination under the Judicial Review.

#### 2.4.2 Procedures Governing Reconsideration

- (a) Service providers and other parties entitled to relief under this Regulation, are expected to present all relevant facts and arguments before the LTA renders its decision in response to a confidentiality request. A party may not present new facts, or raise new arguments in a Reconsideration Request unless the party, for reasons which are acceptable to the LTA:
  - i) could not have presented the facts or raised the arguments before the LTA rendered its decision; or
  - ii) could not have anticipated the importance of the facts or arguments prior to seeing the LTA's statement of reasons for the rejection,
- (b) The LTA will issue its decision on the Reconsideration Request within thirty (30) calendar days of the date of filing the Reconsideration Request.

#### 2.4.3 Judicial Review of LTA Decision on Reconsideration Request

- (a) A service provider may not ask the LTA to reconsider any decision issued in response to a Reconsideration Request. However, the Requesting Party may file for a Judicial Review of the decision of the LTA issued in response to a Reconsideration Request within sixty (60) calendar days of that decision, in court.

### **PART III: DISPUTE RESOLUTION**

#### **3.1 LTA Procedures**

Pursuant to Article 73 of the Act, any dispute that arises regarding the proper application of the Act, these Regulations, applicable licences or other applicable laws, other regulations or rules, including an interconnection dispute or a dispute regarding access to related telecommunications facilities, may be referred for dispute resolution in accordance with this Part III.

#### **3.2 Provisions Applicable to All Dispute Resolution Proceedings**

##### 3.2.1 Prior Effort to Resolve Dispute



- (a) Before submitting a dispute to the LTA for dispute resolution, the parties to the dispute must attempt to resolve the disputed matters, or as many of the disputed matters as possible, through direct, good faith negotiations.
- (b) Unless one of the parties to the dispute can demonstrate to the satisfaction of the LTA that the matter is urgent, such negotiations must involve, at a minimum:
  - i) at least two face-to-face meetings between senior representatives of the parties, at which the issues in dispute shall be discussed and possible areas of resolution or compromise considered; and
  - ii) written correspondence between the parties specifically identifying the basis for any continuing dispute and the conditions under which each party would consider reaching agreement on the issues in dispute.
- (c) A party to the dispute may request assistance from the LTA if the other party has failed to meet or negotiate within thirty (30) calendar days of the party's written request for meeting.
- (d) For disputes between subscribers or users of telecommunications services and service providers, prior to requesting the assistance of the LTA, the person requesting assistance shall demonstrate that the parties have participated in and exhausted any subscriber or user dispute processes adopted by the service provider in terms of any order issued under Sections 55 and 74 of the Act.

3.2.2 Any person requesting that the LTA assist in resolving its dispute with any service provider must submit a written request for dispute resolution assistance (a "Dispute Resolution Request"). The person submitting the Dispute Resolution Request shall be referred to as the "Requesting Party" and the other party that is the subject of the request shall be referred to as the "Responding Party" in this Part III. A copy of the Dispute Resolution Request must be provided to the Responding Party on the same day it is submitted to the LTA. The Dispute Resolution Request must describe, in detail, each issue on which the parties have reached agreement and each issue on which the parties have not reached agreement. The Requesting Party's position on each of the issues in dispute should also be described in separate paragraphs or sections of the Request.

3.2.3 The Responding Party will have fifteen (15) calendar days from the day on which the Dispute Resolution Request is submitted to the LTA to submit a written response to the dispute Resolution Request ("Response"). A copy of the Response must be provided to the Requesting Party on the same day that the Response is submitted to the LTA. For each point in the Dispute Resolution Request on which the Requesting Party claims that the parties are in agreement, the Responding Party must indicate if it agrees or disagrees. If the Responding Party disagrees, it must provide a clear statement of its position. For each point in the Dispute Resolution Request on which the Requesting Party claims that the parties disagree, the Responding Party must provide a clear statement of the way in which its position differs from that of the Requesting Party.

3.2.4 The Requesting Party will be given fifteen (15) calendar days to submit its further reply.

3.2.5 Where a party demonstrates good cause, the LTA may grant a further extension of time for making written submissions.

3.2.6 Where the LTA receives more than one dispute Resolution Request in connection with substantially the same conduct or circumstances, LTA may, in its sole discretion, consolidate the requests into a single proceeding.

3.2.7 The LTA will investigate the validity of the claims included in the Dispute Resolution Request, the Response and any other submissions, in order to make a fair assessment of the parties' positions. The LTA may take into account the following matters or any other such matters as may appear to it to be relevant in making its decision:

- (a) whether the dispute concerns a matter which is essentially a competition matter, for example, concerning alleged anti-competitive behaviour;
- (b) whether the request, in the case of an interconnection dispute, is reasonable taking into account the technical and financial feasibility of the request (for example whether or not the requested infrastructure is available, and whether the service provider already provides similar services to those requested, and if there is capacity available, and whether or not the request if implemented would tend to promote the efficient use or more efficient use of telecommunications networks and services);
- (c) how best any risk to either party might be allocated between them; and
- (d) the cost of implementing a request or a directive, as the case may be.

3.2.8 During investigation and consideration of the dispute the LTA may obtain advice from one or more qualified experts, including in the case of an interconnection dispute, a technical or economic expert.

3.2.9 On completion of its initial investigation, the LTA shall decide whether or not it will assist in resolving the dispute, or undertake any further investigation or take any other enforcement action in response to the Dispute Resolution Request.

3.2.10 In considering a dispute, the LTA will:

- (a) not re-open any issue on which the Parties have reached agreement, unless that agreement is contrary to the Act, these Regulations or other applicable laws, regulations or rules; Rather, the dispute resolution will be limited to those issues on which the parties are unable to reach agreement; and
- (b) to the extent that an issue in dispute is addressed by a provision of these Regulations, or any other rules issued by the LTA, apply that provision.

3.2.11 If an issue in dispute is not addressed by any provision of rules issued by the LTA, the LTA retains full discretion to impose any solution that is permissible under the Act, these Regulations or other applicable laws, regulations or rules (including solutions not advocated by the Parties). In resolving any interconnection dispute, the LTA shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions on implementation of the terms and conditions by the parties to the agreement,

3.2.12 The LTA may impose an interim solution on the parties pending conclusion of the dispute resolution proceeding. The LTA will give the parties reasonable advance notice of the proposed interim solution. Any interim solution will be, in the sole discretion of the LTA, no more onerous than is necessary to avoid serious harm to one or more parties or to the public interest.

3.2.13 The LTA will complete its consideration of a dispute and issue a decision resolving each of the unresolved issues and specifying the actions to be taken by the parties within 60 calendar days of receiving all necessary information.

3.2.14 In determining a dispute resolution proceeding, the LTA may:

- (a) issue an order requiring the Responding Party or any other person affected to undertake specific actions or to cease specific actions;
- (b) in the case of an interconnection dispute, take the steps necessary to implement and maintain any requested interconnection or facilities access, including ordering how the costs of providing the requested interconnection or facilities access are to be allocated or recovered;
- (c) issue an order making specific determinations regarding circumstances or issues relevant to the proceeding;
- (d) identify the fees or charges which may be imposed by the LTA on the parties in order to resolve the dispute, which fees or charges may be based on identified costing methods or other economic modeling or formulae adopted by the LTA;
- (e) recommend to the parties that they pursue any outstanding matter(s) that the LTA considers to fall outside its jurisdiction through a court or other competent authority for resolution;
- (f) where the proceeding raises questions of general interest or application to the telecommunications sector, initiate a public hearing or similar process that permits submissions from other interested parties, and make resolution of the existing proceeding subject to the conclusion of the hearing process; or
- (g) take such other action, within its competence, as it deems appropriate.

3.2.15 The LTA shall provide the parties with a statement of reasons for whatever decision it makes in a dispute resolution proceeding, and a clear statement of the further steps to be taken by the parties in complying with the decision Submission of Information to the LTA

3.2.16 The LTA may request either or both parties to submit additional information at any time during the course of a dispute resolution proceeding. Unless a party requests confidential treatment of information pursuant to Section 2.3.1, any information submitted by a party must be made available to all other parties at the time it is submitted to the LTA.

3.2.17 Where a party wishes to submit confidential information to the LTA in connection with a dispute resolution proceeding, that party may request the LTA for confidential treatment of such information pursuant to Section 2.3.1.

3.2.18 Parties are subject to the general information disclosure requirements set out in Section 2.2.1 of these Regulations.

### **3.3 Binding Effect of Initial Submissions**

3.3.1 Except where section 2.4.2 applies, the LTA will not take account of any subsequent submission made by a party in the course of the relevant proceeding that:

- (a) identifies any additional issue in dispute, not disclosed in its earlier submission;
- (b) contains information that should have been submitted in its earlier submission; or
- (c) takes any position that is inconsistent with its earlier submission, unless that position is conducive to an agreed solution to one or more of the matters in dispute.

3.3.2 Nothing in 3.4.1 shall prevent the LTA from taking account of other issues related to the matter which is in dispute, which it may consider to be of importance to the prompt and fair resolution of the dispute.

## **PART IV: COMPLIANCE AND ENFORCEMENT**

### **4.1 Purpose**

4.1.1 This Part IV sets out the procedures and standards that the LTA will apply in monitoring compliance and enforcement of the Act, these Regulations, applicable licences or other applicable laws, regulations or rules.

#### **4.2 Submission of Information**

4.2.1 The LTA may require a service provider or any other person involved in or affected by these Regulations to submit, at that person's expense, any information that the LTA considers necessary for the purposes of exercising its responsibilities, functions and powers under the Act, these Regulations or any related rules, regulations, decisions or orders of the LTA. The information shall be submitted in such form, manner and time as the LTA specifies.

4.2.2 The submission of such information is subject to Part II of these Regulations.

#### **4.3 LTA Enforcement Powers**

Articles 78 and 79 of the Act set out the powers and functions of the LTA in relation to enforcement of these Regulations, orders, directives or any other exercise of the LTA's authority.

#### **4.4 Liability for Failure to Comply**

Article 77 of the Act shall apply in relation to any failure to comply with the Act, these Regulations, applicable licence conditions, rules and regulations.

#### **4.5 Interim Directive to Cease and Desist**

The LTA may at any time during any proceeding contemplated in this Regulation issue an interim directive to a service provider to cease and desist from any specified conduct. In determining whether to issue such an interim directive, the LTA will consider whether:

- a) there is strong prima facie evidence that the service provider has contravened or is likely to contravene the relevant provision of these Regulations;
- b) continuation of the service provider's conduct is likely to cause serious harm to other service providers, users, subscribers or the general public;
- c) the potential anti-competitive harm from continuation of the service provider's conduct outweighs the prejudice to the service provider that would likely be suffered if it had to cease the conduct; or
- d) the interim directive is otherwise in the public interest.

#### **4.6 Enforcement Measures**

4.6.1 In the event that the LTA concludes that the service provider has contravened any provision of these Regulations or has failed to comply with a directive, decision or order made pursuant to a procedure set out in these Regulations, it may take such enforcement measures as it considers appropriate, including the enforcement actions described in Sections 4.6.2 to 4.6.5.

4.6.2 The LTA may issue a warning to the service provider. The warning will contain a statement of the LTA's basis for concluding that the service provider has acted or is likely to act in contravention of any provision of these Regulations, but will impose no sanction.

4.6.3 The LTA may decide to direct the service provider to cease engaging in identified conduct as contrary to these Regulations.

4.6.4 The LTA may decide to direct the service provider to take specific remedial action.

4.6.5 Where the LTA is satisfied that a service provider has contravened or is likely to contravene these Regulations or a directive, decision or order made pursuant to a procedure set out in these Regulations with particularly serious effects, or has repeatedly contravened these Regulations with serious effects, the LTA may, instead of taking any of the other enforcement actions specified in this Section 4.6, cancel or suspend the service provider's licence or permit as the case may be, as set out in that licence and the Act.

#### 4.7 Time Limitations

4.7.1 Where the LTA initiates enforcement action for any reason, it shall take action under section 4.6 of these Regulations within six (6) months after the date of the occurrence of the actions that constitute the alleged contravention or the anticipated contravention of these Regulations or the contravention of or failure to comply with a directive, order or decision made pursuant to a procedure set out in these Regulations.

4.7.2 In determining the date of the occurrence of the actions that constitute the alleged contravention of any provision of these Regulations, the following will apply:

- a) where the alleged contravention could not reasonably have been discovered at the time it was committed, the earlier of the date on which the conduct was, or reasonably should have been, discovered will constitute the date on which the alleged contravention occurred; or
- b) where a service provider engages in an on-going course of conduct that allegedly contravenes these Regulations, the date of the most recent action taken as part of that course of conduct will constitute the date on which the alleged contravention occurred.

### PART V: APPLICATION

#### 5.1 Short Title and Date of Entry Into Force

These Regulations shall be known as the *Regulations for the Treatment of Confidentiality, Dispute Resolution, Compliance and Enforcement, 2009* and shall come into effect on the date on which they are adopted by the LTA.