

Ordinance
concerning Special Network Access

Network Access Ordinance
NZV

As of: 1 October 1996

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Network Access ordinance (NZV)

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The Federal Government hereby issues the following Ordinance under §35 (5) and §37 (3) of the Telecommunications Act of 25 July 1996 (Federal Law Gazette I p 1120):

Chapter One. General Provisions

§1

Scope

(1) This Ordinance regulates the way in which special network access, including interconnection, shall be provided (§35 (5) of the Telecommunications Act) and the necessary particulars of interconnection orders (§37 (3) of the Telecommunications Act).

(2) Special network access shall enable the use of network and/or service offerings in accordance with §35 (1) of the Telecommunications Act by users within the meaning of §35 (3) of the Telecommunications Act that, as telecommunications service providers or telecommunications carriers, request such offerings in order to provide their own services. The interconnection of telecommunications networks represents special network access as defined herein.

§2

Unbundling Requirement

A carrier according to §35 (1) Of the Telecommunications Act shall provide network and/or service offerings in accordance with §33 (1) of the Telecommunications Act, including transmission, switching and operational interfaces, such that no unsolicited offering need be taken. The carrier shall provide unbundled access to all network elements, including unbundled access to the local loop. The unbundling requirement shall not apply where the carrier can provide evidence that such requirement is not objectively justified in a given instance.

§3

Collocation

(1) A carrier according to §35 (1) of the Telecommunications Act shall undertake to provide use of an offering according to para (2) at the location of the transmission, switching or operational interface in non-discriminatory manner and on the same conditions such carrier applies to itself for use of the said offering.

(2) The carrier shall meet this requirement by housing on its premises the equipment necessary for use of the offering according to para (1) ("physical collocation") and by granting the user, or the user's authorised representative, access to the equipment at any time, unless the carrier can provide evidence that this is not, or no longer objectively justified. In such case the carrier shall undertake to provide use of the offering according to para (1) on equal economic, technical and operational conditions ("virtual collocation").

§4

Provision of Information Requirement

A carrier according to §35 (1) of the Telecommunications Act shall provide users within the meaning of §35 (3) of the Telecommunications Act, upon request, with all the information required for use of network and/or service offerings according to §1 (2). The carrier shall also state any changes intended to be made to the relevant offerings over the following six months.

Chapter Two. Agreements on Special Network Access, Standard Offer

§5

Agreements

(1) Agreements on special network access according to §35 (2) of the Telecommunications Act shall be made in writing.

(2) Agreements according to para (1) shall, in particular with regard to interconnection, be based on the elements listed at Annex.

§6

Submission and Publication Requirement

(1) There shall be submitted forthwith to the regulatory authority any agreement according to §5 to which a carrier according to §35 (1) of the Telecommunications Act is party, by such carrier, upon the signing of such agreement.

(2) Any party to such agreement may, upon submission thereof, mark provisions containing trade or operating secrets. In such case, such party shall additionally submit for inspection according to para (4) a variation of the agreement which does not, in that party's view, disclose the said trade or operating secrets.

(3) Where the regulatory authority considers marking according to para (2) sentence 1 unjustified, it shall consult with the submitting persons prior to taking a decision on allowing third parties to inspect such agreements. It may subsequently restrict inspection to the variation according to para (2) sentence 2.

(4) The regulatory authority shall publish in its official gazette where and when users according to §1 (2) can inspect agreements according to para (1).

(5) The regulatory authority shall publish in its official gazette those conditions of an agreement according to para (1) that are expected to become part of a number of agreements according to para (1) (Standard offer). A carrier according to §35 (1) of the Telecommunications Act shall undertake to incorporate in its general terms and conditions such standard offer.

§7

Confidentiality of Information

There may be used solely for those purposes for which it was provided information obtained from negotiating parties in connection with agreements according to §5. Such information may not be passed on in particular to any other departments, subsidiaries or partner companies of the negotiating parties that could gain competitive advantages therefrom.

§8

Settlement of Disputes

Any dispute relating to negotiations on a special network access agreement to which a carrier according to §35 (1) of the Telecommunications Act is party may be referred jointly, by the parties concerned, to the regulatory authority for settlement. The regulatory authority shall decide on the case, taking into due consideration the interests of both parties.

Chapter Three. Interconnection Orders

§9

Interconnection Orders

(1) Where, between common carriers, no interconnection agreement is brought about (§37 (1) of the Telecommunications Act), either of the parties concerned may appeal to the regulatory authority.

(2) Such appeal shall be made in writing; it shall be substantiated. Set forth in particular shall be when interconnection was requested, what network and/or service offerings were requested and on which issues agreement failed to be reached. Any such appeal may be revoked.

(3) In any procedure according to §37 (1) of the Telecommunications Act the regulatory authority shall heed the grounds for appeal.

(4) In any decision according to §37 (1) of the Telecommunications Act the regulatory authority shall take into due consideration the interests of the users and the entrepreneurial freedom of each carrier to configure its own network.

(5) Carriers concerned shall comply with an order according to §37 (1) of the Telecommunications Act within a period not exceeding three months, unless this is not possible objectively for technical reasons.

(6) The regulatory authority shall publish in its official gazette the interconnection order. §6 (5) shall apply accordingly.

Chapter Four. Administrative Fines, Entry into Force

§10

Administrative Fines

An administrative offence within the meaning of §96 (1) subpara 9 of the Telecommunications Act shall be deemed to have been committed by anyone who, intentionally or negligently,

1. in contravention of §4 fails to provide information, fails to provide correct or complete information or fails to provide information within the proper time, or
2. in contravention of §6 (1) fails to submit an agreement or fails to submit an agreement within the proper time.

§11 Entry into Force

This ordinance shall enter into force on the day following its Promulgation.

The Bundesrat has given its consent.

Annex (relating to §5 (2))

Framework agreement on special network access, including interconnection

- a) Description of each network and/or service offering, determination of how and within what period these will be provided
- b) Access to additional services (ancillary supplementary and advanced services)
- c) Achievement of equal access
- d) Location of the points of connection
- e) Provision of facility sharing, collocation
- f) Technical standards for special network access
- g) Interoperability tests
- h) Traffic/network management
- i) Maintenance and quality of services (including fault repair)
- j) Determination and term of validity of the rates for network and/or service offerings provided, access to additional services
- k) Terms of payment, including billing procedures
- l) Definition and limitation of liability and indemnity
- m) Arrangements in respect of intellectual property rights
- n) Measures to ensure compliance with essential requirements
- o) Staff training
- p) Duration and renegotiation of the agreement
- q) Procedures in the event of changes being proposed to the network and/or service offerings of one of the parties
- r) Procedures instituted by the parties in order to bring about a regulatory authority decision
- s) Protection of the confidential parts of the agreement