

S.I. 2005 No. 72

**Telecommunications Act
Cap. 282B**

**TELECOMMUNICATIONS (RESALE)
REGULATIONS, 2005**

The Minister in exercise of the powers conferred on him by section 110(1)(o) of the *Telecommunications Act*, makes the following Regulations:

1. These Regulations may be cited as the *Telecommunications (Resale) Regulations, 2005*. Citation.

2. (1) In these Regulations, Interpretation.

“resale provider” means a licensee to whom a request for provision of resale services has been made;

“resale seeker” means a licensee who makes a request for provision of resale services from another licensee;

“resale services” means the services listed in the *Schedule* that are available for resale in accordance with regulation 3. Schedule.

(2) For the purposes of these Regulations,

(a) a body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and

(b) where two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

Authority to determine resale services. Schedule.

3. (1) The Minister may determine that any services listed in the *Schedule* are to be made available for resale in accordance with these Regulations.

(2) Paragraph (1) is not to be regarded as requiring any licensee to make available for resale any service that is supplied over a telecommunications network where no component of that telecommunications network is operated under an exclusive licence.

(3) Nothing in these Regulations shall be regarded as requiring a licensee to make available any service for resale where to do so would adversely affect

(a) the provision by the licensee of any service to existing customers; or

(b) the efficient operation by the licensee of its licensed network.

(4) Nothing in these Regulations requires a licensee to offer a resale of transit services.

Request for resale.

4. A request for resale services shall include the following information:

(a) a copy of the resale seeker's service provider licence; and

(b) the resale services that the resale seeker wishes to procure from the relevant licensee.

Time.

5. A resale seeker and a resale provider shall act in a manner that enables resale services to be provided as soon as reasonably practicable.

Resale charges.

6. (1) Resale services shall be provided at rates that do not exceed the retail price for the equivalent retail service offered by the resale provider minus a reasonable estimate of the costs avoided by the resale provider as a result of providing that service for resale rather than on a retail basis.

(2) Resale services shall be provided on non-discriminatory terms and conditions including non-discriminatory rates and quality of service.

(3) Resale seekers shall be required to pay the costs, if any, incurred by the resale provider in providing the resale services requested by the seekers, and those costs are to be shared in an equitable manner amongst all resale seekers to whom the resale services are provided.

7. (1) A licensee shall not communicate or allow access to confidential information received from another licensee as a consequence of the establishment of a resale service relationship, except to the extent authorised by that other licensee in writing, pursuant to the Act or any other Act.

Confidentiality.

(2) Information received by a resale provider from a resale seeker shall be used only for the purpose for which it was supplied, and shall not be passed on to other parts of the same business, affiliates, or partners for whom such information could provide a competitive advantage.

8. All agreements for provision of resale services

Forms and contents of agreement.

- (a) must be negotiated on a commercial basis;
- (b) must be in writing; and
- (c) must specify in those agreements, except where a particular matter is irrelevant to the resale services requested.
 - (i) the duration and re-negotiation of agreements;
 - (ii) dispute resolution procedures;
 - (iii) information handling and confidentiality provisions;
 - (iv) intellectual property rights;
 - (v) procedures in the event of alterations being proposed to the service offerings of the resale provider;

- (vi) terms of payment, including billing and settlement procedures;
- (vii) the scope and description of the resale services to be provided;
- (viii) conditions under which the provision of resale services will be suspended or terminated; and
- (ix) any other relevant issue.

Resale not permitted.

9. A party shall not negotiate or propose to enter into an agreement for the provision of resale services or for the resale of any other telecommunication service where the Minister determines that

- (a) the Act prohibits the provision of resale services or resale of that telecommunication service; or
- (b) the licence issued to the resale seeker does not authorise that seeker to provide those services by resale.

Suspension and termination.

10. An agreement for the provision of resale services shall include provision for the suspension, termination or amendment of the agreement for conduct that is illegal or that interferes with the obligations of either the resale seeker or the resale provider under the relevant licence, the Act or Regulations made under the Act.

Disputes.

- 11.** Where the parties are not able to reach an agreement on
- (a) the terms for the provision of resale services, then either party may refer the issue to the Minister; or
 - (b) rates for the provision of resale services, then either party may refer the issue to the Commission.

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No. 93.

12. The *Telecommunications (Resale) Regulations, 2003*, are revoked.

SCHEDULE

(Regulation 3(1))

Services Available for Resale

The following services may be made available by the Minister for the purposes of resale in accordance with these Regulations:

- (a) international voice minutes provided for switchless resale which may be purchased from any holder of a Barbados International Service Provider Licence.
- (b) circuits leased from an international carrier who holds a valid International Carrier Licence issued by the Government of Barbados. The leased circuit capacity can be resold on a switchless basis.

Made by the Minister this 9th day of June, 2005.

ANTHONY P. WOOD

Minister responsible for Telecommunications.