**Transatlantic Trade and Investment Partnership (TTIP)**

**Chapter [ ]**

**Consolidated Proposed**

**Electronic Communications / Telecommunications Text**

**[EU: Article 40: Scope and Definitions] [US: Article X.1: Scope and Coverage]**

**[EU: 1.** This Section sets out principles of the regulatory framework for the provision of electronic communications networks and services, liberalized pursuant to Chapter II Section 1, Chapters III and IV of the Title.**]**

**[US:** 1. Nothing in this Chapter shall be construed to:

(a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; and

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.**]**

**[EU: 2.] [US: Article X.2: Definitions]**

For the purpose of this **[EU:** Sub-section**] [US:** Chapter**]**:

**[EU:** (a) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical, or other electromagnetic means;**]**

**[EU:** (b) 'electronic communications service' means a service which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting. Those services exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services;**]**

**[EU:** (c) 'public electronic communications service' means any publicly available electronic communications service;**]**

**[EU:** (d) 'public electronic communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which supports the transfer of information between network termination points;**]**

**[US: public telecommunications network** means telecommunications infrastructure used to provide public telecommunications services;**]**

**[EU:** (e) 'public telecommunications transport service'**] [US: public telecommunications service]** means any telecommunications **[EU:** transport**]** service **[EU:** required**] [US:** that a Party requires**]**, explicitly or in effect, **[EU:** by a Member**]** to be offered to the public generally. Such services may include, inter alia, **[EU:** telegraph,**]** telephone **[EU:** telex,**]** and data transmission typically involving **[EU:** the real-time transmission of**]** customer-supplied information between two or more **[US:** defined**]** points without any end-to-end change in the form or content of the customer's information;

**[EU:** (f) a 'regulatory authority' in the electronic communications sector**] [US: telecommunications regulatory body]** means **[EU:** the**] [US:** a**]** body or bodies **[EU:** charged by a Party with**] [US:** responsible for**]** the regulation of **[EU:** electronic communications mentioned in this sub-section**] [US:** telecommunications**]**;

**[EU:** (g) 'essential facilities'**] [US: essential facilities]** mean facilities of a public **[EU:** electronic communications**] [US:** telecommunications**]** network **[EU:** and**] [US:** or**]** service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to **[EU:** provide**] [US:** supply**]** a service;

**[EU:** (h) 'associated facilities' means those associated services, physical infrastructures, and other facilities or elements associated with an electronic communication network and/or service which enable and/or support the provision of services via that network and/or service, or have the potential to do so, and include, inter alia, buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes and cabinets;**]**

**[EU:** (i) a '**major supplier'** in the electronic communications sector is a supplier which**] [US: major supplier** means a supplier of public telecommunications services that**]** has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for **[EU:** electronic communications**] [US:** public telecommunications**]** services as a result of **[US:** (a)**]** control over essential facilities **[US:** ;**]** or **[EU:** the**] [US:** (b)**]** use of its position in the market;

**[EU:** (j) 'access' means the making available of facilities and/or services to another supplier under defined conditions, for the purpose of providing electronic communication services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming and access to virtual network services;**]**

**[EU:** (k) 'interconnection'**] [US: interconnection]** means **[EU:** the physical and logical**]** linking **[US:** with suppliers providing public telecommunications services**] [EU:** of public communications networks used by the same or a different supplier**]** in order to allow the users of one supplier to communicate with users of **[EU:** the same or**]** another supplier, **[US:** and**] [EU:** or**]** to access services provided by another supplier; **[EU**: services may be provided by the parties involved or other parties who have access to the network;**]**

**[EU:** (l) 'universal service' means the minimum set of services of specified quality that must be made available to all users in the territory of a Party, regardless of their geographical location and at an affordable price: its scope and implementation are decided by each Party;**]**

**[EU:** (m) 'number portability'**] [US: number portability]** means the ability of **[US:** end-users of public telecommunications**] [EU:** all subscribers of public electronic communications**]** services **[EU:** who so request**]** to retain, at the same location, the same telephone numbers without impairment of quality, reliability, or convenience when switching between **[EU:** the same category of**]** suppliers of public **[US:** telecommunications**] [EU:** electronic communications**]** services;

**[US: backhaul links** means end-to-end transmission links from a submarine cable landing station to another primary point of access to any public telecommunications network;**]**

**[US: cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;**]**

**[US: cross-connect links** means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching, or routing equipment of any supplier of public telecommunications services co-located in that submarine cable landing station;**]**

**[US: end-user** means a final consumer of, or subscriber to, a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;**]**

**[US: enterprise** means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization, and includes a branch of an enterprise;**]**

**[US: leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user and are supplied by a supplier of fixed telecommunications services;**]**

**[US: license** means any authorization that a Party may require of a person, in accordance with its laws and regulations, in order for such person to offer a telecommunications service, including concessions, permits, or registrations;**]**

**[US: non-discriminatory** means treatment no less favorable than that accorded to any other user of similar public telecommunications services in similar circumstances, including with respect to timeliness;**]**

**[US: reference interconnection offer** means an interconnection offer extended by a major supplier and filed with, or approved by, or determined by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications services willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;**]**

**[US: service supplier of the other Party** means, with respect to a Party, a person that is either a covered investment in the territory of the Party, or a person of the other Party, and that seeks to supply or supplies services within or into the territory of the Party, and includes a supplier of public telecommunications services;**]**

**[US: telecommunications** means the transmission and reception of signals by any electromagnetic

means, including by photonic means;**]**

**[US: user** means a service consumer or a service supplier.**]**

**[EU: Article 41: Regulatory Authority] [US: Article X.3: Independent Regulator]**

**[EU:** 1. Regulatory authorities for electronic communications networks and services shall be legally distinct and functionally independent from any supplier of electronic communications networks, electronic communications services, or electronic communications equipment.**]**

**[US:** 1. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that, to the extent that its telecommunications regulatory body oversees specific services, that it is separate from, and not accountable to, any supplier of such services, and that it does not hold a financial interest or maintain an operating or management role in any such supplier.**]**

**[EU:** 2. A party that retains ownership or control of providers of electronic communication networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control. The regulatory authority shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to it under national law.**]**

**[EU:** 3. The regulatory authority shall be sufficiently empowered to regulate the sector, and have adequate financial and human resources to carry out the task assigned to it. Only appeal bodies set up in accordance with paragraph 7 of this Article shall have the power to suspend or overturn decisions by the regulatory authority. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body. Parties shall ensure that regulatory authorities have separate annual budgets. The budgets shall be made public.**]**

**[EU:** 4. The decisions made and the procedures used by regulators shall be impartial with respect to all market participants.**]**

**[US:** 4. Each Party shall ensure that the regulatory decisions and procedures of its telecommunications regulatory body, including decisions and procedures relating to licensing, interconnection with public telecommunications networks and services, tariffs, and assignment or allocation of spectrum for non-government public telecommunications services, are impartial with respect to all market participants.**]**

**[US:** 2. Each Party shall ensure that its telecommunications regulatory body does not accord more favorable treatment to a supplier of services in its territory than that accorded to a similar service supplier of the other Party on the basis that the supplier to be receiving more favorable treatment is owned by the central government of the Party.**]**

**[EU:** 5. The powers of the regulatory authorities shall be exercised transparently and in a timely manner.**]**

**[US** 5. Each Party shall ensure that its regulatory decisions, and the results of appellate proceedings

regarding such decisions, are made publicly available.**]**

**[EU:** 6. Regulatory authorities shall have the power to ensure that suppliers of electronic communications networks and services provide them, promptly upon request, with all the information, including financial information, which is necessary to enable the regulatory authorities to carry out their tasks in accordance with this sub-section. Information requested shall be proportionate to the performance of the regulatory authorities' tasks and treated in accordance with the requirements of confidentiality.

7. Any user or supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise to enable it to carry out its functions effectively. The merits of the case shall be duly taken into account, and the appeal mechanism shall be effective. Wherever the appeal body is not judicial in character, written reasons for its decision shall always be given, and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced. Pending the outcome of the appeal, the decision of the regulatory authority shall stand, unless interim measures are granted in accordance with national law.

8. Parties shall ensure that the head of a regulatory authority, or where applicable, members of the collegiate body fulfilling that function within a regulatory body, or their replacements, may be dismissed only if they no longer fulfill the conditions required for the performance of their duties which are laid down in advance in national law. The decision to dismiss the head of the regulatory authority concerned, or where applicable, members of the collegiate body fulfilling that function shall be made public at the time of dismissal. The dismissed head of the regulatory authority, or where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons, and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published.**]**

**[US:** 3. Each Party shall provide its telecommunications regulatory body the authority to enforce the Party's measures relating to the obligations set out in Part III (Telecommunications Services). Such authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, or revocation of licenses.**]**

**[EU: Article 42: Authorization to Provide Electronic Communication Networks and Services]**
**[US: Article X.4: Licensing]**

**[EU:** 1. Provision of electronic communications networks and/or services shall be authorized, wherever possible, upon simple notification. In this case, the service supplier concerned shall not be required to obtain an explicit decision or any other administrative act by the regulatory authority before exercising the rights stemming from the authorization. The rights and obligations resulting from such authorization shall be made publicly available in an easily accessible form. Obligations should be proportionate to the service in question.

2. Where necessary, a license for the right of use for radio frequencies and numbers can be required in order to:

a) avoid harmful interference;

b) ensure technical quality of service;

c) safeguard efficient use of spectrum; or

d) fulfill other objectives of general interest.

The terms and conditions for such licenses shall be made publicly available.**]**

**[EU:** 3. Where a license is required:**] [US:** 6. When a Party requires a supplier of public telecommunications services to have a license:**]**

**[US:** (a) the Party shall make publicly available:**]**

(i) all the licensing criteria and **[US:** procedures it applies;**] [EU:** (a) a reasonable period of time normally required to reach a decision concerning an application for a license shall be made publicly available**] [US:** (ii) the period it normally requires to reach a decision concerning an application for a license**]**;

**[US:** (iii) the terms and conditions of all licenses in effect; and**]**

**[US:** (b) the Party shall ensure that, on request, an applicant receives the reasons for the:

(i) **]** [ EU: (b) the reasons for the**]** denial of a license **[EU:** shall be made known in writing to the applicant upon request;**]**

**[US:** (ii) imposition of supplier-specific conditions on a license;

(iii) revocation of a license; or

(iv) refusal to renew a license.**]**

**[EU:** (c) the applicant for a license shall be able to seek recourse before an appeal body in the case of a license having been denied.**]**

**[EU:** 4. Any administrative costs shall be imposed on suppliers in an objective, transparent, proportionate, and cost-minimizing manner. Any administrative charges imposed by any Party on suppliers providing a service or a network under an authorization referred to in paragraph 1 or a license under paragraph 2 shall, in total, cover only the administrative costs normally incurred in the management, control, and enforcement of the applicable authorization and licenses. These administrative charges may include costs for international cooperation, harmonization and standardization, market analysis, monitoring compliance, and other market control, as well as regulatory work involving preparation and enforcement of legislation and administrative decisions, such as decisions on access and interconnection.

**[US: Article X.5: Regulatory Flexibility**

1. The Parties recognize the importance of relying on competitive market forces to provide a wide choice in the supply of telecommunications services.

(a) In this respect, the Parties recognize that a Party may:

(i) engage in direct regulation either in anticipation of an issue that the Party expects may arise, or to resolve an issue that has already arisen in the market;

(ii) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be competitive, or those with low barriers to entry.

(b) Where a Party has engaged in direct regulation, that Party may forbear, to the extent provided for in its law, from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

(i) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;

(ii) enforcement of the regulation is not necessary for the protection of consumers; and

(iii) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

2. Each Party shall ensure that any supplier of telecommunications services may petition its telecommunications regulatory body to forbear from applying any specific regulation with respect to that supplier or any telecommunications services offered by that supplier.

3. Each Party shall require its telecommunications regulatory body to adopt a decision granting or denying the petition in whole or in part.

4. For greater certainty, each Party shall subject its regulatory body's decision to forbear judicial review in accordance with Article X.18 (Resolution of Disputes).**]**

**[US: Article X.6: Review of Regulations**

1. Each Party shall require their telecommunications regulatory body to:

(a) regularly review all regulations affecting the supply of telecommunications services;

(b) determine after such review whether any such regulation is no longer necessary as the result of meaningful economic competition between providers of such service; and

(c) repeal or modify any such regulation, where appropriate, pursuant to subsection (b).**]**

**[US: Article X.7: Technological Neutrality**

1. No Party may prevent a supplier of telecommunications services from choosing the technologies it desires to use to supply its services subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting such choice is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade.

2. If a Party adopts a measure that mandates the use of a specific technology or standard, or otherwise limits a supplier's ability to choose the technology it uses to supply a service, it shall do so on the basis of:

(a) legislation; or

(b) a rulemaking

in which the Party determines that market forces have not achieved, or could not reasonably be expected to achieve, its legitimate public policy objective.**]**

**[US: Article X.8: Transparency**

1. Each Party shall ensure that where a telecommunications regulatory body seeks input for a proposal for a regulation, it shall:

(a) make the proposal public or otherwise available to any interested persons;

(b) include an explanation of the purpose of and reasons for the proposal;

(c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment;

(d) to the extent practicable, make publicly available all relevant comments filed with it; and

(e) respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.

2. Each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces;

(c) conditions for attaching terminal or other equipment to the public telecommunications network;

(d) notification, permit, registration, or licensing requirements, if any;

(e) general procedures relating to resolution of telecommunications disputes; and

(f) any measures of the telecommunications regulatory body where the government delegates to other bodies bear the responsibility for preparing, amending, and adopting standards-related measures affecting access and use.**]**

**[EU: Article 43: Scarce Resources] [US: Article X.9: Allocation and Use of Scarce Resources]**

**[EU:** 1. The allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, shall be carried out in an open, objective, timely, transparent, non-discriminatory, and proportionate manner. Procedures shall be based on objective, transparent, non-discriminatory, and proportionate criteria.**]**

**[US:** 1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.**]**

**[EU:** 2. The current state of allocated frequency bands shall be made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.**]**

**[US:** 2. Spectrum:

(a) Each Party shall make available to the public the current state of frequency bands allocated and assigned to specific suppliers, but retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.**]**

**[EU:** 3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article {…} (market access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of electronic communications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.**]**

**[US:** (b) When making a spectrum allocation for commercial services, each Party shall endeavor to rely on an open and transparent process that considers the overall public interest, including the promotion of competition. Each Party shall endeavor to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party shall have the authority to use mechanisms such auctions, where appropriate, to assign spectrum for commercial use.**]**

**[US:** 3. Numbers:

(a) Each Party shall ensure that telecommunications services suppliers of the other Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.

(i) To the extent that a Party extends eligibility for access to telephone numbers to services suppliers other than telecommunications services suppliers, such eligibility will be extended to suppliers of like services of the other Party on a non-discriminatory basis.

(ii) No Party shall prevent suppliers eligible to obtain numbers from making such numbers

available to other services suppliers.**]**

**[US: Article X.10: Access and Use**

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;

(c) connect owned or leased circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

5. Provided that they satisfy the criteria set out in paragraph 4, conditions for access to and use of public telecommunications networks and services may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(b) requirements, where necessary, of the interoperability of such networks and services; and

(c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks.**]**

**[EU: Article 44: Access and Interconnection] [US: Article X.11: Interconnection]**

**[EU:** 1. Access and interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers concerned.**]**

**[US:** 1. Each Party shall ensure that all suppliers of public telecommunications services in its territory:

(a) provide, directly, or indirectly within the same territory, interconnection with suppliers of public telecommunications services of the other Party at reasonable rates; and**]**

**[EU:** 2. The Parties shall ensure that any suppliers of electronic communications services shall have a right, and when requested by another supplier, an obligation, to negotiate interconnection with each other for the purpose of providing publicly available electronic communications networks and services. The Parties shall not maintain any legal or administrative measures which oblige suppliers granting access or interconnection to offer different terms and conditions to different suppliers for equivalent services, or impose obligations that are not related to the services provided.

3. The Parties shall ensure that suppliers acquiring information from another supplier in the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.**]**

**[US:** Each Party shall ensure that all suppliers of public telecommunications services in its territory:

(b) take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements, and only use such information for the purpose of providing these services.**]**

**[EU:** 4. Each Party shall ensure that a major supplier in its territory grants access to its essential facilities, which may include, inter alia, network elements, associated facilities, and ancillary services, to suppliers of electronic communications services on reasonable and non-discriminatory terms and conditions (including in relation to rates, technical standards, specifications, quality and maintenance).**]**

**[EU:** 5. For public telecommunications transport services, interconnection with a major supplier shall be ensured**] [US:** (a)**]** at any technically feasible point in the **[US:** major suppliers'**]** network **[EU:** .**] [US:** ;**] [EU:** Such interconnection shall be provided.**]**

**[US:** 2. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:**]**

**[EU:** (a)**] [US:** (b)**]** under non-discriminatory terms, conditions (including **[EU:** in relation to**]** technical standards, specifications, **[EU:** quality and maintenance,**]**) and rates **[EU:**, and**] [US:**;**]** **[US:** (c)**]** of a quality no less favorable than that provided **[EU:** for the own like services of such**]** **[US:** by the**]** major supplier **[US:** for its own like services,**] [EU:**, or**]** for like services of non-affiliated **[US:** service**]** suppliers, or for its subsidiaries or other affiliates;

**[EU:** (b)**] [US:** (d)**]** in a timely fashion, on terms, conditions (including in relation to technical standards, specifications, **[EU:** quality and maintenance,**]**) and **[US:** at**]** cost-oriented rates that regard economic feasibility, and are transparent, reasonable, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

**[EU:** (c)**] [US:** (e)**] [EU:** up**]**on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

**[EU:** The procedures applicable for interconnection to a major supplier shall be made publicly available.**]**

**[US:** 5. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.**]**

**[EU:** Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers where it is appropriate.**]**

[**US:** 4. If a major supplier in the territory of a Party has a reference interconnection offer, the Party shall require the offer to be made publicly available.**]**

**[US:** 3. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through:

(a) negotiation of a new interconnection agreement; and

(b) one of the following options:

(1) a reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(2) the terms and conditions of an interconnection agreement in effect.**]**

**[US:** 6. Each Party shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body.[1]

7. Each Party shall make publicly available interconnection agreements in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory.

8. Each Party shall ensure that suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period after the supplier requests interconnection, by its telecommunications regulatory body, to resolve disputes regarding the terms, conditions, and rates for interconnection with that major supplier.**]**

1 **[US:** The United States may comply with paragraph 6 by requiring to file with a state regulatory authority.**]**

**[EU: Article 45] [US: Article X.12:] Competitive Safeguards [EU: on major suppliers]**

**[EU:** The Parties shall introduce or**] [US:** 1. Each Party shall**]** maintain appropriate measures for the purpose of preventing suppliers **[US:** of public telecommunications services**] [EU:** who**] [US:** that**]**, alone or together are a major supplier **[US:** in its territory**]**, from engaging in or continuing anti-competitive practices. **[EU:** These**] [US:** 2.**]** The anti-competitive practices **[US:** referred to in paragraph (a)**] [EU:** shall**]** include in particular:

(a) engaging in anti-competitive cross-subsidization;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information necessary for them to provide services.

**[US: Article X.13: Treatment by Major Suppliers of Public Telecommunications Services**

1. Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of the other Party treatment no less favorable than such major supplier accords in like circumstances to its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.**]**

**[US: Article X.14: Resale**

1. Each Party shall ensure that a major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications services.**]**

**[US: Article X.15: Leased Circuit Services**

1. Each Party shall ensure that a major supplier in its territory provides service suppliers of the other Party leased circuits services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and are based on a generally available offer.

2. In carrying out paragraph 1, each Party shall provide its telecommunications regulatory body or other appropriate bodies the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of the other Party at capacity-based and cost-oriented prices.**]**

**[EU: Article 46] [US: Article X.16] Universal Service**

**[EU:** 1. Each Party has the right to define the kind of universal service obligations it wishes to

maintain.

2. Such obligations will not be regarded per se as anti-competitive, provided they are administered in a proportionate, transparent, objective, and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition, and be not more burdensome than necessary for the kind of universal service as defined by the Party.**]**

**[US:** 1. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner, and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.**]**

**[EU:** 3. All suppliers of electronic communications networks and/or services should be eligible to provide universal service. The designation of universal service suppliers shall be made through an efficient, transparent, and non-discriminatory mechanism. Where necessary, the Parties shall assess whether the provision of universal service represents an unfair burden on supplier(s) designated to provide universal service. Where justified on the basis of such calculation, and taking into account the market benefit, if any, that accrues to a supplier offering universal service, regulatory authorities shall determine whether a mechanism is required to compensate the supplier(s) concerned, or to share the net cost of universal service obligations.**]**

**[EU: Article 47: Number Portability] [US: Article X.17: Allocation and Use of Scarce Resources]**

**[EU:** Each Party shall ensure that suppliers of public electronic communications services provide number portability on reasonable terms and conditions.**]**

**[US:** (b) Each Party shall ensure that telecommunications services suppliers and any other suppliers eligible for access to telephone numbers in its territory provide number portability to an extent that is technically feasible and on reasonable terms and conditions.**]**

**[EU: Article 48: Confidentiality of Information**

Each Party shall ensure the confidentiality of electronic communications and related traffic data by means of a public electronic communication network and publicly available electronic communications services without restricting trade in services.**]**

**[EU: Article 49: Resolution of Electronic Communications Disputes] [US: Article X.18: Resolution of Disputes]**

**[EU:** 1. In the event of a dispute arising between suppliers of electronic communications networks or services in connection with rights and obligations that arise from this sub-section, the regulatory authority concerned shall, at the request of either party concerned, issue a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months, except in exceptional circumstances.**]**

**[US:** 1. Each Party shall ensure that enterprises may have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's

measures relating to matters set out in Articles X.3-X.9 (Telecommunications Services).**]**

**[EU:** 2. When such a dispute concerns the cross-border provision of services, the regulatory authorities concerned shall coordinate their efforts in order to bring about a resolution of the dispute.

3. The decision of the regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based, and shall have the right to appeal this decision, according to Article X.2, paragraph 7 of this sub-section.

4. The procedure referred to in paragraphs 1, 2, and 3 of this Article shall not preclude either party concerned from bringing an action before the courts.**]**

**[US:** 2. Each Party shall ensure that if a telecommunications regulatory body declines to initiate any action on a request to resolve a dispute, it shall, upon request, provide a written explanation for its decision within a reasonable period of time.

3. Each Party shall ensure that any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision. No Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless an appropriate authority stays the determination or decision.

4. Each Party shall ensure that any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. No Party may permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless the relevant judicial body stays the determination or decision.**]**

**[EU: Article 50: Foreign Shareholding**

With regard to the provision of electronic communication services and networks through commercial presence, no party shall impose joint venture requirements or limit the participation of foreign capital in terms of a maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.**]**

**[US: Article X.19: Undersea Cables and Landing Facilities and Services**

1. Where a supplier of telecommunications services in the territory of a Party operates a submarine cable system to provide public telecommunications services, that Party shall ensure that the supplier accords suppliers of public telecommunications services of the other Party reasonable and non-discriminatory treatment with respect to access[2] to that submarine cable system, including landing

2 **[US:** With respect to a supplier of the other Party that does not own facilities in the territory of the Party in which the cable landing system is located, that Party may comply with paragraph 1 by ensuring access to the submarine cable system through facilities that the supplier of the other Party leases from a licensed supplier of public

facilities.

2. Where a major supplier of international public telecommunications services in the territory of a Party controls cable landing facilities and services for which there are no economically or technically feasible alternatives, the Party shall ensure that the major supplier:

(a) permits suppliers of public telecommunications services of the other Party to:

(1) use the major supplier's cross-connect links in the submarine cable landing station to connect their equipment to backhaul links and submarine cable capacity of any supplier of telecommunications; and

(2) co-locate their transmission and routing equipment used for accessing submarine cable capacity and backhaul links of any supplier of telecommunications in the submarine cable landing station on terms and conditions as well as at cost-oriented rates, that are reasonable, transparent, and non-discriminatory; and

(b) provides suppliers of telecommunications of the other Party international leased circuits, backhaul links, and cross-connect links in the submarine cable landing station on terms and conditions and at rates, that are reasonable, transparent, and non-discriminatory.[3]**]**

telecommunications services in the territory of the other Party.**]**

3 **[US:** Notwithstanding paragraph (b), a Party may permit a major supplier in its territory to limit access to or use of its submarine cable landing station if capacity at the station is unavailable.