

TECHNICAL CODE

TECHNICAL STANDARDS AND INFRASTRUCTURE REQUIREMENTS – TECHNICAL CODE OF PRACTICE FOR THE INSTALLATION OF NETWORK FACILITIES

Developed by



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DEVELOPMENT OF TECHNICAL CODES

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Committee Representation

The Installation of Network Facilities-Regulatory Working Group (INF-R WG) under the Malaysian Technical Standards Forum Bhd (MTSFB) which developed this Technical Code consists of representatives from the following organizations:

Asian Broadcasting Network (M) Sdn Bhd (ABNxcross)

Asiaspace Sdn Bhd

Celcom Axiata Berhad

DiGi Telecommunications Sdn Bhd

Fibrecomm Network (M) Sdn Bhd

Fiberail Sdn Bhd

Huber+ Suhner (M) Sdn Bhd

Jaring Communications Sdn. Bhd.

Konsortium Jaringan Selangor Sdn. Bhd

Maxis Communications Berhad

Packet One Networks (Malaysia) Sdn Bhd

Sapura Holdings Sdn Bhd

SIRIM QAS International Sdn Bhd

Telekom Malaysia Berhad

TIME dotCom Berhad.

U Mobile Sdn Bhd

YTL Communications Sdn. Bhd.

FOREWORD

This technical code of practice for the Technical Standards and Infrastructure Requirements – Technical Code of Practice for The Installation of Network Facilities (this ‘Technical Code of Practice’) was developed and recommended by the Installation of Network Facilities-Regulatory Working Group (INF-R WG) in order to establish procedures in the form of a code (code of conduct) for the installation of network facilities, pursuant to Chapter 1 Part X of the Communications and Multimedia Act 1998 (CMA 1998), *Installation of Network Facilities, Access to Network Facilities, etc.* The development of this TCP was carried out by this working group under the supervision of the Malaysian Technical Standards Forum Bhd (MTSFB) which has been authorized by Malaysian Communications and Multimedia Commission (MCMC).

The TCP on the Installation of Network Facilities is intended to be used as reference for the Network Facilities Providers (NFPs), property owners and agents, consultant, general public, local authorities and other concerned parties. This is in line with the objective to meet the requirement of end users services (telecommunication) with minimum disruptions to all services offered by the Network Service Providers (NSPs).

TCP consists of 7 main modules which are as follows:

- i. Notices
- ii. Compensation
- iii. Consideration
- iv. Dispute Resolution
- v. Low Impact Facilities
- vi. Temporary Defence Facilities
- vii. Guidelines for Access - Other Public Utilities Posts, Network Facilities or Right of Way

This TCP does not of itself confer immunity from legal obligations.

This TCP shall continue to be valid and effective until reviewed or cancelled.

**TECHNICAL STANDARDS AND INFRASTRUCTURE REQUIREMENTS –
TECHNICAL CODE OF PRACTICE FOR THE INSTALLATION OF NETWORK
FACILITIES**

1. Introduction

There is an impending need to have safe, reliable and high-speed telecommunications services in the Digital Age. In providing Broadband to the nation, the telecommunications operators must ensure that the network facilities are rolled out where needed and existing infrastructure is regularly maintained.

The telecommunication needs depend on the use of land. A right of way on over and under land forms an integral part of the Network Facilities Providers' (NFPs') effort to provide telecommunications services effectively.

Telecommunications operators rolling out telecommunications communications infrastructure often face challenges in accessing and installing network facilities on over and under land. The land owners also face challenges in responding to the telecommunications operators' requests to access land.

The Communications and Multimedia Act 1998 (CMA 1998) sets out the NFPs' rights and responsibilities when inspecting, maintaining or installing telecommunications facilities. Chapter 1 Part X, *Installation of Network Facilities, Access to Network Facilities, etc.* provides authority for the NFPs to inspect land, maintain facilities or install any declared low impact facilities' or temporary defence facilities or install network facilities where the installation is carried out for the sole purpose of connecting a building or structure, or a line that forms part of a network facility. However, when undertaking these activities, they must comply with certain requirements that are set out in Chapter 1 Part X of the CMA 1998.

The courts has given recognition to the right of way which public utilities have through decided cases and gives it sufficient protection in the form of civil and criminal remedies under the CMA 1998.

The Technical Code of Practice (TCP) supplements the requirements imposed on NFPs under Chapter 1 Part X of the CMA 1998 by setting out the procedures for the NFPs who intend to access any land for the purpose of inspecting, installing and maintaining network facilities under the power of wayleave. The compliance of the TCP is compulsory for the NFPs since it is a condition of the NFPs' licences that they must comply with the CMA 1998 and recognized industry codes and standards, and if the NFPs do not comply with those provisions they may be in breach of their licence conditions.

This TCP has been developed by the Installation of Network Facilities-Regulatory Working Group (INF-R WG) based on the need for wayleave for the inspection, installation and maintenance of network facilities and in particular to provide NFPs' with a right of way to:

- a) enter on, and occupy, any land; and
- b) do anything necessary or desirable on, over or under the land, to install network facilities in the provision of network services for the purpose of providing telecommunications services.

This TCP is intended as a code for NFP, property owners and agents, consultants, general public, local authorities and other concerned parties, on the wayleave rights for the NFPs to enter and carry out the works on land for the installation of telecommunications network facilities, the rights of the landowners under the wayleave agreement and the CMA 1998.

The TCP is a code setting out the standards and procedures which the NFP will observe in the exercise of their wayleave on over and under land in the installation of network facilities and access to right of way in general.

Users of this TCP are advised to refer to Chapter 1 Part X of the CMA 1998, as a guideline in respect of all matters pertaining to the installation of network facilities in the provision of network services at all times. The aforesaid Chapter 1 Part X of the CMA 1998 document is available and maintained at the MCMC website.

This TCP does not address the installation of the network facilities authorized by Chapter 1 Part X of the CMA 1998 which may require the approval of the State Authority, local authority or other relevant authority. The limited general exemptions from such laws apply to a smaller number of activities relating to the inspection of land, connecting subscribers to an existing network, the installation of prescribed facilities (“low-impact facilities” and temporary defence facilities) or the maintenance of facilities only.

2. Scope

This TCP sets out the procedures to be observed when undertaking the inspecting, installation and maintaining of telecommunications facilities on over or under land.

The TCP requires that, when undertaking these activities, the NFPs must take all reasonable steps to:

- a) Provide written notice to landowners and occupiers, specifying the purpose for which the NFPs intends to engage in the activity and outlining the objection process before starting the network facilities installation activity.
- b) Compensate the owner or occupier of land whom may be entitled to compensation for any financial loss or damage caused by a NFP entering and inspecting the land, or installing or maintaining a telecommunications facility.

Note: A claim for compensation is not a ground for objection under the TCP.

- c) Offer Consideration for the right of way provided by the landowners and occupiers upon a firm basis of valuation which as far as possible strikes a fair balance between the interests of the NFPs and the landowners. If the amount of compensation cannot be agreed between the parties, MCMC may decide on what is a reasonable amount.
- d) Adhere to the agreed Dispute Resolution Process based on the CMA 1998, Chapter 7 Part V, *Notification and Resolution of Dispute*.
- e) Install and maintain low-impact facilities, including in-building subscriber connection equipment in accordance with any ministerial determination.
- f) Comply with the Part 10 of the TCP, Guidelines for Access - Other Public Utilities Posts, Network Facilities or Right of Way. Take all reasonable steps to ensure that the activities interfere as little as practicable with the operation of a public utility.
- g) Do as little damage as practicable and act according to good engineering practice.
- h) Take all reasonable steps to ensure the land is restored to a condition similar to its condition before the activity began.
- i) Co-operate with other NFPs and public utilities who are undertaking similar activities on the same land to minimize inconvenience and damage.

This TCP is subject to review from time to time in line with new industry developments, technical or non-technical.

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Note:

MTSFB also maintains a number of guides that sets out the requirements for the installation of telecommunications network facilities. These include the

- a) MTSFB 001:2009 - *Technical Standard and Infrastructure Requirements Radiocommunications Network Infrastructure (External)*;
- b) MTSFB 008:2005 (Revision 1) - *Technical Standard and Infrastructure Requirements Part 1 Fixed Network Infrastructure*

Details on current compliance arrangements can also be obtained from the MTSFB website, <http://www.mtsfb.org.my/document/files?folder=Guideline%20and%20Technical> or in MCMC website, <http://www.skmm.gov.my/Legal/Register/CMA-Registers.aspx>

3. Normative References

The following normative references are indispensable for the application of this Technical Code. For dated references, only the edition cited applies. For undated references, the latest edition of the normative references (including any amendments) applies.

Communication and Multimedia Act 1998 (CMA 1998), January 2006

MCMC Guidelines for Complaints Handling, July 2003

MCMC Guidelines for Dispute Resolution, July 2003

4. Notices

4.1 Introduction

Network Facilities Providers' Rights to Inspect, Install and Maintain Network Facilities pursuant to the CMA 1998, the NFPs have the following rights, namely:

- a) Right to inspect land
NFPs have the right to inspect land and determine the suitability of the land for its purposes in accordance with Section 214 of the CMA 1998, *Inspection of land*.
- b) Right to install network facilities
NFPs have the right to install network facilities for the provision of network services. Prior to carrying out the installation of network facilities, the NFPs must be authorized to carry out that particular activity in accordance with Section 215 (1) of the CMA 1998, *Installation of network facilities*.
- c) Right to maintain telecommunications facilities
A NFP has the right to maintain network facilities including any fixing, restoration, replacement, removal or variation.
- d) Right of access to posts, network facilities or right of way
A NFP has the right to non-discriminatory access to any post, network facilities or right of way of another NFP or a public utility subject to insufficient capacity, or for reasons of safety, security, reliability, or difficulty of a technical or engineering nature in accordance with Section 228 of the CMA 1998, *Access to posts, network facilities or right of way*.

In carrying out the installation of network facilities activities, NFPs may do the following:

- a) Enter on, and occupy, any land; and

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- b) On, over or under the land, do anything necessary or desirable for those purposes, including
 - i. Constructing, erecting and placing any post or network facility;
 - ii. Felling and lopping trees and clearing and removing other vegetation and undergrowth;
 - iii. Making cuttings and excavations;
 - iv. Restoring the surface of the land and, for that purpose, removing and disposing of soil, vegetation and other material;
 - v. Erecting temporary workshops and sheds and other temporary buildings; and
 - vi. Leveling the surface of the land and making roads.

When undertaking the installation of network facilities activities, NFPs must take all reasonable steps to:

- a) Cause as little detriment, damage and inconvenience as practicable; in accordance with Section 216 of the CMA 1998, *Minimal damage*;
- b) Ensure that land is restored to a condition similar to its condition before the activity began; in accordance with Section 217 of the CMA 1998, *Network facilities provider to restore land*;
- c) Protect the environment; in accordance with Section 218 of the CMA 1998;
- d) Minimize interference with public utilities, roads and paths, traffic and land use; in accordance with Section 218(c) of the CMA 1998;
- e) Act in accordance with good engineering practice, Section 218(a) of the CMA 1998, and ensure that the design, planning and installation of the facilities is in accordance with best practice and complies with MCMC or industry codes or standards;
- f) Protect the safety of persons and property; in accordance with Section 218(b) of the CMA 1998;
- g) Co-locate facilities with the existing facilities of other NFPs or public utilities or use public easements; and
- h) Co-operate with other NFPs and public utilities who are undertaking similar activities on the same land to minimize inconvenience and damage.

The installation of the network facilities may be subject to the approval of the State Authority, Local Authority or other relevant authority, where necessary.

4.2 Notification

4.2.1 Introduction

In the case of the inspection of land, there is no express statutory requirement for NFPs to issue a notice for the inspection of land. In carrying out the installation activities in relation to any land, however, NFPs are required to notify the owner and occupier of the land.

NFPs are required to comply with the notification requirements in the following instances:

- a) Before engaging in land entry activity, in accordance with Section 221 CMA 1998, *Notice to owner of land*
- b) Before cutting down, lopping a tree, clearing or removing undergrowth or vegetation on private land, in accordance with Section 222 CMA 1998, *Notice to owner of land for lopping of trees, etc.*

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- c) Before (a) closing, diverting or narrowing a road or bridge;
 - i. Installing any network facilities on, over or under a road or bridge; or
 - ii. Altering the position of a conduit, gas main or pipe
 - iii. Section 223 CMA 1998, *Notice to road authority, public utility, etc.*
 - iv. In summary the statutory notices required are, namely the Section 221 Notice, Section 222 Notice and Section 223 Notice respectively.

4.2.2 Inspection of Land

Under the CMA 1998, a NFP has the right to inspect land. This encompasses the right to enter onto and inspect any land, and do anything on the land that is necessary or desirable for the purpose of determining whether the land is suitable for its purposes.

This right is embodied in Section 214 of the CMA 1998, *Inspection of land*, which provides that: A NFP may, for the purposes of determining whether any land is suitable for its purposes:

- a) enter on, and inspect, the land; and
- b) do anything on the land that is necessary or desirable for that purpose, including making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil.

The right to inspect land does not require the prior issuance of a notice of inspection. There is no express statutory requirement for the NFP to issue a notice for the inspection of land.

4.2.3 Section 221 Notice

Section 221 Notice - Before engaging in land entry activity

4.2.3.1 Procedure

A NFP shall adhere to following before engaging in any land entry activity, i.e.:

- a) Provide a written notice to the landowner and occupier at least fourteen (14) days before the commencement of the activity;
- b) The notice must specify and state the following:
 - i. The purpose for engaging in the land entry activity.
 - ii. A statement that compensation may be payable to a person who suffers financial loss or damage in relation to property because of anything done by the provider in engaging in the activity.

A standard form of the Section 221 Notice shall be adopted by the NFP as in Annex A prior to any land entry activity.

The process flow of the installation of the network facilities process shown in Annex B.

4.2.3.2 Waiver

The landowner and occupier may waive their rights respectively to be given the notice.

4.2.3.3 No Notification Requirements

The NFP need not provide a written notice to the landowner and occupier if the provider intends to engage in the inspection of land under Section 214 of the CMA 1998, *Inspection of land*, and those activities does not involve any material disturbance to the land which is a public place.

Note:

Based on the current practice, MCMC only issue a letter of no objection and does not issue any installation permit (as specified by Section 215(1) (a)) prior to any installation activities by the Service Provider. By virtue of Section 215(2), Service Provider may be required to obtain the approval of the State Authority, Local Authority or the relevant authority, if necessary.

4.2.4 Section 222 Notice

Section 222 Notice - Before cutting down, lopping a tree; clearing or removing undergrowth or vegetation on private land.

4.2.4.1 Procedure

NFP shall adhere to following before engaging in any cutting down, lopping a tree, clearing or removing undergrowth or vegetation on private land, i.e.

- a) Provide a written notice to the landowner and occupier at least fourteen (14) days before the commencement of the activity.
- b) The notice must specify and state the following:

Requesting that the tree be cut down or lopped, or that the undergrowth or vegetation be cleared, in the manner, and within the period, specified in the notice.

- c) In the event the notice is not complied with, the NFP may undertake those activities.

4.2.4.2 Waiver

The landowner and occupier may waive their rights respectively to be given the notice.

A standard form of the Section 222 Notice shall be adopted by the NFP as in Annex C prior to any cutting down, lopping a tree, clearing or removing undergrowth or vegetation on private land.

4.2.5 Section 223 Notice

Section 223 Notice - Before closing, diverting or narrowing a road or bridge; installing any network facilities on, over or under a road or bridge; or altering the position of a conduit, gas main or pipe.

4.2.5.1 Procedure

A NFP shall adhere to following before engaging in the

- a) Closing, diverting or narrowing a road or bridge;
- b) Installing any network facilities on, over or under a road or bridge; or
- c) Altering the position of a conduit, gas main or pipe, i.e.

Provide a written notice to the person or authority responsible for the care and management of the road, bridge, conduit, gas main or pipe at least fourteen (14) days before the commencement of the activity.

A standard form of the Section 223 Notice shall be adopted by the NFP as Annex D prior to any land entry activity.

4.2.5.2 Waiver

A person or authority may waive the person's or authority's right to be given the notice.

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4.2.5.3 Open Passage

If a NFP engages in the installation of network facilities, the NFP shall ensure that the network facilities installed over a road, bridge, path or navigable water are installed in a way that will allow reasonable passage by persons, vehicles and vessels.

4.3 Objections

4.3.1 The Landowner's Right

The landowner may dispute the rights of the NFP to undertake the installation of network facilities above based on the following grounds, namely, -

- a) The landowner objects to the intended works of the NFP; and/or
- b) The landowner does not agree to the amount of compensation or consideration payable.

4.3.2 Negotiation

- a) The parties shall first attempt to resolve the dispute by negotiations.
- b) If the parties have reached a settlement to the dispute an undertaking may be provided by the parties and registered with the Commission. The parties shall then be taken to adopt the conditions of the undertaking in resolving the dispute.

4.3.3 Dispute Resolution

The parties may seek resolution of the dispute by the Commission if:

- a) One of the parties to the dispute does not wish to adopt the conditions of the undertaking; or
- b) They cannot or have otherwise failed to reach an agreement to the dispute, and no relevant undertaking has been registered

The Commission shall adjudicate the disputes in accordance with the MCMC Guidelines for Dispute Resolution July 2003 which contains the principles and procedures for the resolution of disputes or a class of disputes as in Annex E.

The dispute resolution process outlined in the Guidelines is in addition to and not in derogation of the Commission's existing powers and functions under the CMA.

For further details on the dispute resolution mechanism, refer to part 7 of the TCP, Dispute Resolution.

5. Compensation

5.1 Introduction

Compensation and consideration has been used interchangeably traditionally to denote one and the same thing. For example, compensation seeks to include rentals payable to landowners for use of the right of way. This has at times caused confusion as to the use of the terms and the meanings intended.

In relation to the rights and remedies of the landowners for the right of way accorded to the NFPs, the term compensation and consideration has distinct and different meanings and which brings about different forms of remedies to the landowners for use of the right of way.

The statutory remedy accorded to the landowner in relation to compensation is provided in Section 221(3) of the CMA 1998 which states that

“...if a person suffers financial loss or damage in relation to property because of anything done by the provider in engaging in the activity, compensation may be payable.”

The rate of compensation payable as agreed by both the NFP and the landowner or occupier of the land in their wayleave agreements has not been defined or addressed specifically.

In respect of the right of way as stated in Chapter 1 Part X of the CMA 1998, *Installation of Network Facilities, Access to Network Facilities, etc.* the term compensation and consideration are distinct and different remedies accorded to the landowners by the NFPs.

5.1.1 The Difference – Compensation and Consideration

Compensation is a remedy paid for losses suffered by the landowner, for the diminution in value in terms of financial loss or damage to his property, to put him in a status quo position, as if he has not suffered the losses.

Whereas, consideration is the payment for use of the property (in the form of rentals) made to the landowner for granting the right of way to the NFP. This is a payment over and above the payment for losses suffered by the landowner.

5.1.2 Meaning – Compensation

The term “compensation” is used to indicate a payment that compensates for a loss. In the context of access to the right of way for land, the term “compensation” is used to denote a sum that makes good the landowner’s losses, whether that is the loss caused by the disturbance of having installation of network facilities done or the loss in value of the land at the end of such land entry activities.

Examples of compensation in this sense includes without limitation, the cost of disruption to a landowner’s business while a cable is laid under his land (example agricultural land), or the cost of making good a building (for example shop house) after the telecommunications equipment is installed to make it a transmission site or a payment to compensate the landowner for any diminution in value of his land, i.e. the land is worth much less than it was before after the installation of the telecommunications equipment.

5.1.3 Assessment

The assessment of the compensation payable should be based on two (2) components –

- a) The value of the land which would be depreciated by allowing the right of way; and
- b) The damage (if any) sustained by the landowner for the severance of his land from other lands owned by him, or injuriously affecting that other land by giving the right of way.

In essence, where there is diminution in the value of the land resulting from the right of way accorded to the NFP, the landowner will be compensated by being paid the difference.

The assessment of the compensation payable may be done as follows:

- a) Negotiations
The parties may determine the compensation payable through negotiations and any agreement reached is done by way of private arrangement.
- b) Appointment of Valuers
The parties may choose to appoint an independent valuer to determine the compensation payable. The costs of the independent valuation shall be borne equally between the parties or individually depending on the arrangement agreed upon.

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c) Referral to the Commission

In the event the parties are not able to reach an agreement as to the compensation payable, then the matter may be referred to the Commission for resolution.

5.2 Dispute Resolution

Section 229(1) of the CMA 1998 provides that the Commission may adopt procedures necessary and appropriate to hear and resolve disputes in accordance with Chapter 7 of Part V, *Notification and Resolution of Disputes*.

The parties may seek resolution of the dispute by the Commission as to the compensation payable only if

- a) One of the parties to the dispute does not wish to adopt the conditions of the undertaking registered with the Commission; or
- b) They cannot or have otherwise failed to reach an agreement to the dispute, and no relevant undertaking has been registered

The Commission shall adjudicate the disputes in accordance with the MCMC Guidelines for Dispute Resolution July 2003 which contains the principles and procedures for the resolution of disputes or a class of disputes as in Annex E.

The dispute resolution process outlined in the Guidelines is in addition to and not in derogation of the Commission's existing powers and functions under the CMA.

For further details on the dispute resolution mechanism, refer to part 7 of the TCP, Dispute Resolution.

5.3 Payment

The compensation payments should compensate the landowner for any financial loss or damage to property in full. The mode of settlement of the compensation may be by way of installments or a one off payment. The compensation shall be considered finally settled only if the payments are received in full. The principle of double compensation is also not applicable in this instance.

The quantum of the compensation and the mode of payment shall be determined by way of private treaty between the landowner and the NFP.

6. Consideration

6.1 Introduction

Part 4 of the TCP, Compensation, state, there is a fundamental difference between compensation and consideration. The distinction is significant as it sets out and differentiates the financial entitlement of the landowner for the use of the right of way.

The claims of the landowner are exhaustive and limited to the two (2) categories.

a) Meaning - Consideration

Consideration is something more than compensation and it is akin to a price paid for the use of something and in this case for the right of way granted by the landowner to the NFP. The payment of the consideration leaves the landlord better off than he or she was beforehand; it is a premium paid for the right of way.

b) Valuation

The provision of telecommunications services requiring the public installation of network facilities makes it a cogent reason for the regulation of the rentals that landowners can demand for the right of way granted. Furthermore, the offers (as opposed to invitation to treat) made by NFPs to landowners for wayleave rights to roll out the telecommunications services makes it imperative that there is a clear basis for the determination of the quantum of the rental payable.

6.1.1 Bases of Valuation

The factors to be taken into account in the formulation of the basis of valuation are:

- a) Certainty - The need for as much certainty as possible; and
- b) Striking a Balance – To balance the interests of the NFP and the landowners fairly.

There are commonly four (4) options used as bases of valuation, namely:

- a) Profit share or ransom value - means that the rentals paid to the landowners are based on the revenue share of the profits.
- b) Market value - the rentals paid are based on a willingly agree sum by the landowner and the NFP.
- c) Market value assessed using compulsory acquisition principles - the rentals paid are based on the market value of the right of way disregarding the value of that right to the NFP and the scheme pursuant to which the right is acquired.
- d) Uplift on compensation - means that in the valuation of the rental to be paid, the rental as consideration is disregarded altogether, and based only on the basis of compensation i.e. the diminution in the value of the land resulting from the grant of the right of way by the landowner

Currently the prevalent basis of valuation of rentals is on the market value of the wayleave rights. This is presently being embodied in the Consideration Code with the ultimate objective of striking a fair balance between the competing interests of the landowner and the network facilities provider. The challenge is to fairly price the right of way to NFP and giving a just premium to the landowner.

6.1.2 Code

The Consideration Code contains the proposed rentals which the NFPs considers fair and reasonable to be paid to the landowners based on the market valuation of the wayleave rights granted.

6.2 Dispute Resolution

6.2.1 Process

Section 229(1) of the CMA 1998, *Commission to regulate matters on access to post, etc.*, provides that the Commission may adopt procedures necessary and appropriate to hear and resolve disputes in accordance with Chapter 7 of Part V, *Notification and Resolution of Disputes*.

The parties may seek resolution of the dispute by the Commission as to the compensation payable only if:

- a) One of the parties to the dispute does not wish to adopt the conditions of the undertaking registered with the Commission; or
- b) They cannot or have otherwise failed to reach an agreement to the dispute, and no relevant undertaking has been registered

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The Commission shall adjudicate the disputes in accordance with the MCMC Guidelines for Dispute Resolution July 2003 which contains the principles and procedures for the resolution of disputes or a class of disputes as in Annex E.

The dispute resolution process outlined in the Guidelines is in addition to and not in derogation of the Commission's existing powers and functions under the CMA.

For further details on the dispute resolution mechanism, refer to part 7 of the TCP, Dispute Resolution.

6.2.2 Payment

The consideration payments should be paid in full and preferably on a periodic basis. The mode of settlement of the compensation may be by way of installments or any other mode agreed between the parties. The rentals shall be considered finally settled only if the payments are received in full. The principle of double rental may apply in the case of non-payment of the rentals.

7. Dispute resolution

7.1 Introduction

Chapter 7 Part V of the CMA 1998, *Notification and Resolution of Dispute*, sets out the processes to be followed in the resolution of disputes when referred to the Commission and the powers of the Commission in resolving of disputes on any matters under the CMA 1998 or its subsidiary legislations.

The Commission's powers include the following provisions relating to:

- a) When the parties may seek resolution of the dispute from the Commission (Section 82 of the CMA 1998, *Disputes*);
- b) How the process is to be commenced and when the Commission may act (Section 83 of the CMA 1998, *Notification of a dispute* and Section 84 of the CMA 1998, *Commission to act only upon notification*);
- c) The publication of guidelines by the Commission setting out the principles and procedures in resolving disputes (Section 85 of the CMA 1998, *Commission may publish guidelines*);
- d) Matters relating to the decision by the Commission (Sections 86 of the CMA 1998, *Commission to decide notified dispute*, Sections 87 of the CMA 1998, *Decision to be in writing* and Section 88 of the CMA 1998, *Register of decisions*); and
- e) The enforcement of the decision (Section 89 of the CMA 1998, *Enforcement*)

The parties may seek resolution of the dispute only for matters which are expressly provided for in the Act or its subsidiary legislation. In the case of any disputes on matters on right-of-way, Section 229(1) of the CMA 1998, *Commission to regulate matters on access to post, etc*; expressly provides for the resolution of such a dispute by the Commission.

7.2 Guidelines for Dispute Resolution

In July 2003, in exercise of its powers under Section 85 of the CMA 1998, *Commission may publish guidelines*; the Commission published the MCMC Guidelines for Dispute Resolution to provide a dispute resolution mechanism. The principles and procedures for the resolution of disputes or a class of disputes are contained in the Guidelines.

The dispute resolution process outlined in the Guidelines is in addition to and not in derogation of the Commission's existing powers and functions under the Act. See Annex E for the MCMC Guidelines for Dispute Resolution.

The parties must first attempt to resolve the disputes themselves by negotiations regarding any matter under the Act or its subsidiary legislation in accordance with Section 82 of the CMA 1998, *Disputes*. The circumstances where the disputing parties may seek resolution of their disputes with the Commission are:

- a) If an undertaking is provided by one of the parties and registered with the Commission in accordance with Chapter 11 of Part V of the CMA 1998, *Undertakings*, the conditions contained therein forms the basis for the resolution of the dispute. In the event, the undertaking party fails or otherwise is unable to fulfill the undertaking conditions, then the aggrieved party may seek resolution of the dispute by the Commission, if the Act or its subsidiary legislation expressly provides for such resolution.
- b) If the disputing parties is unable or otherwise fails to settle the dispute and no relevant undertaking has been registered, then the parties may refer the subject matter of the dispute to the Commission for resolution provided that the Act or its subsidiary legislation expressly provides for such resolution.

7.3 Dispute Resolution Matters

The matters which may fall within the purview of dispute resolution with regard to the NFP's right of way, inter alia, are as follows:

- a) Wayleave to install network facilities;
- b) Compensation for damage and financial loss; and
- c) Consideration

7.3.1 Wayleave to Install Network Facilities

Section 215 of the CMA 1998, *Installation of network facilities*, states that NFPs have the right to install network facilities for the provision of network services provided that it is authorized to carry out that particular activity.

After receipt of the Section 221 Notice under the CMA 1998, *Notice to owner of land*, the landowner may dispute the rights of the NFP to undertake the installation of network facilities and deny access accordingly. Although the right to install is a statutory right conferred on the NFP, there is nothing to prevent the Landowner from referring the denial of access to the Commission for dispute resolution.

7.3.2 Compensation for Damages and Financial Loss

The Section 221 Notice contains a statement to the effect that if a person suffers financial loss or damage in relation to property because of anything done by the network facilities provider in engaging in the activity, compensation may be payable.

The landowner may not agree to no compensation payable or the quantum of compensation payable by the NFP for activities undertaken from the use of the right of way. In this case, the Network Facilities may choose to refer this matter to the Commission for dispute resolution.

7.3.3 Consideration

The landowner may not agree to no consideration paid or to the amount of consideration paid for the utilization of the right of way. In this instance, the landowner may choose to refer the matter to the Commission for dispute resolution.

7.4 Principles and Procedures

The principles and procedures for the resolution of disputes or a class of disputes are contained in the MCMC Guidelines for Dispute Resolution published in July 2003.

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In essence, the landowner may initiate the dispute resolution to the Commission by adhering to the dispute resolution process which comprises of five (5) parts:

7.4.1 Notification of Dispute

Commencement of the dispute resolution by submission of a Notification of Dispute – Form 1 (see Annex E) to the Commission including the relevant particulars required, inter alia, the Statement of Case, copies of any agreement, undertaking or document out of or in relation to which the dispute arose and a filing fee of RM1,000.00

7.4.2 Preliminary Inquiry

Within thirty (30) days from the date of receipt of the Notification of Dispute, the Commission shall, hold a preliminary inquiry to determine whether the matter for dispute resolution is expressly provided in accordance with Section 229(1) CMA 1998, *Commission to regulate matters on access to post, etc*, or its subsidiary legislation and whether the Commission will convene to decide the dispute.

The Commission shall hold a preliminary inquiry if it decides that the matter in dispute is expressly provided under the Act or its subsidiary legislation, the parties are unable to settle the dispute within a reasonable time, and the dispute is not trivial, frivolous or vexatious and the resolution of the dispute would promote the objects of the Act.

7.4.3 Written Submissions

- a) Statement of Case - if the Commission decides to convene to resolve the dispute, the Commission shall notify the landowner to submit a Statement of Case - Form 2 within 14 days from the date of notification. See Annex E.
- b) Statement of Reply - the NFP shall submit a Statement of Reply - Form 3 annexing the prescribed documents within 14 days from the date of notification by the Commission and may also choose to make a counterclaim or a set-off. See Annex E.
- c) Reply to Counterclaim / Set-Off - the landowner shall submit his reply to the Counterclaim - Form 4 within 14 days from the date of notification by the Commission. See Annex E.
- d) Evidence - the parties shall present evidence by relevant persons in the form of a written statement made by way of a statutory declaration.
- e) Queries / Clarifications - the landowner and the NFP shall respond to any queries or clarifications of the Commission.

7.4.4 Decision

Within 30 days from receipt date of the last written submission by the parties, the Commission shall where practicable, come to a decision.

The Commission's decision shall be binding on the parties. The decision will be registered in accordance with Section 88 of the CMA 1998, *Register of decision*, and Part V Chapter 6 of the CMA 1998, *Register*.

7.4.5 Enforcement

The enforcement of the Commission's decision on a party may be made by way of a Commission direction in accordance with Section 89(1) of the CMA 1998, *Enforcement*, or an order of the High Court with the exception of an injunction.

7.5 Jurisdiction

It needs to be noted that where there are regulations of a State Authority, local authority or other authority with respect to access to any posts, network facilities or right of way, the Commission's jurisdiction is not applicable.

8. Low impact facilities

8.1 Introduction

Section 215(1) (b) of the CMA 1998 authorizes a network facilities provider to carry out the installation of low impact facilities.

A NFP must observe certain requirements in carrying out the installation of low impact facilities. Low-impact facilities list are listed in Annex F.

The installation of the low-impact facilities includes the installation and the activities connected with the installation.

Low impact facilities are network facilities as specified in a Ministerial Determination on Low - Impact Network Facilities.

8.2 Conditions to be complied

The NFP must comply with a number of requirements when inspecting land, installing and maintaining any declared low-impact facilities.

- a) Firstly, the NFP must be authorized to carry out the installation under Section 215(1) (b) of the CMA 1998.
- b) Secondly, low impact facilities are network facilities as specified in a Ministerial Determination on Low - Impact Network Facilities.
- c) Thirdly, the NFP must comply with requirements as stipulated in the CMA, 1998 which are, namely:
 - i) Provide written notice to landowners and occupiers, specifying the purpose for which the NFP intends to engage in the activity and outlining the objection process before starting the network facilities installation activity. (Section 221(2)).
 - ii) Compensate the owner or occupier of land whom may be entitled to compensation for any financial loss or damage caused by a NFP entering and inspecting the land, or installing or maintaining a telecommunications facility. (Section 221(3)).

Note: A claim for compensation is not a ground for objection under the TCP.
 - iii) Offer Consideration for the right of way provided by the landowners and occupiers upon a firm basis of valuation which as far as possible strikes a fair balance between the interests of the NFPs and the landowners. If the amount of compensation cannot be agreed between the parties, MCMC may decide on what is a reasonable amount.
 - iv) Adhere to the agreed Dispute Resolution Process based on the CMA 1998. (Chapter 7, Part V, *Notification and Resolution of Disputes*).
 - v) Install and maintain low-impact facilities, including in-building subscriber connection equipment in accordance with any ministerial determination. (Section 215, *Installation of network facilities*)

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- vi) Comply with the Guidelines for Access to Other Public Utilities (non-licencees) posts, network facilities or right of way. Take all reasonable steps to ensure that the activities interfere as little as practicable with the operation of a public utility. (Part 10 of the TCP, *Guidelines for Access - Other Public Utilities Posts, Network Facilities or Right of Way*)
- vii) Do as little damage as practicable and act according to good engineering practice.(Section 216, *Minimal damage*)
- viii) Take all reasonable steps to ensure the land is restored to a condition similar to its condition before the activity began. (Section 217, *Network facilities provider to restore land*)
- ix) Co-operate with other NFPs and public utilities who are undertaking similar activities on the same land to minimize inconvenience and damage.(Section 218, *Management of activity*)

Lastly, in addition to the above requirements, the NFP must abide with following requirements as below in this TC, which are, namely:

- a) The notification requirements and the standard Forms to the relevant authorities including the State Authority, Local Authority or other relevant authority.
- b) The prohibition of the installation of low-impact network facilities in an area declared to be an area of environmental significance.
- c) The dispute resolution mechanism for dealing with any objections of the landowners and occupiers.
- d) The general principles and procedures for the installation of low-impact facilities.
- e) The best practices and the Commission or industry codes or standards in the design, planning and installation of low-impact facilities.
- f) The conditions specified in the facility installation permit and the regulations.
- g) Making reasonable efforts to co-operate with other NFPs, and public utilities undertaking similar activities on the same land to minimize inconvenience and damage.

8.2.1 Notification

Prior to the installation of the low-impact facilities, a NFP must inform the landowner and occupier. The general notification requirements as contained in part 4 of the TCP, Notices shall apply in particular the inspection of land, the installation of network facilities and cutting down, lopping a tree, clearing or removing undergrowth or vegetation on private land.

The installation of the low-impact network facilities shall not require the approval of authorities including the State Authority, Local Authority or other relevant authority. There is, however, an obligation to inform the relevant authorities.

The notification requirements and the standard Form to the relevant authorities including the State Authority, Local Authority or other relevant authority are appended herewith as Annex G.

8.2.2 Environment - Area of environmental significance

Before commencing the installation of low-impact network facilities, the NFP must take reasonable steps to find out whether the place the low-impact facilities are to install is an area of environmental significance.

A place is an area of environmental significance generally if:

- a) it is identified as a reserve for nature conservation purposes;or

- b) it is an area that is protected from significant environmental disturbance; or
- c) it is designated or identified for the preservation, conservation and enhancement of cultural heritage.

The NFP may agree with the environment authorities on how best to ascertain the notification of an area of environmental significance and the attendant requirements (if any).

8.2.3 Dispute Resolution Mechanism

The landowners and occupiers may object to the installation of low-impact facilities. The grounds of objection may be the consideration payable (or not payable), the compensation for financial loss or damage or the installation itself.

In accordance to Section 82 of the CMA 1998, *Disputes*, the parties must first attempt to resolve their dispute through negotiations. The successful outcome of the negotiations would deem the matter closed. The parties who have reached a settlement to the dispute may provide an undertaking and register it with the Commission. The parties shall then be taken to adopt the conditions of the undertaking in resolving the dispute.

In the event if:

- a) One of the parties to the dispute does not wish to adopt the conditions of the undertaking; or
- b) They cannot or have otherwise failed to reach an agreement to the dispute, and no relevant undertaking has been registered.

The parties may seek resolution of the dispute by the Commission.

The Commission shall adjudicate the disputes in accordance with the MCMC Guidelines for Dispute Resolution July 2003 which contains the principles and procedures for the resolution of disputes or a class of disputes annexed herewith as Annex E.

The dispute resolution process outlined in the Guidelines is in addition to and not in derogation of the Commission's existing powers and functions under the CMA.

For further details on the dispute resolution mechanism, refer to part 7 of the TCP, Dispute Resolution.

8.2.4 Installation of Low-Impact Facilities – Principles, Procedures and Practices

The low-impact facilities must be installed according to industry best practices, Commission codes or standards relating to the design, planning and installation of low-impact facilities.

The NFP must comply with the conditions as set out below, inter alia, the following:

- a) In the installation of low-impact facilities, an ancillary facility may be installed with the primary aim of protecting or ensuring the safety of the low-impact facilities itself or the persons or property in close proximity to the low-impact facilities itself.
- b) No alteration will be permitted in the event; the volume of the low-impact network facilities is exceeded.
- c) A NFP shall complete all installation of low-impact network facilities and must notify the Commission if it is unable to complete the installation of the network facilities. The NFP shall also remove the network facilities and restore the site or land to a condition that is similar to its condition before the activity began and shall complete the restoration of such site or land.

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- d) If the installed low-impact network facilities are no longer in use, the NFP shall, immediately dismantle and remove the low-impact network facilities and restore the site or land to a condition that is similar to its condition before the activity began and shall complete the restoration of such site or land.
- e) The records on the type and location of the installed low-impact facilities shall be kept and maintained by the NFP.

8.2.5 Collaboration with Network Facilities Provider and Public Utilities

The NFP shall co-operate with other NFP and public utilities when undertaking the installation of low-impact facilities on the same land to minimize inconvenience and damage.

In this respect, a NFP shall take all reasonable efforts to enter into an agreement (where practicable) with a public utility by providing for the co-operation in the manner which the NFP will engage in the installation of the low-impact facilities which is likely to affect the operations of the utility.

When undertaking the installation of low-impact facilities, the NFP shall collaborate with each other to expedite matters and ensure there is minimal damage where the low-impact facilities is installed and where practicable grant access to the said facilities.

8.3 Compensation and Consideration

A landowner or occupier may be entitled to compensation for any financial loss or damage caused by a NFP installing low-impact facilities on their property. This includes in-building subscriber connection equipment to connect a customer to their network. A claim for compensation is not a ground for objection under this TCP. If the amount of compensation cannot be agreed between the parties, Commission may decide on what is a reasonable amount in accordance with the dispute resolution mechanism as set out in part 7 of the TCP, Dispute Resolution.

In terms of consideration to be paid to the landowner or occupier, it shall be governed by the Consideration Code or on such rates, terms and conditions which the Commission deems are just and reasonable under the powers conferred pursuant to Section 229 (1) of the CMA 1998, *Commission to regulate on access to post, etc.* In the event the parties are unable to reach an agreement on the reasonable amount to be paid, they may refer the matter for dispute resolution to the Commission with the attendant details outlined in part 7 of the TCP, Dispute Resolution.

9. Temporary Defence Facilities

9.1 Introduction

Section 215 (1) (c) of the CMA 1998, authorizes a network facilities provider to carry out the installation of the network facilities which are temporary network facilities for use by, or on behalf of, the Ministry of Defence (“MINDEF”) for defence purposes.

A NFP must observe certain requirements in carrying out the installation of temporary defence facilities.

The installation of the temporary defence facilities includes the installation and the activities connected with the installation.

Temporary defence facilities are network facilities which are temporary network facilities for use by, or on behalf of, MINDEF for defence purposes.

9.2 Conditions to be complied

The NFP must comply with a number of requirements when inspecting land, installing and maintaining temporary defence facilities.

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- a) Firstly, the NFP must be authorized to carry out the installation under Section 215(1) (c) of the CMA 1998.
- b) Secondly, the temporary defence facilities to be installed are for defence purposes and for the use by, or on behalf of, MINDEF.
- c) Thirdly, the NFP must comply with requirements as stipulated in the CMA, 1998 which are, namely:
 - i. Provide written notice to landowners and occupiers, specifying the purpose for which the NFP intends to engage in the activity and outlining the objection process before starting the network facilities installation activity. (Section 221(2))
 - ii. Compensate the owner or occupier of land whom may be entitled to compensation for any financial loss or damage caused by a NFP entering and inspecting the land, or installing or maintaining a telecommunications facility. (Section 221(3))

Note: A claim for compensation is not a ground for objection under the TCP.

- iii. Offer Consideration for the right of way provided by the landowners and occupiers upon a firm basis of valuation which as far as possible strikes a fair balance between the interests of the NFPs and the landowners. If the amount of compensation cannot be agreed between the parties, MCMC may decide on what is a reasonable amount.
- iv. Adhere to the agreed Dispute Resolution Process based on the CMA 1998. (Chapter 7 Part V of the CMA 1998, *Notification and Resolution of Dispute*).
- v. Install and maintain temporary defence facilities, including in-building subscriber connection equipment in accordance with any order of the minister.
- x. Comply with the Guidelines for Access to Other Public Utilities (non-licencees) posts, network facilities or right of way. Take all reasonable steps to ensure that the activities interfere as little as practicable with the operation of a public utility. (Part 10 of the TCP, *Guidelines for Access - Other Public Utilities Posts, Network Facilities or Right of Way*)
- xi. Do as little damage as practicable and act according to good engineering practice. (Section 216, *Minimal damage*)
- xii. Take all reasonable steps to ensure the land is restored to a condition similar to its condition before the activity began. (Section 217, *Network facilities provider to restore land*)
- xiii. Co-operate with other NFPs and public utilities who are undertaking similar activities on the same land to minimize inconvenience and damage. (Section 218, *Management of activity*)

In addition to the above requirements, the NFP must abide with following requirements as in this TCP, which are namely:

- a) The notification requirements and the standard Forms to the relevant authorities including the State Authority, Local Authority or other relevant authority.
- b) The prohibition of the installation of temporary defence facilities in an area declared to be an area of environmental significance.
- c) The dispute resolution mechanism for dealing with any objections of the landowners and occupiers.

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- d) The requirements of defence agencies in particular any standards or best practices or requirements that relates to the installation of the temporary defence facilities and which is notified to the NFP by the Chief of the Armed Forces or the Chief Secretary of MINDEF.
- e) The conditions specified in the facilities installation permit and the regulations.
- f) Making reasonable efforts to co-operate with other NFPs, and public utilities undertaking similar activities on the same land to minimize inconvenience and damage.

9.2.1 Notification

Prior to the installation of the low-impact facilities, a NFP must inform the landowner and occupier. The general notification requirements as contained in in part 4 of the TCP, Notices, shall apply in particular the inspection of land, the installation of network facilities and cutting down, lopping a tree, clearing or removing undergrowth or vegetation on private land.

In the interests of national security and where there is a state of emergency, the temporary defence facilities may be installed without the need of the approvals of the authorities including the State Authority, Local Authority or other relevant authority.

In all other cases, the NFP must inform the landowner and occupier together with obtaining the approvals of the State Authority, Local Authority or other relevant authority. The standard notification requirements and the standard Forms as contained in part 4 of the TCP, Notices applies.

9.2.2 Environment - Area of environmental significance

Before commencing the installation of temporary defence facilities, the NFP must take reasonable steps to find out whether the place the temporary defence facilities are to install is an area of environmental significance.

A place is an area of environmental significance generally if:

- a) It is identified as a reserve for nature conservation purposes;or
- b) It is an area that is protected from significant environmental disturbance;or
- c) It is designated or identified for the preservation, conservation and enhancement of cultural heritage.

The NFP may agree with the environment authorities on how best to ascertain the notification of an area of environmental significance and the attendant requirements(if any).

In the interests of national security and where there is a state of emergency, the temporary defence facilities may be installed notwithstanding the place is an area of environmental significance.

9.2.3 Dispute Resolution Mechanism

The landowners and occupiers may object to the installation of temporary defence facilities. The grounds of objection may be the consideration payable (or not payable), the compensation for financial loss or damage or the installation itself.

In accordance to Section 82 of the CMA 1998, *Disputes*, the parties must first attempt to resolve their dispute through negotiations. The successful outcome of the negotiations would deem the matter closed. The parties who have reached a settlement to the dispute may provide an undertaking and register it with the Commission. The parties shall then be taken to adopt the conditions of the undertaking in resolving the dispute.

In the event if:

- a) One of the parties to the dispute does not wish to adopt the conditions of the undertaking; or
- b) They cannot or have otherwise failed to reach an agreement to the dispute, and no relevant undertaking has been registered.

The parties may seek resolution of the dispute by the Commission.

The Commission shall adjudicate the disputes in accordance with the MCMC Guidelines for Dispute Resolution July 2003 which contains the principles and procedures for the resolution of disputes or a class of disputes annexed herewith as Annex E.

The dispute resolution process outlined in the Guidelines is in addition to and not in derogation of the Commission's existing powers and functions under the CMA.

For further details on the dispute resolution mechanism, refer to part 7 of the TCP, Dispute Resolution.

9.2.4 Requirements of Defence Agencies

The temporary defence facilities must be installed according to the requirements of defence agencies in particular any standards or best practices or requirements that relates to the installation of the temporary defence facilities and which is notified to the NFP by the Chief of the Armed Forces or the Chief Secretary of MINDEF.

The NFP must comply with the conditions as laid down by the defence agencies and the conditions as set out below, inter alia, the following:

- a) A NFP shall complete all installation of temporary defence facilities and must notify the Commission if it is unable to complete the installation of the network facilities. The NFP shall also remove the network facilities and restore the site or land to a condition that is similar to its condition before the activity began and shall complete the restoration of such site or land.
- b) If the installed temporary defence facilities are no longer in use, the NFP shall immediately dismantle and remove the temporary defence facilities and restore the site or land to a condition that is similar to its condition before the activity began and shall complete the restoration of such site or land.
- c) The records on the type and location of the installed temporary defence facilities shall be kept and maintained by the NFP.

9.2.5 Collaboration with Network Facilities Provider and Public Utilities

The NFP shall co-operate with other NFP and public utilities (where practicable) when undertaking the installation of temporary defence facilities on the same land to minimize inconvenience and damage.

In this respect, a NFP shall take all reasonable efforts to enter into an agreement (where practicable) with a public utility by providing for the co-operation in the manner which the NFP will engage in the installation of the temporary defence facilities which is likely to affect the operations of the utility.

When undertaking the installation of temporary defence facilities, the NFP shall collaborate with each other to expedite matters and ensure there is minimal damage where the temporary defence facilities is installed.

9.3 Compensation and Consideration

A landowner or occupier may be entitled to compensation for any financial loss or damage caused by a NFP installing temporary defence facilities on their property. A claim for compensation is not a

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ground for objection under this TCP. If the amount of compensation cannot be agreed between the parties, Commission may decide on what is a reasonable amount in accordance with the dispute resolution mechanism as set out in part 7 of the TCP, Dispute Resolution.

In terms of consideration to be paid to the landowner or occupier, it shall be governed by the Consideration Code or on such rates, terms and conditions which the Commission deems are just and reasonable under the powers conferred pursuant to Section 229 (1) of the CMA, *Commission to regulate matters on access to post, etc.* In the event the parties are unable to reach an agreement on the reasonable amount to be paid, they may refer the matter for dispute resolution to the Commission with the attendant details outlined in part 7 of the TCP, Dispute Resolution.

10. Guidelines for access - other Public Utilities Posts, Network Facilities or Right of Way

10.1 Introduction

The right of access of a NFP as an access seeker is encapsulated in Section 228 of the CMA 1998, *Access to post, network facilities or right-of-way*, which in essence provides that a NFP or a public utility shall provide a NFP with non-discriminatory access to any post, network facilities or right of way owned or controlled by him albeit the provisions of any other written law. This right of non-discriminatory access may be denied in circumstances where there is insufficient capacity, or for reasons of safety, security, reliability, or difficulty of a technical or engineering nature.

With regards to the right of way accorded to the NFP, this in effect means that the NFP has been given the right to undertake to build network infrastructure on land owned by third parties and the third parties (in this case the public utility) must provide the right of way to the NFP. Compensation and consideration are applicable and any disputes between the parties are to be resolved in accordance with Chapter 7 Part V, *Notification and Resolution of Dispute*.

It is important to note that in the seeking of access with the public utilities, the NFP shall first attempt to obtain access through negotiations. It is imperative to obtain consensus of the parties at all times as both the access seeker and the access provider are public utilities. The consensus principle should be borne in mind when the parties have reached an impasse in the resolution of any disputes which may arise. The aim of achieving national objectives with the betterment of the rakyat shall be the sole aim of the parties concerned.

10.2 Scope of the Guidelines

The Guidelines applies to the dealings of the NFP with the public utilities. The public utilities are those designated as public utilities by the government including without limitation electricity, petroleum, gas, transport and water. The public utility corridor status is normally given in their relevant industry legislations such as the Electricity Supply Act 1960, the Water Services Act 2006 and the Land Public Transport Act 2010.

The Guidelines lays down the processes to be followed in the NFP access seeking of the right of way with the public utilities. This is in addition to the powers of the Commission in the resolution of disputes as contained in Chapter 7 Part V of the CMA 1998, *Notification and Resolution of Disputes*.

10.3 Engagement Process with Public Utilities

10.3.1 Commencement of the Engagement Process

- a) The NFP seeking access shall submit the request to the public utility and serve on the public utility a notification of seeking access as prescribed in the Notice to Seek Access Form as in Annex H.
- b) The Notification of Seeking Access shall include the following:
 - i. The purpose of the access sought;

- ii. The details on the right of way;
- iii. The names and address of the access seeker;
- iv. A reference to the specific provision of the CMA 1998 or its subsidiary legislation which expressly provides for the right to access;
- v. The authorization given to have the access to the right of way for example, the network facilities provider licence;
- vi. The right of way sought;
- vii. The obligations and code of conduct of the access seeker when granted access to the right of way sought; and
- viii. Any other relevant details.

10.3.2 Preliminary Inquiry

- a) Upon receipt of the Notification of Seeking Access, the public utility concerned shall within thirty (30) days from the date of receipt of the Notification of Seeking Access, hold a preliminary inquiry with the NFP to determine as to whether the public utility is able to provide the access to the right of way sought.
- b) If the public utility is willing and able to grant access to the right of way owned or controlled by it, the parties shall take all reasonable efforts to enter into an agreement. The public utility shall forward its list of terms and conditions required to allow access to the right of way (“Access Provider Obligations”) and the NFP shall in turn also provide its list of requirements. (“Access Seeker Requirements”).
- c) The public utility and the NFP shall then agree on the list of requirements (“Agreed List of Requirements”) and enter into an agreement with the public utility to govern the terms and conditions of access.
- d) If the public utility is not able, willing or refuse to grant access to the right of way owned or controlled by it or cannot reach an agreement on the Agreed List of Requirements, the public utility shall provide reasons for the denial of access. If the reasons given are unacceptable to the NFP as the access seeker, then the access seeker shall escalate the matter to the Commission for determination.
- e) If the Commission at its sole and absolute discretion deems the matter fit for resolution then it shall engage with the Regulator or other relevant authorities of the public utility as access provider to convene and seek consensus to find an amicable solution. The guiding principle is the national objectives and the provision of public utility services of the public utility corridors to better serve the rakyat. The Commission shall where practicable, come to a decision within 30 days from the date of its receipt of the escalation notice from the NFP.
- f) The Commission shall inform the NFP in writing of the outcome of its engagement to obtain access within a reasonable period of time.

10.3.3 General Provisions

For the purpose of calculating a period of time under these Guidelines, such period shall begin to run, on the day following the day when a notice, notification, communication or document is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business (as the case may be) of the addressee, the period shall be extended until the first business day which follows. Official holidays or nonbusiness days occurring during the running of the period of time are included in calculating the period.

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The engagement process outlined in these Guidelines is in addition to and not in derogation of the Commission's existing powers and functions under the CMA 1998.

10.4 Conduct and Responsibilities of Access

When exercising the rights to access the Public Utilities post, network facilities or right of way, the NFP must observe the following, inter alia, take all reasonable steps to:

- a) Cause as little detriment, damage and inconvenience as practicable;
- b) Ensure that land is restored to a condition similar to its condition before the activity began;
- c) Protect the environment;
- d) Minimize interference with public utilities, roads and paths, traffic and land use and ensure the access by the NFP shall not affect the Public Utilities services;
- e) Act in accordance with good engineering practice and that the access rights are exercised in accordance with best practice and complies with MCMC or industry codes or standards;
- f) Protect the safety of persons and property;
- g) Co-operate with other NFP and public utilities who are also seeking access on the same land to minimize inconvenience and damage.
- h) Provide written notice to the Public Utilities, specifying the purpose for which the NFP intends to engage in the activity and outlining the objection process before seeking access.
- i) Compensate the Public Utilities whom may be entitled to compensation for any financial loss or damage caused by a NFP accessing the post, network facilities or right of way.
- j) Offer Consideration for the right of way provided by the Public Utilities upon a firm basis of valuation which as far as possible strikes a fair balance between the interests of the NFP and the Public Utilities. If the amount of compensation cannot be agreed between the parties, the Regulators of the respective parties shall seek consensus on what is a reasonable amount payable.

Under Section 219 of the CMA 1998, *Agreement with public utility*, a NFP shall take all reasonable efforts to enter into an agreement with a Public Utility when seeking access and where the access provision is likely to affect the operations of the Public Utility. The NFP shall comply with the said agreement in force to ensure the right of access to the Public Utilities' right of way is executed smoothly and efficiently.

ANNEX A
(Normative)

Section 221 Notices - Notice to Enter Land

Section 221

COMMUNICATIONS AND MULTIMEDIA ACT 1998 (“ACT”)

To - Owner / Occupier

Re: Notice of intention to enter into land and for the installation of network facilities on Lot No: (“Property”) (“Notice”)

Purpose of Notice

TAKE NOTICE that we being licenced to provide telecommunication network facilities dated under the above Act are desirous of entering the abovementioned Property:

- a) to construct telecommunication network facilities. The site plan and the design are as per the attachment.
- b) to licence the right to use the site for ____ years and the licence fee payable as per attachment.

Minimal Damage

Whilst engaging in the works and/or related activities, we shall use our best effort as far as practicable not to cause any detriment, inconvenience or damage.

After completion of the works and/or related activities, we shall take reasonable steps to restore the land to a condition that is similar to its condition before the works began.

Objection

You may lodge an objection using the form as prescribed in the MCMC Guidelines for Complaints Handling, July 2003, within 14 days (“Notice Period”) from the date of receipt of this Notice to the following authority:-

Chairman
Department/Division
Communications and Multimedia Malaysia,
Off Persiaran Multimedia,
63000 Cyberjaya
Telephone:
Fax:

OR

Digitally via the following website:-

www.skmm.gov.my or www.mcmc.gov.my

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If you do not lodge any objection within the said Notice Period you shall be deemed to have given your consent / approval for us to enter into the said land according to the terms set out in this Notice

Compensation

You shall be paid appropriate compensation if you suffer any financial losses or for any damage caused to your Property directly due to the above works and/or related activities.

Dated:

Yours faithfully

Note:

In the event of inconsistency between the Bahasa Malaysia and English version, the former shall prevail.

ANNEX B
(Normative)

Installation of Network Facilities Process

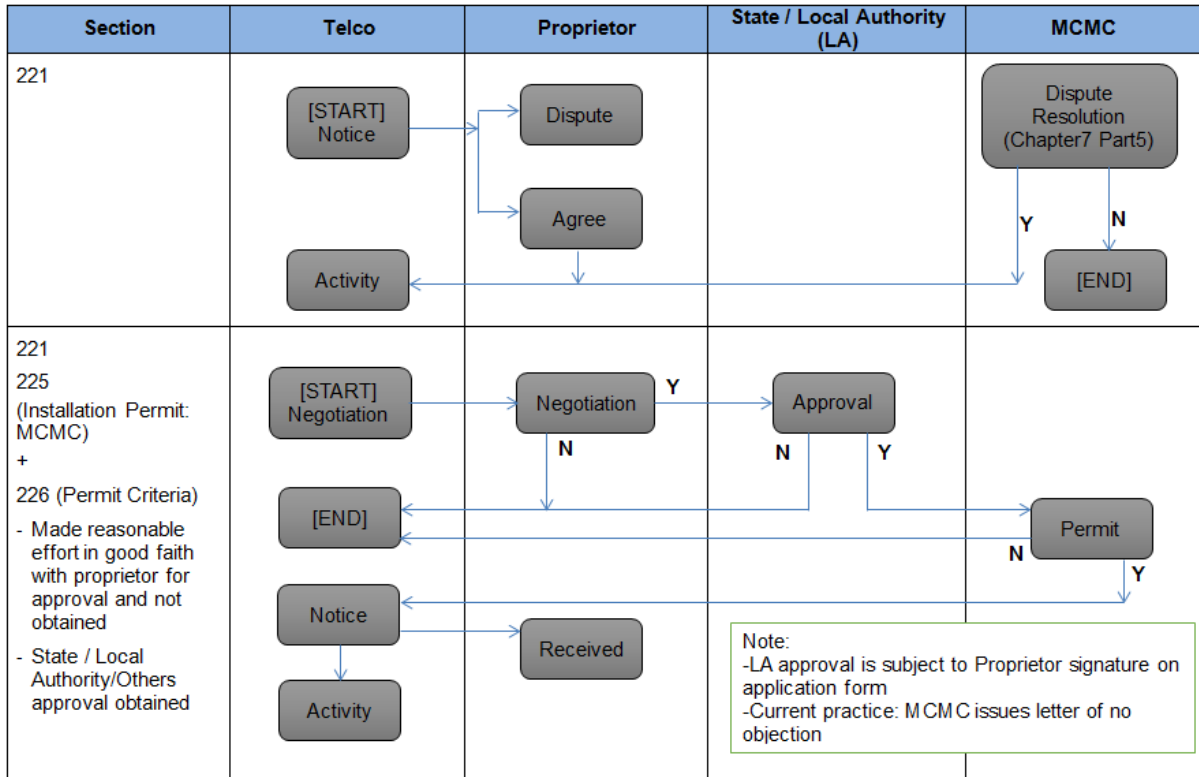


Figure B1. The process flow for issuing of notice

Section 221 of the CMA 1998, *Notice to owner of land*

Section 225 of the CMA 1998, *Network Facilities installation permit*

Section 226 of the CMA 1998, *Criteria for issue of network facilities installation permit*

ANNEX C
(Normative)

**Section 222 Notices - Notice to Enter Land And Cutting Down Or Lopping
Trees / Clearing Or Removing Undergrowth / Vegetation**

Section 222

COMMUNICATIONS AND MULTIMEDIA ACT 1998 (“ACT”)

To - Owner / Occupier

**Re: Notice to enter land: - Cutting down or Lopping trees, Clearing or removing
undergrowth / Vegetation on Lot No:**

TAKE NOTICE that we being licenced to provide telecommunication network facilities dated under the above Act are desirous of entering the abovementioned land to construct telecommunication network facilities. The site plan and the design are as per attached.

You are hereby given 14 days from the date of receipt of this notice to:-

- i. Cut down or lop trees; and/or
- ii. To clear or remove undergrowth /Vegetation; (hereinafter referred as “works”) (“delete as appropriate”)

as marked/shown in the attachment. Failing which, we will take the necessary steps and action to carry out the works.

Minimal Damage

Whilst engaging in the works we shall use our best effort as far as practicable not to cause any detriment, inconvenience or damage.

After completion of the works we shall take reasonable steps to restore the land to a condition that is similar to its condition before the works began.

Objection

You may lodge an objection using the form as prescribed in the MCMC Guidelines for Complaints Handling, July 2003, within 14 days from the date of receipt of this Notice to the following authority:-

Chairman
Department/Division
Communications and Multimedia Malaysia,
Off Persiaran Multimedia,
63000 Cyberjaya
No. Telephone:
No. Fax:

OR

Digitally via the following website:-

www.skmm.gov.my or www.mcmc.gov.my

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If you do not lodge any objection within the said notice period you shall be deemed to have given your consent / approval for us to enter into the said land according to the terms set out in this Notice

Compensation

You shall be paid appropriate compensation if you suffer any financial losses or for any damage caused.

Dated:

Yours faithfully

Note:

In the event of inconsistency between the Bahasa Malaysia and English version, the former shall prevail.

ANNEX D
(Normative)

**Section 223 Notices - Notice to Close/Divert/Narrow Road Or Bridge Or
Installing Network Facilities On/Over/Under A Road Or Bridge Or Altering The
Position Of A Conduit/Gas Main/Pipe**

Section 223

COMMUNICATIONS AND MULTIMEDIA ACT 1998 (“ACT”)

To - Road Authority / Public Utility

**Re: Notice To Close/Divert/Narrow Road Or Bridge Or Installing Network Facilities
On/Over/Under A Road Or Bridge Or Altering The Position Of A Conduit/Gas Main/Pipe
on Lot No:**

BE ADVISED that we being licenced to provide telecommunication
network facilities dated under the above Act.

TAKE NOTE that as utility service provider; we are permitted by the Malaysian Communications and
Multimedia Commission to install network facilities on/over/under the above land/property in which the
care and management of the road/bridge/conduit/gas main/pipe thereto are under your responsibility.
The site plan and the design are as per the attached.

We shall install the network facilities within 14 days from the date of receipt of this Notice by you.

For your information, the above network facilities are low impact.

Dated:

Yours faithfully

Note:

In the event of inconsistency between the Bahasa Malaysia and English version, the former shall prevail.

ANNEX E
(Normative)

MCMC Guidelines for Dispute Resolution

E1. Please refer to the **MCMC GUIDELINES FOR DISPUTE RESOLUTION** as the link below

<http://www.skmm.gov.my/Legal/Dispute-Resolution.aspx>

E2. There are few forms used for Dispute Resolution as below.

- a) Form 1 - Notification of Dispute. This issue for commencement of the dispute resolution.
- b) Result of Preliminary Inquiry - Within thirty (30) days from the date of receipt of the Notification of Dispute, the Commission shall, hold a preliminary inquiry
- c) Written Submissions
 - i) Form 2 - Statement of Case. The Commission shall notify the landowner if decides to convene to resolve the dispute.
 - ii) Form 3 - Statement of Reply. The NFP shall submit a Statement of Reply within 14 days from the date of notification by the Commission
 - iii) Form 4 - Reply to Counter-claim. The landowner shall submit his reply to the Counterclaim - Form 4 within 14 days from the date of notification by the Commission

These Forms are available at <http://www.skmm.gov.my/Legal/Dispute-Resolution.aspx>

ANNEX F
(Normative)

Low-Impact Facilities List

Table F1. Radio network facilities

Item no.	Network Facilities
1	Subscriber connection deployed by radio satellite terminal antenna or dish a) Not more than 1.2 metres in diameter; and b) Harmonise to its background; or c) Colour agreed in writing between NFP and Local Authority (LA)
2	Yagi or other like antenna: a) Flush mounted to an existing structure and b) Harmonise to its background; or c) Colour agreed in writing between NFP and LA
3	Panel antenna: a) Not more than 2.8 metres long b) If the antenna is attached to a structure - protruding from the structure by not more than 3 metres and c) Harmonise to its background; or d) Colour agreed in writing between NFP and LA
4	An omni directional antenna or an array: a) Not more than 4.5 metres long b) Not more than 5 metres apart; and c) If the array is attached to a structure - protruding from the structure by not more than 2metres
5	Radio communications dish: a) Not more than 1.8 metres in diameter; b) Harmonise to its background; or c) Colour agreed in writing between NFP and LA d) If attached to a supporting structure, the total protrusion from the structure is not more than 2 metres
6	Microcell installation with: a) A cabinet not more than 1 cubic metre in volume; and b) A separate antenna not more than 1 metre long
7	In-building coverage installation: a) To improve cellular coverage to mobile phone users operating inside a building; and b) Wholly contained and concealed in a building
8	Equipment installed inside a structure, including an antenna concealed in an existing structure.
9	Any works of aesthetic or camouflaging to existing network facilities with the intention to minimise adverse visual impact of such network facilities.

Table F2. Underground housing

Item no.	Network Facilities
1	Pit with surface area of not more than 2 square metres
2	Manhole with surface area of not more than 2.5 square metres including JB30, JRC7, JC9, RIB (as listed in Annex D, the <i>Technical Standards and Infrastructure Requirements (TSIR): Fixed Network Infrastructure</i>)
3	Underground equipment shelter or housing with surface area of not more than 2.5 square metres
4	Access to : a) An existing manhole or pit; or b) A manhole or pit created by a developer, relevant authority, public utility or network facilities provider

Table F3. Above ground housing

Item no.	Network Facilities
1	Poles : a) Not more than 8 metres high; and b) With a base area of not more than 2 square metres
2	Roadside cabinet: a) Not more than 2 metres high; and b) With a base area of not more than 2 square metres
3	Pedestal: a) Not more than 2.5 metres high; and b) With a base area of not more than 2 square metres [Exception to be considered for flooding areas]
4	Equipment shelter: a) Not more than 2.5 metres high; and b) With a base area of not more than 5 square metres; and c) Harmonise to its background; or d) Colour agreed in writing between NFP and LA
5	Equipment shelter: a) Used solely to house equipment used to assist in providing a service by means of a network facility mentioned in Table F1; b) Not more than 3 metres high; c) With a base area of not more than 7.5 square metres; and d) Harmonise to its background; or e) Colour agreed in writing between NFP and LA
6	In-building subscriber connection equipment
7	Solar panel with a base area of not more than 7.5 square metres

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Table F4. Underground network facilities
 [To facilitate other type of facilities e.g. Underground DP]

Item no.	Network Facilities
1	Underground conduit or cable deployed by: <ul style="list-style-type: none"> a) Narrow trench not more than: <ul style="list-style-type: none"> i. 600 millimetres wide ii. 650 millimetres wide if intended to be used by more than one carrier; or b) Direct burial which is a method used to lay cable without using sub-duct or c) Bore or directional drill hole not more than 600 millimetres below the surface; [to protect other utilities] where: <ul style="list-style-type: none"> d) Access to business premises is not restricted between the hours of 8 am and 6 pm, Monday to Friday, or such other hours agreed to by the relevant authority; and e) In relation to residential areas, not more than 100 metres of excavation is left open at any time and vehicle access to each property is not lost for more than 8 hours in total
2	Conduit or cabling to be laid in: <ul style="list-style-type: none"> a) An existing trench; or b) A trench created by a developer, relevant authority, public utility or network facilities provider.

Table F5. Emergency network facilities

Item no.	Network Facilities
1	A temporary network facility installed: <ul style="list-style-type: none"> a) In an emergency; and b) To provide assistance to an emergency services organisation

Table F6. Co-located network facilities

Item no.	Network Facilities
1	Network facilities mentioned in: <ul style="list-style-type: none"> a) Table F1, or F5; or installed on or within: b) The original network facilities; or c) A public utility structure
2	Network facilities mentioned in: <ul style="list-style-type: none"> a) Table F1, or F5; or installed on or within: b) The original network facilities; or c) A public utility structure; where: d) The total volume of the co-located facilities is no more than 25 per cent greater than the volume of the original network facilities or the original infrastructure; and e) The levels of noise that are likely to result from the operation of the co-located facilities are less than or equal to the levels of noise that resulted from the operation of the original network facilities or the public utility structure

Table F7. Above ground optical fibre facilities

Item no.	Network Facilities
1	<p>A single cable line links or a bundle of cable line links :</p> <ul style="list-style-type: none"> a) Suspended above the surface of : <ul style="list-style-type: none"> i. Land (other than submerged land), or ii. A river, lake, bay, estuary, harbour or other body of water, or b) Protruding from the surface of land (other than submerged land), and c) The maximum external cross-section of any part is : <ul style="list-style-type: none"> i. In the case of a single line link - 50 mm [<i>to consider copper cables</i>] ii. In the case of a bundle (of cable line link) - 50 mm d) Deployed on, or attached to, a public utility structure, building or other structure; and e) Has electrical properties consistent with those specified for cables set out in the IEEE 1222-2011 standard; and that is, or is to be, part of a national network used, or for use, for the carriage of communications.
2	<p>Cable joint enclosure:</p> <ul style="list-style-type: none"> a) Suspended above the surface of : <ul style="list-style-type: none"> i. Land (other than submerged land), or ii. A river, lake, bay, estuary, harbour or other body of water, or b) Either: <ul style="list-style-type: none"> i. Forming part of (or integrated with) a cable ,or ii. Clamped to, strung from, or otherwise mounted on a public utility structure, building or other structure; c) The substantive volume of which is not more than 0.046 cubic meters; and that is, or is to be, part of a national network used, or for use, for carriage of communications
3	<p>Cable access terminal:</p> <ul style="list-style-type: none"> a) Suspended above the surface of : <ul style="list-style-type: none"> i. Land (other than submerged land), or ii. A river, lake, bay, estuary, harbour or other body of water, or b) Clamped to, strung from, or otherwise mounted on a public utility structure, building or other structure; c) The substantive volume of which is not more than 0.02 cubic meters; and d) That is, or is to be, part of a national network used, or for use, for the carriage of communications.
4	<p>A single drop cable or a bundle of drop cables:</p> <ul style="list-style-type: none"> a) Suspended above the surface of : <ul style="list-style-type: none"> i. Land (other than submerged land), or ii. A river, lake, bay, estuary, harbour or other body of water, or b) Protruding from the surface of land (other than submerged land), and c) Either: <ul style="list-style-type: none"> i. Clamped to an electrical drop cable or other cable: or ii. Strung from a public utility structure, building or other structure: and d) Attached to a building or other structure for the purposes of a subscriber connection The maximum external cross-section of any part is: <ul style="list-style-type: none"> i. In the case where a single drop cable is attached to a single-unit building 13 mm ii. In the case where a bundle (of drop cables) is attached to a single unit building - 13 mm; or Has electrical properties consistent with those specified for cables set out in the IEEE 1222-2011 Standard; and that is, or is to be, part of a national network used, or for use, for the carriage of communications.

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Item no.	Network Facilities
5	Cable termination box (Single Type) a) Attached to a building or other structure for the purposes of a subscriber connection b) The substantive volume of which is not more than 0.005 cubic metres; and that is, or is to be, part of a national network used, or for use, for the carriage of communications.
6	Cable termination box (Multiple Type) a) Attached to a multi-unit building; b) The substantive volume of which is not more than 0.1 cubic metres (to include box for 96 termination): and that is, or is to be, part of a national network used, or for use, for the carriage of communications.
7	Network termination unit : a) Attached to a building or other structure for the purposes of a subscriber connection b) The substantive volume of which is not more than 0.02 cubic metres; and that is, or is to be, part of a national network used, or for use, for the carriage of communications

Table F8. Low power transmitter

Item no.	Network Facilities
1	A femtocell access point device installed for coverage improvements with transmit power limited to a maximum transmit power of 25 dBm or 316mW EIRP ¹ per carrier.
2	A smart repeater installed for coverage improvements with transmit power limited to a maximum transmit power of 25 dBm or 316mW EIRP per carrier.

¹ In radio communication systems, equivalent isotropically radiated power or, alternatively, effective isotropically radiated power (EIRP) is the amount of power that a theoretical isotropic antenna (which evenly distributes power in all directions) would emit to produce the peak power density observed in the direction of maximum antenna gain.

The EIRP is often stated in terms of decibels over a reference power emitted by an antenna and also a reference power emitted by an isotropic radiator with an equivalent signal strength.

The EIRP is used to estimate the service area of the transmitter, and to coordinate transmitters on the same frequency so that their coverage areas do not overlap.

ANNEX G
(Normative)

Notice to Inform

To – Owner / Occupier

**Re: Notice of installation of low-impact facilities on Lot No :.....(“Property”)
 (“Notice to Inform”)**

Purpose of Notice

TAKE NOTICE that we being licenced to provide telecommunication network facilities dated under the above Act are desirous of entering the abovementioned Property:

i. to install the Low-Impact Facilities as per the Ministerial Determination on Low-Impact Network Facilities. The site plan and the design are as attached.

Minimal Damage

Whilst engaging in the works and/or related activities, we shall use our best effort as far as practicable not to cause any detriment, inconvenience or damage.

After completion of the works and/or related activities, we shall take reasonable steps to restore the land to a condition that is similar to its condition before the works began.

Dated:

Yours faithfully

ANNEX H
(Normative)

Section 228 Notices - Notice to Seek Access

Section 228

COMMUNICATIONS AND MULTIMEDIA ACT 1998 (“ACT”)

To – Public Utility

Re: Notice to seek access of right of way on over and under the land on Lot No:
..... (“Property”)

BE ADVISED that we being licenced to provide telecommunication network facilities dated under the above Act.

TAKE NOTE that as a utility service provider, and pursuant to Section 228 of the Act, we are permitted by the Malaysian Communications and Multimedia Commission to be given access to the right of way and to install network facilities on/over/under the above land/property. The site plan and the design are as attached.

Minimal Damage

Whilst engaging in the works and/or related activities, we shall use our best effort as far as practicable not to cause any detriment, inconvenience or damage.

After completion of the works and/or related activities, we shall take reasonable steps to restore the land to a condition that is similar to its condition before the works began.

Compensation

You shall be paid appropriate compensation if you suffer any financial losses or for any damage caused to your Property directly due to the above works and/or related activities and the appropriate consideration as per the Consideration Code.

Dated:

Yours faithfully

Note:

In the event of inconsistency between the Bahasa Malaysia and English version, the former shall prevail.

Acknowledgements

Members of the Installation of Network Facilities – Regulatory Working Group (INF-R WG) under the Malaysian Technical Standards Forum Bhd (MTSFB)

Mr. Irving Ho Wee Beng (Chairman)	DiGi Telecommunications Sdn Bhd
Mr. Mohd Zin Mohd Noor (Vice Chairman)	Sapura Research
Mr. Low Kien Yap (Secretary)	Celcom Axiata Berhad
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Mr. Baharuzaman Saman /	
Ms. Halimahtun Sa'adiyah Baharuddin /	
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Ms. Ainul Azlinda /	Telekom Malaysia Berhad
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Mr. Hairul Nizam Mohd Hakim /	
Mr. Mohd Rizaili Sazali /	
Ms. Normah Hani Binti Muhamad Habib /	
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MCMC MTSFB TC TXXX:2015

Mr. Saimon Bin Nordin /

Ms. Zaleha Abdul Aziz

Mr. Abdulhadi Wahid /

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Mr. Jimmy Low Khee Yu /

Mr. Md. Zakir Bajuri /

Mr. Muhammad Bin Md Yunus /

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