

Establishment of Harmonized Policies for the ICT Market in the ACP countries

Licensing: Model Policy Guidelines & Legislative Texts

HIPCAR

Harmonization of ICT Policies,
Legislation and Regulatory
Procedures in the Caribbean



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Foreword

Information and communication technologies (ICTs) are shaping the process of globalisation. Recognising their potential to accelerate the Caribbean region's economic integration and thereby its greater prosperity and social transformation, the Caribbean Community (CARICOM) Single Market and Economy has developed an ICT strategy focusing on strengthened connectivity and development.

Liberalisation of the telecommunication sector is one of the key elements of this strategy. Coordination across the region is essential if the policies, legislation, and practices resulting from each country's liberalisation are not to be so various as to constitute an impediment to the development of a regional market.

The project 'Enhancing Competitiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures' (HIPCAR) has sought to address this potential impediment by bringing together and accompanying all 15 Caribbean countries in the Group of African, Caribbean and Pacific States (ACP) as they formulate and adopt harmonised ICT policies, legislation, and regulatory frameworks. Executed by the International Telecommunication Union (ITU), the project has been undertaken in close cooperation with the Caribbean Telecommunications Union (CTU), which is the chair of the HIPCAR Steering Committee. A global steering committee composed of the representatives of the ACP Secretariat and the Development and Cooperation - EuropeAid (DEVCO, European Commission) oversees the overall implementation of the project.

This project is taking place within the framework of the ACP Information and Telecommunication Technologies (@CP-ICT) programme and is funded under the 9th European Development Fund (EDF), which is the main instrument for providing European aid for development cooperation in the ACP States, and co-financed by the ITU. The @CP-ICT aims to support ACP governments and institutions in the harmonization of their ICT policies in the sector by providing high-quality, globally-benchmarked but locally-relevant policy advice, training and related capacity building.

All projects that bring together multiple stakeholders face the dual challenge of creating a sense of shared ownership and ensuring optimum outcomes for all parties. HIPCAR has given special consideration to this issue from the very beginning of the project in December 2008. Having agreed upon shared priorities, stakeholder working groups were set up to address them. The specific needs of the region were then identified and likewise potentially successful regional practices, which were then benchmarked against practices and standards established elsewhere.

These detailed assessments, which reflect country-specific particularities, served as the basis for the model policies and legislative texts that offer the prospect of a legislative landscape for which the whole region can be proud. The project is certain to become an example for other regions to follow as they too seek to harness the catalytic force of ICTs to accelerate economic integration and social and economic development.

I take this opportunity to thank the European Commission and ACP Secretariat for their financial contribution. I also thank the Caribbean Community (CARICOM) Secretariat and the Caribbean Telecommunication Union (CTU) Secretariat for their contribution to this work. Without political will on the part of beneficiary countries, not much would have been achieved. For that, I express my profound thanks to all the ACP governments for their political will which has made this project a resounding success.



Brahima Sanou
BDT, Director

Acknowledgements

The present document represents an achievement of the regional activities carried out under the HIPCAR project “Enhancing Competiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures”, officially launched in Grenada in December 2008.

In response to both the challenges and the opportunities from information and communication technologies’ (ICTs) contribution to political, social, economic and environmental development, the International Telecommunication Union (ITU) and the European Commission (EC) joined forces and signed an agreement aimed at providing “*Support for the Establishment of Harmonized Policies for the ICT market in the ACP*”, as a component of the programme “ACP-Information and Communication Technologies (@CP-ICT)” within the framework of the 9th European Development Fund (EDF), i.e., ITU-EC-ACP project.

This global ITU-EC-ACP project is being implemented through three separate sub-projects customized to the specific needs of each region: the Caribbean (HIPCAR), sub-Saharan Africa (HIPSSA) and the Pacific Island Countries (ICB4PAC).

The HIPCAR Steering Committee – chaired by the Caribbean Telecommunications Union (CTU) – provided guidance and support to a team of consultants led by Ms. Sofie Maddens Toscano and including Mr. J Paul Morgan and Mr. Kwesi Prescod, who prepared the initial draft of this report. The document was then reviewed, finalized and adopted by broad consensus by the participants at two consultation workshops for HIPCAR’s Working Group on ICT Policy and Legislative Framework on Telecommunications matters, held in Trinidad and Tobago on 26-29 October 2009 and in Suriname on 12-15 April 2010 (see Annexes).

ITU would like to especially thank the workshop delegates from the Caribbean ICT and telecommunications ministries and regulators as well as their counterparts in the ministries of justice and legal affairs, academia, civil society, operators, and regional organizations, for their hard work and commitment in producing the contents of this report. The contributions from the Caribbean Community Secretariat (CARICOM) and the Caribbean Telecommunications Union (CTU) are also gratefully acknowledged.

Without the active involvement of all of these stakeholders, it would have been impossible to produce a document such as this, reflecting the overall requirements and conditions of the Caribbean region while also representing international best practice.

The activities have been implemented by Ms Kerstin Ludwig, responsible for the coordination of activities in the Caribbean (HIPCAR Project Coordinator), and Mr Sandro Bazzanella, responsible for the management of the whole project covering sub-Saharan Africa, the Caribbean and the Pacific (ITU-EC-ACP Project Manager) with the overall support of Ms Nicole Morain, HIPCAR Project Assistant, and of Ms Silvia Villar, ITU-EC-ACP Project Assistant. The work was carried under the overall direction of Mr Cosmas Zavazava, Chief, Project Support and Knowledge Management (PKM) Department. The document has further benefited from comments of the ITU Telecommunication Development Bureau’s (BDT) Regulatory and Market Environment Division (RME). Support was provided by Mr. Philip Cross, ITU Area Representative for the Caribbean. Pre-formatting was done by Mr. Pau Puig Gabarró. The team at ITU’s Publication Composition Service was responsible for its publication.

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Introduction

1.1. HIPCAR Project – Aims and Beneficiaries

The HIPCAR project¹ was officially launched in the Caribbean by the International Telecommunication Union (ITU) and the European Commission (EC) in December 2008, in close collaboration with the Caribbean Community (CARICOM) Secretariat and the Caribbean Telecommunications Union (CTU). The HIPCAR project is part of a global ITU-EC-ACP project encompassing also sub-Saharan Africa and the Pacific.

HIPCAR's objective is to assist CARICOM / ACP countries in the Caribbean to harmonize their information and communication technology (ICT) policies, legislation and regulatory procedures so as to create an enabling environment for ICT development and connectivity, thus facilitating market integration, fostering investment in improved ICT capabilities and services, and enhancing the protection of ICT consumers' interests across the region. The project's ultimate aim is to enhance competitiveness and socio-economic and cultural development in the Caribbean region through ICTs.

In accordance with Article 67 of the Revised Treaty of Chaguaramas, HIPCAR can be seen as an integral part of the region's efforts to develop the CARICOM Single Market & Economy (CSME) through the progressive liberalization of its ICT services sector. The project also supports the CARICOM Connectivity Agenda and the region's commitments to the World Summit on the Information Society (WSIS), the World Trade Organization's General Agreement on Trade in Services (WTO-GATS) and the Millennium Development Goals (MDGs). It also relates directly to promoting competitiveness and enhanced access to services in the context of treaty commitments such as the CARIFORUM states' Economic Partnership Agreement with the European Union (EU-EPA).

The beneficiary countries of the HIPCAR project include Antigua and Barbuda, The Bahamas, Barbados, Belize, The Commonwealth of Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

1.2. Project Steering Committee and Working Groups

HIPCAR has established a project Steering Committee to provide it with the necessary guidance and oversight. Members of the Steering Committee include representatives of Caribbean Community (CARICOM) Secretariat, Caribbean Telecommunications Union (CTU), Eastern Caribbean Telecommunications Authority (ECTEL), Caribbean Association of National Telecommunication Organisations (CANTO), Caribbean ICT Virtual Community (CIVIC), and International Telecommunication Union (ITU).

In order to ensure stakeholder input and relevance to each country, HIPCAR Working Groups have also been established with members designated by the country governments – including specialists from ICT agencies and national regulators, country ICT focal points and persons responsible for developing national legislation. The Working Groups also include representatives from relevant regional bodies (CARICOM Secretariat, CTU, ECTEL and CANTO) and observers from other interested entities in the region (e.g. civil society, the private sector, operators, academia, etc.).

¹ The full title of the HIPCAR Project is: "Enhancing Competitiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures". HIPCAR is part of a global ITU-EC-ACP project carried out with funding from the European Union set at EUR 8 million and a complement of USD 500,000 by the International Telecommunication Union (ITU). It is implemented by the ITU in collaboration with the Caribbean Telecommunications Union (CTU) and with the involvement of other organizations in the region. (see www.itu.int/ITU-D/projects/ITU_EC_ACP/hipcar/index.html).

The Working Groups have been responsible for covering the following two work areas:

1. *ICT Policy and Legislative Framework on Information Society Issues*, dealing with six sub-areas: e-commerce (transactions and evidence), privacy & data protection, interception of communications, cybercrime, and access to public information (freedom of information).
2. *ICT Policy and Legislative Framework on Telecommunications*, dealing with three sub-areas: universal access / service, interconnection, and licensing in a convergent environment.

The reports of the Working Groups published in this series of documents are structured around these two main work areas.

1.3. Project Implementation and Content

The project's activities were initiated through a Project Launch Roundtable organized in Grenada, on 15-16 December 2008. To date, all of the HIPCAR beneficiary countries – with the exception Haiti – along with the project's partner regional organizations, regulators, operators, academia, and civil society have participated actively in HIPCAR events including – in addition to the project launch in Grenada – regional workshops in Trinidad & Tobago, St. Lucia, St. Kitts and Nevis, Suriname and Barbados.

The project's substantive activities are being led by teams of regional and international experts working in collaboration with the Working Group members, focusing on the two work areas mentioned above.

During *Stage I* of the project – just completed – HIPCAR has:

1. Undertaken assessments of the existing legislation of beneficiary countries as compared to international best practice and in the context of harmonization across the region; and
2. Drawn up model policy guidelines and model legislative texts in the above work areas, from which national ICT policies and national ICT legislation / regulations can be developed.

It is intended that these proposals shall be validated or endorsed by CARICOM / CTU and country authorities in the region as a basis for the next phase of the project.

Stage II of the HIPCAR project aims to provide interested beneficiary countries with assistance in transposing the above models into national ICT policies and legislation tailored to their specific requirements, circumstances and priorities. HIPCAR has set aside funds to be able to respond to these countries' requests for technical assistance – including capacity building – required for this purpose.

1.4. This Report

This report deals with Licensing in a convergent environment, one of the work areas of the Working Group on Telecommunications. It includes Model Policy Guidelines and a Model Legislative Text that countries in the Caribbean may wish to use when developing or updating their own national policies and legislation in this area.

Prior to drafting this document, HIPCAR's team of experts – working closely with the above Working Group members – prepared and reviewed an assessment of existing legislation on telecommunications in the fifteen HIPCAR beneficiary countries in the region focusing on three related regulatory issues: Universal Access and Service, Interconnection and Access, and Licensing. This assessment took account of accepted international and regional best practices as reflected in the Economic Community of West African States (ECOWAS), the Eastern Caribbean Telecommunications Authority (ECTEL), the European Union Directive 2002/21/EC and other jurisdictions (Bahrain, Brazil, Ireland, Jordan, Nigeria, Singapore, Uganda and the United States of America).

This regional assessment – published separately as a companion document to the current report² – involved a comparative analysis of current legislation on Licensing in the HIPCAR beneficiary countries and the identification of potential gaps in this regard, thus providing the basis for the development of the model policy framework and legislative text presented herein. By reflecting national, regional and international best practices and standards while ensuring compatibility with the legal traditions in the Caribbean, the model documents in this report are aimed at meeting and responding to the specific requirements of the region.

1.5. The Importance of Effective Policies and Legislation on Licensing

Licensing is a relatively recent development in many telecommunications markets. Looking at examples around the world, it is obvious that there is no one preferred model but rather that there are various solutions to this issue and that each country chooses what fits best into its own market reality as well as its political and administrative tradition.

Licensing frameworks are generally designed with a specific vision of the structure of the market in mind and to cater for specific competition and consumer protection issues. Licensing has two essential attributes:

- It effectively determines the structure of the market by determining the services to be licensed and the number of market players; and
- It also sets the basic terms and conditions under which services are offered to the public.

Most of the key policy decisions relating to the development of the market structure ultimately determine the form of the licensing and authorisation regime chosen to implement the policy.

Whereas telecommunications regulation was traditionally aimed at limiting market entry and at regulating the activities of the incumbent monopolist, more emphasis is now being placed on effective ways to facilitate the development of and access to a national ICT infrastructure. The introduction of new and advanced technologies coupled with the liberalization of markets and the introduction of competition has created new requirements for the regulation of the information and communication markets. The right balance must be struck between ease of market entry, competition between different access technologies, technical efficiency and customer protection.

The responses of regulators and policymakers to the challenges of liberalisation and convergence have not been uniform, but have nevertheless consistently focused on a number of key elements: the introduction of transparent licensing criteria, the introduction of the principles of technology and service neutrality, the simplification of administrative procedures, the establishment of greater flexibility in key aspects of their existing regulatory frameworks and the establishment of a level playing field for all operators.

The characteristics of an effective licensing regime can therefore be summarized as follows:

- Transparency in licensing requirements and process;
- Licensing frameworks which embrace technology neutrality and facilitate service convergence;
- Simplification of the licensing process;
- Uniformity of licence conditions;
- Transparency in licence administration;
- Clear articulation of penalties and methods of enforcement.

² See “ICT Policy and Legislative Framework on Telecommunications – Licensing: Assessment Report on the Current Situation in the Caribbean” available at www.itu.int/ITU-D/projects/ITU_EC_ACP/hipcar/

Section I: Model Policy Guidelines – Licensing

Following, are the Policy Guidelines that a country may wish to consider in relation to Licensing in a convergent environment.

1. **CARICOM/CARIFORUM COUNTRIES SHALL AIM TO INTRODUCE TRANSPARENT LICENSING CRITERIA, INCLUDING TERMS AND CONDITIONS OF LICENCES**

- All licensing criteria and the terms and conditions of licences, with the exception of those relating to national security are published and publicly available, for example on the regulator’s website.
- All parties are aware of the obligations and rights of other parties.
- All applicants are subject to the same procedures, unless there is a clearly defined and objective reason for differentiation.
- The law provides that any entity that fulfills the conditions adopted and published by the regulatory authority is entitled to receive a licence, except where the number of licences is clearly limited based on previously defined criteria (e.g. scarcity of resources).
- It is clear which facilities and services fall into each category of licence.
- The entity determining the categories of licences is clearly defined in the law.
- The regulatory framework establishes the mechanisms to be used in case of limitation in number of licences– beauty contests, auctions.

2. **CARICOM/CARIFORUM COUNTRIES SHALL ENDEAVOUR TO INTRODUCE COMPETITIVE, TECHNOLOGY AND SERVICE NEUTRAL LICENSING FRAMEWORKS WHICH ACCOMMODATE CONVERGENCE AND FACILITATE THE INTRODUCTION OF NEW TECHNOLOGIES**

- The licensing framework is no longer service-specific and there should be a move to a system of unified licensing in which large categories of facilities and/or services fall within each category, towards a general authorization regime, or towards a system providing for multi-service licensing where specific categories of facilities and services are licensed.
- The law provides for clear grounds for individual licensing (e.g., use of scarce resources).
- The categories of licensing (e.g., individual, class, registration, open entry) are clearly defined.
- Where there is a framework based on individual and class licences, licences are hierarchical whereby an individual licence replaces a class licence and allows the individual licence holder to offer all types of facilities and services in both licence categories.
- Licences or authorizations are technology-neutral.
- The law provides for exceptions for certain activities within the different categories of licensing.
- Licensed operators are permitted to provide new or additional services within their allocated spectrum bands without additional licensing requirements subject to controls on interference.
- Licences shall not provide for exclusivity in a market.
- Any quantitative restrictions that exist on the number of licences must be clearly justified and based on the scarcity of resources and the minimum amount of spectrum required to make a particular service viable.

3. CARICOM/CARIFORUM COUNTRIES SHALL AIM TO INTRODUCE TRANSPARENT LICENSING CRITERIA FOR SCARCE RESOURCES, IN PARTICULAR SPECTRUM

- Countries shall aim to facilitate spectrum licensing by allowing applicants to apply for frequencies in conjunction with the service licence application.
- Frequency licences are issued concurrently with service licences by the same regulatory entity.
- Mechanisms for awarding spectrum licences (beauty contest, first-come first-served and auction) are transparent and timely.
- Where spectrum licences can only be transferred by the licensee with a pre-approval of the regulator, the process is fair and transparent.
- Frequency licences are renewable and for the same period as the service licence/authorization.
- Technology neutrality has been incorporated.
- There is provision for flexibility in spectrum management (e.g. in-band migration, spectrum trading, etc.).
- The mandate of the regulator requires that they ensure efficient use of scarce resources – however, the right of the regulator to withdraw spectrum for inefficient use is proportionate to the objective sought and the procedure is transparent.

4. CARICOM/CARIFORUM COUNTRIES SHALL ENDEAVOUR TO SIMPLIFY MARKET ENTRY PROCEDURES TO ENCOURAGE THE INTRODUCTION OF NEW SERVICES

- The framework keeps licence conditions and filing requirements to a minimum.
- Applicants can apply for large categories of facilities and/or services in the same application, which may, for example, involve a “check the box” style of notification/application or allow the applicant to list the types of facilities and/or services it plans to offer.
- Procedures in case of expansion of activities at a later stage are simple –e.g., there a simple information requirement.
- Licence application procedures for activities falling under the class licence regime are kept to a minimum and are different from applications for individual licences in terms of the amount of detail applicants must provide.
- Activities which fall under an open entry regime may still be subject to prior declaration or registration but are no longer subject to approval by the regulator prior to initiating activities. Entities are however subject to conditions applicable to the services offered in accordance with the laws and regulations in force.
- Time limits for acting upon licence requests are reasonable.
- The reason to refuse to issue a licence is reasoned and transparent and communicated formally to the applicant.
- The terms of a licence are fixed at the time the licence is officially delivered.

5. CARICOM/CARIFORUM COUNTRIES SHALL ENDEAVOUR TO INTRODUCE CLEAR AND TRANSPARENT LICENCE CONDITIONS WHICH ARE PROPORTIONATE AND RELEVANT TO MARKET REALITIES

- The detail of the legal and regulatory texts is not copied verbatim in the licences – i.e., the licences refer to the relevant legal provisions without copying text of regulations.
- Licence conditions are justified, proportionate, non-discriminatory, cost efficient and transparent.
- The objective is that costs imposed on licensees should be transparent and proportionate in relation to the cost of regulating the sector.
- The legal framework reflects a gradation of rights and obligations according to specific situation (e.g., obligations just applicable for dominant operators/operators with significant market power (SMP), specific obligations linked to use of numbers or spectrum).
- There is provision in the licences to allow an operator to apply to the regulator for forbearance from regulation. Where such forbearance has been granted, the determination shall be clear and published.
- Over time a build-up of dated regulation has the potential to hinder sector development. Licensing objectives are to minimize the regulatory burden imposed on licensees.
- The regulator should provide for licence conditions to be reviewed periodically and if necessary removed or modified.
- There are periodic reviews of regulation which can be initiated either by the regulator or on application by licensees.

6. CARICOM/CARIFORUM COUNTRIES SHALL ENDEAVOUR TO INTRODUCE TRANSPARENT LICENCE ADMINISTRATION AND TRANSITIONING MECHANISMS

- There are provisions in licences to accommodate legal framework changes.
- Licences should be transferrable to third parties. If the transfer of the licence to a third party requires prior consent from the regulatory authority, the procedure should be transparent and clear.
- Where licences are obtained through competitive tender, the transfer of the licence shall be subject to a similar procedure as the original grant of the licence. For the sake of clarity, partial change of ownership is not considered to be transfer of ownership.
- Procedures to amend a licence must be transparent.
- Timeframes required for modifications to a licence must be reasonable.
- The licence must provide for termination rights and renewal that are appropriate to each party.
- The legal framework shall provide for an effective dispute resolution process with clear, specific time periods for resolution.
- All parties must be clear on the process.

7. CARICOM/CARIFORUM COUNTRIES SHALL ENDEAVOUR TO INTRODUCE CLEAR AND TRANSPARENT MECHANISMS RELATING TO SANCTIONS AND ENFORCEMENT WHICH GIVE LICENSEES AN OPPORTUNITY TO STATE THEIR VIEWS AND ARE PROPORTIONATE TO THE INFRACTION

- The law contains clear procedures in the event that a licensee fails to comply with licence conditions (e.g., withdrawal, amendment, or suspension of the licence).
- The licence or legal framework includes specific enforcement provisions.
- The regulatory authority has to give the licensee notice of any suspected or alleged licence violations that come to the attention of the regulatory authority. If so, the timeframe for the licensee to investigate and take corrective action shall be clear and proportionate.
- The licensee shall be provided with an opportunity to present his views before an enforcement action is taken.
- There shall be a transparent appeals process against any licensing decision of the regulator.
- The licence or legal framework relating to licensing shall include dispute resolution mechanisms such as for example mediation, arbitration, and adjudication, as appropriate.
- Licensees can appeal against all fines imposed by the regulator to a body independent of the regulator.
- Sanctions and fines are gradated and proportionate to infringement and the reality in the market.

Section II: Model Legislative Text – Licensing

Following, is the Model Legislative Text that a country may wish to consider when developing national legislation relating to licensing in a convergent environment. This model text is based on the Model Policy Guidelines outlined previously.

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PART I – PRELIMINARY

- Short Title** 1. These Regulations may be cited as the “Licensing Regulations”, and shall come into force and effect [on xxx/ following publication in the *Gazette*].
- Objective** 2. The objective of these Licensing Regulations is to prescribe:
- a. the process for applying for authorisations, including scarce resources authorisations and for determining an application for an individual and class licence and frequency authorisation;
 - b. the form of and the general conditions, including the period of validity, for individual and class licences and scarce resources authorisations; and
 - c. the fees payable including for the grant and renewal of individual and class licences and scarce resources authorisations and by way of annual fees.
- Definitions** 3. Unless otherwise specified, the following definitions apply:
- a. **Authorisation:** Administrative act (individual licence, or class licence) which grants a set of rights and obligations to an entity and grants the entity the right to establish and exploit information and communication networks or offer information and communication services.
 - b. **Class Licence:** means an authorisation granted by the national regulatory authority (NRA) to any legal entity meeting the applicable conditions appended thereto and which obligates that legal entity the company in question to obtain an explicit decision from the NRA before exercising rights deriving from such authorisation and to communicate information about the service concerned as necessary to ensure proper compliance with the applicable conditions appended thereto in accordance with current regulations.
 - c. **Days:** For the avoidance of doubt (and without limiting any other law relating to interpretation), in these Licensing Regulations, the term “days” means calendar days.
 - d. **Dominant Operator:** an authorised operator that, either individually or jointly with others, enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately end users.
 - e. **Individual Licence:** An individual licence is a customised and detailed licence, which may include the authorisation to provide multiple facilities and services as provided for in Regulation 8 below. Subject to the provisions of Regulation 10 below, individual licences generally apply to facilities-based operations or where scarce resources such as spectrum, numbers, or rights of way are required to provide services.
 - f. **Information and communications transmission** means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct.

- g. Information and communications network means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electro-magnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.
- h. Information and communications operator means an entity which owns, operates or provides an information and communications network.
- i. Information and communications service means a service normally provided for remuneration which consists of the conveyance of signals on information and communications networks, including information and communications services and transmission services in networks used for broadcasting as well as services providing or exercising editorial control over content transmitted using information and communications networks.
- j. Information and communications service provider means an entity providing an information and communications service to users as described in these Regulations.
- k. Network facilities means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of information and communications services, but does not include customer equipment.
- l. Scarce Resources Authorisation means authorisation given by an administration for the use of numbers or which allows radio communication systems to use a specific radio frequency or radio frequency channels under specified conditions.
- m. Service neutral licence: is a licence which permits network operators to determine their service offerings based on market demand and cost effectiveness and which does not prescribe or limit the services that can be provided on an authorised network.
- n. Technology neutral licence: means a licence whereby a network operator or service provider is not limited to a specific technology or equipment configuration in the provision of services to the consumer. This gives the provider the option of choosing the most suitable technology that would provide the most efficient and affordable service.

PART II – FRAMEWORK FOR AUTHORISATIONS

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| Licensing Procedures | 4. | The framework by which authorisations are governed are: <ol style="list-style-type: none"> a. The [Act/Law], these Regulations and any other Regulations or Guidelines issued by the [Minister/ NRA]; and b. Sector policies. |
| Promotion of Competition | 5. | The Minister, after consultation with the NRA, shall propose as far as practicable, a service- and technology-neutral approach to authorising communications networks and services with minimal barriers to entry and competition in converged information and communications technology markets. |
| Transparency Requirements | 6. | <p>(1) Where the NRA intends to implement authorisation measures that have a significant impact on information and communications markets, interested parties will be provided the opportunity to comment on the draft measure within a reasonable period, in accordance with the Law.</p> <p>(2) The NRA may publish names of applicants as part of its authorisation procedures, subject to confidentiality requirements as provided for in the Law.</p> <p>(3) The consultation procedures and results shall be made publicly available, except where confidential information affects proprietary information or national security interests.</p> |
| Licensing Principles | 7. | <p>Subject to such exemptions as provided for in Regulation 11, a person shall not-</p> <ol style="list-style-type: none"> a. establish, install, operate or maintain an information or communications network; or b. provide an information and communications service, <p>in [insert country name] without appropriate authorisation for that purpose in accordance with these Regulations and any other relevant legislation.</p> |
| Multiple Service Licensing | 8. | Subject to the provisions of Regulation 10 and Part IV below, in order to simplify the authorisation framework, an entity will be issued a single form of authorisation, being either an individual licence or a class licence, for all the information and communications networks and/or services it intends to operate/offer. |
| Other Authorisations | 9. | Notwithstanding the provisions of Regulation 8 above, separate permissions may be required from other relevant government agencies for the deployment and/or provision of certain types of networks and/or services. |
| Licensing Classification | 10. | <p>Subject to public consultation, the NRA shall define the classification of networks and services in the information and communications sectors into three categories requiring different levels of regulatory intervention authorising market entry, namely-</p> <ol style="list-style-type: none"> a. individual licence, which subject to the provisions of Regulation 11 below, would be associated with facilities-based operations or where a scarce resource authorisation is required to build or operate the networks, as defined under Regulation 3, and subject to exemption as provided for in Regulation 11 below; |

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- Licensing Exemptions**
- b. class licence, which subject to the provisions of Regulation 11 below, would be associated with such rights and/ or resources for which less stringent regulation is deemed appropriate by the NRA;
 - c. open entry for markets deemed adequately competitive such that a prior and distinct authorisation to provide services is deemed not necessary by the NRA.
11. Notwithstanding the provisions of Regulation 9 above, in order to promote the development of the information and communications sector, accommodate certain specific situations, and to allow more choice to consumers, the NRA may grant temporary individual or class licences or decide that certain networks or services should be exempt from the obligation to hold an individual or class licence and be subject to the class licence or open entry regime respectively.
- Hierarchy of Licences**
12. Notwithstanding the requirement imposed on all individual and class licensees to inform the NRA of networks and services offered, the authorisation framework shall be structured in such a way that an individual licence is on a higher hierarchical level than a class licence, meaning that:
- a. an individual licence holder is permitted to offer all networks, and services in both the individual and class licence categories as well as those which fall under open entry;
 - b. a class licence holder will be permitted to offer only those services included in the class licence category as well as those which fall under open entry or networks which have been exempted in accordance with Regulation 11.
- Notification to Provide Additional Operations or Services**
13. (1) Notwithstanding the provisions of Regulation 12 above, where a licensee intends to provide additional networks or services under its licence, it shall notify the NRA in writing [at least fifteen (15) days] prior to commencing such activities, showing that it can meet any additional conditions associated with the additional networks or services.
- (2) The notification provided for in paragraph (1) above does not require the licensee to await approval from the NRA prior to providing additional networks or services.
- Review of Licensing Framework and Policies**
14. The NRA shall regularly review and refine the general regime for the regulation of the information and communications sector to ensure the framework is adequate, sufficient and complete, taking into consideration market trends and developments:
- a. Such periodic reviews may be initiated by the NRA or on application by a licensee; and
 - b. Such periodic reviews shall be subject to public consultation.

PART III – AUTHORISATION OF INFORMATION AND COMMUNICATIONS NETWORKS AND SERVICES

INDIVIDUAL LICENCE PROCEDURES

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| General Principles | 15. | Parties who require an individual licence shall submit their applications to the NRA in accordance with the requirements outlined in this Part. |
| Non-Discriminatory Terms | 16. | <p>The NRA shall issue an individual licence on terms that are non-discriminatory. An individual licence is issued on non-discriminatory terms if</p> <ol style="list-style-type: none"> a. Information and communications service providers of similar types of information and communications services and information and communications operators of similar types of information and communications networks are treated similarly; b. The licence does not favour any one information and communications network operator or service provider or class of information and communications network operator or service provider; and c. The issuance of the licence does not, and is not likely to, adversely affect competition in any market. |
| Individual Licences Requirements | 17. | <p>(1) Where the number of individual licences is not limited in accordance with this Part, the NRA shall publish a standard application form for individual licence applications.</p> <p>(2) Any entity which satisfies the specified qualification criteria for the operation of information and communication networks and or for the provision of the information and communication services to be authorised by an individual licence and which applies in writing to the NRA in the prescribed form filing an appropriate complete, correct and signed application form and paying any application or other fees as prescribed by the NRA shall be granted an individual licence.</p> |
| Review of Individual Licence Application | 18. | Upon receipt of an application for an individual licence as provided for in Regulation 17, the NRA shall review the application and shall notify the applicant if any further information is required to process that application. The NRA shall notify the applicant of its decision within 60 days of receipt of the application. |
| Complete Information | 19. | The NRA shall be under no obligation to review and evaluate an application if the information included in the application is not complete or if it is not submitted in strict compliance with the requirements published by the NRA. |
| No Predetermined Number of Individual Licences and Competitive Selection Process | 20. | <p>(1) Subject to paragraph (2) below the NRA shall not pre-determine the number of individual licences to be issued, except and subject to Regulation 21 below, where considerations apply in relation to scarce resource constraints such as constraints in relation to spectrum, numbers or rights of way.</p> <p>(2) Notwithstanding the provisions of Regulations 17 to 19 above, where the NRA determines under subsection (1) that there should be a limit to the number of information and communication service providers or information and communication service operators in a particular market,</p> |

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| Consultations to Limit Individual Licences | 21. | <p>it will adopt a competitive selection process such as comparative evaluation, auction or any other method or combination of methods for the award of individual licences.</p> <p>Where it intends to limit the number of individual licences to be granted for the operation of a particular type of information and communications network or the provision of a particular type of information and communications service, the NRA shall:</p> <ol style="list-style-type: none"> a. Publish a consultative document containing detailed reasons for the proposed limitation; b. Consider any representations made to it in respect of the proposed limitation; c. Publish a notice in the Gazette, on the NRA’s website and in local newspaper having a wide circulation stating the <ol style="list-style-type: none"> i. Criteria by which and the period for which licences will be granted; ii. Reasons for proposing to limit the number of licences; and d. Undertake a periodic review of any limitation imposed on the number of licences granted. |
| Evaluation Criteria | 22. | <p>Where the NRA adopts a competitive selection process, it shall develop appropriate evaluation criteria and associated weightings in a transparent and open manner, and shall ensure that such comparative applications are evaluated in a fair and objective manner and in accordance with the applicable criteria and weightings.</p> |
| Granting of Individual Licence | 23. | <p>Upon granting the individual licence, notice of the application approval will be made publicly available as follows:</p> <ol style="list-style-type: none"> a. The NRA will make the terms and conditions of the individual licence available to the public at its office and will provide one copy of a licence to any member of the public who requests one and pays the specified fee. b. The NRA shall publish such application forms in the Gazette, newspapers with wide circulation and on the NRA website. c. Where it appears to the NRA that the individual licence contains confidential or commercially sensitive information or information which may have adverse implications for national security or other international obligations, the NRA shall withhold that information from public scrutiny in accordance with the law. |
| Refusal to Grant Individual Licence | 24. | <p>Where an application for an individual licence is denied, the NRA shall notify the applicant in writing of its decision and shall state the reasons for the refusal and shall advise the applicant of its right to a review of the decision of the NRA pursuant to Regulation 84.</p> |
| Non-Exclusive Licences | 25. | <p>Individual licences shall be awarded on a non-exclusive basis.</p> |
| Individual Licence Duration | 26. | <p>Individual licences shall be issued for a period of [fifteen (15)] years.</p> |

CLASS LICENCE PROCEDURES

- Non-Discriminatory Terms**
27. The NRA shall issue a class licence on terms that are non-discriminatory. A class licence is issued on non-discriminatory terms if
- Information and communications service providers of similar types of information and communications services and information and communications operators of similar types of information and communications networks are treated similarly;
 - The licence does not favour any one information and communications service provider or information and communications operator or class of information and communications service providers or information and communications operator; and
 - The issuance of the licence does not, and is not likely to, adversely affect competition in any market.
- Class Licences Requiring Registration**
28. The NRA shall publish a standard registration form for class licences in which any entity meeting the specified qualification criteria for the different activities falling under a class licence [class licences/licensing] may regime register and remain registered for the provision of such activities by filing with the NRA the appropriate complete, correct and signed registration form and paying any application or other fees as prescribed by the NRA.
- Registration Procedure for Class Licence**
29. Registration for a class licence shall be submitted in writing to the NRA and shall
- Be in the prescribed form and contain such information as is set out in a form as determined and previously published by the NRA as provided for in Regulation 29 above; and
 - Include the prescribed application fee.
- Ineffective Registration**
30. (1) Registration for a class licence may not be effective if:
- The entity fails satisfy all the criteria [qualify under any criteria] applicable to the class licence;
 - The registration form is incomplete, incorrect or unsigned; or
 - The prescribed fee has not been paid.
- (2) The NRA must provide written notice to a registering entity whose registration for a class licence was not effective under subsection (1) above and shall provide reasons for its decision.
- Effective Date of Registration**
31. Unless rendered ineffective under section 30 above, registration shall take effect thirty (30) calendar days after filing the complete, correct and signed registration form or a completed, corrected or signed registration form has been filed in response to a notice from the NRA.
- No Limitation on Number of Class Licences**
32. The NRA may not limit the number of class licences to be issued and all class licences shall be awarded on a non-exclusive basis.
- Class Licence Duration**
33. Class licences will be issued for a period of [fifteen (15) years/ for the period determined by the NRA which shall not exceed 15 years].

AUTHORISATION CONDITIONS

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| Principles | 34. | Any condition imposed with regard to the operation of information and communication networks or the provision of information and communication services must be non discriminatory, proportionate, and transparent and must be justified in relation to the targeted network or service. |
| Applicability of Authorisation Conditions | 35. | All information and communications operators and service providers will have a set of basic rights and obligations, and these rights and obligations shall be applicable to all operators or service providers, regardless of whether they have an individual licence or a class licence or whether they have been granted open entry into the specific market. However, the ability of operators or service providers to avail themselves of any rights may be conditional upon their being able to satisfy specified physical or technical requirements. |
| General Conditions | 36. | <p>Without limiting the general nature of conditions that may be applicable to information and communications operators and service providers pursuant to the regulation and legislation in force, specific conditions which may be applicable to information and communications operators and service providers may relate to:</p> <ol style="list-style-type: none"> a. Payment of fees; b. Conditions aimed at ensuring compliance with essential requirements, including the safety of users and of personnel operating information and communication networks; the protection of networks, and particularly the protection of exchanges of control and management information pertaining to networks; the interoperability of networks, services and terminal equipment and the protection of data; where applicable, the proper and efficient utilization of the radio spectrum, and environmental protection, town planning and regional development issues; c. Conditions relating to the provision of information reasonably requested with a view to verifying compliance with applicable conditions and for statistical and/or market analysis purposes; d. Accessibility to end users of numbers in the National Numbering Plan; e. Conditions relating to the protection of users and subscribers, particularly in regard to: <ol style="list-style-type: none"> i. standard contracts concluded with subscribers; ii. detailed and accurate invoicing; iii. the availability of a dispute resolution procedure; iv. the publication of service access conditions, including tariffs, quality and availability, and adequate notification whenever such conditions are amended; v. specific rules concerning personal data and privacy protection. f. Conditions aimed at preventing anti-competitive behaviour in information and communications markets, and in particular measures designed to ensure that tariffs are not discriminatory and do not distort competition; |

- g. Conditions relating to universal access/service, including
 - i. the provision of services to rural or other specified areas;
 - ii. the payment of a contribution toward any loss incurred by another licensee as a result of an obligation imposed on that licensee by the NRA regarding the provision of uneconomic service in accordance with the principles stated in these Regulations or any other type of universal service levy or fee;
 - iii. communication of information contained in customer databases for the purpose of providing universal directory services;
 - iv. provision of emergency services;
 - v. special arrangements for differently abled users.
 - h. Conditions pertaining to the access obligations applicable to information and communications operators or service providers and network interconnection and service interoperability;
 - i. Terms of use during major disasters to ensure the viability of communications between emergency services, the authorities and public broadcasting services;
 - j. Measures aimed at limiting exposure of the public to electromagnetic fields generated by information and communication networks;
 - k. Conditions aimed at preventing money laundering, terrorism and the use of proceeds of crime.
- Applicability of Conditions to SMP or Dominant Operator**
37. Certain conditions shall be applicable only if the information and communications operator or service provider is a dominant operator in a market as determined by the NRA in accordance with the Law. Where the NRA intends to make a finding of dominance, there is a statutory consultation process to be followed, as provided for in the Law.
- Types of Conditions Applicable to SMP or Dominant Operator**
38. In accordance with Regulation 37 above, conditions which may be applied to dominant operators as defined in the Law, include obligations to:
- a. lease out part of a local loop and equipment facilities;
 - b. rent a leased line;
 - c. share or grant access to facilities including sites, antenna towers, poles, and cable ducts;
 - d. publish terms of service delivery and tariff information;
 - e. lease out part of a terrestrial mass communications / broadcasting network;
 - f. national and/or international roaming;
 - g. use cost-oriented pricing based on cost calculations;
 - h. comply with carrier any pre-selection obligations that may be imposed by the NRA;
 - i. use appropriate methodology of cost-accounting;
 - j. keep separate accounts on its activities;

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| Environmental, Town Planning and Regional Development Conditions | 39. | <ul style="list-style-type: none"> k. interconnect an information and communications network to another information and communications network; l. provide universal service. <p>Information and communications operators or service providers may be subject to specific conditions in relation to environmental, town planning and regional development considerations and in particular conditions relating to the granting of access to public or private property and to the co-location or sharing of facilities.</p> |
| Reporting Obligations | 40. | <p>The reporting and information obligations of information and communications operators or service providers to the NRA may include data for market analysis and statistical analysis purposes and should be proportionate, objectively justified and limited to what is strictly necessary to ensure compliance with licence conditions, for dispute resolution or market analysis. Licensees have a right to know the purposes for which the information they must provide will be used.</p> |
| Administrative Fees | 41. | <p>The NRA may impose regulatory fees on licensees in order to finance the activities of the NRA in managing the authorisation system and for the granting of rights of use. It is best regulatory practice that fees levied on communications providers cover only the reasonable and transparent administrative costs efficiently incurred by the regulator. In addition fees should not be based on the number of subscribers but on the relevant revenues.</p> |

TRANSFER, MODIFICATION, RENEWAL AND OTHER OBLIGATIONS

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| Transfer of Authorisations Generally | 42. | <p>The individual or class licensee must apply in writing to the NRA for prior written approval in order to</p> <ul style="list-style-type: none"> a. Assign its licence or any rights under that licence; or b. Transfer control of operations. |
| Transfer of a Class Licence | 43. | <p>For the transfer or assignment of a class licence, the NRA shall make a determination within 30 days of receiving an application under Regulation 42. Factors that the NRA shall consider are:</p> <ul style="list-style-type: none"> a. Likely effects of the transfer or assignment on competition in the relevant market; and b. The intended transferee’s ability to fulfill the obligations of the licence; c. The transferee meets the same qualification criteria as initially prescribed. |
| Transfer of an Individual Licence | 44. | <p>For the transfer or assignment of an individual licence, the NRA shall make a determination with respect to an application no later than three (3) months from the date the application was filed. Factors that the NRA shall consider are:</p> <ul style="list-style-type: none"> a. The likely effects of the transfer or assignment on competition in the relevant market; and b. The intended transferee’s ability to fulfill the obligations of the licence; |

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- c. The extent to which the transferee meets the same qualification criteria as initially prescribed.
- If the individual licence to be transferred or assigned is associated with a frequency authorisation, then the procedures detailed in Part IV shall also be considered.
- Refusal to Transfer an Authorisation** 45. Where the application to transfer or assign an individual or class licence is refused, the NRA must notify the applicant and state in writing the reasons for such refusal and shall advise the applicant of its right to review appeal pursuant to Regulation 84.
- Modification of Authorisations** 46. The NRA may, upon reasonable grounds and to promote policy objectives in the public interest, modify the conditions of an individual or class licence provided that the NRA:
- a. Gives notice in the Gazette, in newspapers of wide circulation, on its website and directly to the licensee(s) or class of licensees to be affected by the modification;
 - b. States the reasons for proposing the modifications;
 - c. States the objectives and effects of modifying the licence;
 - d. Specifies the time (not being less than twenty-eight days from the date of the publication of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - e. Considers any representations or objections, which are duly made and not withdrawn, by or on behalf of the licensee or any other person likely to be affected by the modifications.
- Authorisation Renewal** 47. (1) In accordance with this Part, the NRA shall, subject to a request from the licensee, renew an individual or class licence for a period equivalent to that in the first relevant licence.
- (2) Without prejudice to the provision of paragraph (2) of this Article, a licence issued under this Act shall be renewed on the request of the licensee, for a further limited term in accordance with the conditions of the licence.
- (3) If the NRA does not intend to renew a licence, it shall give the licensee adequate advance notice, which, absent exigent circumstances, shall not be less than [two (2) years] before the expiration of the licence, in writing of the intention not to renew it, specifying the reasons for the proposed non-renewal, and shall give the licensee the opportunity to
- a. Present its views; and
 - b. Submit to the NRA, within the notice period, a written statement of objections to the decision not to renew the individual or class licence.
- Refusal or Failure to Renew a Authorisation** 48. The NRA may refuse to renew the individual or class licence if it is satisfied, after considering all relevant information before the end of the notice period, that
- a. The licensee failed to operate within the terms of the first licence; or

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| Review of Decision to Refuse to Renew Authorisation | 49. | <p>b. The licensee failed to comply materially with any of the provisions of the Law, the regulations or the terms and conditions of the licence or a frequency authorisation.</p> <p>Where the NRA has refused to renew the individual or class licence under Regulation 48, the aggrieved licensee may apply for a review of the decision to an independent authority.</p> |
| Termination by Licensee | 50. | <p>Where the individual or class licensee chooses to allow its licence to terminate at the expiration of the licence period, it shall provide written notice to the NRA of this intention at least one (1) year prior to the licence expiration.</p> |

PART IV – SCARCE RESOURCES AUTHORISATIONS

FRAMEWORK FOR SCARCE RESOURCES AUTHORISATIONS

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| Management of Scarce Resources | 51. | <p>(1) For the purpose of clarity, scarce resources to be managed and authorised by the NRA under the provisions of this Part shall include numbers and radio spectrum resources.</p> <p>(2) The NRA shall manage, allocate and assign all frequencies in the radio spectrum and all numbers for the provision of information and communications networks and services.</p> <p>(3) The NRA shall manage scarce resources in ways that promote flexibility, innovation and competition and to allow for the highest valued use of such resources while respecting ITU international allocations and other international obligations.</p> |
| Frequency Authorisation Requirements | 52. | <p>Subject to specific license-exempt use as provided for in Regulation 53 below, no person shall use radio frequency spectrum without prior authorisation by the NRA.</p> |
| Licence-Exempt or Class Licence Authorisation | 53. | <p>Notwithstanding the provisions of Regulation 53 above, the NRA may adopt a class licence or licence-exempt authorisation in lieu of frequency authorisations granted in accordance with this Part in order to meet the objectives provided for in Regulation 51 (3) above.</p> |
| Numbering Assignment Requirements | 54. | <p>The NRA shall, under objective, transparent and non-discriminatory conditions manage and assign numbers in accordance with a numbering plan and shall charge a fee to cover the cost of administration.</p> |
| Limited Number of Scarce | 55. | <p>(1) The NRA shall follow appropriate and transparent procedures for the authorisation of scarce resources.</p> |

**Resources
Assignments**

(2) Where the demand for scarce resources exceeds their availability, and the NRA determines that there should be a limit to the number of providers in a particular market based on transparent procedures in accordance with Regulation 56 below, it will adopt a competitive selection process such as comparative evaluation, auction or any other method or combination of methods for the authorisation of scarce resources.

(3) Where the NRA determines that there will be no limit on the number of providers in a particular market category, a First-Come First-Served award method will be adopted, subject to the applicant meeting the evaluation criteria set out by the NRA in respect of the relevant authorisation.

(4) The NRA shall develop appropriate evaluation criteria and associated weightings in a transparent and open manner, and shall ensure that applications are evaluated in a fair and objective manner and in accordance with the applicable criteria and weightings.

**Consultations
to Limit the
Number of
Scarce
Resources
Authorisations**

56. Where the NRA is considering whether to limit the number of rights of use to be granted for scarce resources, it shall:
- a. Provide all interested parties, including users and consumers, the opportunity to express their views on any limitation through a public consultation;
 - b. Give due weight to the need to maximise benefits for users and to facilitate the development of competition;
 - c. Publish any decision to limit the granting of rights of use, stating the reasons for such limitation;
 - d. After having determined the procedure, invite applications for rights of use;
 - e. Review the limitation at reasonable intervals or at the reasonable request of affected undertakings; and
 - f. Where the NRA concludes that further rights of use for scarce resources may be granted, it shall publish that conclusion and invite applications for such rights.

**Obtaining
Associated
Licences**

57. (1) The grant of any authorisation for the use of scarce resources does not exempt the authorisation holder from obtaining any other approval, permit, or licence, including an individual licence, or other authorisation required by law for or in connection with the use of scarce resources or with the possession, establishment, installation maintenance, provision or operation of any radiocommunications service or transmitting device.
- (2) Subject to paragraph (1) above, applicants for a scarce resource will be required to simultaneously apply for any other relevant licence. If an individual licence is required, the NRA will grant an individual licence concurrently with the scarce resource authorisation.

**Technology
Neutrality**

58. If the scarce resource authorisation is for the authorisation to use radio spectrum, the NRA should ensure frequency authorisations are technology-neutral, by neither discriminating in favour of or against the use of a particular type of technology unless pursuant to clear policy objectives and after public consultation on the issue.

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APPLICATION FOR AND ASSIGNMENT OF SCARCE RESOURCES

- Submission of Application for Scarce Resources Authorisation**
59. An application for a scarce resources authorisation shall be submitted in writing to the NRA and shall:
- a. Be in the prescribed form and contain such information and particulars as are determined and previously published by the NRA; and
 - b. Be accompanied by the prescribed application fee.
- Review of Application for Scarce Resources Application**
60. Upon receipt of an application for a scarce resource authorisation, the NRA shall review the application and notify the applicant if any further information is required to process that application. The NRA shall notify the applicant of its decision within [60 days] of receipt of the application.
- Refusal of Authorisation Application**
61. (1) Where the application is refused, the NRA shall in the notification to the applicant state in writing the reasons for the refusal.
- (2) The applicant may apply for a review of the NRA decision to an independent authority as provided for in the law.
- Right to Review Decision to Application**
62. Where an applicant is of the view that its application for rights to scarce resources are not treated in a fair and objective manner or where the decisions to assign such scarce resources authorisations are unduly delayed by the NRA, the applicant shall have the right to apply for the review of such decisions or delays to an independent authority as provided for in the Law.
- Public Notice of Authorisation Approval**
63. Upon granting the scarce resource authorisation, notice of the application approval will be published in the Gazette and on the NRA's website:
- a. The NRA will make the terms and conditions of scarce resource authorisation available to the public at its office and will provide one copy of the authorisation or number assignment to any member of the public who requests one and pays the specified fee.
 - b. Where it appears to the NRA that the frequency authorisation or number assignment contains commercially sensitive information or information contrary to national security or other international obligations, the NRA shall withhold that information from public scrutiny.
- Duration of Scarce Resources Authorisation**
64. Scarce resources authorisations will be issued for a period which is equal to the licence for the associated information and communications network or service authorisation.
- Non-Discrimination in Selection Criteria**
65. The NRA may require an applicant for a scarce resources authorisation to meet such requirements as the NRA may determine, provided that such selection criteria are objective, transparent, non-discriminatory and proportionate.

SCARCE RESOURCE AUTHORISATION CONDITIONS AND OBLIGATIONS

**Principles for
Conditions of
Scarce Resource
Authorisations**

66. The NRA may include certain conditions in a scarce resource authorisation, provided that such conditions apply equally to all similarly situated licensees and authorisation holders to ensure parity among licensees.

**Conditions
Related to the
Use of
Frequencies**

67. In accordance with Regulation 66 above, if the scarce resource authorisation involves the authorisation to use radio frequencies, specific conditions may be applied relating to the use of the radio frequencies where justified and with due respect for the principle of proportionality. These may include:
- a. Effective and efficient use of frequency resources including coverage requirements, where appropriate;
 - b. Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the individual licence;
 - c. Duration of the frequency authorisation, subject to any changes in the national frequency plan;
 - d. Spectrum usage fees;
 - e. Transfer of radio-frequency spectrum usage rights at the initiative of the rights-holder, and conditions applicable to such transfer;
 - f. Any commitments which the entity obtaining the frequency authorisation has made in the course of a competitive or comparative selection procedure;
 - g. Obligations to collaborate with the Government in matters of national security upon request made by the Government and subject to any enactment;
 - h. Obligations under relevant international agreements relating to the use of frequencies.

**Conditions
Related to the
Allocation of
Numbers**

68. In accordance with Regulation 66 above, if the scarce resource authorisation involves the assignment of and the authorisation to use numbers, specific conditions may be applied relating to the allocation and use of numbers where justified and with due respect for the principle of proportionality. The may include:
- a. Designation of the service for which the number might be used, including any requirements in regard to the provision of that service;
 - b. Effective and efficient use of numbers;
 - c. Requirements in regard to number portability;
 - d. Obligation to provide subscribers listed in public directories with information;
 - e. Transfer of usage rights at the initiative of the rights-holder, and conditions applicable to such transfer;
 - f. Charges for usage rights;
 - g. Obligations under relevant international agreements relating to number usage.

Section II

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| Modification of Scarce Resources Authorisations | 69. | The NRA may modify a scarce resources authorisation only under the following conditions: <ul style="list-style-type: none"> a. Where the NRA and the authorisation holder agree in writing; or b. Following appropriate public consultation with members of the relevant class of scarce resources authorisation holders. |
| Transfer of Scarce Resources Authorisations | 70. | The scarce resources authorisation holder must apply in writing to the NRA for prior written approval in order to <ul style="list-style-type: none"> a. Assign its authorisation or any rights under that authorisation to a third party; or b. Transfer control of its operations. |
| Period to Issue Decision on Transfer | 71. | The NRA shall make a determination with respect to an application under Regulation 70 no later than three (3) months from the date the application was filed. |
| Matters Considered in Transferring a Frequency Authorisation | 72. | The NRA shall consider the following matters where relevant, when deciding on a request for assignment or transfer: <ul style="list-style-type: none"> a. That the scarce resources authorisation holders should not be unduly restricted in the management of their commercial affairs; b. Whether the assignee or transferee satisfies the criteria for the grant of a scarce resources authorisation; c. The competitive effects of the assignment or transfer on the market. |
| Transfer Approval | 73. | Notwithstanding Regulation 72, the NRA shall not withhold approval of the assignment or transfer of the scarce resources where <ul style="list-style-type: none"> a. The assignment or transfer achieves no material change in the relative interests of the assignee and assignor; or b. The assignment or transfer is <ul style="list-style-type: none"> i. To a wholly-owned subsidiary of the assignor; ii. From a body corporate to its parent company; iii. Between wholly-owned subsidiaries; or iv. Results from a corporate re-organisation that involves no change in the beneficial ownership or management of the assignor. |
| Refusal to Transfer a Scarce Resources Authorisation | 74. | Where the application to transfer a scarce resources authorisation is refused, the NRA shall notify the applicant and state in writing the reasons for such refusal and that the applicant has a right to apply for a review of the decision of the NRA pursuant to Regulation 84. |
| Withdrawal of Scarce Resources Authorisation | 75. | The NRA shall have the right to withdraw the assignment of scarce resources [assigned or allocated under a scarce resources authorisation] if such resources, in the opinion of the NRA, are being inefficiently used. Such measures shall be proportionate to the objective sought and the procedure shall be published and transparent. |

Section II

- Scarce Resources Authorisation Renewal**
76. (1) Subject to this Regulation, the NRA shall automatically renew scarce resources authorisations for a period equivalent to that in the first scarce resources authorisation.
- a. The NRA may conduct public hearings in respect of applications for scarce resources authorisations granted under this section or prior to a renewal of an authorisation.
 - b. If the NRA does not intend to renew a scarce resources authorisation, it shall give the authorisation holder adequate advance notice before the expiration of the authorisation, which, absent exigent circumstances, shall not be less than the period of notice required for the renewal of the associated information and communications network or service authorisation. The NRA shall communicate its intention not to renew the scarce resources authorisation in writing, thereby, specifying the reasons for the proposed non-renewal, and shall give the authorisation holder the opportunity to:
 - i. Present its views; and
 - ii. Submit to the NRA, within the notice period, a written statement of objections to the decision not to renew the scarce resources authorisation.
- Refusal to Renew Scarce Resources Authorisation**
77. The NRA may refuse to renew the scarce resources authorisation if it is satisfied that
- a. The authorisation holder failed to operate within the terms of the first scarce resources authorisation; or
 - b. The authorisation holder failed to comply materially with any of the provisions of the [Act/Law], the regulations or the terms and conditions of the licence or scarce resources authorisation.
- Review of Decision to Refuse to Renew Scarce Resources Authorisation**
78. Where the NRA has refused to renew the scarce resources authorisation, the aggrieved authorisation holder may apply for a review of the decision of the NRA in accordance with the provisions of Regulation 84.
- Termination by Authorisation Holder**
79. Where the authorisation holder chooses to allow its scarce resources authorisation to terminate at the expiration of the authorisation, it shall provide written notice to the NRA of this intention at least one (1) year prior to the expiration of the scarce resources authorisation [before the authorisation expires].
- Scarce Resources Usage Fees**
80. The NRA may charge scarce resources fees for the use of scarce resources to ensure the optimal use of such resources and to cover the costs of managing the scarce resources.

PART V – SANCTIONS AND ENFORCEMENT

Acts Subject to Sanction

81. Acts or omissions by a licensee or authorisation holder that may be subject to sanctions in accordance with the law include:
- a. Making any false statement in an application for a licence or authorisation or in any statement made to the NRA;
 - b. Failing to provide information or evidence that would have resulted in a refusal to grant a licence;
 - c. Failing to comply with the terms of the licence or authorisation without good cause;
 - d. Contravening any provision of the Law, these Regulations or any other relevant rules or regulations;
 - e. Violating or failing to comply with decisions and orders issued by the NRA;
 - f. Providing services not authorised by the licence or authorisation;
 - g. Operating a facility without an individual licence;
 - h. Operation of radio equipment other than receive only equipment belonging to an end user, without the relevant spectrum authorisation;
 - i. Failing to make payments in a timely manner in connection with the universal service obligation levy or in respect of the any fees imposed pursuant to these Regulations.

Notice of Contravention

82. Where the NRA has reason to believe that a licensee has contravened the conditions of the information and communications authorisation [committed any of the above acts or omissions], the NRA shall give notice in writing to the licensee or authorisation holder
- a. Specifying the particulars of such contravention; and
 - b. Providing [sixty (60) days] for the licensee or authorisation holder to justify its actions or otherwise to take such remedial action as may be specified in the notice.

Licence Suspension or Revocation

83. (1) Where a licensee or authorisation holder fails to justify its actions to the reasonable satisfaction of the NRA or fails or refuses to take any remedial action specified in the notice issued under Regulation 82, the NRA may impose sanctions for non-compliance, provided they are proportionate to the infringement:
- (2) Any sanctions imposed should be proportionate to the violation, non-discriminatory and reasonable.
- (3) Except in exceptional circumstances, the suspension or revocation of the right to provide information and communications services or the right to operate information and communications networks or the right to use radio frequencies or numbers is proportionate where a licensee did not comply with one or more of the conditions under the Law, these Regulations or the licence. This is without prejudice to urgent measures that may need immediate action regarding serious threats to public safety, security or health or to economic and operational interests of other licensees.

(4) The NRA must establish clear, transparent procedures for imposing sanctions which includes the opportunity for the aggrieved licensee or authorisation holder to appeal to apply for a review of the decision of the NRA in accordance with section 84 below.

PART VI – MISCELLANEOUS

Right to Review 84. In instances where the NRA has issued a final decision in any matter under these Regulations, any aggrieved party with the appropriate standing may [appeal the NRA’s decision] file a request for a review of the decision of the NRA to an independent authority with jurisdiction to hear the matter within thirty (30) days of the issuance of the decision and as otherwise provided for in the Law.

ANNEXES

Annex 1

**Participants of the First Consultation Workshop for HIPCAR Project Working Groups
dealing with Telecommunications Acts – Universal Access & Service; Access &
Interconnection; and Licensing.
Port of Spain, Trinidad and Tobago, 26-29 October 2009**

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