

Regulations of Turks and Caicos Islands: /2005

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Telecommunications Ordinance 2004

TELECOMMUNICATIONS AND FREQUENCY LICENSING REGULATIONS 2005

Regulations made by the Governor in Council under section 64 of the Telecommunications Ordinance 2004

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Part 1

PRELIMINARY

Citation and Scope

1. (1) These Regulations may be cited as the Telecommunications and Frequency Licensing Regulations.
- (2) These Regulations, made by the Governor pursuant to sections 11, 32 and 38 of the Ordinance, apply to carrier licences, for the ownership and operation of telecommunications networks, to service provider licences, for the provision of public telecommunications services, to other licences, for the provision of other telecommunications services, to special licences and spectrum/licences.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires-
Ordinance” means the Telecommunications Ordinance 2004.
- (2) Unless otherwise specified, terms used in these Regulations shall have the meanings assigned to them under the Ordinance.

Part 2

APPLICATIONS FOR LICENCES

Application procedure

3. (1) Any person required to obtain a licence shall apply to the Commission in such form as may be prescribed.
- (2) The Commission shall cause to be published in the Gazette a notice that an application for a licence has been received by the Commission and that it is available for public scrutiny at the offices of the Commission.
- (3) Except with respect to applications for special licences, the Commission shall afford interested parties a specified period during which they may submit written representations on applications for licences, or otherwise consult with such persons in good faith.
- (4) The Commission may make a determination as to which application is required for any particular type or class of telecommunications network or telecommunications service.
- (5) The Commission shall forward to the Minister for decision any applications for licences under Part III of the Ordinance.

Applications for spectrum licences

4. (1) Applications for spectrum licences shall be granted or refused in accordance with the Spectrum Plan (as defined in the Frequency Management Regulations 2005) of the Turks and Caicos Islands.

(2) Pursuant to the Spectrum Plan and Part IV of the Ordinance, the Commission shall establish procedures to determine applications for spectrum licences.

(3) Any procedures established by the Commission pursuant to subsection (2) shall be objective, transparent and non-discriminatory.

(4) Notwithstanding any other provision of the Ordinance or these Regulations, the Commission may establish one or more separate application procedures, or exempt from any of the provisions of these Regulations, applications to use spectrum for personal or similar uses, where the effective and appropriate management of the spectrum would not be adversely affected, or where the risk of causing harmful interference is negligible.

Contents of applications

5. (1) Applicants for licences shall provide such information as the Commission shall specify, which may include –

- (a) applicant details, including name, legal status, business address, the address of its registered office and other applicable contact information;
- (b) details regarding the type of telecommunications networks, telecommunications services or spectrum for which the application is being submitted;
- (c) in the case of the operation of a submarine cable, such details regarding the place of landing, capacity and other matters;
- (d) information regarding the applicant's directors, partners, management, officials and controlling persons sufficient to satisfy any requirement that the applicant is owned or controlled by Belongers;
- (e) information regarding the applicant's background, including its financial resources and evidence that it can establish, operate and maintain the telecommunications networks or telecommunications services for which it is applying, and other licences held by the applicant or any of its affiliates;
- (f) information describing the network or service to be supplied;
- (g) details regarding business plans, including the estimated date of commencement of the relevant activity;
- (h) information regarding the applicant's proposed rates; and
- (i) details, policies, strategies or representations regarding the applicant's intention and ability to comply with the Ordinance, the Regulations or any conditions of the licence.

(2) The Commission shall prescribe the instructions for applicants, the forms of applications for licences and the charges for submitting an application.

(3) The Commission may ask applicants for further information and may refrain from considering or acting upon the application until the information is supplied.

(4) Each applicant will be bound by the terms, commitments, offers, plans and obligations stated in its application.

(5) Any change in the information contained in the application and in any subsequent information provided to the Commission must be immediately notified to the Commission.

Granting of licences

6. (1) The Minister, with respect to a licence under Part III of the Ordinance, and the Commission, with respect to a licence under Part IV of the Ordinance, may refuse to grant any application for a licence where a person is ineligible for such licence or where the information provided under section 5 is incomplete or unsatisfactory or where the granting thereof would be inconsistent with applicable policies or Regulations or the written directions of the Governor.

(2) Where an application is refused, the Minister or the Commission, as the case may be, shall notify the applicant in writing, giving the reasons for the refusal upon request by the applicant.

(3) Where a licence is granted, the Minister or the Commission, as the case may be, shall notify the applicant and shall cause to be published in the Gazette a notice to that effect.

Confidentiality

7. (1) Information submitted to the Commission on or in connection with an application shall generally not be considered confidential information.

(2) Notwithstanding subsection (1), the Commission shall consider representations from applicants or other persons submitting information that may be confidential information that such information should not be made available to the public or otherwise be disclosed.

Part 3

CONTENTS OF LICENCES

Licences

8. (1) The Commission may, in accordance with the Ordinance, determine –
- (a) the conditions of any licence, the term of the licence (where not prescribed by the Ordinance), the time required for an application for renewal pursuant to section 21 of the Ordinance, the circumstances under which the licence may be suspended, terminated or amended, and technical matters including, in the case of spectrum licences, the spectrum authorised and types of emission power and other technical requirements; and
 - (b) the payment of any initial, annual, renewal or other fees payable by any licensee.

(2) The Commission may specify that certain conditions may not apply to certain classes of carriers or service providers.

(3) The Commission may attach special conditions to a licence where to do so would be justified and consistent with the requirements of the Ordinance and these Regulations and Schedule 1.

(4) The Commission may grant an exclusive licence or a limited number of licences where the Commission determines that it would be consistent with the Ordinance and these Regulations to do so.

(5) Unless the Commission, in a written decision, specifically determines to the contrary, where it intends to grant an exclusive licence or a limited number of licences, it shall afford interested parties a specified period during which they may submit written representations thereon or otherwise consult with such persons in good faith.

Class licences

9. (1) The Minister may adopt a class licence for any telecommunications services, in lieu of requiring that an individual licence be granted under the Ordinance.

(2) A class licence gives a person the right to carry on the activities specified therein upon compliance with the licence and such further requirements as the Minister may specify.

(3) A class licence shall specify the telecommunications services it authorises, a person's eligibility for a class licence and the conditions of the class licence, including –

- (a) the scope of the licensed telecommunications services;
- (b) any applicable technical and operational standards or conditions;
- (c) the location in which the authorised services are to be provided;
- (d) the duration of the class licence (where not prescribed by the Ordinance); and
- (e) any other requirements.

(4) To provide a telecommunications service pursuant to a class licence, a person must, before doing so, register with the Minister or the Commission, in the manner specified by the Commission or in such class licence, of his or her intention to provide such service, and submit such information in writing and pay such fee as the Commission may require.

(5) Within such period as may be specified by the Commission, the Commission shall issue to a person who registered with the Minister or the Commission pursuant to subsection (4) a declaration that such person is authorized to provide the telecommunications service authorised by the class licence.

(6) Where it considers appropriate to do so, the Minister or the Commission may issue the declaration referred to in subsection (5) automatically upon receipt of the registration pursuant to subsection (4).

(7) A person licensed under a class licence must notify the Minister or the Commission of any change or inaccuracy in its registration or any change in its operations that would make it ineligible for the class licence.

Licensing of telecommunications services other than public telecommunications services

10. (1) The Minister, upon recommendation of the Commission, may determine that one or more providers of telecommunications service other than public telecommunications services are required to obtain a licence under the Ordinance and these Regulations.

(2) Before making a determination pursuant to subsection (1), the Minister shall afford interested parties a specified period during which they may submit written representations or otherwise consult with such persons in good faith.

(3) In the absence of a determination pursuant to subsection (1), providers of telecommunications service, other than public telecommunications services, are not required to obtain a licence under the Ordinance and these Regulations.

(4) For purposes of this section 10, the Minister, upon the recommendation of the Commission, may determine which particular type or class of telecommunications service is not a public telecommunications service.

Part 4

TRANSFERS

Assignment of licence or transfer of control

11. (1) Where a licensee wishes to assign its licence or before any transfer of control of the licensee, the licensee shall apply in writing to the Commission for prior approval pursuant to section 20 of the Ordinance.

(2) For purposes of this section 11, a “transfer of control” of a licensee that is a company means a transfer of control of a “significant interest” in such company, where “significant interest” means a holding or an interest in the company or in any holding company of the company held or owned by a person, either alone or with any other person, and whether legally or equitably, that entitles or enables the person, directly or indirectly –

- (a) to control 10 per cent or more of the voting rights of that company at a general meeting of the company,
- (b) to a share of 10 per cent or more in dividends declared and paid by the company, or
- (c) to a share of 10 per cent or more in any distribution of the surplus assets of the company.

(3) Every person who owns or holds a significant interest in a licensee shall apply in writing to the Commission for its approval prior to the sale, transfer, charge or other disposition of his interest in the licensee.

Part 5

COMMISSION REGISTER

Register of licensees

12. (1) The Commission shall maintain a register of licensees and such other information as the Commission deems appropriate, other than information the disclosure of which is proscribed by section 7 of the Ordinance.

(2) The register shall be open to public inspection, without charge, at the offices of the Commission.

Part 6

MISCELLANEOUS

Citation and commencement

13. These Regulations may be cited as the Telecommunications and Frequency Licensing Regulations and shall come into operation on ___.