



REPUBLIC OF FIJI ISLANDS GOVERNMENT GAZETTE
PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT

Vol. 10

FRIDAY, 13th NOVEMBER 2009

No. 101

[1241]

REGULATION OF NATIONAL SPECTRUM DECREE 2009
 (DECREE NO. 48 OF 2009)

GOVERNMENT OF FIJI

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority Decree 2009, I hereby make the following Decree—

Short title and Commencement

1. This Decree may be cited as the Regulation of National Spectrum Decree 2009, and shall come into force on _____, 2009.

Interpretation

2. In this Decree, unless the context otherwise requires—

“existing licence” includes an existing licence, at the commencement of this Decree, for operation of a service or device including radio broadcast, television broadcast, telecommunications, microwave links or any other service which uses radio frequency spectrum from 3Hz to 300GHz;

“existing licensee” includes a person or body with an existing licence, at the commencement of this Decree, for operation of a service or device including radio broadcast, television broadcast, telecommunications, microwave links or any other service which uses radio frequency spectrum from 3 Hz to 300GHz;

“licence” includes a licence issued under this Decree for operation of a service or device including radio broadcast, television broadcast, telecommunications, microwave links or any other service which uses radio frequency spectrum from 3Hz to 300GHz;

“licensee” includes a person or body who has been issued with a licence under this Decree for operation of a service or device including radio broadcast, television broadcast, telecommunications, microwave links or any other service which uses radio frequency spectrum from 3Hz to 300GHz;

“Minister” means the Minister responsible for communications;

“Ministry” means the ministry or department of communications;

“spectrum” means the continuous range of electromagnetic wave frequencies from 3Hz to 300GHz;

“Telecommunications Authority of Fiji” means the authority established pursuant to section 5 of the Telecommunications Promulgation 2008.

Cancellation of current spectrum allocations

3.—(1) Subject to subsection (2), any allocation or use of radio frequency spectrum whether or not such allocation or use is made under an existing licences is, from the commencement of this Decree converted to a temporary allocation or use pending a determination by the Minister which may or may not result in the issuance of new licences to existing licensees or users, by the relevant licensing authority.

(2) Notwithstanding subsection (1), all existing licensees and users shall continue to operate on the spectrum, band, frequency or microwave link currently allocated or used by them, until such time as a determination may be made by the Minister reallocating spectrum, band, frequency or microwave links under this Decree.

(3) No existing licensee or any other person or body shall be entitled to any compensation or any other remedy in relation to the cancellation, reallocation or any other action or decision whatsoever taken by the Minister or an

agent under this Decree, which impacts on the allocation or use of spectrum, band, frequency or microwave links by the existing licensee or that other person.

(4) No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain, any challenges whatsoever (including any application for judicial review) by any person or body, or to award any compensation or grant any other remedy to any person or body, in relation to the cancellation, reallocation or any action or decision whatsoever which impacts on allocation and use of spectrum, band, frequency or microwave links whether or not such allocation and use is made under existing licences.

Disclosure by existing licensees and spectrum users

4.—(1) Every existing licensee shall, on or before a date to be appointed by the Minister by Order, disclose in writing to the Minister, the current spectrum, band, frequency or microwave links actually used by the licensee.

(2) Every user of selected bands or sections of the radio frequency spectrum not currently licensed or otherwise covered by subsection (1) may be required to, disclose in writing to the Minister on or before a date to be appointed by the Minister by Order, the radio frequency spectrum, band, or microwave links in use by the user.

(3) For the purposes of disclosure under this section, the Ministry may decide at its own discretion, the types of information to be disclosed to the Minister.

Minister to make spectrum allocation

5.—(1) The Minister may, upon receipt and consideration of the disclosures made by the existing licensees and users under section 4 and upon such further consultations as the Minister may deem appropriate, allocate and reallocate spectrum, band, frequency or microwave links for radio broadcast, television broadcast, telecommunications or any other service which uses radio frequency spectrum, band or microwave link, on such terms and conditions as the Minister may deem just and fair in the national interest.

(2) In exercising its powers under this Decree, the Minister may adopt new standards, technical or otherwise, or modify current standards to be incorporated in general licences.

Spectrum management

6. In allocating spectrum, band, frequencies or microwave links under section 5, the Minister must ensure—
- (a) that the allocation of spectrum, band, frequencies or microwave links is fair, non-discriminatory, economically efficient, enhances competition in the market and takes into consideration the public interest and the national interest of Fiji;
 - (b) that the allocation of spectrum, band, frequencies or microwave links is technologically neutral and which allows for evolution to new technologies and services.

Offence

7.—(1) Any licensee or user who engages in radio broadcast, television broadcast, telecommunications or any other service which uses radio frequency spectrum, band or microwave link, contrary to an allocation made under section 5 is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years.

(2) Any person who breaches section 4 of this Decree is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years.

Monitoring compliance

8. The Minister may designate the ministry or the Telecommunications Authority of Fiji to monitor compliance by the licensees with any allocation of spectrum, band, frequency or microwave links made under this Decree.

Regulations and directives

9. The Minister may make regulations and issue directives as are necessary to give effect to the provisions of this Decree.

Operation of Telecommunications Promulgation

10. This Decree has effect notwithstanding any provision of the Telecommunications Promulgation 2008 or any other law and accordingly, to the extent that there is any inconsistency between this Decree and the Telecommunications Promulgation 2008 or any other law, this Decree shall prevail.

Minister's decision not to be challenged

11.—(1) No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain, any challenges whatsoever (including any application for judicial review) by any person or body, or to award any compensation or grant any other remedy to any person or body, in relation to the validity or legality or propriety of any action or decision of the Minister, the ministry or the Telecommunications Authority of Fiji under this Decree.

GIVEN under my hand this 12th day of November 2009.

EPELI NAILATIKAU
President of the Republic of Fiji