

TELECOMMUNICATIONS ACT 2009

(No. 20 of 2009)

IN exercise of the powers conferred upon it by sections 25 (2) and 38 of the Telecommunications Act 2009 (Act), and all other powers hereunto enabling, the Telecommunications Commission makes the following order –


Citation &
Commencement

1. This Order may be cited as the Telecommunications Commission (Establishment of a Class Licence) Order No. 1 of 2011 and shall commence on the date of the publication in the gazette.

Terms &
Conditions

2. The terms and conditions of the class licence and other relevant criteria applicable to the class licence are as set out as an annexure to this Order.

DATED this 11th day of May 2011



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TELECOMMUNICATIONS COMMISSIONER

GOVERNMENT OF SOLOMON ISLANDS
TELECOMMUNICATIONS SERVICE PROVIDER CLASS LICENCE

1. SCOPE OF THE LICENCE

1.1 TERMS USED IN THIS LICENCE

The following terms are defined in the Act:

funding deficit;

dominant service provider;

gross revenues;

new entrant launch date;

Telecommunications Commission;

telecommunications equipment;

telecommunications market;

telecommunications service;

telecommunications network; and

transitional funding period,

and any other terms used in this licence shall have the meaning given to them in the Act and references to sections or Parts are references to sections or Parts of the Act.

1.2 REGISTERED LICENSEE

In this licence, "Registered Licensee" means any person duly registered in accordance with clause 4 of this licence.

1.3 LICENCE TO PROVIDE TELECOMMUNICATIONS SERVICES

This licence authorises a Registered Licensee to:

(a) provide telecommunications services of any kind to end users in Solomon Islands;
and

(b) provide international telecommunications services of any kind to end users in Solomon Islands, and to persons outside Solomon Islands; and

(c) provide any other telecommunications services (including value added services) that are supplementary to those telecommunications services.

1.4 APPROVAL TO OPERATE TELECOMMUNICATIONS NETWORKS OR TELECOMMUNICATIONS EQUIPMENT

This licence authorises any Registered Licensee to construct and operate all telecommunications networks or telecommunications equipment that are used to provide the telecommunications services referred to in sub-clause 1.3 in accordance with this licence.

1.5 RADIO SPECTRUM

Where radio spectrum is required to provide telecommunications services, then the Registered Licensee requires a radio spectrum licence to be issued. This licence is not a radio spectrum licence and confers no rights to the Registered Licensee to use radio spectrum.

1.6 INDIVIDUAL LICENCES TO TAKE PRECEDENCE

Where a Registered Licensee provides telecommunications services pursuant to an individual licence issued in accordance with section 38(2) of the Act (whether that individual licence is issued before or after this class licence is issued), the terms of that individual licence take precedence over the terms of this class licence in respect of those telecommunications services that are the subject of that individual licence.

1.7 EMERGENCY SERVICES

(a) Subject to any order, determination, direction or regulation made by the Telecommunications Commission under the Act, and subject to any Universal Access Plan adopted by the Telecommunications Commission under section 47 of the Act, where a Registered Licensee provides a voice telecommunications service, including VOIP services, that is capable of receiving incoming calls from, and connecting outgoing calls to, a public switched telephone network, that Registered Licensee shall provide emergency services for its subscribers, being dedicated emergency telephone line for each of the police, ambulance, fire brigade, marine search master, or other emergency service as the Telecommunications Commission may reasonably require, where a subscriber may dial directly to the police, ambulance, fire brigade, marine search master or other emergency services as the Telecommunications Commission may from time to time reasonably require:

PROVIDED THAT nothing in this sub-clause obliges that Registered Licensee to ensure that the relevant emergency department answers the telephone call connected by that Registered Licensee.

(b) A Registered Licensee that provides a voice telecommunications service, including VOIP services, to subscribers that is not capable of receiving incoming calls from, and connecting outgoing calls to, a public switched telephone network must provide notification to each subscriber that the service does not provide emergency services for its subscribers.

1.8 COMPLIANCE WITH THE TELECOMMUNICATIONS ACT

All Registered Licensees shall comply at all times with the Telecommunications Act, any determinations, orders, directions and regulations made under the Telecommunications Act and any other applicable laws of Solomon Islands.

2. LICENCE FEES

2.1 LICENCE FEES DURING THE TRANSITIONAL FUNDING PERIOD

During the transitional funding period, each Registered Licensee shall, in accordance with section 133 of the Act, pay a licence fee of 2% of that Registered Licensee's gross revenues for the relevant period.

2.2 LICENCE FEES AFTER THE TRANSITIONAL FUNDING PERIOD

(a) After the transitional funding period, each Registered Licensee shall pay a licence fee as a percentage of that Registered Licensee's gross revenues, not exceeding 2%, for the relevant period, in accordance with section 20 of the Act.

(b) The percentage of a Registered Licensee's gross revenues shall be set at a level intended to cover the Telecommunications Commission's budgeted costs (including without limitation provision for legal and other costs as contemplated in section 15 of the Act) of all of its activities other than those set out in section 19 of the Act.

2.3 SUPPLEMENTARY LICENCE FEE

(a) The Telecommunications Commission may set a supplementary licence fee payable by each Registered Licensee as a percentage of that Registered Licensee's gross revenues in their most recent financial reporting year, in accordance with section 21 of the Act.

(b) A supplementary licence fee may be set only to make up a funding deficit resulting, or which the Telecommunications Commission reasonably expects will result, from any judicial review, appeal or any other legal proceedings.

2.4 OTHER FEES AND LEVIES

(a) This clause 2 shall not limit the Registered Licensee's liability to pay any other fees and levies payable under the Telecommunications Act.

(b) Fees and levies levied under the Telecommunications Act must, in accordance with section 18(3) of the Act, be set in an open, transparent, non-discriminatory, objective and competitively neutral manner, except that fees may be adjusted to encourage and accommodate the needs of small businesses in Solomon Islands.

3. UNIVERSAL ACCESS

Any universal access levy that any Registered Licensee is required to pay under section 51 of the Act shall not exceed 2% of that Registered Licensee's gross revenues in the relevant period.

4. REGISTRATION

4.1 REGISTRATION FORM

(a) Subject to sub-clause 4.3, any person who meets the qualification criteria specified in paragraph (b) below may become a Registered Licensee by filing with the Telecommunications Commission a complete, correct and signed registration form as published by the Telecommunications Commission from time to time.

(b) A person may apply for registration under this clause 4 only if that person meets the following qualification criteria:

(i) where the applicant is a body corporate, that body corporate must be incorporated in Solomon Islands;

(ii) where the applicant is an individual, that person is a citizen or permanent resident of Solomon Islands and is domiciled in Solomon Islands; and

(iii) in all cases, that person has undertaken in writing to comply with the terms of this class licence and the Act.

(c) Subject to sub-clause 4.2, registration in respect of any Registered Licensee expires on the anniversary of the date on which its original registration took effect.

4.2 RE-REGISTRATION

Every Registered Licensee must file with the Telecommunications Commission a complete, correct and updated signed version of the registration form referred to in sub-clause 4.1 at least 45 days before every anniversary of the date on which its original registration took effect.

4.3 NON-EFFECTIVE REGISTRATION

The Telecommunications Commission shall provide written notice of non-effective registration to any applicant filing for registration under either sub-clause 4.1 or 4.2 if:

(a) the applicant fails to meet any criteria applicable to this licence (or is not a qualifying person); or

(b) the registration form is incomplete or incorrect.

4.4 EFFECTIVE REGISTRATION

Unless the Telecommunications Commission provides written notice under sub-clause 4.3, registration shall take effect 45 days after filing with the Telecommunications Commission under sub-clause 4.1 or 4.2.

5. QUALITY OF SERVICE

5.1 KEY PERFORMANCE INDICATORS FOR DOMINANT SERVICE PROVIDERS

Each Registered Licensee shall, if it is declared to be a dominant service provider in the telecommunications market in which mobile telecommunications services are provided, comply with the following key performance indicators in respect of its telecommunications service during each calendar quarter (the measurement period):

Parameter	Measurement	Obligation during 1st year	Obligation during 2nd year	Obligation during 3rd year and after
1. Call set-up success rate	The 10% of cells which have the highest levels of carried traffic during their busy hour during the measurement period are identified. The call set-up success rate is calculated for each cell during the identified busy hour. The network call set-up success rate is the average across the individual success rates for each cell.	>95%	>97%	>98%
2. Dropped call rate (Urban Areas)	The network dropped call rate (Urban Areas) is calculated during the busy hour for each of the 10% of busiest cells (as for the call success rate) in Urban Areas. The network dropped call rate (Urban Areas) is the average over the dropped call rates for each such cell.	<3.5%	<2.0%	<1.5%
3. Dropped call rate (Non-Urban Areas)	The network dropped call rate (Non-Urban Areas) is calculated during the busy hour for each of the 10% of busiest cells (as for the call success rate) in Non-Urban Areas. The network dropped call rate (Non-Urban Areas) is the average over the dropped call rates for each such cell.	<5.0%	<5.0%	<5.0%
4. Call quality	The busy hour with the highest level of carried traffic during the	>90%	>93%	>95%

	<p>measurement period is identified for each cell. The call set-up success rate and dropped call rates are then calculated for each cell over this busy hour. The proportion of cells satisfying the criterion (see definition in subclause 6.2) is the performance measure.</p>			
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5.2 EXPLANATION OF PARAMETERS

(a) The Network Call Set-up Success Rate parameter measures the call set-up success rate over the busiest part of the network. The call set-up success rate is defined as successful seizures for TCH/seizure attempts for TCH.

(b) The Network Dropped Call Rate parameter measures the dropped call rate over the busiest part of the network in each of: (i) Urban Areas, and (ii) Non-Urban Areas. The network dropped call rate is defined as the proportion of calls successfully set up which terminate for any reason other than termination by either the calling or called parties. For the purpose of this clause 5:

(i) "Urban Areas" means those main provincial centres in each province in which the Registered Licensee provides mobile telecommunications services; and

(ii) "Non-Urban Areas" means those parts of Solomon Islands, except for the Urban Areas, in which the Registered Licensee provides mobile telecommunications services.

(c) The Network Quality parameter measures the proportion of the network over which performance is deemed to be adequate during busy periods. It is defined as the "number of cells with x% or lower dropped call rate and a call set up success rate of y% or higher divided by the total number of operational cells" where x and y are the respective obligations in the relevant measurement period.

6. AMENDMENT, SUSPENSION AND REVOCATION OF THIS LICENCE

6.1 AMENDMENT, SUSPENSION AND REVOCATION OF THIS LICENCE

The Telecommunications Commission may, by determination or order, amend the conditions of, suspend or revoke this licence in accordance with the Act.

6.2 APPEAL TO THE HIGH COURT

Where the Telecommunications Commission suspends or revokes this licence under sub-clause 6.1, and if such suspension or revocation constitutes a deprivation or acquisition of property within Part II of the Constitution, then any Registered Licensee may appeal under section 42(2) or Part 17 of the Act to the High Court for the determination of its interest or right, the legality of the suspension or revocation, and if compensation is payable contrary to

sub-clause 6.1, the amount of any compensation payable and the period of time within which it shall be paid.

6.3 REQUIREMENTS OF INTERNATIONAL TREATIES, ETC.

The Telecommunications Commission may by determination, order, direction or regulation amend this licence if such amendment is required as a result of applicable international treaties, commitments, recommendations or standards legally binding on Solomon Islands, except that such amendment shall:

(a) be made only to the extent reasonably required as a result of such treaty, commitment, recommendation or standard as applicable; and

(b) make the minimal change necessary to the original clause of this licence.

6.4 PAYMENT OF COMPENSATION

The Telecommunications Commission must pay reasonable compensation (the valuable consideration of which may take the form of cash or some other form and may be payable by way of lump sum or by instalments) within a reasonable period of time after an amendment under sub-clause 6.3 having due regard to all the relevant circumstances.

6.5 NOTIFICATION FROM THE TELECOMMUNICATIONS COMMISSION

The Telecommunications Commission must provide prior written notice to all Registered Licensees that it intends to amend this licence under sub-clause 6.3 and any Registered Licensee may within thirty (30) days appeal under section 102 of the Act to the Dispute and Appeal Panel for the determination of its interest or right, the legality of the amendment and the reasonableness of the compensation and the period of time within which it shall be paid.

6.6 ACCOUNT OF CONTINUITY OF SERVICE

In amending, suspending or revoking this licence, the Telecommunications Commission must take into account continuity of service to users and any hardship that may result to any Registered Licensee.

7. PRICE REGULATION

7.1 PRICE REGULATION

The Telecommunications Commission may, on application or on its own motion, regulate the prices of services provided by a dominant service provider in a telecommunications market with reference to relevant benchmarks in accordance with section 70 of the Act.

7.2 REASONABLE RETURN

The Telecommunications Commission must seek to ensure that a price cap, glide path or any other method of price regulation applied to any Registered Licensee does not:

(a) prevent that Registered Licensee from achieving a reasonable return on investment; or

(b) violate section 60(2) of the Act.

8. NOTICES

Any notice required to be served upon any Registered Licensee or given to any Registered Licensee shall be in writing and shall be deemed to have been served or given:

(a) as soon as the same is personally delivered to the address provided by that Registered Licensee on registration under clause 4 of this licence;

(b) immediately if transmission by facsimile is effected to the facsimile number provided by that Registered Licensee on registration under clause 4 of this licence, provided receipt of transmission has been confirmed by that Registered Licensee; or

(c) immediately if transmission is effected by email to the email address provided by that Registered Licensee on registration under clause 4 of this licence:

PROVIDED THAT, if personal delivery or transmission by facsimile or other electronic means is effected after 4.00 pm on a Working Day or any time on a day other than a Working Day, then such notice shall be deemed to be given the next Working Day following the delivery, facsimile or electronic transmission.

9. GOVERNING LAW

This licence shall be governed in all respects by and construed in accordance with the laws of Solomon Islands.