

Spectrum Licensing Rules

Chapter I. Preliminary

Section 1. Authority

- (1) These rules are promulgated by the Authority pursuant to the powers granted by Section 333 of Title 21 of the Code of the Federates States of Micronesia.

Section 2. Title

- (1) These rules shall be cited as the “Spectrum Licensing Rules, 2019.”

Section 3. Objectives

- (1) The objectives of these rules are to:
 - (a) ensure a simplified, transparent, and non-discriminatory radio frequency spectrum management framework;
 - (b) establish an objective and streamlined approach to the licensing of radio frequency spectrum in the FSM;
 - (c) promote efficient use of the radio frequency spectrum; and
 - (d) encourage innovation in order to facilitate the rapid deployment of Communications Services to the people of the FSM.

Section 4. Applicability

- (1) These rules apply to any Person requiring a Spectrum License for the provision of Communications Services in the FSM.

Section 5. 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, 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) “Consumer” means any Person, other than another Licensee, to whom a Licensee provides a Communications Service;
- (d) “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;
- (e) “Communications Service” means a service for the transmission of communications by means of a Communications Network;
- (f) “Communications Network” means a system that uses electricity or electromagnetic energy for providing Communications Services between network termination points;
- (g) “Days” means calendar days;
- (h) “Equipment” means any appliance, apparatus, device, or accessory used or intended to be used for communications purposes;
- (i) “Frequency License” means a Spectrum License granted in accordance with Section 13(1)(a) and Schedule 1 of these rules;
- (j) “FCC” means the Federal Communications Commission of the United States of America;
- (k) “FSM” means the Federated States of Micronesia;
- (l) “FSMTC” means the Telecommunications Corporation of the Federated States of Micronesia, a public corporation established under the Code;
- (m) “Harmful Interference” means interference which endangers the functioning of a radio navigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service operating in accordance with the Code and applicable rules and regulations.
- (n) “Interference” means the effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radiocommunication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy.
- (o) “ITU” means the International Telecommunication Union;
- (p) “License” means a Spectrum License;
- (q) “Licensee” means a Person who holds a Spectrum License;
- (r) “Operating License” means either an Individual License or a Class License granted in accordance with the Operating License Rules;
- (s) “Operating License Rules” means the Communications Operating License Rules for the Federated States of Micronesia, 2019 issued by the Authority, and its amendments;
- (t) “Person” means a public authority and any association of persons, whether incorporated or not;
- (u) “Station License” means a Spectrum License granted in accordance with Section 13(1)(b) and Schedule 2 of these rules;
- (v) “Radio Apparatus” or “Station” means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a Radiocommunication service;

- (w) “Radio frequency spectrum” has the meaning established in section 302(ah) of the Code;
- (x) “Radiocommunication” has the meaning set forth in section 302(ag) of the Code.

Chapter II. Spectrum management functions of the Authority

Section 6. Spectrum management powers

- (1) In accordance with Section 332 of the Code, the Authority shall have sole responsibility in licensing the use and allocating and assigning the radio frequency spectrum for the provision of Communications Services in the FSM.
- (2) The Authority may conduct periodic reviews to assess radio frequency spectrum needs and the potential availability of additional radio frequency spectrum bands for future use.
- (3) The Authority may reallocate Radio frequency spectrum to foster the introduction of new technologies and services in a manner consistent with the Code and these rules.

Section 7. General spectrum management principles

- (1) The Authority shall ensure that:
 - (a) national spectrum allocations are harmonized, to the greatest extent possible, with both regional and the international allocations;
 - (b) radio frequency spectrum is managed in an efficient, open, non-discriminatory, competitively neutral, objective and transparent manner;
 - (c) radio frequency spectrum is made available to promote the introduction of new technologies and services.

Section 8. National Table of Frequency Allocations

- (1) The Authority shall issue and update from time to time a publicly available National Table of Frequency Allocations for the FSM.
- (2) The National Table of Frequency Allocations provide shall provide:
 - (a) the ITU allocations for each spectrum band;
 - (b) the national allocations for each spectrum band; and
 - (c) National and international footnotes; such other matters as deemed relevant by the Authority.

Section 9. Aggregation limits for Radio frequency spectrum

- (1) The Authority may set aggregation limits on the amount of Radio frequency spectrum that may be assigned or held by a Licensee, its parent corporation or other entities within its corporate group.
- (2) A determination establishing aggregation limits set pursuant to subsection (1) may:
 - (a) apply on a permanent basis until modified by the Authority from time to time;
 - (b) apply for a specific assignment process;
 - (c) be established as a specific amount of Radio frequency spectrum or percentage of available Radio spectrum frequency in the bands covered;

- (d) apply to one or more Radio spectrum frequency bands.
- (3) Aggregation limits implemented in accordance with this section shall be aimed at:
 - (a) promoting competition and innovation in the FSM market; and
 - (b) avoiding undue concentration of Radio frequency spectrum resources by a Licensee, its parent corporation or other entities within its corporate group.

Section 10. Public register

- (1) The Authority shall establish and maintain a publicly available register of all Spectrum Licenses granted under these rules.
- (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 (if any);
 - (b) the type of Spectrum License held;
 - (c) spectrum blocks or particular frequencies authorized under the License (as applicable); and
 - (d) License effective and expiration dates.
- (3) In the case of Spectrum Licenses granted to natural persons the Authority may choose to withhold publications of personal information in the register referred to in this section.

Section 11. No ownership interests

- (1) A Spectrum License does not grant the Licensee any ownership rights in the authorized Radio spectrum frequencies, and no such rights shall be created or implied by virtue of the Licensee's use of its authorized Radio spectrum frequencies.

Chapter III. Types of Spectrum Licenses

Section 12. License required

- (1) Subject to the exemptions provided in Section 14 and the provisions of Section 43, no Person shall:
 - (a) use specific Radio frequency spectrum blocks or particular frequencies; or
 - (b) install, establish or use any Radio Apparatus,
within the FSM or on board any local vessel, aircraft or vehicle operated in the FSM without first being issued a Spectrum License in accordance with the Code and these rules.

Section 13. Types of Spectrum Licenses granted under these rules

- (1) The Authority may issue two types of Spectrum Licenses for the use of the Radio frequency spectrum in accordance with the Code:
 - (a) Frequency Licenses authorizing Licensees to use specific Radio frequency spectrum blocks or particular frequencies and which shall be of the types set forth in Schedule 1; and
 - (b) Station Licenses authorizing Licensees to install, establish and use the Radio Apparatus and use Radio frequency spectrum and which shall be of the types set forth in Schedule 2.

Section 14. Use of license-exempt spectrum

- (1) A Radio Apparatus may be installed, established or used without the need for obtaining a License under these rules if the Radio Apparatus is operating in accordance with Part 15 of the FCC rules (47 CFR 15).
- (2) Notwithstanding the generality of subsection (1), Radio Apparatus may not operate under this Section in the following frequency ranges:
 - (a) 902-915 MHz and 925-928 MHz; and
 - (b) 1920-1930 MHz
- (3) The Authority may identify additional license-exempt Radio spectrum frequency bands consistent with international recommendations by determination issued after consultation in accordance with Section 321 of the Code.
- (4) The provisions of Section 32 apply to the Radio Apparatus authorized under this Section.
- (5) Radio Apparatus operating in accordance with this section shall:
 - (a) not cause Harmful Interference to Licensees; and
 - (b) accept Interference from those Licensees as well as from other License-exempt Radio Apparatus.
- (6) The Authority may adopt technical rules from time to time to address power levels, operating characteristics and limitations, out-of-band emission criteria, and other technical conditions applicable to Radio Apparatus operating in accordance with this section.

Chapter IV. Assignment of Spectrum Licenses

Section 15. Licensing procedures for assignment of Spectrum Licenses

- (1) The Authority shall assign Spectrum Licenses using one of the following methods:
 - (a) first-come, first-served;
 - (b) request for applications published by the Authority; or
 - (c) competitive tender.
- (2) The Authority shall assign:
 - (a) Station Licenses on a first-come, first served basis; and
 - (b) Frequency Licenses using any of the methods identified in subsection (1) subject to the requirements of the Code and Schedule 1 of these rules.
- (3) Notwithstanding the generality of subsection (2)(a) and the provisions of Schedule 2, the Authority may decide to publish a request for application for Station Licenses provided the requirements of Section 17(1) are met.

Section 16. First come, first-served assignments

- (1) Any Person (the applicant) may request a Spectrum License on a first-come, first-served basis by filing the prescribed application form to the Authority.

- (2) Applications filed in the accordance with subsection (1) shall be reviewed under this section provided the Spectrum License requested is not subject to assignment in accordance with Section 17.
- (3) Unless additional information is required or the application is denied, the Authority shall issue the Spectrum License within thirty (30) days upon receiving:
 - (a) an accurate and complete application form demonstrating that the applicant meets all eligibility criteria; and
 - (b) the relevant application fee set forth in the Schedule of Fees that the Authority shall issue from time to time.
- (4) If the application is not complete, or if the Authority has reason to believe that the information provided in the application is not accurate, the Authority shall provide written notice to the applicant:
 - (a) stating any deficiencies in the application; or
 - (b) requiring further information to process that application; or
 - (c) denying the application.
- (5) The applicant may then amend its application to correct any issues identified by the Authority and resubmit it within thirty (30) days and the Authority shall review the amended application in accordance with subsection (3).
- (6) The process described in subsection (3) shall only apply if the applicant:
 - (a) does not require an Operating License to offer the Communications Networks and Communications Services associated to the Spectrum License; or
 - (b) holds the applicable Operating License required to offer the Communications Networks and Communications Services associated to the Spectrum License at the time of application.
- (7) If the applicant does not comply with subsection 6(b) at the time of application, the applicant shall:
 - (a) simultaneously apply for an Individual License and a Spectrum License in accordance with Section 331(3) of the Code; or
 - (b) simultaneously apply for a Spectrum License and file a notification to provide additional Specified Communications Networks and Communications Services under Section 11 of the Operating License Rules.
- (8) The Authority shall review the simultaneous application filed pursuant to subsection (7) in accordance with Section 14 of the Operating License Rules.

Section 17. Request for applications published by the Authority

- (1) The Authority may publish from time to time a request for applications for Spectrum Licenses for such blocks or bands of the Radio frequency spectrum as the Authority determines have, or may have, high economic value.
- (2) The Authority may from time to time publish a list of blocks or bands of the Radio frequency spectrum deemed of high economic value.
- (3) The request for applications referred to in subsection (1) shall:

- (a) be published on the Authority's website and, as applicable, in such other manner as the Authority may deem appropriate;
 - (b) identify the blocks or bands of available Radio frequency spectrum for assignment and their expected use;
 - (c) set forth the applicable eligibility requirements to obtain a Spectrum License;
 - (d) establish aggregation limits in accordance with Section 9, as applicable;
 - (e) specify, where applicable, the number of Spectrum Licenses to be assigned;
 - (f) establish the timeframe to present applications which shall be at least thirty (30) days after publication;
 - (g) reference the application and annual fees attached to the Spectrum License;
 - (h) provide a draft of the Spectrum License to be assigned; and
 - (i) address such other matters as the Authority may deem appropriate.
- (4) Where the Authority determines, following a request for applications published in accordance with subsection (1), that applications received for Spectrum Licenses:
- (a) exceed available Radio frequency spectrum for assignment, the Authority shall within sixty days (60) initiate a competitive tender in accordance with Section 18 to assign the Spectrum Licenses subject to the request for application; or
 - (b) do not exceed available Radio frequency spectrum for assignment, the Authority shall process applications received and assign Spectrum Licenses in accordance with Section 16.

Section 18. Competitive tenders

- (1) The Authority shall use competitive tenders in circumstances where applications for Spectrum Licenses exceed the available Radio frequency spectrum for assignment.
- (2) The competitive tender document issued by the Authority shall establish the process for assignment of the spectrum under this Section, including:
 - (a) Identification of the blocks or bands of available Radio frequency spectrum for assignment and their expected use
 - (b) eligibility and pre-qualification requirements;
 - (c) application fees;
 - (d) selection criteria;
 - (e) obligations that may be imposed on the Licensee;
 - (f) timeframes for implementation of the process; and
 - (g) such other matters as the Authority may deem appropriate.
- (3) The Authority shall implement fair and transparent selection criteria to assign Spectrum Licenses, which may include:
 - (a) price offered in the form of spectrum fees for the assignment of the Spectrum License;
 - (b) compliance with obligations set forth in the tender document;

- (c) schedule for deployment and use of the Spectrum License;
 - (d) a combination of the criteria set forth in subsections (a), (b) and (c); or
 - (e) such other objective criteria established by the Authority in the tender document.
- (4) Spectrum License fees paid as a result of a competitive tender process shall be paid into the Universal Access Special Revolving Fund, after deduction of any costs reasonably incurred by the Authority in relation to the tender process.

Section 19. Eligibility criteria for Frequency Licenses

- (1) In addition to any specific eligibility criteria established under Section 344 (2) of the Code and in Schedule 1, the following general eligibility criteria shall be met to obtain a Frequency 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 communications market.
- (2) The Authority may adopt additional or different eligibility criteria for Spectrum Licenses in:
- (a) the request for applications published by the Authority pursuant to Section 17; or
 - (b) the competitive tender document published by the Authority pursuant to Section 18.

Section 20. Eligibility criteria for Station Licenses

- (1) In addition to any specific eligibility criteria established under Section 344 (2) of the Code and in Schedule 2, the following general eligibility criteria shall be met to obtain a Station License:
- (a) the applicant is:
 - (i) a natural person; or
 - (ii) a legal entity 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 (in case of legal entity), 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 (in case of legal entity), possesses the financial and technical capabilities to carry out and engage in the planned Communications Networks and Communications Services; and

Chapter V. General Terms and Conditions for Spectrum Licenses

Section 21. Uniform terms and conditions of Spectrum Licenses

- (1) Spectrum Licenses shall be standardized and made publicly available on the Authority's website.
- (2) The terms and conditions of the Spectrum 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) Spectrum Licenses shall be technology- and service-neutral as much as practicable in accordance with the provisions of these rules.

Section 22. Spectrum License duration

- (1) Frequency Licenses may be assigned for up to twenty (20) years, subject to the conditions set forth in Schedule 1.
- (2) Station Licenses may be assigned for up to ten (10) years, subject to the conditions set forth in Schedule 2.

Section 23. Spectrum License expiration

- (1) The Spectrum License of a Person who does not obtain a renewal in accordance with Section 24 shall be considered to have expired on the date of expiration identified in the Spectrum License.

Section 24. Spectrum License renewal

- (1) A Licensee may request a renewal of its Spectrum License by submitting a written request to the Authority.
- (2) A renewal request for a Frequency License shall be submitted no more than twenty (24) months and no less than twelve (12) months prior to the license expiration date.
- (3) A renewal request for a Station License shall be submitted no less than six (6) months prior to the license expiration date, except for Temporary Licenses for which the request shall be filed fifteen (15) days prior to the license expiration date.
- (4) 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 Spectrum License.

- (5) 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.
- (6) In the case of Temporary Licenses, the review period provided in subsection (4) shall be ten (10) days
- (7) The Authority may waive any failure to comply with the timeframes in subsection (2).
- (8) The Authority shall renew the Spectrum Licenses on the same or substantially similar terms and conditions, and for the same duration, as the initial Spectrum License unless the Authority considers any variations are objectively justified and provides such justification in a written notice to the Licensee.
- (9) The Authority shall collect a renewal fee in accordance with the Schedule of Fees.
- (10) Renewal fees for Spectrum Licenses levied in accordance with this section shall be separate from any renewal fees for an Operating License associated with such Spectrum Licenses.

Section 25. Refusal to renew a Spectrum License

- (1) Where the Authority refuses to grant a request to renew a Spectrum License, the Authority shall provide written notice to the Licensee. Such notice shall:
 - (a) state the reasons for refusal to renew the Spectrum 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 Spectrum 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 26. Transfer, assignment, or sub-license of Spectrum License

- (1) Prior to transferring, assigning, or sub-licensing a Spectrum 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 27. Spectrum License variation

- (1) The Authority may, on its own initiative or upon request by a Person, vary the terms and conditions, including specific Radio spectrum frequency blocks authorized, of a License granted under these rules.

- (2) The Authority may vary the terms and conditions of a Spectrum License if, following a consultation process under section 321 of the Code, it concludes that a variation is necessary to:
 - (a) bring the terms and conditions of the License into conformity with:
 - (i) international obligations of FSM; or
 - (ii) any applicable legislation, rules, regulations, including changes in spectrum plans;
 - (b) foster development or the introduction of new technologies;
 - (c) promote efficient use of spectrum resources; or
 - (d) conform to the terms and conditions of the associated Operating License, including any modifications thereto.
- (3) Any variation shall be based upon reasonable grounds, aimed at promoting specified policy objectives consistent with the Code, subject to principles of non-discrimination and fairness.

Section 28. Spectrum License suspension or revocation

- (1) The Authority may suspend or revoke a Spectrum License in accordance with Section 337(3) of the Code.

Section 29. Spectrum License surrender

- (1) A Licensee that intends to surrender a Frequency 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 Station 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 a Spectrum License

- (1) Within sixty (60) days of the expiration, revocation, or surrender of a Frequency License, the Licensee shall wind down activities authorized by the Frequency 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. Payment of fees

- (1) A Spectrum 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 32. Compliance with technical standards

- (1) Licensees shall comply with any technical standards applicable to Radio Apparatus that the Licensee uses, sells, leases or distributes, as determined by the Authority after consultation in accordance with Section 355 of the Code.
- (2) In any case in which the Authority does not require the use of a particular technical standard, the Licensee may deploy Radio Apparatus if that Radio Apparatus:
 - (a) complies with technical standards adopted by a recognized international standard-setting body or a relevant administration recognized by the Authority; or
 - (b) is routinely used by providers of Communications Services in other countries; or
 - (c) has been specifically approved by the Authority.

Section 33. Efficient use of the spectrum

- (1) The Licensee shall cooperate fully with the Authority in identifying whether and to what extent the assigned Radio spectrum frequencies are being used efficiently and whether the Licensee has a reasonable need for all or a portion of the assigned Frequencies.
- (2) Licensees shall promptly notify the Authority if the Licensee no longer requires the use of any or all of the assigned Radio spectrum frequencies. The Authority will then reclaim those frequencies and may reassign them to another Person or Licensee.
- (3) If the Authority determines that:
 - (a) Radio spectrum frequencies are being used inefficiently; or
 - (b) the Licensee does not have a need for all its assigned frequencies,the Authority may initiate an action to reclaim those frequencies and may reassign them to another Person.

Section 34. Prevention of Interference

- (1) Licensees shall comply with existing and future international coordination requirements and procedures, as appropriate, including the relevant International Radio Rules issued by the ITU. The Licensee shall coordinate, when necessary, with other Radio Spectrum Licensees in the FSM to avoid Harmful Interference.
- (2) In the event of a disagreement between or among Licensees regarding the prevention or causation of Harmful Interference, the affected Licensees shall be responsible for resolving such disputes expeditiously and, if such efforts are unsuccessful, one or more of the Licensees involved may request the Authority to resolve the dispute, which shall do so within sixty (60) days.
- (3) The Authority is responsible for working with its counterparts in neighboring countries to minimize Harmful Interference, where warranted, and Licensees shall cooperate with the Authority to resolve cases of cross-border Harmful Interference.
- (4) The Authority may establish synchronization and other requirements as part of the terms and conditions of a Spectrum License to avoid or minimise Harmful Interference

Section 35. Rules on Harmful Interference

- (1) The following rules apply to assess Harmful Interference:
 - (a) Licensees licensed on a “primary basis” are entitled to protection from:
 - (i) Harmful Interference caused by any other Licensee who may be authorized to use the same Radio frequency spectrum on a secondary basis or any user on a license-exempt basis; and
 - (ii) claims of Harmful Interference by any such Licensee or unlicensed user.
 - (b) Licensees licensed on a “co-primary basis” shall refrain from causing Harmful Interference to, and may not require protection from, the Radio Apparatus and services of other Licensees licensed on a co-primary basis that were previously authorized and are operating in the same frequency bands. All other Licensees on a “co-primary basis” are entitled to protection from:
 - (i) Harmful Interference caused by any other Licensee that may be authorized to use the same Radio frequency spectrum on a secondary basis or any user on a license-exempt basis, and
 - (ii) claims of Harmful Interference from holders of secondary licenses with respect to their frequencies.
 - (c) Licensees licensed on a “secondary basis” shall use specified frequencies subject to the condition that such Licensees do not cause any Harmful Interference to, or claim protection from any Harmful Interference caused by, other Licensees who have been granted the right to use the same frequency bands on a “primary basis” or “co-primary basis.”

Section 36. Proper functioning of Communications Networks and Communications Services

- (2) 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. Radio frequency emissions standards

- (1) Licensees shall take appropriate measures to limit human (worker and end user) exposure to Radio frequency (non-ionizing radiation) emissions from Radio Apparatus by installing, managing and operating the Radio Apparatus in its Communications Network based on the technical standards, limits and procedures described by the International Commission on Non-Ionizing Radiation Protection (ICNIRP), “Guidelines for Limiting Exposure to Time-Varying Electric, Magnetic, and Electromagnetic Fields (up to 300 GHz), published in Health Physics 74 (4): 494-522; 1998 (and any subsequent updates).

Section 38. Coverage obligations

- (1) The Authority may establish coverage obligations as part of the terms and conditions of a Spectrum License.
- (2) Coverage obligations established in accordance with subsection (1) may be defined on the basis of one or more of the following:

- (a) a percentage of population that shall be served;
 - (b) a geographic area, including roads, in which service must be available;
 - (c) within a specified timeframe.
- (3) The Authority shall define the technical standards in relation to signal strength, throughput or other conditions that must be met by the Licensee to verify that the coverage obligation imposed has been met.
- (4) The Authority shall impose coverage obligations on a non-discriminatory manner.

Chapter VI. Monitoring and Enforcement

Section 39. 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 40. Permission to inspect

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

Section 41. 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 VII. Transition Provisions

Section 42. Transition framework

- (1) Within thirty (30) days of the effective date of these rules, the Authority shall issue Spectrum Licenses to FSMTC.
- (2) For purposes of subsection (1), Section 19(1)(a) shall not apply to FSMTC.
- (3) FSMTC shall be subject to annual fees and other fees as determined by the Authority, but shall not be subject to an application fee for a Spectrum License granted in accordance with subsection (1).

Section 43. Terms and conditions of Licenses marked as RESERVED in the Schedules

- (1) The Authority shall define the terms and conditions for the types of Frequency Licenses and Station Licenses identified as RESERVED in Schedule 1 and Schedule 2 within 18 months of the effective date of these rules and after conducting a consultation as required under the Code.
- (2) The Authority shall commence granting the Licenses identified in subsection (1) at such time as the proposed amendments to these rules come into effect.
- (3) Current spectrum users in the License types identified in subsection (1) shall continue operating in accordance with the terms of existing authorizations until the Authority commences to exercise its licensing powers pursuant to subsection (2) and defines the applicable transition provisions.

Schedule 1 – Frequency Licenses

Section 1. Types of Frequency Licenses

(1) The Authority may assign the following Frequency Licenses:

- (a) Cellular Mobile
- (b) Fixed Links
- (c) Land Mobile
- (d) Government Use
- (e) Special Temporary Use
- (f) Other Radiocommunication Services

Section 2. Cellular Mobile Service License

- (1) The Authority may authorize Persons to transmit, receive, or transmit and receive Communications by means of Radio Apparatus for the purpose of providing Cellular Mobile Services to the public.
- (2) The Authority shall license Persons for public Cellular Mobile Services only according to the National Table of Frequency Allocations, taking into consideration the Radio spectrum frequencies identified for International Mobile Telecommunications by the ITU.
- (3) The Authority shall assign Cellular Mobile Service Licenses following a request for applications published by the Authority in accordance with Section 17.
- (4) Conditions and requirements for Cellular Mobile Service Licenses:
 - (a) Persons applying for a Cellular Mobile Services Licenses must obtain an associated Operating License.
 - (b) Licenses granted under this section include both the right to use approved frequencies and to operate the end user Radio Apparatus that uses those frequencies.
 - (c) a License granted under this Section authorizes the Licensee to deploy an unlimited number of base stations and end user terminals; no individual authorization of such Radio Apparatus is required.
 - (d) Communications Network and end user Radio Apparatus does not require approval by the Authority prior to the commencement of operations provided it is compliant with the provision of Section 32 of these Rules.
 - (e) Coverage obligations shall be imposed by the Authority in accordance with Section 38.
 - (f) The Authority shall assign Licenses under this section for use of the radio frequency spectrum block or band in the entire territory of the FSM as the preferred approach.
 - (g) Notwithstanding subsection (4)(f), Licenses under this section may be granted for use of the radio frequency spectrum block or band in one or more individual States of the FSM provided that such Licenses do not include the State of Phonpei.
 - (h) Radio Apparatus used as part of providing the authorized service shall comply with any technical standards or requirements in accordance with Section 32.

- (i) other technical conditions (e.g., power limits for Radio Apparatus and end user devices) may be specified from time to time in order to minimize interference.
 - (j) such additional conditions and requirements established by the Authority in the Cellular Mobile Service License.
- (5) Holders of a Cellular Mobile Service License shall:
- (a) only use the radio frequencies or radio frequency bands approved by the Authority;
 - (b) register tower locations and antennae structures with the Authority, but no prior approval for building such towers or antennae is required from the Authority. It is noted that permits, authorization or licenses may be required from other local agencies for tower construction;
 - (c) keep adequate records to allow any instances of interference to be resolved.
- (6) The initial term of Cellular Mobile Service Licenses shall be fifteen (15) years, with renewals allowed under Section 24.

Section 3. Fixed Service Licenses

- (1) The Authority may assign Fixed Service License under this section to authorize Persons to transmit, receive, or transmit and receive Communications by means of fixed Radio Apparatus for the purpose of providing Communications Services to itself or for sale to another Person.
- (2) The Authority shall authorize Persons to use frequencies for fixed services only according to the National Table of Frequency Allocations.
- (3) The Authority shall assign Fixed Service Licenses on a first-come, first-served basis.
- (4) Applicants may request:
 - (a) exclusive use of a channel or channels on a nationwide basis in bands determined by the Authority; and/or
 - (b) specific fixed links on a point-to-point or point-to-multipoint basis, subject to availability and the conditions in e) and f) of this Section.
- (5) Fixed Services Licenses may allow, but are not limited to, the use of frequencies for:
 - (a) fixed Radio Apparatus used for point-to-point or point-to-multipoint operation;
 - (b) portable Radio Apparatus (e.g., for electronic newsgathering or other applications where the Radio Apparatus can be moved but which operates only when in a stationary location).
- (6) Conditions and requirements for Fixed Service Licenses:
 - (a) Persons applying for a Fixed Service Licenses for the provision of Communications Services to another Person must obtain an associated Operating License.
 - (b) no associated Operating License is required for the use of Fixed Service Licenses to deploy exempt Communications Networks and Communications Services in accordance with section 12 of the Operating License Rules.
 - (c) Licenses granted under this section include both the right to use authorized frequencies and to operate the Radio Apparatus that uses those frequencies.

- (d) prior to operation, the applicant must complete an interference study to determine if its operations will interfere with prior-authorized Licensees. That study must be submitted along with the License application.
 - (e) based on the interference study referred to in subsection (6)(d), the Licensee may be required to coordinate its operations with prior-authorized Licensees.
 - (f) Radio Apparatus used as part of providing the authorized service shall comply with any technical standards in accordance with Section 32.
 - (g) Other technical conditions (e.g., power limits for Radio Apparatus and end user devices) may be specified from time to time in order to minimize interference to other services and Licensees.
- (7) Holders of a Fixed Service License shall:
- (a) only use the radio frequencies or radio frequency bands approved by the Authority in the Fixed Service License;
 - (b) register tower locations and antennae structures with the Authority, but no prior approval for building such towers or antennae is required from the Authority. It is noted that permits, authorization or licenses may be required from other local agencies for tower construction;
 - (c) keep adequate records to allow any instances of interference to be resolved.
- (8) The initial term of Fixed Service Licenses shall be fifteen (15) years, with renewals allowed under Section 24.

Section 4. Land Mobile Service License

[RESERVED]

Section 5. Government Use Licenses

[RESERVED]

Section 6. Special Temporary Licenses

- (1) The Authority may permit any Person to temporarily use any radio frequency or frequency band for the following purposes:
 - (a) testing of Radio Apparatus;
 - (b) emergency response to natural disasters and other emergency situations;
 - (c) special events; and
 - (d) other exigent circumstances as determined by the Authority.
- (2) Special Temporary Licenses may not be granted if the radio frequency or frequency band has assigned to another Spectrum Licensee in the same geographic area or if the Authority believes that Harmful Interference will be caused to an existing Licensee.
- (3) A Special Temporary License may be granted for a period not exceeding one hundred fifty (150) days, and may be extended upon request for one additional one hundred fifty (150) day period.

Section 7. Other Radiocommunication Services

- (1) The Authority may grant such other Frequency Licenses for Radiocommunication Services not addressed elsewhere in these rules.
- (2) The terms and conditions included in Licenses granted under this section shall be in accordance with the Code and these rules.
- (3) The Authority shall decide applications for licenses granted under this section in accordance with Section 16.

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Schedule 2 – Station Licenses

Section 1. Types of Frequency Licenses

(1) The Authority may assign the following Station Licenses:

- (a) Aeronautical Station License (aircraft)
- (b) Amateur License
- (c) HF-MF Fixed and mobile stations
- (d) Ship Station License
- (e) Satellite Earth Station License
- (f) Other Station Licenses

Section 2. Aeronautical Station License

[RESERVED]

Section 3. Amateur License

- (1) The Authority may authorize Persons interested in the operation of Radio Apparatus for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, by duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.
- (2) The Authority shall authorize Persons to use Amateur Licenses only according to the National Table of Frequency Allocations.
- (3) Persons desiring to obtain an amateur spectrum License are required to first demonstrate their operational and technical qualifications by passing the test to obtain a Radio Amateur Certificate, which is to be developed based on Recommendation ITU-R M.1544, "Minimum qualifications of radio amateurs".
- (4) The Authority shall accept Radio Amateur Certificates issues by other administrations.
- (5) The following conditions and requirements apply to Amateur Licenses:
 - (a) the Radio Apparatus shall be operated at locations registered with the Authority. These may include mobile operations, where the Radio Apparatus is registered:
 - (i) in or on a any vehicle or conveyance;
 - (ii) on the person of the Licensee where the Licensee is a pedestrian; or
 - (iii) on a ship.
 - (b) the Radio Apparatus shall in all cases be operated by the authorized Licensee only;
 - (c) the Radio Apparatus used as part of providing the authorized service shall comply with any technical standards or requirements identified by the Authority and with the latest ITU-R recommendations applicable to the amateur service.
 - (d) the Radio Apparatus and associated towers, antennas, etc., shall be erected and used so as not to cause interference to other Radiocommunication Services;

- (e) messages transmitted according to an Amateur License shall be in plain language and shall relate solely to the Licensee's experiments or personal affairs (not being business affairs), or to the personal affairs of the Person with whom the Licensee is communicating;
 - (f) national and international communication is permitted only between amateur stations, and is limited to matters of a personal nature, or for the purpose of self-training, intercommunication and radio technology investigation, solely with a personal aim and without monetary remuneration. The passing of brief messages of a personal nature on behalf of other Persons is also permitted, provided no fees or other consideration is requested or accepted.
 - (g) other technical conditions (e.g., power limits) may be specified from time to time in order to minimize interference to other services and Licensees.
- (6) Holders of an Amateur License shall:
- (a) only use the radio frequencies or radio frequency bands approved by the Authority;
 - (b) only communicate with other authorized amateur license holders in the FSM or appropriately licensed amateur authorization holders in other countries;
 - (c) not make use of encryption devices or equipment in the operation or use of any station, nor can the content of the communication be encoded in such a way as to obscure its meaning;
 - (d) not begin transmitting without listening in on the radio frequency to be used in order to ascertain that no interference is likely to be caused to any other station that may be transmitting;
 - (e) identify himself or herself by the transmission of the callsign assigned to him by the Authority at the beginning and end of each transmission;
 - (f) obtain the approval of all relevant authorities before erecting any mast or antenna to be used in connection with the operation of the station;
 - (g) keep a running record of all transmission periods showing the date and time of each period of transmission and the radio frequency and type of emission employed; preserve the record of each entry made for at least twelve (12) months; and make such record available for inspection by the Authority;
 - (h) not transmit news, advertisements, communications of a business or non-experimental character, or messages for monetary remuneration; and
 - (i) prepare for, and meet, communication needs in support of disaster relief in accordance with ITU Radio Regulations.
- (7) The initial term of the Amateur License will be five (5) years with renewals allowed under Section 24.
- (8) The Radio Amateur Certificate shall be issued in perpetuity; it does not need to be renewed.

Section 4. HF-MF Fixed and mobile stations

[RESERVED]

Section 5. Ship Station License (maritime service)

[RESERVED]

Section 6. Satellite Spectrum License

[RESERVED]

Section 7. Other Radiocommunication Stations

- (4) The Authority may grant such other Station Licenses for Radiocommunication Services not addressed elsewhere in these rules.
- (5) The terms and conditions included in Licenses granted under this section shall be in accordance with the Code and these rules.
- (6) The Authority shall decide applications for Licenses granted under this section in accordance with Section 16.

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