

# Telecommunications Operating License Rules

## Chapter I. Preliminary

### Section 1. Authority

- (1) These rules are promulgated by the Authority pursuant to the powers granted by Section 330 of Title 21 of the Code of the Federates States of Micronesia.

### Section 2. Title

- (1) These rules shall be cited as the “Telecommunications Operating License Rules for the Federated States of Micronesia, 2019.”

### Section 3. Objectives

- (1) The objectives of these rules are to:
  - (a) promote liberalization, competition, and investment in the communications sector of the Federated States of Micronesia;
  - (b) establish an objective and streamlined approach to the licensing of communications networks and services in the Federated States of Micronesia;
  - (c) ensure regulatory certainty, proportionality, and transparency in the licensing registration and application processes, as well as in the administration and decision-making processes relating to Operating Licenses;
  - (d) establish a technology- and service-neutral approach to licensing; and
  - (e) ensure fair and non-discriminatory treatment of similarly situated Licensees.

### Section 4. Scope

- (1) These rules establish:
  - (a) the framework for licensing communications networks and services in the Federated States of Micronesia;
  - (b) the types of Operating Licenses that shall be awarded for the ownership or operation of specified communications networks and the provision of communications services;
  - (c) the processes that shall be applied to determine the award of Operating Licenses;
  - (d) the general and specific terms and conditions that shall apply to Operating Licenses;
  - (e) the mechanisms regarding how Licensees may access to scarce resources;
  - (f) monitoring and enforcement provisions; and
  - (g) transitional provisions for the FSMTC.
- (2) These Rules do not apply to licensing for broadcasting networks and services.

## **Section 5. Applicability**

- (1) These rules apply to any Person requiring an Operating License for the provision of Communications Services in the Federated States of Micronesia.
- (2) These rules do not apply to:
  - (a) the authorization and assignment of scarce resources, including Radio Frequencies and Telephone Numbers; and
  - (b) exempt Communications Networks and Communications Services in accordance with Sections 302 and 330 of the Code and Section 12 of these rules.

## **Section 6. Definitions**

- (1) Any word, phrase or expression used in these rules shall, unless the context requires otherwise or it is expressly defined in these rules, have the same meaning as it has in the Code.
- (2) Headings and titles used in these rules are for reference only and shall not affect the interpretation or construction of these rules.
- (3) References to a word or phrase in the singular encompass references to words or phrases in the plural, and vice versa.
- (4) The terms listed below shall have the following meanings:
  - (a) “Authority” means the Office of the Telecommunication Regulation Authority established under Section 304 of the Code;
  - (a) Federated States of Micronesia Telecommunication Regulation Authority, or its successors;
  - (b) “Code” means the Title 21 of the Code of the Federated States of Micronesia, as amended by Public Law No. 18-52;
  - (c) “Class License” means an Operating License granted in accordance with Chapter IV of these rules;
  - (d) “Consumer” means any Person, other than another Licensee, to whom a Licensee provides a Communications Service;
  - (e) “Communications” means the conveyance from one device to another of any message by means of any wire, radio, optical, electric, magnetic, electromagnetic, or similar system;
  - (f) “Communications Service” means a service for the transmission of communications by means of a Communications Network;
  - (g) “Communications Network” means a system that uses electricity or electromagnetic energy for providing Communications Services between network termination points;
  - (h) “Community Networks” means networks deployed in accordance with Chapter IX;
  - (i) “Days” means calendar days;
  - (j) “Dominant Service Provider” means, in respect of a communications market of a Licensee who, in the opinion of the Authority:
    - (i) receives 40% or more the total gross revenues of all service providers in that market; or

- (ii) has a position of economic strength or controls a bottleneck facility in that market that allows the Licensee to behave independently of competitors or potential competitors, consumers, or customers;
- (k) “Equipment” means any appliance, apparatus, device, or accessory used or intended to be used for communications purposes;
- (l) “FSM” means the Federated States of Micronesia;
- (m) “FSMTC” means the Telecommunications Corporation of the Federated States of Micronesia, a public corporation established under the Code;
- (n) “FSMTCC” means the FSM Telecommunications Cable Corporation, an Open Access Entity established under the Code;
- (o) “Individual License” means an Operating License granted in accordance with Chapter III of these rules;
- (p) “License” means an Operating License;
- (q) “Licensee” means a Person who holds an Operating License;
- (r) “Open Access Entity” means a corporation established pursuant to Section 389 of the Code;
- (s) “Operating License” means either an Individual License or a Class License;
- (t) “Person” means a public authority and any association of persons, whether incorporated or not;
- (u) “Service neutrality” means rules allowing a Licensee to offer or use any type of approved Communications Service authorized under its respective Operating License;
- (v) “Specified Communications Network” means a communications network that includes a line or radio communications link, or a series of lines or radio communications links, between two fixed points, including:
  - (i) Radio communications transmission links;
  - (ii) Cable transmission links; and
  - (iii) Cable access networks;
- (w) “Technology neutrality” means rules allowing a Licensee to offer or use any type of approved technologies under its respective Operating License;
- (x) “Telephone Numbers” means any number, including data of any description, that is used (whether or not in connection with telephony) for any one or more of the purposes determined in accordance with the relevant numbering plan issued by the Authority;

## **Chapter II. Framework for Operating Licenses**

### **Section 7. License required**

- (1) Subject to the exemptions provided in the Code and these rules, no Person shall:
  - (a) own or operate a Specified Communications Network; or
  - (b) provide a Communications Service,

within the FSM or between the FSM and any jurisdiction outside of the FSM without first being issued an Operating License.

### **Section 8. Types of Operating Licenses**

- (1) The Authority may issue two types of Operating Licenses:
  - (a) Individual License, which is a facilities-based license, as set out in Chapter III of these rules; and
  - (b) Class License, which is a resale-based license, as set out in Chapter IV of these rules.

### **Section 9. Limits on the number of Operating Licenses**

- (1) Individual Licenses and Class Licenses shall be issued on a non-exclusive basis.
- (2) There shall be no limit to the number of Individual Licenses or Class Licenses issued by the Authority.
- (3) Notwithstanding the provisions of subsections (**Error! Reference source not found.**) and (2), the Authority may, pursuant to Section 330(2) of the Code, limit the number of Individual Licenses for the establishment of specific Communications Networks or Communications Services provided that such limit is justified by the Authority in a reasoned and written decision, necessary to give effect to the objectives of the Code, including promoting competitive communications markets.

### **Section 10. Public register**

- (1) The Authority shall establish and maintain a publicly available register of all Operating Licenses.
- (2) This register shall be made available on the Authority's website and shall contain:
  - (a) the Licensee's name, address, phone number, fax number (if any), and website;
  - (b) the License held;
  - (c) types of Specified Communications Networks and/or Communications Services that the Licensee is authorized to provide; and
  - (d) License effective and expiration dates.

### **Section 11. Notification to provide additional Specified Communications Networks and Communications Services**

- (1) Any Person holding an Operating License who intends to provide additional Specified Communications Networks and/or Communications Services under the Person's existing license shall notify the Authority in writing at least thirty (30) days prior to providing such additional Communications Networks and/or Communications Services.
- (2) The Licensee shall use the Individual or Class Operating License form, as relevant, and identify the additional Specified Communications Networks and/or Communications Services to be offered.
- (3) The Authority may request that the Licensee submit additional information during the notification period.
- (4) The Licensee may begin offering the additional Specified Communications Networks and/or Communications Services after the thirty (30) day notification period unless the Authority:

- (a) notifies the Licensee that the additional Specified Communications Networks and/or Communications Services require a different Operating License;
  - (b) notifies the Licensee that the additional Specified Communications Networks and/or Communications Services require scarce resources that are subject to separate authorization;
  - (c) determines that the Licensee has failed to comply with existing licensing obligations;
  - (d) agrees in writing that the Licensee may begin offering the additional Specified Communications Networks and/or Communications Services at an earlier date; or
  - (e) determines the planned Communications Network and Communications Services are:
    - (i) likely to negatively impact competition in the FSM’s communications market;
    - (ii) are inconsistent with the provisions of Section 9(3); or
    - (iii) are otherwise inconsistent with the objectives of the Code.
- (5) A Licensee that is authorized to offer additional Specified Communications Networks and/or Communications Services shall be automatically subject to and must comply with all terms and conditions that may apply to the provision of the additional Specified Communications Networks and/or Communications Services.

#### **Section 12. License-exempt networks and services**

- (1) The following Communications Networks are exempt from requiring an Operating License:
- (a) Communications Networks not used to provide any Communications Service for which a charge is imposed;
  - (b) Communications Networks wholly deployed within one property (including a ship or aircraft) or a number of properties that together comprise a campus;
  - (c) Communications Networks used exclusively for a Person’s private or internal communication requirements. This may include:
    - (i) communications between staff members of a specific organization or legal entity, within the FSM or between the FSM and any place outside of the FSM;
    - (ii) communications between different properties or assets of a specific organization or legal entity, within the FSM or between the FSM and any place outside of the FSM; and
    - (iii) communications between a related entity or a holding company, subsidiary company or associated company, within the FSM or between the FSM and any place outside of the FSM.
  - (d) Community Networks that do not require:
    - (i) access to numbering resources administered by the Authority in accordance with the Code; or
    - (ii) interconnection and access to Communications Networks of Licensees.
- (2) The following Communications Services are exempt from requiring an Operating License:
- (a) Communications Services provided exclusively over an exempt Communications Network;

- (b) voice and messaging services offered over the public Internet that are not assigned Telephone Numbers; and
  - (c) the provision of satellite capacity by foreign satellite providers within the FSM.
- (3) The deployment of receive-only satellite earth stations in the FSM shall not require an Operating License.
- (4) Pursuant to Section 330 of the Code, the Authority may exempt additional Communications Networks and Communications Services from time to time.

### **Chapter III. Individual License**

#### **Section 13. Scope of the Individual License**

- (1) Subject to subsection (3), an Individual License authorizes the Licensee to:
- (a) establish, manage and operate Specified Communications Networks;
  - (b) lease all or part of the capacity on a Specified Communications Network to a holder of an Individual License or Class License; and
  - (c) provide any Communications Service.
- (2) Subject to subsection (3), the activities authorized by the Individual License include, but are not limited to, the establishment, management and operation of, and the provision of Specified Communications Networks and Communications Services over:
- (a) terrestrial cable transmission facilities;
  - (b) terrestrial radio communications transmission facilities for fixed and mobile service;
  - (c) submarine cable and landing station facilities;
  - (d) international gateway services facilities;
  - (e) satellite earth station facilities and apparatus; and
  - (f) other satellite facilities located within the FSM providing capabilities for transmission of communications services.
- (3) The authorized activities of an Individual Licensee that has been designated an Open Access Entity shall be limited to the establishment, management, and operation of submarine and terrestrial cable assets for the transmission of data for communications and shall be provided on:
- (a) a wholesale-basis only to Individual or Class Licensees; and
  - (b) on non-discriminatory and cost-based terms.
- (4) The Individual Licensee may provide the authorized Specified Communications Networks and Communications Services within the FSM or between the FSM and any jurisdiction outside of the FSM.

#### **Section 14. Licensing procedures for the Individual License**

- (1) Pursuant to Section 331 of the Code, a Person seeking an Individual License shall submit the prescribed application form in writing to the Authority.

- (2) Unless additional information is required, the Authority shall issue the Individual License within thirty (30) days upon receiving:
  - (a) an accurate and complete application form demonstrating that the applicant meets all eligibility criteria set forth in Section 15; and
  - (b) the application fee set forth in the Schedule of Fees that the Authority shall issue from time to time.
- (3) The Authority may request additional information if the application form is incomplete or appears to contain inaccurate information. Failure to submit a response within thirty (30) days may result in rejection of the application.
- (4) The Authority shall review any additional information submitted in accordance with subsection (3) within thirty (30) days of receipt of all information.
- (5) The Authority may extend the timeframe for review set forth in subsections (2) and (4) for up to thirty (30) additional days with written notice to the applicant explaining the reasons for the extension.
- (6) Where the Authority rejects an application for an Individual License, the Authority shall promptly provide written notice to the applicant explaining the reasons for rejection.
- (7) If the Authority is satisfied that the applicant meets the requirements of subsection (2), the Authority shall:
  - (a) issue the Individual License, and
  - (b) include the Licensee in the public register as an Individual License holder.
- (8) Where an applicant simultaneously applies for an Individual License and a radio frequency spectrum license in accordance with Section 331(3) of the Code, the Authority may extend the timeframe for review where necessary to issue the licenses together, or under such arrangement as the Authority and the applicant agree.

#### **Section 15. Eligibility criteria for the Individual License**

- (1) The following eligibility criteria shall be met to obtain an Individual License:
  - (a) the applicant is registered or incorporated with the FSM Registrar of Corporations, in accordance with the Corporate Registry Act, as amended by Public Law 20-35;
  - (b) if the applicant, its parent corporation or other entities within its corporate group, holds or has held a license issued by the Authority:
    - (i) there are no outstanding fees, fines, or other charges to be paid; and
    - (ii) such license has not been terminated by the Authority within the last three (3) years;
  - (c) the applicant, its parent corporation or other entities within its corporate group, possesses the financial and technical capabilities to carry out and engage in the planned Communications Networks and Communications Services; and
  - (d) the applicant and its planned Communications Network and Communications Services are not likely to negatively impact competition in the FSM's communications market.

### **Section 16. Award of Individual Licenses subject to limits**

- (1) The Authority shall determine, on a case by case basis, the specific processes, conditions and requirements to be implemented for awarding Individual Licenses that are subject to limits in accordance with Section 9(3).
- (2) Processes used to award licenses in accordance with subsection (1) shall be public, competitive in nature and ensure awards are made in an objective, transparent and non-discriminatory manner.

## **Chapter IV. Class License**

### **Section 17. Scope of the Class License**

- (1) A Class License authorizes the Licensee to:
  - (a) provide any communications services, including resale services, to Consumers or to other Licensees;
  - (b) lease transmission capacity directly from a holder of an Individual License or other third parties, whether on an international or national basis, to provide any Communications Services to Consumers and/or to another Licensee; and
  - (c) establish, manage and operate switches, routers and processing Equipment necessary to provide the licensed Communications Service.
- (2) The activities authorized by the Class License include, but are not limited to, the provision of the following Communications Services:
  - (a) resale of wireline connectivity and data transmission services;
  - (b) resale of terrestrial wireless connectivity and data transmission services;
  - (c) resale of satellite connectivity and data transmission services;
  - (d) resale of fixed and/or mobile public telephone services using Telephone Numbers pursuant to the numbering plan; and
  - (e) resale of public Internet access services.
- (3) The Class Licensee may provide the authorized Communications Services within the FSM or between the FSM and any jurisdiction outside of the FSM.
- (4) The Class License does not authorize the Licensee to:
  - (a) establish, manage and operate Specified Communications Networks, except for switches, routers and processing equipment necessary to provide the licensed service(s); or
  - (b) use radio frequency spectrum resources that are subject to licensing pursuant to the relevant rules issued by the Authority.
- (5) Where a Person who holds a Class License subsequently applies for and is granted an Individual License, then the Individual License shall replace the Class License.

### **Section 18. Licensing procedures for the Class License**

- (1) Pursuant to Sections 329 and 331 of the Code, a person seeking a Class License shall submit the prescribed registration form in writing to the Authority.



- (2) The Authority shall issue the Class License within thirty (30) days upon receiving:
  - (a) an accurate and completed registration form demonstrating that the applicant meets all eligibility criteria set forth in Section 19; and
  - (b) the application fee set forth in the Schedule of Fees that the Authority shall issue from time to time.
- (3) The Authority may request additional information if the registration form is incomplete or appears to contain inaccurate information. Failure to submit a response within thirty (30) days may result in rejection of the registration.
- (4) The Authority shall review the registration form and any additional information submitted in accordance with subsections (2) and (3) within thirty (30) days of receipt of all information.
- (5) The Authority may extend the timeframe for review set forth in subsections (2) and (4) up to thirty (30) additional days with written notice to the applicant explaining the reasons for the extension.
- (6) Where the Authority rejects a registration for a Class License, the Authority shall promptly provide written notice to the applicant explaining the reasons for rejection.
- (7) If the Authority determines that the person meets the requirements of subsection (2), within the relevant period specified under subsections (2), (4), and (5), the Authority shall issue the Class License and include the applicant on the public register as a Class License holder.
- (8) Pursuant to Sections 329 and 331 of the Code, the Class License shall come into force upon registration in the public register.

#### **Section 19. Eligibility criteria for the Class License**

- (1) A Person seeking a Class License must meet the following eligibility criteria:
  - (a) be registered or incorporated with the FSM Registrar of Corporations, in accordance with the Corporate Registry Act, as amended by Public Law 20-35;
  - (b) if the applicant, its parent corporation or other entities within its corporate group, holds or has held a license issued by the Authority:
    - (i) there are no outstanding fees, fines, or other charges to be paid; and
    - (ii) such license has not been terminated by the Authority within the last two (2) years.

### **Chapter V. General Terms and Conditions for Operating Licenses**

#### **Section 20. Uniform terms and conditions of Operating Licenses**

- (1) The Individual License and Class License shall be standardized and made publicly available on the Authority's website.
- (2) The terms and conditions of the Operating Licenses shall be uniform for all similarly situated Licensees, unless:
  - (a) differences are objectively justified based on different circumstances between Licensees; and
  - (b) the Authority has adequately assessed such objective justifications in a written notice to the affected Licensee.

- (3) Operating Licenses shall be technology- and service-neutral as much as practicable in accordance with the provisions of these rules.
- (4) The Authority may impose coverage obligations in Individual Licenses to ensure extension of Communications Networks and Communications Service to all Persons in the FSM.

#### **Section 21. Operating License duration**

- (1) The Individual License shall have a duration of twenty (20) years.
- (2) The Class License shall have a duration of fifteen (15) years.

#### **Section 22. Operating License expiration**

- (1) The Operating License of a Person who does not obtain a license renewal in accordance with Section 23 shall be considered to have expired on the date of expiration identified in the Operating License.

#### **Section 23. Operating License renewal**

- (1) A Licensee may request a renewal of its Operating License by submitting a written request to the Authority.
- (2) A renewal request shall be submitted no more than twenty (24) months and no less than twelve (12) months prior to the license expiration date.
- (3) Upon receiving a renewal request, the Authority shall review the request and renew the license within sixty (60) days, provided that the Licensee has substantially complied with:
  - (a) the Code and all amending legislation;
  - (b) all applicable laws, regulations, rules, and other decisions issued by the Authority; and
  - (c) the terms, conditions, and obligations under the relevant Operating License.
- (4) The Authority may extend the timeframe for review set forth in subsection (3) up to ninety (90) additional days with written notice to the applicant explaining the reasons for the extension.
- (5) The Authority may waive any failure to comply with the timeframes in subsection (2).
- (6) The Authority shall renew the Operating License on the same or substantially similar terms and conditions, and for the same duration, as the initial Operating License unless the Authority considers any variations are objectively justified and provides such justification in a written notice to the Licensee.
- (7) The Authority shall collect a renewal fee in accordance with the following principles:
  - (a) renewal of Individual Licenses granted in accordance with Section 14 and of Class Licenses shall reflect the costs of the renewal process.
  - (b) renewal fees for Individual Licenses levied in accordance with this subsection shall be separate from any renewal fees for a radio frequency spectrum license associated with such Individual Licenses.
- (8) Notwithstanding subsection (5) and (6), the renewal of Individual Licenses subject to limits in accordance with Section 9(3) shall require the Authority to:

- (a) reassess the public interest, convenience and necessity of maintaining any limit granted in the initial Individual License;
- (b) determine whether different terms and conditions should apply to the renewed Individual License; and
- (c) levy a renewal fee commensurate to the specific rights being granted to the Licensee under the renewed Individual License.

#### **Section 24. Refusal to renew an Operating License**

- (1) Where the Authority refuses to grant a request to renew an Operating License, the Authority shall provide written notice to the Licensee. Such notice shall:
  - (a) state the reasons for refusal to renew the Operating License, which may be based on:
    - (i) serious failure to comply with any of the obligations of a Licensee specified in the Code or any laws, regulations, rules, or other decisions issued by the Authority;
    - (ii) serious failure to comply with any term, condition, or obligation contained in the license; or
    - (iii) any decision made by the Authority relating to anti-competitive conduct; and
  - (b) provide the Licensee a reasonable opportunity to remedy any defect identified by the Authority and resubmit the renewal request.

#### **Section 25. Transfer, assignment, or sub-license of Operating License**

- (1) Prior to transferring, assigning, or sub-licensing an Operating License, a Licensee (applicant) must apply in writing to the Authority and obtain the Authority's written approval.
- (2) The Authority shall review the request for transfer, assignment, or sub-license and provide a written decision to the applicant within thirty (30) days.
- (3) The Authority may extend the timeframe for review set forth in subsection (2) for up to thirty (30) additional days with written notice to the applicant explaining the reasons for the extension.
- (4) Where the Authority refuses to grant a request to transfer, assign, or sub-license a license, the Authority shall provide written notice to the applicant explaining the reasons for refusal. The Authority shall not unreasonably withhold approval of the transfer, assignment, or sub-license.

#### **Section 26. Industry consolidation**

- (1) In accordance with Section 345 of the Code, a Licensee shall not acquire or obtain an interest in shares or assets related to communications facilities or the provision of Communications Services of another licensee without the prior written consent of the Authority.

#### **Section 27. Operating License variation**

- (1) The Authority may, on its own initiative or upon request by a Person, vary the standard terms and conditions of Operating Licenses.
- (2) Any modification shall be based upon reasonable grounds, aimed at promoting specified policy objectives consistent with the Code, subject to principles of non-discrimination and fairness and to consultation.

### **Section 28. Operating License suspension or revocation**

- (1) The Authority may suspend or revoke an Operating License in accordance with Section 337(2) of the Code.

### **Section 29. Operating License surrender**

- (1) A Licensee that intends to surrender an Individual License shall provide written notice to the Authority at least sixty (60) days prior to the planned surrender date.
- (2) A Licensee that intends to surrender a Class License shall provide written notice to the Authority at least thirty (30) days prior to the planned surrender date.

### **Section 30. Effects of expiration, revocation, or surrender of an Operating License**

- (1) Within sixty (60) days of the expiration, revocation, or surrender of an Operating License, the Licensee shall wind down activities authorized by the Operating License and make reasonable efforts to transition affected Consumers to alternative providers of Communications Services.
- (2) The Licensee may submit to the Authority a written request for extension of the timeframe in subsection (1), which the Authority may grant, at its discretion, if it believes such extension is necessary to protect Consumers or is otherwise in the public interest.

### **Section 31. Fees for Operating Licenses**

- (1) Licensees shall pay all applicable fees established by the Authority, including:
  - (a) application and renewal fees associated with Operating Licenses;
  - (b) annual license fees; and
  - (c) other fees consistent with the Code that the Authority may determine from time to time.
- (2) The Authority shall set fees and the terms relating to payment of such fees, for Operating Licenses in a Fee Schedule, which the Authority may update from time to time.

### **Section 32. Payment of fees**

- (1) A Licensee shall pay the annual license fee and other fees due to the Authority in the manner established in the Schedule of Fees adopted by the Authority in accordance with Section 336 of the Code.
- (2) Notwithstanding the Authority's ability to recover fees owed to it in accordance with Section 319(3) of the Code, if the Licensee willfully or repeatedly fails to pay the annual license fee (or make other payments) due to the Authority within thirty (30) days of the date on which the payment is due, the Authority may initiate an action pursuant to Section 337 of the Code.

### **Section 33. Notification of changes**

- (1) Notwithstanding other notification requirements set forth in these rules, the Licensee shall notify the Authority of any changes to the information provided in the license application or registration form within thirty (30) days of the Licensee becoming aware of such change.

#### **Section 34. Consumer protection obligations**

- (1) Subject to the rules that the Authority may adopt from time to time, and in accordance with Section 352 of the Code, a Licensee providing Specified Communications Networks and/or Communications Services to Consumers shall:
  - (a) have standardized contracts with Consumers;
  - (b) provide Consumers detailed and accurate billing;
  - (c) make available to Consumers a fair and transparent complaints and dispute resolution procedure and provision for consumer remedies where circumstances warrant;
  - (d) publish terms and conditions of service, including prices; and
  - (e) publish comparable, adequate and up-to-date quality of service information where directed by the Authority.

#### **Section 35. Confidentiality and protection of communications**

- (1) A Licensee shall protect the confidentiality of customer information in accordance with Section 349 of the Code.
- (2) A Licensee shall protect the confidentiality of customer communications in accordance with Sections 350 and 351 of the Code.

### **Chapter VI. Specific Terms and Conditions of Operating Licenses**

#### **Section 36. Proper functioning of Communications Networks and Communications Services**

- (1) The Licensee shall take all necessary measures to maintain, to the greatest extent possible:
  - (a) the proper and effective functioning of the Communications Networks and Communications Services provided by it at all times, and
  - (b) in the event of major outages, or in cases of force majeure, the fullest possible availability of the Communications Networks and Communications Services that it provides.

#### **Section 37. New Infrastructure**

- (1) A Person holding an Individual License who intends to construct a new communications facility to expand its Communications Network shall comply with the requirements set forth in Section 342 of the Code.

#### **Section 38. Access and interconnection requirements**

- (1) A Licensee shall, to the extent requested by another Licensee, negotiate with the requesting Licensee with the objective of concluding an access or interconnection agreement within a reasonable period.
- (2) Access and interconnection negotiations and agreements shall be subject to the process, requirements and conditions set forth in the relevant rules adopted by the Authority and in accordance with Sections 339 to 341 of the Code.

### **Section 39. Obligations for dominant service providers**

- (1) A Licensee determined by the Authority to be a Dominant Service Provider shall comply with the requirements set forth in Sections 346 to 348(2), and 354 of the Code and with any rules the Authority adopts pursuant to such sections relating to publication of terms and conditions, pricing and tariffs, fair dealing, and quality of service.
- (2) The Authority may impose additional specific obligations on a Licensee determined to be a Dominant Service Provider pursuant to a review of the relevant market in accordance with the Code and other relevant legislation, rules, and regulations.

### **Section 40. Access to land and rights-of-way**

- (1) Access to public and private land and rights-of-way are limited to holders of Individual Licenses, subject to the rights, obligations, and procedures set forth in Sections 370 to 374 of the Code.

### **Section 41. Directories and provision of directory assistance**

- (1) In accordance with Section 353 of the Code, a Licensee that has been assigned Telephone Numbers under the numbering plan may be required by the Authority to provide directory assistance services.
- (2) A Licensee that offers fixed telephone service and has been assigned Telephone Numbers under the numbering plan shall:
  - (a) maintain a complete and accurate database of its Consumers' names and telephone numbers, including information regarding Consumers who have asked to be excluded from directories; and
  - (b) make that data available on reasonable terms and conditions to any other Licensees that have been assigned Telephone Numbers under the telecommunications numbering plan, at the other Licensee's request in case such other Licensee seeks to provide directory assistance services.

### **Section 42. Provision of emergency call services**

- (1) Subject to Sections 357 and 358 of the Code, and in accordance with the numbering rules promulgated by the Authority, Licensees that assign Telephone Numbers to Consumers shall:
  - (a) make available to any Consumer, free of charge, access to any national emergency number specified in the Numbering Plan from Equipment used in conjunction with the Licensee's network; and
  - (b) comply with technical and other requirements relating to the provision of emergency call services as the Authority may determine.

### **Section 43. Interception capabilities**

- (1) Licensees shall provide the specified interception capabilities and real-time collection of data in accordance with Sections 380 and 381 of the Code.

### **Section 44. Exposure to electromagnetic fields**

- (1) Licensees shall comply with measures regarding the limitation of exposure of the general public to electromagnetic fields caused by Communications Networks and other relevant health and safety

requirements as determined by the Authority in accordance with the Code and other relevant rules and regulations.

## **Chapter VII. Access to Scarce Resources**

### **Section 45. Access to radio frequency spectrum resources**

- (1) The Authority shall issue radio frequency spectrum licenses separately from an Operating License in accordance with Sections 333 and 334 of the Code and Spectrum Licensing Rules promulgated by the Authority.

### **Section 46. Allocation and use of Telephone Numbers**

- (1) Licensees may request the allocation of Telephone Numbers from the Authority in accordance Section 357 of the Code and the numbering plan promulgated by the Authority.
- (2) Licensees must ensure that Telephone Numbers allocated to them are used effectively and efficiently in accordance with the numbering plan issued by the Authority.

## **Chapter VIII. Monitoring and Enforcement**

### **Section 47. Provision of information**

- (1) The Authority may establish additional notification and provision of information requirements, including regular reporting obligations, provided that such requirements are necessary and desirable for the purpose of the Authority carrying out its functions or exercising its powers under the Code.
- (2) Pursuant to Section 379 of the Code, a Licensee shall provide information or documents or give evidence to the Authority upon written notice and within the time and manner specified in the notice.

### **Section 48. Permission to inspect**

- (1) A Licensee's premises are subject to entry or inspection in accordance with Section 377 of the Code.

### **Section 49. Notice of contravention**

- (1) Notwithstanding the provisions of Section 344 of the Code, where the Authority has a legitimate reason to believe that the Licensee has committed or is committing:
  - (a) a specific offense subject to Section 382 of the Code and/or
  - (b) a general offense subject to Section 383 of the Code,the Authority may initiate an investigation into any alleged contravention, pursuant to the Authority's functions and powers under Section 305 (a) and (o) of the Code.
- (2) Prior to the taking of any enforcement action, the Authority shall provide the Licensee with a written notice of the alleged contravention that specifies:
  - (a) the conduct and specific obligations that the Authority deems to be in contravention;
  - (b) a description of the Authority's factual and legal conclusions;
  - (c) the actions that the Licensee shall take to remedy the alleged contravention; and

- (d) the timeframe in which the Licensee shall comply with the alleged contravention notice.
- (3) The Licensee shall be granted a reasonable opportunity to respond to the Authority's notice, including correcting the alleged contravention.
- (4) If a Licensee does not comply with the notice served under subsection (2), the Authority may refer the alleged contravention to the Attorney General for prosecution in accordance with Section 387 of the Code.

## **Chapter IX. Community Networks**

### **Section 50. Policies to facilitate Community Networks**

- (1) Community Networks may be deployed to extend Communications Networks and Communications Services to unserved or underserved areas.
- (2) In furtherance of subsection (1), the Authority may:
  - (a) waive reporting requirements, regulatory fees and other obligations that may apply to Community Networks;
  - (b) streamline application and other administrative processes involving Community Networks;
  - (c) create flexible use rules for radio frequency spectrum resources that are subject to licensing used by Community Networks;
  - (d) provide technical and other support to local community groups that intend to deploy Community Networks; and
  - (e) adopt additional policies to reduce the cost of deployment of Community Networks, including, but not limited to, promoting infrastructure sharing agreements.

### **Section 51. Description of Community Networks**

- (1) Community Networks are Communications Networks:
  - (a) deployed and operated by a local community group;
  - (b) to meet the communications requirements of the members of the community or communities;
  - (c) within the geographic area of the community or communities served.
- (2) Community Networks may impose charges for the Communications Networks and Communications Services they offer and shall:
  - (a) invest any surplus revenues generated in the expansion and improvement of the Community Network;
  - (b) retain any surplus revenues in anticipation of future expenditures in the expansion and improvement of the Community Network; or
  - (c) allocate any surplus revenues to:
    - (i) provide refunds to its Consumers for charges incurred in the prior fiscal year; or
    - (ii) to other investments for community related projects,in the manner determined by the local community group.



**Section 52. Process to obtain Individual Licenses by Community Networks**

- (1) A local community group that intends to deploy and operate a Community Network not exempted from requiring an Operating License as provided in Section 12(1)(d) shall, prior to deploying such Community Network, obtain an Individual License by submitting an application to the Authority:
  - (a) describing the local community group in question in a manner that sufficiently demonstrates it meets the requirements set forth under subsection (5)(2)(2); and
  - (b) describing the Communications Network and Communications Services to be offered and the sources of funding for undertaking the project.
- (2) The Authority shall issue the Individual License within thirty (30) days upon receiving the application, unless the Authority:
  - (a) notifies the local community group in writing that the proposed Community Network requires scarce resources that are subject to a separate license as set forth in Section 53; or
  - (c) determines that the local community group has failed to sufficiently demonstrate compliance with the requirements set forth under subsection (5) (2).
- (3) Where the Authority rejects an application for an Individual License submitted in accordance with subsection (1), the Authority shall promptly provide written notice to the applicant explaining the reasons for rejection.
- (4) If the Authority is satisfied that the local community group meets the requirements of subsection (1), the Authority shall:
  - (a) issue the Individual License, and
  - (b) include the Licensee in the public register as an Individual License holder.
- (5) For purpose of this section, local community groups may be formed by any association of persons residing in the specific community or communities being served by the Community Network, whether incorporated or not, and may also include other persons not residing in the community or communities that provide support, expertise or financing to the local community group to undertake the project.

**Section 53. Assignment of radio frequency spectrum licenses to a Community Network**

- (1) A local community group may simultaneously apply for an Individual License and a radio frequency spectrum license in accordance with Section 331(3) of the Code. In such case, the Authority may extend the timeframe for review set forth in Section 52(2) where necessary to issue the licenses together, or under such arrangement as the Authority and the applicant agree.
- (2) The Authority shall grant radio frequency licenses to Community Networks via direct assignment, unless it has sufficiently verified that applications for spectrum licenses exceed the available spectrum.

## **Chapter X. Transition Provisions**

### **Section 54. Transition framework**

- (1) Within thirty (30) days of the effective date of these rules, the Authority shall issue Individual Licenses to FSMTC and FSTMCC, respectively.
- (2) For purposes of subsection (1), Section 15 (1) (a) shall not apply to FSMTC or FSMTCC.
- (3) FSMTC and FSMTCC shall be subject to annual fees and other fees as determined by the Authority, but shall not be subject to an application fee for an Operating License granted in accordance with subsection (1).
- (4) Within ninety (90) days of being issued an Individual License under subsection (1), FSMTC shall comply with the requirements set forth in Sections 34 (1) (a), (b), (c) and (d).
- (5) Within twelve (12) months of being issued an Individual License under subsection (1), FSMTC shall transition all existing service contract entered into with Consumers prior to the effective date of these rules to standardized contracts as set forth in Section 34 (1) (a).
- (6) Transition provisions for radio frequency spectrum licenses or other licenses, assignments, or authorizations other than an Operating License shall be contained in the relevant rules promulgated by the Authority.