

**EXTRAORDINARY
FIJI ISLANDS GOVERNMENT GAZETTE SUPPLEMENT**

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**TELECOMMUNICATIONS PROMULGATION 2008
(NO. 1 OF 2008)**

TELECOMMUNICATIONS (LICENSING) REGULATIONS 2012

IN exercise of the powers conferred upon me under section 82 of the Telecommunications Promulgation 2008, I hereby make the following Regulations—

PART 1—PRELIMINARY

Short title and commencement

1. These Regulations may be cited as the Telecommunications (Licensing) Regulations 2012 and shall commence on the date of its publication in the *Gazette*.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“charge payable” means the charge that has been determined by the Authority under section 24 (1) of the Promulgation in respect of the matter;

“fee payable” means the fee that has been determined by the Authority under section 24 (1) of the Promulgation in respect of the matter;

“financial year”, in relation to a licensee, means the period of a year ending on the date specified in the licensee’s application for a licence, or on such other date as may be notified to the Authority, in accordance with regulation 19, as the date on which the licensee’s financial year ends;

“general licence condition”, in relation to a telecommunications services licence, means a condition of the licence described in regulation 10 of these Regulations;

“licence”, in relation to an existing licence, means a licence issued under Part 3 Division 1 of the Promulgation;

“Register” means the Register kept by the Authority under section 38(1) of the Promulgation; and

“special condition”, in relation to a licence, means a condition specified by the Authority in respect of that particular licence only.

(2) In these Regulations, unless the context otherwise requires, reference to a document being signed by a licensee or an applicant for a licence is a reference to the document being signed where the licensee or applicant is—

- (a) a company, by an authorised representative of the company;
- (b) an individual, by that individual;

- (c) a sole proprietorship, by the person who is the proprietor; and
- (d) a partnership, by any one of the partners.

PART 2—LICENCES FOR TELECOMMUNICATIONS SERVICES

Service providers to be licensed

3. Every service provider who provides telecommunications services must hold a licence issued by the Authority under the Promulgation.

Types of licences that may be issued

4.—(1) A single type of licence shall be issued by the Authority under Part 3 of the Promulgation to persons eligible to provide telecommunications services in Fiji.

(2) The licence referred to in regulation 3(1) shall cover all or any telecommunications services that the licensee may currently provide, and all or any telecommunications services that the licensee may provide in the future, subject to general and special licence conditions.

(3) For the avoidance of doubt—

- (a) a licence to provide telecommunications services shall cover the operation of telecommunications facilities necessary or desirable to provide such services;
- (b) persons operating equipment and systems that are not associated with the provision of telecommunications services, such as billing systems, may not be licensed under these Regulations; and
- (c) a person or an enterprise, such as a hotel, who resells the telecommunications services of a licensee without change or modification to the services, need not be licensed in respect of such resale activities.

PART 3—APPLICATIONS FOR AND ISSUE OF LICENCES

Applications

5.—(1) A service provider must apply to the Authority for a licence to provide telecommunications services.

(2) Every application must be—

- (a) made by an eligible person in accordance with regulation 6;
- (b) in accordance with the form in Schedule 1;
- (c) accompanied by a police clearance showing, in accordance with regulation 7, whether the applicant has—
 - (i) prior infringements and non-compliance with the conditions of a licence; and
 - (ii) been convicted of unlawful conduct relating to dishonesty in the provision of telecommunication services; and
- (d) accompanied by the application fee in Schedule 4 or a document evidencing payment of any fee payable in respect of the application.

Eligible persons

6. The following are eligible persons for the purposes of regulation 5(a)—

- (a) a company incorporated under the Companies Act (Cap. 247);
- (b) a natural person over 18 years of age and a resident of Fiji;

- (c) a sole proprietorship, the proprietor of which is over 18 years of age and a resident of Fiji;
- (d) a partnership, one of the members of which is a person over 18 years of age and a resident of Fiji and whose principal place of work is in Fiji;
- (e) an educational institution registered under the applicable laws of Fiji; and
- (f) a Fijian government agency or an organisation or a statutory body created pursuant to the laws of Fiji.

Matters relevant to the grant of a licence

7.—(1) Without prejudice to the application of section 3 of the Promulgation, the Authority, in considering whether an application for a licence should be granted, shall have regard to the suitability of the applicant to be the holder of a licence in terms of prior—

- (a) infringements and non-compliance with the conditions of a licence; and
- (b) convictions for unlawful conduct relating to dishonesty in the provision of telecommunications services.

(2) For the avoidance of doubt—

- (a) prior infringements and prior convictions of the kind referred to in regulation 7(1) refer to prior infringements and prior convictions of any relevant kind and shall not be limited to prior infringements and prior convictions in Fiji; and
- (b) where the applicant is a partnership or company, prior infringements and prior convictions of the kind referred to in regulation 7(1) shall include prior infringements and prior convictions of the partnership or company, and of the partners, owners and directors.

Payment of annual charge for first year of licence

8. Where an application for a licence is to be granted, the grant of the licence shall not come into effect until the applicant has provided the Authority with payment of the annual charge for the licence, or a document evidencing payment of the amount payable, under regulation 17.

Grant of licence

9.—(1) The Authority may, in its direction, grant a licence to an eligible person unless there is one or there are more specific reasons for not granting the licence, including the failure to provide a complete application with all the necessary information.

(2) The Authority shall notify the licensee of the granting of a licence by issuing to the licensee a certified copy of an extract of the relevant entry in the Register.

Refusal of licence

10. If the Authority refuses to grant a licence, the Authority must immediately notify the applicant in writing of the decision, including the reasons for the refusal.

PART 4—LICENCE CONDITIONS

General conditions

11. It is a condition of every licence that the licensee comply with—

- (a) the laws of Fiji, including the Commerce Commission Decree 2010;

- (b) the Promulgation and any Regulations and Orders made under the Promulgation, including any provision relating to the payment of fees or charges;
- (c) decisions and determinations made by the Authority, whether alone or jointly with the Commerce Commission, in the lawful exercise of its powers under the Promulgation, including but not limited to—
 - (i) determinations made by the Authority;
 - (ii) technical rules and standards issued by the Authority;
 - (iii) orders, directions or requirements lawfully given or issued by the Authority;
 - (iv) conditions and penalties imposed by the Authority; and
- (d) decisions and determinations of the Commerce Commission in the lawful discharge of its functions under the Commerce Commission Decree 2010.

Special conditions to prevail

12.—(1) The Authority may impose special conditions in a particular licence in accordance with these Regulations in order to pursue the objectives of the Promulgation.

(2) Special conditions specified by the Authority in respect of a particular licence, whether expressly or by implication, may vary the application of any general licence conditions in respect of the particular licence.

(3) In the event of any inconsistency between a special condition of a licence and any general condition applying to the licence, the former condition shall prevail and the latter condition shall be suspended in its operation to the extent of the inconsistency.

PART 5—ANNUAL CHARGES FOR LICENCE FEES

Financial year for calculation of annual gross revenue

13. For the purpose of calculating the annual amount of a licence fee as provided in section 24(1)(c) of the Promulgation, the annual gross revenue referred to in that provision shall be the gross revenue for the financial year of the licensee ending during the 12 months immediately prior to the beginning of the period to which the annual fee relates.

Maximum and minimum licence fees

14.—(1) The maximum percentage of annual gross revenue which must not be exceeded for the purpose of section 24(1)(c) of the Promulgation is set out in Part 1 of Schedule 2.

(2) The minimum levy below which the annual charges for licence fees shall not be charged for the purpose of section 24(1)(c) of the Promulgation is set out in Part 2 of Schedule 2.

Annual return to be filed by licensee

15.—(1) A licensee shall, within three months from the end of the licensee's financial year, lodge with the Authority a—

- (a) return in respect of that financial year reporting the—
 - (i) amount of the annual gross revenue of the licensee;
 - (ii) amount of settlement charges payable to or receivable from other licensees; and

- (iii) method by which the amounts in (i) and (ii) were calculated and a replication of the actual calculations used; and
- (b) statement showing a calculation of the annual charge for the licence fee that would be payable in respect of the annual gross revenue net of settlements as set out in the return.

(2) The return must include a certificate stating that it is true and correct in all respects and signed by the licensee.

(3) If the licensee is unable to lodge a final return within three months of the conclusion of the licensee's financial year, he or she may lodge a provisional return instead within the same three months provided the licensee—

- (a) clearly identifies its return as a provisional return; and
- (b) submits a final return within six months of the conclusion of the licensee's financial year.

(4) In the case of a licensee that is required by law to produce an annual report, the information on which the calculation in the return is based must be verifiable by reference to the annual report last issued before the filing of the return.

(5) Regulation 15(1) does not apply to a licensee whose annual gross revenue net of settlement charges is less than the amount specified in Schedule 3.

(6) Where two or more licensees are companies that are so associated with each other through common or familial ownership, arrangements or control that they should in the view of the Authority be treated as a single entity for the purposes of the assessment of the annual charge, the Authority may require those licensees to lodge a consolidated return and statement under regulation 15(1), in addition to any requirement to lodge individual returns or statements.

(7) A licensee who, in a return, falsely reports or fails to report revenue that is required to be reported commits an offence and is liable to a fine not exceeding \$5,000 or two years' imprisonment.

Invoice for annual charge

16.—(1) The annual charge for a licence fee is payable not later than 30 days after the issue by the Authority to the licensee of an invoice specifying the amount payable in accordance with the annual charges for licence fees as determined by the Authority under section 24(1)(c) of the Promulgation.

(2) Where the invoice referred to in regulation 16(1) is received more than three days after the date of issue, the annual charge for the licence fee is payable not later than 30 days after the receipt of the invoice from the Authority.

(3) The onus of proving that the receipt of the invoice in regulation 16(2) has occurred more than three days after the issue of the invoice and the actual date of receipt in those circumstances shall be on the licensee.

Determination of annual gross revenue of a licensee

17.—(1) In determining a licensee's annual gross revenue or annual gross revenue net of settlements for the purposes of the calculation of annual charges for licence fees

under section 24(1)(c) of the Promulgation, the Authority may have regard to the amount reported by the licensee, in a return lodged with the Authority under regulation 15(1), as being the annual gross revenue or annual gross revenue net of settlements of the licensee.

(2) Where—

- (a) a return required under regulation 15(1) to be lodged by a licensee has not been lodged; or
- (b) the Authority does not accept as accurate or complete the amount of annual gross revenue or annual gross revenue net of settlements reported in such a return lodged by a licensee,

the Authority may make an estimate of the annual gross revenue or annual gross revenue net of settlements based on such matters or information as it reasonably considers to be relevant including but not limited to previous returns lodged by the licensee, returns lodged by other licensees, or market information, and may base its invoice on such an estimate.

Payment on account of annual charge for first year of licence

18.—(1) A licensee shall pay on account an annual charge for the first year of its licence based on the greater of the—

- (a) licensee's estimate of its annual gross revenue net of settlements for the first year of its licence; and
- (b) Authority's estimate of its gross annual revenue net of settlements under regulation 17(2), if the Authority has made such an estimate.

(2) Payments made on account in accordance with regulation 18(1) shall be subject to adjustment in invoices for annual charges for the next year following the first year of licence.

Audit Requirements

19. The auditing of a licensee's annual gross revenue or annual gross revenue net of settlements for the purposes of section 24(1)(c) of the Promulgation shall be carried out by an accountant registered under the Fiji Institute of Accountants Act (Cap. 259).

PART 6— VARIATION, RENEWAL, ETC OF LICENCES

Variation of conditions of a licence

20.—(1) The Authority shall only vary the terms of an existing licence after following the procedure set out in section 18 or section 36 of the Promulgation.

(2) A licensee may apply to vary the terms of a licence by initiating the procedure under section 18(1) of the Promulgation.

Renewal of licence

21.—(1) For the purposes of section 35(2) of the Promulgation, an application by a licensee for the renewal of a licence shall be made by submitting to the Authority, not later than sixty days before the expiry of the licence, at the same time—

- (a) a notice in writing signed by the licensee requesting such renewal; and
- (b) payment of the fee payable in respect of such applications or a document evidencing payment of the fee payable in respect of such applications.

(2) Upon receipt of an application for renewal the Authority shall carry out such investigations as it considers necessary and appropriate to determine whether—

- (a) the licence is a licence that must be renewed on substantially similar conditions pursuant to section 35(2) of the Promulgation; or
- (b) in accordance with section 35(3) of the Promulgation, the—
 - (i) licence should be renewed but on new conditions; or
 - (ii) application to renew the licence should be denied.

Change of other particulars of licensee

22.—(1) A licensee, being a company or incorporated partnership, must notify the Authority in writing, within 14 days of any change to its ownership that affects the control of the licensee.

(2) The notice must be accompanied by such fee as may be determined by the Authority under section 24(1) of the Promulgation or a document evidencing payment of such a fee.

Application to assign or transfer a licence

23.—(1) An application to the Authority for its approval to the transfer, assignment, ceding, pledging or other disposal of a licence for the purposes of section 37 of the Promulgation must be in writing and must be accompanied by—

- (a) the particulars of the proposed transfer, assignment, ceding, pledging or other disposal; and
- (b) such fee as may be determined by the Authority under section 24(1) of the Promulgation in respect of such applications or a document evidencing payment of such a fee.

(2) Before making any decision on the application under regulation 23(1), the Authority shall consult the Commerce Commission.

PART 7—TELECOMMUNICATIONS EQUIPMENT AND APPARATUS

Licensee responsible for apparatus

24.—(1) A licensee must, in respect of all telecommunications equipment and apparatus possessed, operated, maintained or used by the licensee in connection with the provision of services under the licence, take all reasonable measures to prevent injury to persons or damage to property, including the exposure of persons to any electrical emission or radiation emanating from the equipment or apparatus.

(2) A licensee must, in respect of all telecommunications equipment and apparatus possessed, operated, maintained or used by the licensee in connection with the provision of services under the licence, take all reasonable measures not to cause interference or physical obstruction to other telecommunications equipment or apparatus operating in the same band or in other bands.

(3) A licensee must, in respect of all telecommunications equipment, apparatus and telecommunications network possessed, operated, maintained or used by the licensee in connection with the provision of services under the licence, take reasonable measures to ensure that its equipment, apparatus and network are adequately resistant to or protected from interference that may be caused by other equipment, apparatus and networks operating in the same band or in other bands.

(4) A licensee must take all reasonable steps to ensure that any metering and charging apparatus or mechanism used by the licensee in connection with the provision of telecommunications services is accurate and reliable.

Records relating to facilities

25. A licensee who, in connection with the provision of telecommunications services, owns or operates overhead lines, telecommunications transmitter towers or underground facilities must keep and maintain accurate records of the kind, usage and capacity, and location of that equipment and apparatus.

Regular inspection and correction of dangerous facilities

26.—(1) A licensee who, in connection with the provision of telecommunications services, owns or operates any telecommunications equipment, apparatus or facility must inspect the equipment or apparatus and any facility in which it is kept regularly in accordance with good engineering practice to ensure that it is operating in a safe manner.

(2) When a licensee is made aware by whatever means that any telecommunications equipment, apparatus or a facility poses or may pose a danger to the health or safety of persons or property, the licensee shall investigate promptly the condition of the equipment, apparatus or facility and shall take any remedial action that is reasonably required.

PART 8—MISCELLANEOUS

Register

27.—(1) The Authority shall maintain a Register of all applications received for licences under these Regulations.

(2) The Authority shall acknowledge, in writing, receipt of each application for a licence under these Regulations within seven days of such receipt.

(3) The details of a licence and of an application for a licence that are to be entered in the Register shall be those set out in Schedule 5.

(4) A document purporting to be a copy of an extract from the Register and purporting to be certified as such by an authorised member or officer of the Authority shall be admissible in evidence in any court or legal proceedings without further proof and shall be, in the absence of evidence to the contrary, proof of the matters stated in the document.

Licensee ownership and structure

28. A licensee that is a company shall—

- (a) at all times comply with any requirement stipulated by Investment Fiji; and
- (b) notify the Authority of any change in its shareholding which under any law it is required to notify to the government or any statutory authority.

Notification of agreement with other licensee

29.—(1) A licensee who enters into an agreement with another licensee or another telecommunications service provider relating to the provision of any telecommunications service shall notify the Authority in writing, within 30 days of that agreement, and shall provide a copy of the agreement to the Authority if requested to do so.

(2) A licensee shall disclose to the Authority any agreement with another licensee or an unlicensed telecommunications service provider relating to the provision of any telecommunications service when requested to do so by the Authority.

(3) Subject to regulation 29(4) neither the Authority nor any of its officers or employees shall disclose to third parties including other agencies of the government the existence or content of an agreement referred to in regulations 29(1) and 29(2) without the written permission of the parties to the agreement.

(4) The Authority may disclose the existence and contents of an agreement referred to in regulations 29(1) and 29(2) to the Commerce Commission without the approval or permission of the parties to the agreement.

Minister and Authority not liable

30. For the avoidance of doubt, neither the Minister nor the Authority shall be liable in any respect whatsoever arising out of the actions of a licensee in exercise of its licence or in breach of its licence.

Savings

31. Nothing in these Regulations is to be taken as discharging or excusing a licensee from any obligation, under any other law in force in Fiji, to obtain any licence, permit or approval.

Service of notices

32. A notice to be given to a licensee under these Regulations or under the licence must be in writing and is deemed to have been—

- (a) given if it has been delivered by hand and receipt has been signed for by the intended recipient or his or her agents or servants or sent by pre-paid post or by facsimile to the licensee's address as recorded in the Register; and
- (b) received by the licensee on the date and at the time the actions of the Authority in sending the documents have been completed or, if receipt is signed for, on the date of such signature.

Transitional arrangements – Applications for replacement licences

33.—(1) This regulation applies to an application for a licence where, for the purposes of section 2 of the Schedule to the Promulgation, the—

- (a) applicant is the holder of a prior licence; and
- (b) application is for the grant of a replacement licence.

(2) An application for such a licence may be made by letter signed by the applicant and attaching—

- (a) audited accounts for the purposes of calculating licence fees under these Regulations;
- (b) a copy of the prior licence; and
- (c) any agreements entered into by the holder of a prior licence with any other telecommunications service provider, whether licensed or not, up to the date of the application.

(3) These Regulations and this regulation in particular do not apply to an application for allocation of additional frequency spectrum.

Dated this 1st day of February 2012.

A. SAYED-KHAIYUM

Attorney-General and Minister for Justice and Anti Corruption, Public Enterprises, Communications, Civil Aviation and Tourism, Industry and Trade

SCHEDULE 1

Particulars of applicant for licence

PART 1—ALL APPLICANTS

1. Overview of the applicant—

- (a) Name of applicant
- (b) Address, telephone number and email address of applicant
- (c) Legal status of applicant including age, citizenship and residency status
- (d) A contact name, telephone number, fax number and email address for the licensee
- (e) Date of the end of the financial year used by the applicant
- (f) Prior infringements and non-compliance with the conditions of a telecommunications service licence in any country by the applicant
- (g) Prior convictions for unlawful conduct relating to dishonesty in the provision of telecommunications services in any country by the applicant

2. Statement as to whether the application has been made in conjunction with a related application for a spectrum licence under Division 2 of Part 3 of the Promulgation.

3. Statement describing the types and coverage of the telecommunications services to be provided under the licence in the first three years after the issue of the licence.

4. Statement containing information sufficient to allow the calculation of a payment on account of the annual charge for the licence fee in respect of the first year of the licence.

5. Signature, name and position of the signatory.

6. Date of application.

PART 2—WHERE THE APPLICANT IS A COMPANY

In addition to the information required in Part 1 of this Schedule, applicants who are companies shall provide the following information—

- (a) Date and place of incorporation and Business Registration Number
- (b) Registered address
- (c) Business and mailing address in Fiji
- (d) Names and addresses of directors at the date of the licence application

- (e) A statement in relation to each director and of their prior –
 - (i) infringements and non-compliance with the conditions of a telecommunications service licence in any country; and
 - (ii) convictions for unlawful conduct relating to dishonesty in the provision of telecommunications services in any country,
 if any
- (f) Latest financial statements
- (g) Names of shareholders holding more than 5% of shares held, and the number and percentage of shares at the date of the licence application.

**PART 3—WHERE THE APPLICANT IS A PARTNERSHIP
OR AN UNINCORPORATED ORGANISATION**

In addition to the information required in Part 1 of this Schedule, applicants who are partnerships or unincorporated organisations shall provide the following information—

- (a) Date and place of formation of the partnership or organisation
- (b) Business and mailing address in Fiji
- (c) Names and addresses of partners or, in the case of other organisations, of senior managers at the date of the licence application
- (d) A statement in relation to each partner or other person listed in response to item 3 of this Part in relation to their—
 - (i) prior infringements and non-compliance with the conditions of a telecommunications service licence in any country; and
 - (ii) prior convictions for unlawful conduct relating to dishonesty in the provision of telecommunications services in any country,
 if any
- (e) Latest financial statements
- (f) Names of shareholders holding more than 5% of shares held, and the number and percentage of shares at the date of the licence application

SCHEDULE 2

Maximum and minimum annual charges for licence fees

PART 1

Maximum value for annual charge for licence fee

The prescribed maximum annual charge for a licence fee for the purposes of section 24(1)(c) of the Promulgation shall be 5% of audited annual gross revenue calculated net of settlements with other licensees in Fiji.

PART 2

Minimum value for annual charge for licence fee

The minimum levy prescribed for the purposes of section 24(1)(c) of the Promulgation shall be \$1000.00.

SCHEDULE 3

Threshold amounts

The annual gross revenue for the purposes of exemption under regulation 14(5) from requirement to lodge a return reporting annual gross revenue shall be \$5,000.

SCHEDULE 4

Application fee

The application fee referred to in regulation 4 shall be a non-refundable fee of an amount set by the Authority from time to time, as authorised in section 24(1)(a) of the Promulgation.

SCHEDULE 5

Register

The information listed below shall be entered into the Register in respect of each application for a licence and for each licence, respectively.

PART 1—APPLICATION FOR LICENCE

- (a) Applicant's name
- (b) Applicant's address
- (c) Applicant's contact details
- (d) Whether the applicant is an individual, a company, a partnership or unincorporated organisation
- (e) Date of application
- (f) Date of receipt of application by the Authority
- (g) Whether each relevant information required by these Regulations has been provided with the application
- (h) Whether a payment in accordance with regulation 4 and Schedule 4, or evidence of such a payment, has been received
- (i) Date and reference number of acknowledgement of receipt of application in accordance with regulation 7
- (j) Name and signature of authorised officer of the Authority making the entry into the Register
- (k) Date of entry into the Register

PART 2—LICENCE

- (a) Licensee's name
- (b) Licensee's address
- (c) Contact person for the licensee, including name, address, telephone, email and fax details
- (d) Date of effect (commencement) of licence
- (e) Name and signature of authorised officer of the Authority making the entry into the Register
- (f) Date of entry into the Register