

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

Licensing: Assessment Report

HIPCAR

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



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Foreword

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

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

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

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

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

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

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



Brahima Sanou
BDT, Director

Acknowledgements

The present document represents an achievement of the regional activities carried out under the HIPCAR project “Enhancing Competiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures”, officially launched in Grenada in December 2008. It is a companion document to the Model Policy Guidelines and Legislative Texts on this HIPCAR area of work¹.

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

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

The HIPCAR Steering Committee – chaired by the Caribbean Telecommunications Union (CTU) – provided guidance and support to a team of consultants led by Ms. Sofie Maddens Toscano and including Mr. J Paul Morgan and Mr. Kwesi Prescod, who prepared the initial draft documents. The documents were then reviewed, finalized and adopted by broad consensus by the participants at the First Consultation Workshop for HIPCAR’s Working Group on ICT Policy and Legislative Framework on Telecommunications matters, held in Trinidad and Tobago on 26-29 October 2009. Based on the assessment report, Model Policy Guidelines and Legislative Texts were developed, reviewed and adopted by broad consensus by the participants at the Second Consultation Workshop held in Suriname on 12-15 April 2010.

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

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

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

¹ HIPCAR Model Policy Guidelines and Legislative Texts, including implementation methodology, are available at www.itu.int/ITU-D/projects/ITU_EC_ACP/hipcar/index.html

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Section I: Summary and Introduction

This first paper has been prepared in accordance with the Phase I Work Plan for the Working Group on Licensing under the HIPCAR project which provides for a critical assessment report of existing Telecoms Acts in the region covering the work area. This report was discussed and adopted by the HIPCAR Working Group on Licensing and Interconnection which met in Port-of-Spain, Trinidad and Tobago, from 26 to 29 of October 2009.

The aim of this first paper is to provide an overview of the key factors in relation to licensing as distilled from international best practices and to illustrate how they are reflected in the different Caribbean legal and regulatory telecommunications frameworks. Such an assessment will also provide the basis for policy guidelines and model regulatory texts provided for under Phases 2 and 3.

The *Summary Chart of Key Elements and Status* included at the start of Section II, presents a quick overview of the status in the different countries. Section II also provides a detailed overview of relevant best practices from around the world and identifies key factors and regulatory trends from around the world as well as identifying regulatory trends relating to licensing. Section II discusses an overview of the practice of licensing telecommunications networks and services, from the prevalence of state-owned monopolies, through early trends in privatization and market liberalization, to current best practices across the world, including the United States, the EU and Latin America.

Accordingly there is a discussion on the characteristics of an effective licensing regime, which includes:

- Transparency in licensing requirements and process
- Licensing frameworks which embrace technology neutrality and service convergence facilitation
- Simplification of Licensing Process
- Uniformity of license conditions
- Transparency in license administration
- Clear articulation of penalties and methods of enforcement

The overarching theme suggests that administrations should focus on establishing as much obligations and guidelines as possible in the highest legal document, which is generally the law, simplify license application procedures for market access. The overarching trend is to more open market – with examples of registration, notification and open access frameworks provided in the international best practice review. Where licenses are still required for scarce resources, there is a focus on underscoring that processes should be predictable based on transparent processes and criteria. The report further discusses the need for transparency in licensing criteria by the administrators, be they regulatory agent or government ministry, to allow investors to better evaluate the market and regulatory conditions. There is also further reiteration of the need for the licensing framework to recognize industry-wide convergence through technology and service neutrality.

As an extension of the requirement for transparency in regulatory frameworks, the report also reviews and assesses the availability of license conditions for review and the transparency of license administration practices and regulatory transitioning mechanisms.

Section III of this paper presents a snapshot of how the key issues are reflected (or not) in legal and regulatory texts from the beneficiary countries under the HIPCAR Project (Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago), thereby classifying the situation in the beneficiary countries as related to regulation on licensing in categories ranging from none (texts do not make reference at all to key issues) to fair (there is some mention of the issue but it is not detailed or not at an appropriate level, e.g. in some form of consultation document or draft regulation or even in a regulation which is not in line with primary legislation) to good (the texts reflect all elements categorized under a key issue). With regard to these criteria, the CARICOM states were found to generally be in compliance with best practice, with the notable exception of limited application of convergence in market definition, and the continued need for the application for licenses even in instances where scarce resources were not being used.

Section III also provides a comparison with target language from other countries around the world. The aim of including this target language is to illustrate how other comparable countries or regions have dealt with such key issues. Another aim is to provide the basis for future work to define Policy Guidelines and model regulation on licensing.

Section II: Trends and Key Licensing Issues

2.1 Introduction

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

Most of the key policy decisions relating to the development of the market structure ultimately determine the form of the licensing and authorisation regime chosen to implement the policy. Licensing frameworks are generally designed with a specific vision of the structure of the market in mind and to cater for specific competition and consumer protection issues. The right balance between ease of market entry, competition between different access technologies, technical efficiency and customer protection must be struck.

Historically, state-owned incumbent operators provided telecommunication services on a monopoly basis in most markets around the world. Telecommunications operators were treated as part of public administration along with postal services and as such licenses were not considered as necessary. In short, government controlled all resources. This model worked particularly well for many years in the more developed economies, where long-distance and international tariffs, which had stayed high despite technological changes decreasing their cost significantly as opposed to the initial phases of their exploitation, basically subsidized local and regional and even the establishment of rural telephony. Indeed, in the more developed economies, this model enabled the development of the networks and of teledensity and the sectorial industrial development. Financial sources for sector development and for the provision of universal service, in particular, were obtained from the government budget which supported this well.

In the less developed countries, the scenario of cross-subsidization worked less well. Financial resources were obtained in some cases from multilateral lending or donor agencies as well as from government or other government-sponsored sources, but this was not sufficient to develop the sector, provide communications to the people, lower certain tariffs, increase the range of services available to the consumers or even to expand businesses. As a consequence, private investment substituted public funds for investment in telecommunications services, thereby allowing the government to use their funds for the development of other sectors.

Since the 1980s, however, the trend has been to move away from state ownership towards more reliance on private markets to supply telecommunications services. Within that context, one of the main challenges facing regulators has been the transition from monopoly and dominance to new entry and effective competition. Whereas prior to liberalisation, the regulation of telecommunications was aimed at regulating the activities of the incumbent monopolist or dominant network operator thus curtailing the possibility for the incumbent to abuse its market power, and at facilitating the development of and access to a national information infrastructure, the introduction of new and advanced technologies coupled with the liberalization of markets and the introduction of competition has created new requirements for entering and operating in the information and communication market. Regulatory change is also being driven by technological change, market innovation, and also by the needs of businesses to have access to sophisticated and seamless telecommunication services on a global and end-to-end basis. In the long term as markets liberalize, any service provider should be able to offer any communications service to anyone, anywhere, using any type of technology.

In addition to the introduction of liberalisation, convergence of technologies and services, including advanced services, provides many advantages to those economies in which it is fully implemented: (i) it promotes the expansion of competition, allowing the introduction of inter-modal competition, in which networks and technologies compete with each other with no technological or regulatory restrictions; (ii) it fosters the development of more and more efficient technologies and services; (iii) it reduces the costs of telecommunications services; and (iv) it increases the appearance of a tailored offering to satisfy the specific needs of end users.

Though there is no universal definition of convergence, it has been defined as “the ability of different networks to carry similar services,” and also as “the ability of one network to carry different services.” Good examples of convergence are the provision of Internet access and television to mobile handsets and the “triple play”² services offered by cable television networks and ISPs. Convergence is accelerating as existing networks are improved to offer new services (e.g., the upgrade of mobile networks to provide 3G/IMT-2000 and mobile television services, the enhancement of switched telephone networks to offer Digital Subscriber Line (DSL) data services, or the adaptation of cable networks to allow interactive services). Figure 1 illustrates several different combinations of technology, infrastructure and service.

Figure 1 - Examples of Technologies and Services that Enable Convergence

Multiple service provision under different network infrastructures			
Infrastructure	Voice	Data	Video
Copper line	PSTN	DSL, FTTp	VOD, IPTV
Cable (coaxial, fibre optic)	Some (analogue, VoIP)	Cable modem	Analogue, DTV
Mobile	Analogue, 2G, IMT-2000	2.5 G, IMT-2000	DVB-H, others
Fixed Wireless	Some (VoIP)	Proprietary, IMT-2000, WiMax, LMDS, MMDS	DVB
Power lines	VoIP	BPL	VOD, DVB, IPTV
DSL=Digital Subscriber Line, FTTp=Fibre to the premise, VOD=Video on Demand, IPTV=Internet Protocol TV, DVB=Digital Video Broadcasting, 2G=Second generation mobile service, IMT-2000=International Mobile Telecommunications-2000 mobile service, BPL=Broadband over Power Line, LMDS=Local Multipoint Distribution System, MMDS=Multichannel Multipoint Distribution System.			

Source: Telecommunications Management Group, Inc. 2006

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

This too, shall be the situation in the Caribbean, where a major consideration in the definition of a licensing regime going forward are the tenets included in, and the policy considerations associated with, the provisions of the CARIFORUM/ EU Economic Partnership Agreement (EPA). These provisions shall

² Triple play is the bundled offer of voice, data and video or television services. Cable operators, traditionally restricted to offering broadcasting services, are expanding their offerings to include bundles with voice and data services. Similarly, ISPs are no longer restricted to providing Internet access, and their offerings now include bundling their traditional data services with IPTV and VoIP.

have significant impact on the licensing mechanism when one considers either specific licensing or class licensing frameworks of authorization – both of which are evident in the approaches used across the Caribbean. Article 96 of the recently signed EPA³ states, inter alia:

ARTICLE 96

Authorisation to provide telecommunications services

1. *Provision of services shall, as much as possible, be authorised following mere notification.*
2. *A licence can be required to address issues of attributions of numbers and frequencies. The terms and conditions for such licences shall be made publicly available*
3. *Where a licence is required:*
 - (a) *all the licensing criteria and a reasonable period of time normally required to reach a decision concerning an application for a licence shall be made publicly available;*
 - (b) *the reasons for the denial of a licence shall be made known in writing to the applicant upon request;*
 - (c) *the applicant of a licence shall be able to seek recourse before an appeal body in case a licence is unduly denied;*
 - (d) *licence fees required by the EC Party or by the Signatory CARIFORUM States for granting a licence shall not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licences.*

2.2 Transparent Licensing Criteria

KEY QUESTIONS RELATING TO TRANSPARENCY OF LICENSING

- Are all licensing criteria and the terms and conditions of licenses published and publicly available, for example on the regulators website? Are all parties aware of the obligations and rights of other parties?
- Are all applicants subject to the same procedures, unless there is an objective reason for differentiation? Are the reasons for differentiation defined?
- Does the law provide that any entity that fulfills the conditions adopted and published by the regulatory authority is entitled to receive a license?
- Is it clear which activities fall into each category of license? Who determines the categories of licenses?
- Does the regulatory framework establish the mechanisms to be used in case of limitation in number of licenses, – beauty contests, auctions?
- Should operators be permitted to obtain exemptions to use spectrum in bands which have licenses on an unlicensed basis?

³ The EPA can be found here: www.tradeind.gov.tt/Agreements/EPA/EPA%20Agreement.pdf. Article 96 can be found on page 126 therein.

It is important to note that licenses provide countries with a useful tool to ensure regulatory certainty for investors and to help a country keep up to date with technology developments and demands. License requirements and their associated costs vary worldwide, but a significant trend has emerged with countries around the world adopting state-of-the-art policy approaches. ***This trend is gearing towards a more simplistic, publicly available regime that is attractive and accessible for operators and foreign companies.***

Regulators and policy-makers cannot forget that they are each stakeholders amongst stakeholders and that transparent and fair practices are critical to the success of any licensing regime. All stakeholders involved benefit in multiple ways from a transparent and efficient licensing process. Regulators use transparency to safeguard their legitimacy and efficiency. Regulators also obtain information from the regulated industry and other interested parties that they need in order to base their decisions on all relevant facts and diverse views. Operators, service suppliers, consumers and other stakeholders depend on transparency to ensure that their concerns are heard and that they play a role in shaping important decisions.

This was confirmed in *“Feedback to Regulators from the Private Sector”*, a study presented to the ITU Global Symposium for Regulators held in Hong Kong in December 2002, which stated categorically that companies look at the big picture of the regulatory environment, not just specific regulations. Transparency and responsiveness matter. Companies varied in their methods for assessing markets, with some looking first to the overall environment and others to more specific regulations. Despite varied responses on the ways in which the markets are analyzed, all companies in the survey said that *“transparency of regulatory processes and responsiveness of regulators are extremely important factors in their willingness to enter and stay in markets”*.

In accordance with the WTO:

Licensing Criteria must be publicly available, meaning:

1. All the licensing criteria and the period of time normally required to reach a decision concerning and application for a license, and
2. The terms and conditions of individual licenses

The reasons for the denial of a license must be made known to the applicant upon request.

Where applicable, NRAs must be careful to stay within the limits of their WTO commitment, which prohibits the use of economic needs test as a barrier to entry.

The awarding of the second GSM license in Morocco⁴ represented an enormous success in terms of the regulator-ANRT-'s credibility and legitimacy. Moreover, part of the money taken in is being used by the government to pursue its strategy of universal Internet access. All the people from the private sector that were interviewed as part of the ITU's case study acknowledged and praised the work done by ANRT in preparation for this sale, and said that they would be willing to consider taking part in future competitions for licenses if they were conducted according to procedures that were as clear and transparent as the last one (which earned Morocco more than US\$1 billion). ANRT became more active, more confident and surer of the role that it can play in the developing the telecommunication sector, and more broadly the country as a whole. This can be interpreted as a sign of the Agency's independence and determination to pursue the government's objectives according to its own best judgment.

ICASA in South Africa, on the other hand, came under fire from numerous parties for their apparent lack of independence and transparency in the SNO License Award. Investors claimed to be uncertain about the risks of political interference jeopardizing their business opportunities, and about the monopoly power of the incumbent operator (Telkom), with whom a SNO requires interconnection in order to reach most of

⁴ See ITU Effective Regulation Case Study – Morocco 2001 at : www.itu.int/itudoc/itu-d/publicat/ma_ca_st.html

its customers. A November 2001 survey of local business leaders by Ernst & Young and BMI Techknowledge found that *"the main theme, repeated time and time again..."* as to what *"the biggest inhibitors or challenges to growing a [telecommunications] business in South Africa...was the regulatory environment."*

For transparency to have its full effect there must be systems and processes in place to allow regulators to gain valuable information, consult all stakeholders, render their decisions, and justify them based on the public interest and the facts provided to them, with evidence of transparency and unbiased decision-making. This is particularly important when determining and implementing issues relating to licensing.

2.3 The Introduction of a Licensing Framework which can Accommodate Convergence

KEY QUESTIONS RELATING TO A CONVERGENCE-READY LICENSING FRAMEWORK

- Is the licensing framework based on a general authorization regime or are there specific categories of licensing for facilities and services? What are the categories of licensing (e.g., individual, class, declaration, registration, open entry)?
- What are the reasons given for individual licensing (e.g., public order, use of scarce resources)?
- Are licenses service-specific or has there been a move to a system of unified licensing in which large categories of facilities and/or services fall within each category?
- For a framework based on individual and class licenses, are the licenses hierarchical whereby an individual license replaces a class license and allows the individual license holder to offer all types of facilities and services in both license categories?
- Does the law provide for exceptions for certain activities?
- Are licenses or authorizations technology-neutral?
- Do any of the licenses provide for exclusivity? If so, what are the conditions and timing?
- Do any quantitative restrictions exist on the number of licenses?

The introduction of new and advanced technologies coupled with the liberalization of markets and the introduction of competition has created new requirements for the regulation of the information and communication markets. Where telecommunications regulation was traditionally aimed at limiting market entry and at regulating the activities of the incumbent monopolist, more emphasis is now being placed on effective ways to facilitate the development of and access to a national information infrastructure. Licensing is an important part of this process. Licensing has two essential attributes – it effectively determines the structure of the market by determining the services to be licensed and the number of market players; it also sets the basic terms and conditions under which services are offered to the public.

The introduction of a competitive, convergent and technology neutral licensing framework is a necessary element to promote competition in markets and to allow a wide variety of services to be offered. It is important to note that any modification must be managed to minimize inconsistencies between new and existing rules. Also, licensing reforms will only be completely effective in addressing the challenge of convergence if the guiding principles of technology neutrality and flexibility are applied to the rights and obligations of the telecommunications operators as well as to the other essential elements of the regulatory framework.

There are several ways that the different activities can be classified – examples of how countries generally classified the licensing of the different types of activities have included:

- Licensing based on **type of service** provided (fixed; international; national long distance; local; mobile (PCS and mobile cellular where countries differentiate, such as in Latin America); data; VSAT; value added services, VoIP, ISP; various satellite services, undersea cables, etc. – this is an approach which was adopted by many countries, including, for example, many Caribbean countries, in the early phases of liberalization. – within this scheme many countries provide that there are two types of licenses: individual and class. An Individual License shall be specific to an individual operator and shall cover the basic Public Switched Telephone Network (PSTN) services, mobile and wireless services, and any service that requires frequency spectrum. A Class License shall be issued where Individual Licenses are not justified but there may still be a need to place certain conditions on the provision of the service – for example for services such as data transmission, resale, internet, value-added services and private networks.
- Licensing based on **facilities-based and services-based competition** (Singapore model) - The Info-communications Development Authority of Singapore (IDA), for example, adopted a two-pronged licensing approach that differentiates between licensees based on the nature of their operations, i.e., whether facilities-based or services-based type of operations. Facilities-based operations refer to the deployment of any form of telecommunications networks, systems and facilities by any persons, outside of their own property boundaries, to offer telecommunications services to third parties, which may include other licensed telecommunications operators, business customers or the general public. Operators intending to lease telecommunications network elements (such as transmission capacity and switching services) from any Facilities Based Operator (FBO) licensed by the IDA so as to provide their own telecommunications services, or to resell the telecommunications services of FBOs to third parties, may apply to IDA for an Service Based Operator (SBO) license. Operators who have deployed telecommunications networks, systems and facilities within their own property boundaries, but wish to offer telecommunication services to third parties resident within their property boundaries, should also apply for an SBO license.
- Licensing based on the **ownership** of infrastructure - In Australia, for example, there is an open licensing regime for telecommunications with no distinction being drawn on the basis of the technology used and services offered. A carrier license allows the owner(s) of a network to supply carriage services to the public subject to obligations set out in its license, the Telecommunications Act 1997, and any additional conditions imposed by the Minister. Carriers are individually licensed and pay application and ongoing license fees that recover the costs of regulating the industry. Carriage service providers provide telecommunication services to the end users. There is an obligation to take a carrier license if one owns a network unit.
- Licenses that **don't identify technology or service to be provided** - Uganda's 3rd operator license, for example, allows the operator to select either mobile or fixed line services to meet service obligations.

Apart from the categories listed above, there are also more ways to authorize particular types of services or service-provision – these include:

- **Geographically-based licenses** (India's circle regime; Brazil's regions, etc.). Some countries, typically large one such as Brazil, India and the United States, divided their telecommunication markets into specific regions for the purposes of licensing. However, recently, perhaps as a result of convergence, many countries have moved away from regional licenses and are taking a more national approach. TRASA⁵ is also looking into a regional license to speed up market entry across the region.
- **Licenses for rural or universal access providers:** South Africa has such licenses according to the Balancing Act Issue 198 of 7 March 2004; Digitel, one of the mobile operators in Venezuela also has a Rural Telephone Service license

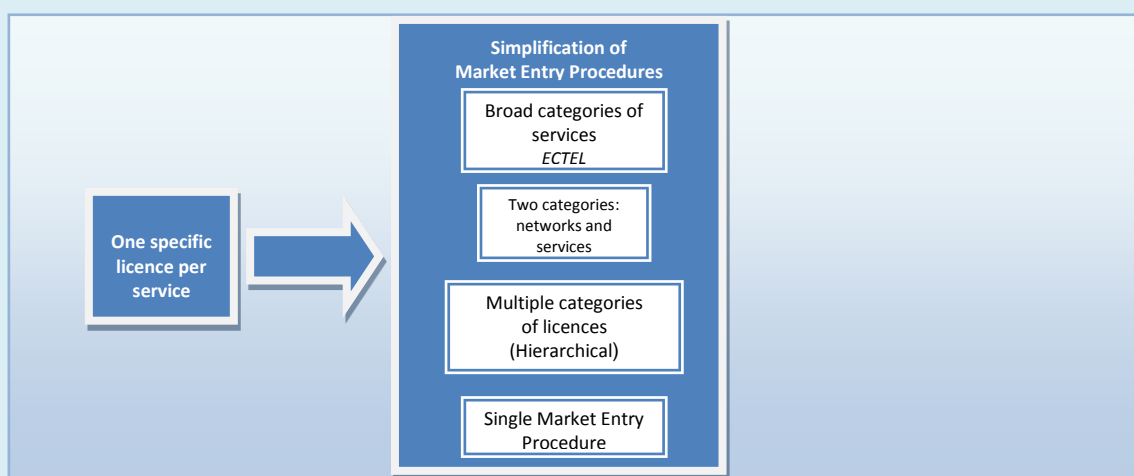
⁵ For further information see: www.trasa.org.bw

- **Spectrum-based licenses** (GSM, PCS, 3G, etc).

Recent trends show that many countries have modified their licensing regimes, which typically involves changing from a technology or service specific structure to a technology neutral, simplified set of licensing categories, and in some cases, a unified (single/global) licence and/or multi-service authorizations⁶ for all technologies and services.

Figure 1 illustrates the range of licence categories, from more complex (one licence per service) to the single market entry procedure (one licence or market entry procedure for the provision of any service).

Figure 1 - Simplification of Market Entry Intervention



Source: Telecommunications Management Group

An example of simplifying licensing categories into broad categories of services is Malaysia, where the adoption of a new licensing framework simplified the existing 31 service-based licences into four broad technology-neutral licensing categories: Network Facilities Provider (NFP); Network Services Provider (NSP); Application Services Provider (ASP); and Content Application Service Provider (CSP; a special subset of application services that includes television and radio broadcast services and Internet content services). The service providers that fall under any of these categories may request an individual licence or a class authorization depending on the degree of control for each service that is deemed necessary.⁷

ECTEL too is an example of simplified licensing. The license classes that have been developed by the Eastern Caribbean Telecommunications Authority (ECTEL)⁸ are technology neutral. The determining factor

⁶ Multiservice authorizations are defined as those authorizations which allow service providers to offer multiple services under the umbrella of a single authorization, using any type of communications infrastructure and technology capable of delivering the services in question. Like unified licenses, multi-service authorizations are technology neutral. However, multi-service authorizations are more limited than unified authorizations; licensees are permitted to provide any of a designated set of services, but not any and all services. Multi-service authorizations are sometimes issued as general authorizations and, in other cases, are issued as individual licences. It is not uncommon for a country to have both general authorization regimes and individual licence regimes for their multi-service authorizations. Individual multi-service authorizations are often issued using a non-competitive individual licensing process. – from Infodev toolkit, available at: www.ictregulationtoolkit.org/en/Section.3317.html

⁷ Malaysia Communications and Multimedia Act 1998, Act 588. www.mcmc.gov.my/mcmc/the_law/ViewAct.asp?cc=4446055&lg=e&arid=900722.

⁸ For more information see: www.ectel.info

for license classification is the service that will be provided. For example, a VSAT⁹ license does not exist. In that case, the license that would be issued would be dependent on whether a private network or a public network is being proposed. VSAT could be the technology employed to provide the service.

Within this context, four (4) license categories have been developed within ECTEL:

Individual License	The services that fall under this license are generally infrastructure-oriented. Those services often provide the network foundation upon which other services (such as Value-Added Services) can be supported.
Class License	
Type A	The services that fall under Type A Class License are those for which applicants seek to be providers of telecommunications services, such as Internet Service Provision and International Simple Voice Resale.
Type B	The services that fall under Type B Class License are those for which applicants would be users of telecommunications services. They include Amateur Radio, Land Mobile Radio, Maritime Mobile Radio and Aeronautical Mobile Radio Services.
Type C	The services that fall under Type C Class License are those that can be construed as other support services and controls for the sector. They include Type Approval, Terminal Equipment Dealer's Certification and Customer Premises Wiring.
Frequency Authorization License	This is an ancillary license, which would be required in addition to the Individual or Class License for wireless applications or services that require use of the spectrum. In some cases, specifically for services under Class License Type C, the requirements for an Application for Frequency Authorization are satisfied within the respective license application forms.
Special License	This is a special license to be issued under the discretion of the Minister and only for emergency or exigent circumstances. These licenses are not to exceed ten (10) days.

Source: www.ectel.int/

Singapore's method is another example of licence simplification. There are only two categories of licences for the provision of telecommunications services: (1) Facilities-Based Operator (FBO) licences and (2) Services-Based Operator (SBO) permits. The FBO licence is always an individual licence, whereas the SBO may be an individual licence or, for some services, a class licence.¹⁰

Some countries are adopting models of simplification based on multiple categories of licensing, where a so-called "unified licence" covers most or all services, and other licences follow a hierarchy system, whereby each licence allows for the provision of progressively narrower categories of services. This is the

⁹ VSAT – Very Small Aperture Terminal

¹⁰ Infocomm Development Authority of Singapore (IDA).

www.ida.gov.sg/idaweb/pnr/infopage.jsp?infopagecategory=licensing:pnr&versionid=14&infopageid=I3616. These two licenses are hierarchical in that FBO license allows for the provision of all services included in the SBO license, provided they have been notified to the regulator.

case in the well-known 2004 proposal of TRAI in India,¹¹ as well as the recently adopted “unified licence” in Peru.¹² These countries combine the administrative procedure of a licence for the “unified licence” category with less burdensome requirements, such as class licences (in the case of India) or registrations, for the other categories. The system is simpler in Peru than in India: there is a “unified licence,” which allows for the provision of any telecommunications service, and a registration for the provision of value-added services.

Tanzania and Uganda are good examples as well.

In addition to the aforementioned simplification processes in relation to market entry, some countries allow specific services to have an open entry into the market in order to promote and foster advanced services, especially those related to the Internet. A notable example is the United States, where Internet access, VoIP and other IP services, fall under the category of “information services,” and do not require any licence to operate in the market.¹³

There are issues with VOIP providers which should in principle be subject to the same regulatory requirements, or alternative but equivalent requirements where necessary, in order to maintain a fair competitive landscape and one which generates most long term benefits for consumers. For example VOIP only providers should enable their customers to call the emergency services and put in place a system that enables the location of the caller to be identified.

In a fully competitive market, competition will generally discipline the market, with consumers, for example, switching between operators if these operators fail to provide adequate service. The aim of any differentiation in qualifications for different categories of licensable telecommunications activities should be to ensure that there are no unnecessary regulatory barriers to market entry or on the choices operators may make concerning available technologies, except where the latter is justifiable for reasons of scarcity or within the limits of normal safeguards, security and technical limitation considerations. Within this context, the objective of licensing procedures should not become a subjective evaluation of applications, but rather a way to verify that applicants in an open market demonstrate that they are able to comply with legal obligations.

2.4 Scarce Resources Licensing

KEY QUESTIONS RELATING TO SCARCE RESOURCE LICENSING

- Is there a separate frequency licensing requirement?
- Are frequency licenses issued concurrently by the same regulatory entity?
- Are frequency licenses renewable and for the same period as the service license/authorization?
- Can spectrum licenses be transferred by the licensee without pre-approval of the regulator? If not, is the process fair and transparent?
- Are mechanisms for awarding spectrum licenses (beauty contest, first-come first-served and auction) transparent and timely?
- Has technology neutrality been incorporated?
- Is there provision for flexibility in spectrum management (e.g. in-band migration, spectrum trading, etc.)?
- Is the right of the regulator to withdraw spectrum for inefficient use limited?
- Does the mandate of the regulator require that they ensure efficient use of the scarce resource?

¹¹ Telecom Regulatory Authority of India. Recommendations on Unified Licensing. www.trai.gov.in/trai/upload/recommendations/13/recom13jan05.pdf

¹² Congreso de la República del Perú. Ley que establece la concesión única para la prestación de los servicios públicos de telecomunicaciones.

¹³ 47 U.S.C. § 230 (b).

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As with licensing regimes, new advanced technologies and converged services that use spectrum are demanding more flexibility and service/technology neutral frameworks. Without the introduction of these essential principles, fully converged services and new advanced applications, such as mobile television or IMT-2000 data services, cannot fully realize their advantages, such as a more efficient use of spectrum, reduction of prices and a variety of new applications for business and consumers.

Spectrum management is currently undergoing a transition, or more accurately a paradigm shift. Perhaps as recently as 15 years ago, it was considered best for spectrum to be managed in a rigid, top-down style. It is now generally accepted that a more flexible approach to regulating and managing the spectrum offers the best opportunities for all users. The trend now is for regulators to modify the traditional allocation and licensing process to permit more flexible allocations by minimising constraints on services that licensees may offer and technologies they employ. The focus of the more flexible approach to allocating and assigning spectrum is on efficiency, equity, in-band migration, and technical neutrality.

Policy makers and regulators are beginning to introduce changes within spectrum regulations in several ways to address the challenges of convergence. First, regulators are granting the right to use spectrum without regard to the type of technology being used (i.e., technology-neutral approach). The premise of a technology-neutral approach is that any service may be provided through any kind of technology in any frequency band, and the use of spectrum can be altered at any time. However, this is limited by certain issues such as the need to manage interference; the need to achieve economies of scale in order to make technologies more cost-efficient; and the restrictions imposed by international coordination of frequencies. A second response to convergence has been the introduction of spectrum trading and in-band migration.

Spectrum trading refers to the ability of licensees to sell or trade their spectrum rights. Licensees are permitted to partition the spectrum they have access to and transfer a portion of their license along geopolitical or other boundaries to other entities. Licensees can also disaggregate the spectrum they are licensed to operate within by transferring discrete portions or “blocks” of their spectrum to other entities. And, in some instances, they are allowed to buy the licenses from earlier licensees without having to involve the regulator until the point in time when the buyout has been completed.

In-band migration refers to the policy of allowing operators to use existing licensed spectrum to provide new services. Jurisdictions in the Americas and Asia have used this policy with the introduction of IMT-2000 systems, allowing existing mobile operators to provide third generation (3G) networks in their assigned frequencies. This has been effective in reducing the implementation costs of these systems, as it allowed operators to use their existing spectrum without incurring the cost of new licenses.

Because operators make significant investments in their spectrum-dependent operations, they must have the assurance that the spectrum licenses will be issued in a timely, transparent, and fair manner. Licenses must be renewable and for a length of time that gives operators the ability to recover investments to the best degree possible. Timeliness is a key factor in the issuance of spectrum licenses as undue delays can have serious effects on operations. Operators must also be assured that spectrum will not be taken away for arbitrary reasons and without due compensation.

2.5 Simplified License Application Procedures

KEY QUESTIONS RELATING TO LICENSE APPLICATION (MARKET ENTRY) PROCEDURES

- Does the framework keep license conditions and filing requirements to a minimum?
- Are license application procedures for activities falling under the class license regime kept to a minimum? Are they different from applications for individual licenses in terms of the amount of detail applicants must provide?
- Can applicants apply for large categories of facilities and/or services in the same application, which may involve a “check the box” style of notification/application or allow the applicant to list the types of facilities and/or services it plans to offer?
- What are the procedures in case of expansion of activities at a later stage – is there a simple information requirement (e.g., Singapore)?
- Where there is a system of individual and class licensing rather than a general authorization regime, are the filing requirements for the class license treated as if it is a general authorization?
- Are activities, such as value-added services or Internet cafes, which fall under an open entry regime still subject to declaration or registration in which they must wait for approval to begin activities? Or may they begin offering such services prior to approval? Does administrative silence constitute approval?
- What are the time limits for acting upon license requests?
- Is the reason to refuse to issue a license reasoned and transparent and is it communicated formally to the applicant – is this automatic or upon request?
- Are the terms of a license fixed at the time the license is officially delivered?

As the simpler regimes have demonstrated, there is no objective justification for splitting up authorizations in ever so many service categories and this approach should therefore be abandoned. While some countries have shown that light regimes are feasible, workable and successful, other countries have developed rather heavy handed procedures which often are based upon the perceived need to control who enters into the market. This is not in line with the policy objective of stimulating the development of a competitive and dynamic market in communications services nor does it take account of convergence between services, networks and technologies.

Indeed, it must be remembered, that the decision to adopt an individual licensing mechanism for more than just those activities which use scarce resources effectively establishes a nation's regulatory authority as the country's "gatekeeper" to the market. If the regulator adopts more restrictive requirements for certain types of networks and/or services that, in addition are unduly burdensome or opaque, these procedures may slow or prevent the entrance of, for example, ISPs into a nation's market. The licensing process thus can become a means for regulators to restrict, intentionally or not, the market access of certain types of networks and/or services, which will keep costs high and limit the overall growth of the country's communications and information services. To avoid such results, countries have started adopting different combinations of the simplified methods discussed below.

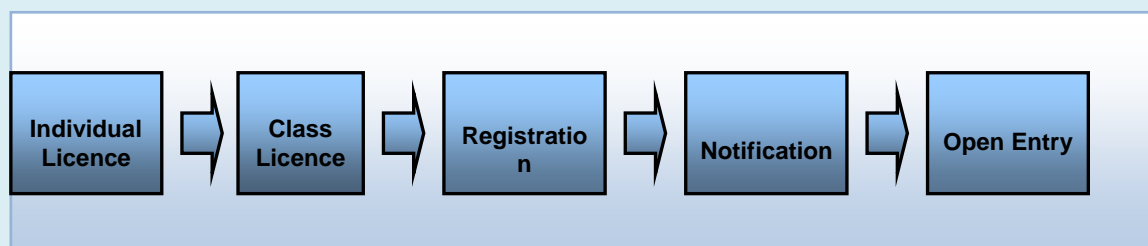
Within this context, some countries have streamlined their licensing regimes by establishing a single market entry requirement for all telecommunications services. These countries have established different administrative procedures, from requiring a licence, such as in Argentina,¹⁴ to a notification regime, such as in the European Union.¹⁵ In general, the licensing regime with the fewest administrative requirements will be the most effective in addressing convergence and successfully fostering new advanced services. More details are included in Annexes 1 and 2.

¹⁴ Decree PEN 764/2000, B.O. 29476 (05/09/2000) dated 3 September 2000.

¹⁵ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorization of electronic communications networks and services (Authorization Directive). However individual rights of use may be required for scarce resources.

Figure 2 shows the variety of administrative methods used by regulators: individual licences (more complex, since each licence request is considered individually), class licences (an approval process for a broad category of service), and open entry (no licence is required for the service). In between class licences and open entry, regulators offer two procedures that depending on their specific requirements may fall in one of two classifications: registration (requiring the operator to formally register with the regulator before operation of the service begins), and notification (requiring the operator only to notify the regulator of the service; no regulatory approval is necessary). It is important to note that regardless of which method is chosen, the regulator must ensure full transparency of the process, in order to ensure an efficient market.

Figure 2 - Simplification of Administrative Requirements



Source: Telecommunications Management Group

Regarding application procedures for licenses and authorizations, there are a number of questions which must be addressed, namely:

1. type of information and documentation to be submitted and distinction between categories.
2. where, and how to obtain application form.
3. timeframe for submission and decision.
4. time limits for requests for information/clarification from the Telecommunication Authority (normally the NRA).

With reference to the different categories of authorization of telecommunications activities (individual license, class license or simple declaration), and the level of administrative requirements for each of these categories, NRA generally request different levels of information for each category of applicant. The following paragraphs show examples of the types of information that could be requested for each category of application.

In the case of Individual Licenses, for example, where more assurance is needed regarding the financial and operational capability of such operators, the type of information that may be required includes:

- legal information, including a description of the applicant (for example: name, legal form and contact details of the applicant as well as proof of corporate registration, etc.), articles of incorporation and bylaws.
- financial information, including audited financial statements, and a list and description of existing licenses in which the applicant has, for example, at least 10% ownership as well as confirmation that an operators' existing licenses are in good standing.
- economic information, including financing resources and proof of the applicant's telecommunications operating expertise.

- technical information, including coverage plans and indicators, planning and development of the system including interconnection, numbering and addressing plans and issues, and proposed quality of service levels.

This is generally justifiable on the grounds that these telecommunications networks will require access to or pass through public possessions, and/or locations of public use and/or third parties properties, may require scarce resources (i.e.; frequencies, numbering), or where such networks are seen to contribute to the realization of public policy goals.

This does not necessarily mean that market access is restricted; but is mainly aimed at giving licensees the opportunity to describe how they intend to establish their operations in the time and manner required and meet any obligations imposed on the applicant for individual licenses in an appropriate and timely manner.

In the case of class licenses, where the main concerns are consumer protection and competition, the type of information that may be required includes:

- legal and financial information, including a description of the applicant, the legal form of the company, proof of corporate registration by the competent commercial jurisdiction (e.g. commercial registry, articles of incorporation and bylaws), a model of service contract/declaration of compliance with model service contract to be drafted and published by the regulator as well as annual reports and a description of financial backing.
- technical information, including a list and proof of type approval of own equipment to be used to provide the service, a description of the proposed service's dependencies on the network infrastructure of other operators.

for non-facilities-based resellers, there may need to be a description of the services and/or traffic (i.e. minutes) to be resold, as well as a description of the ways it will be sold, (distribution channels) and geographic area where the services will be resold in order to ensure consumer protection. Pre-paid calling card resellers may be required to post a bond –guarantee to minimize fraudulent provision of pre-paid cards by card providers.

2.6 License Conditions

KEY QUESTIONS RELATING TO LICENSE CONDITIONS

- Is the detail of the legal and regulatory texts copied verbatim in the licenses or do the licenses refer to the relevant legal provisions without copying text of regulations?
- Are licence conditions justified, proportionate, non-discriminatory, cost efficient and transparent?
- Are there objectives to minimize all costs imposed on licensees?
- Does the legal framework reflect a gradation of rights and obligations according to specific situation (e.g., obligations just applicable for dominant operators/operators with SMP, specific obligations linked to use of numbers or spectrum)?
- Is there provision in the licenses to allow an operator to apply to the regulator for forbearance from regulation?
- Over time a build-up of dated regulation has the potential to hinder sector development. Are the licensing objectives to minimize the regulatory burden imposed on licensees?
- It should be possible and indeed a duty on the regulator for licence conditions to be reviewed periodically and if necessary removed or modified. Are there periodic reviews of regulation either initiated by the regulator or on application by licensees?

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In the old regime, the regulatory approach was to regulate the delivery of telecommunications services through concessions (usually very detailed long-term contracts) or detailed regulation. As a result, licenses were very service and sector specific and restrictive. With the move towards using general authorizations, it means that licenses are no longer specifically tailored, and licensees are regulated through general regulations issued by the regulator. International examples show that many countries have indeed moved away from detailed licenses and towards a regime using generally applicable rules that apply to all market participants and a licensing structure that merely grants the licensee an authorization to provide service and obligates the licensee to abide by the rules issued by the regulator.

Although the simplification of the licensing regime is essential in eliminating barriers to entry for advanced services, and convergence among networks and services, it is only a part of the modifications that telecommunications regulatory frameworks required to be fully adapted to the challenges posed by convergence. A successful modification of a regulatory regime should include the essential elements of the regulatory framework. It must be remembered licenses comprise only one element of the regulatory framework. Any changes to regulatory frameworks should include the key principles of flexibility for new technologies, service and technology neutrality, and a level playing field among services and technologies within the same licence category. These modifications on essential elements of regulatory frameworks focus on rights and obligations such as interconnection, numbering, universal service, and consumer protection.

Rules that govern operators are included in telecommunications laws, sector policies, regulations, decrees, orders, decisions, guidelines, directions and other such determinations. Instead of regulating through company-specific concessions or licenses, regulatory authorities adopt broad-ranging regulations and *ex ante* rules that apply to the entire industry or to certain similarly situated groups of operators.

Such rules generally include all the relevant terms and conditions formerly included in licenses and which are equally applicable to all relevant licensees. Future terms and conditions included in such rules are then determined and amended, if necessary, through regulation according to a predictable, transparent process, thus creating more transparency, fairness and openness.

There should be a *general set of terms and conditions* that are applicable to all – irrelevant of where they are – be it in the license or as general rules applicable to the operation of a network or the provision of a service. Then there are terms and conditions applicable to certain service providers and terms and conditions linked to the use of scarce resources.

The first issue here is the *gradation of the rights and obligations* according to the category of license being awarded. Class licensees are subject to a more general set of rights and obligations, while individual licensees are, in addition to general rights and obligations, subject to specific rights and obligations linked to their use of scarce resources and the need to ensure that those scarce resources are put to proper use.

The second issue is to determine the *appropriate legal instrument*, under the Law, in which to include all of the rights and obligations of licensees. In the interest of fairness, equal treatment and transparency, international examples show that changes in the market and in technologies are usually more manageable using generally applicable licenses, with guidelines applicable to all licensees being published separately. Such guidelines generally include all the relevant terms and conditions formerly included in licenses and are equally applicable to licensees. Future terms and conditions included in such guidelines are then determined and possibly amended through regulation according to the relevant process, thus creating more transparency, fairness and openness.

In countries that do not have a clear regulatory framework or where there is a perceived high country risk or where there are economic or governance problems, and that intend to license new operators or attract new investors in incumbents, clear, detailed and comprehensive licenses and cahiers de charge as part of the privatization and licensing processes are still seen to be necessary.

2.7 Transparent License Administration and Transitioning Mechanisms

KEY QUESTIONS RELATING TO LICENSE ADMINISTRATION AND TRANSITIONING MECHANISMS

- What happens when the legal framework changes – are there any provisions in licenses to accommodate this?
- Are licenses transferrable to third parties? If so, does the transfer of the license to a third party require prior consent from the regulatory authority? Is there an exception for a license obtained through competition or tender procedures?
- Are there specific procedures to amend a license?
- What are the timeframes for modifications?
- Does the license provide termination rights and renewal that are appropriate to each party?
- Is there an effective dispute resolution process? Are there clear, specific time periods for resolution? Are all parties clear on the process?

A transitioning mechanism must be developed for existing licensees and the necessary legal and regulatory measures defined to allow incumbents to transition to the new reality of full competition in as smooth and fair a way as possible while, at the same time opening the path for new entrants in both the provision of networks and services. Such a process must be fully transparent and balance previous payments and obligations with the objectives sought under a new framework.

One question is whether existing licensees will be grandfathered into the new regime without the review of the necessary qualifications or whether they will need to re-apply. Again, this is a question where there is no single preferred model. Australia, for example, decided that all existing carriers were deemed to have been granted a carrier license on 1 July 1997, and this is foreseen in Section 49 of the Telecommunications Act 1997. The Minister, however, retained the right to impose conditions on the individual carrier licenses held by those carriers.

Issues which NRAs will need to address include: fees and the position the NRA will adopt as to the fees already paid, rights and obligations related to the new categories as opposed to the existing ones, the duration of the grace period for existing licensees re-apply; the duration of the new license, qualifications to be submitted by existing licensees, etc.

- One option is to adapt the existing licenses to the new framework by amending the licenses.
- Another option is to decide on what category the existing licensees would fall into and to grant such licenses to the organizations without requiring application for such license or any additional payment. Specific guidelines could be attached to such licenses to take account of the specific nature of such.
- A third option is to make all licensees re-apply for new licenses, thereby granting all existing licensees, for example, a six-month grace period to file for the new licenses.

This is an issue that needs to be addressed carefully and where the input from the stakeholders is essential.

Chapter 15 of the *Electronic Communications Act, 2005* (ECA) sets out the general framework for the transition to South Africa's new technology- and service-neutral multi-service authorization regime. The key features of the transition include:

- Mandatory migration to the new authorization regime. The migration occurs through a conversion of existing licences to one or more licences that comply with the ECA.
- The Independent Communications Authority of South Africa (ICASA) must convert all existing licences by granting new licences that comply with the ECA within 24 months of the adoption of the ECA. (The schedule for conversion was extended)

- The new licences must be granted on no less favourable terms than the existing licences. However, as part of the conversion process, the ICASA may grant rights and impose obligations on a licensee to ensure that existing licences comply with the ECA.
- All existing licences issued under the *Telecommunications Act* (one of the predecessors to the ECA) remain valid until converted to a new licence by the ICASA. Existing licences remain subject to all terms and conditions that are not inconsistent with the ECA until these licences are converted and re-issued under the ECA.
- All licences converted pursuant to the ECA retain their original term of validity unless otherwise specified by the ICASA.
- Once an existing licence is converted and re-issued, the new licence is governed by the terms of the ECA and the existing licence is considered to have been surrendered and is of no force or effect.

The ICASA is not permitted to grant or to include in the terms of a converted licence any monopoly or exclusionary rights in any network or services contemplated in the ECA or related legislation. Existing monopoly and exclusionary rights are null and void, subject to the proviso that radio frequency spectrum that is assigned to a licence holder is not considered to be a monopoly or to constitute exclusionary rights¹⁶.

2.8 Sanctions and Enforcement

KEY QUESTIONS RELATING TO SANCTIONS AND ENFORCEMENT

- Are there procedures when a licensee fails to comply with license conditions (e.g., withdrawal, amendment, or suspension of the license)?
- Does the license or legal framework include specific enforcement provisions?
- Does the regulatory authority have to give the licensee notice of any suspected or alleged license violations that come to the attention of the regulatory authority? If so, what is the timeframe for the licensee to investigate and take corrective action?
- Does the licensee have to be provided with an opportunity to present his views before the enforcement action?
- Can the licensee appeal any decision by the regulatory authority regarding licensing to an independent institution?
- Can Licensees appeal against all fines imposed by the regulator and to a body independent of the regulator?
- Some regulators in the Caribbean are considering the introducing of fines up to 10% of revenues, although 10% of revenue could be 100% of profit. Are exorbitant fines the way forward for enforcement?
- Would a lower fine (no more than 2% of turnover) subject to consultation on how to arrive at any decision be more practical and equitable way forward?

Is there a procedure which allows for a highly expedited interim decision to be made on disputes and for retrospective application of any final decision? As the telecommunications sector becomes more liberalized and competitive, the ability of the regulator to maintain order in the sector is necessary to ensure that growth continues and that investments made in the sector are secured. Instead of regulating through company-specific concessions or licenses, regulatory authorities are starting to adopt broad-ranging regulations and ex ante rules that apply to the entire industry or to certain similarly situated groups of operators. In this kind of environment, regulators must have the ability to monitor

¹⁶ Source: South Africa, Electronic Communications Act, 2005, Act No. 36, 2005, Chapter 15

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telecommunications companies to ensure compliance with telecommunications laws, regulations and license conditions, to investigate alleged misconduct by operators, and to enforce compliance with its rules and regulations. In order to conduct both ex ante and ex post actions, it is necessary to constantly monitor the operators' behavior. It also means that adequate confidentiality clauses should be in place to ensure that the information that companies submit is protected and used solely for the purpose for which it is requested.

If the regulator does not have the ability to demand information from operators, particularly incumbent operators, to assess overall market performance and/or investigate alleged violations, then competitors can engage in anti-competitive practices to the detriment of the compliant operators, and the entire regulatory system is undermined, thus creating uncertainty. On the other hand, if the regulator has too much authority to demand commercial information, particularly if it is not bound by confidentiality clauses, then this may result in burdensome regulations and uncertainty about submitted information that strain resources and increase the cost of doing business.

Clear and published enforcement procedures are needed to ensure transparency and accountability, for example, that sanctions are issued after adequate investigation, and that the accused party is provided with proper notice of the alleged violation and an opportunity for defense. Transparency also facilitates and encourages voluntary compliance with rules and regulations, minimizing the need for intervention by the regulator and reducing regulatory costs for the government and industry players.¹⁷

This also means that regulators need to have the regulatory capacity to ensure compliance and enforce ex post actions, such as directing operators to alter their behavior, to engage in remedial activities if they breach existing rules and regulations, and applying sanctions.

¹⁷ See *Effective Compliance and Enforcement Guidelines and Practices*, APEC Telecommunications and Information Working Group, 31st Meeting, Document no. Telwg31/LSG14, April 2005, at 4-5.

Section III:

Analysis of Regional Texts and Presentation of International Best Practices

This section presents a snapshot of how the key issues are reflected (or not) in legal and regulatory texts from the beneficiary countries under the HIPCAR Project (Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago), thereby classifying the situation in the beneficiary countries as related to regulation on licensing in categories ranging from none (texts do not make reference at all to key issues) to fair (there is some mention of the issue but it is not detailed or not at an appropriate level, e.g. in some form of consultation document or draft regulation or even in a regulation which is not in line with primary legislation) to good (the texts reflect all elements categorized under a key issue). The *Summary Chart of Key Elements and Status* presents a quick overview of the status in the different countries. The aim of this first discussion paper is to provide not only an analysis of the key factors that exist in the different Caribbean legal and regulatory telecommunications frameworks in relation to licensing, but also to provide a common reference document that can be used to assess consistently the framework in the various countries.

In addition, this discussion paper identifies some of the best practices from around the world related to the key factors to determine the direction that regulatory trends are moving. This section also provides a comparison between target language from other countries around the world and regional texts. The aim of including this target language is to illustrate how other comparable countries or regions have dealt with such key issues. Another aim is to provide the basis for work to define the Policy Guidelines and Model Regulation on Licensing.

Section III

Country/Region	1. Transparent licensing criteria	2. Licensing framework	3. Licensing of scarce resources	4. Simplified license application procedures	5. License conditions	6. Transparent license administration and transitioning	7. Sanctions and enforcement
Antigua and Barbuda	LIMITED	NONE	NONE	LIMITED	LIMITED	NONE	LIMITED
Bahamas	GOOD	GOOD	GOOD	GOOD	GOOD	GOOD	GOOD
Barbados	GOOD	GOOD	GOOD	FAIR	GOOD	GOOD	GOOD
Belize	GOOD	NONE	FAIR	FAIR	FAIR	FAIR	FAIR
Dominica	GOOD	GOOD	FAIR	FAIR	GOOD	GOOD	GOOD
Dominican Republic	GOOD	GOOD	GOOD	FAIR	GOOD	GOOD	GOOD
Grenada	GOOD	FAIR	FAIR	FAIR	FAIR	FAIR	GOOD
Guyana	LIMITED	LIMITED	LIMITED	NONE	FAIR	GOOD	GOOD
Haiti	NONE	NONE	NONE	NONE	NONE	NONE	NONE
Jamaica	GOOD	GOOD	FAIR	FAIR	FAIR	GOOD	GOOD
St. Kitts and Nevis	GOOD	GOOD	FAIR	FAIR	GOOD	GOOD	GOOD
St. Lucia	GOOD	GOOD	FAIR	FAIR	GOOD	GOOD	GOOD
St. Vincent and the Grenadines	GOOD	GOOD	FAIR	FAIR	GOOD	GOOD	GOOD
Suriname	FAIR	FAIR	FAIR	GOOD	FAIR	FAIR	FAIR
Trinidad and Tobago	GOOD	GOOD	GOOD	FAIR	GOOD	GOOD	GOOD

Source: Telecommunications Management Group, Inc., 2009

NOTE: Legal texts are assessed as:

“GOOD” if they provide for all, nearly all or the most substantive portions of the key elements;

“FAIR” if they include some key elements, but are missing substantial points; and

“LIMITED”, if they only nominally address the key elements

“NONE” if they do not include the provisions

3.1 Transparent Licensing Criteria

International Best Practices and Regional Trends:

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

Regional Examples

Antigua and Barbuda – LIMITED: refers to licensing of telecommunications “stations” or “apparatus” but does not clearly treat with other considerations of authorizing public service provision.

“4. (1) No person shall establish any telecommunications station or install, work or operate any telecommunications apparatus in any place in Antigua and Barbuda or on board any ship or aircraft registered in Antigua and Barbuda except under and in accordance with a licence granted in that behalf under the provisions of this Act and subject to such conditions and restrictions as may be prescribed by rules made under this Act.

(2) In any case in which it shall appear to the Cabinet that no provision has been made by rules made under this Act for the issue of an appropriate licence, or that the circumstances of the case justify the issue of a special licence, the Cabinet may, notwithstanding the provisions of section 6, issue a special licence for the establishment of a telecommunication station and the installation, working and operation of telecommunication apparatus therein on payment of such fees and on such terms and conditions as to the Cabinet may seem fit.”

[Section 4, Telecommunications Act, Chap 423]

***More substantive provisions are considered in Section 7, of the Telecommunications Bill of 2007.**

Bahamas – GOOD

“(1) Persons wishing to apply for an individual licence or licences must submit an application in the form and manner and with the information specified by URCA. URCA may specify that a fee is payable on application.

(2) Where reasonably practicable, URCA must treat a person seeking an individual licence to provide a network or carriage service and the right to use radio spectrum for such network or carriage service under a single or coordinated application or registration process or other arrangement which minimises the administrative burdens and uncertainties for such persons of dual application or registration processes.

- (3) Persons wishing to apply for an individual licence must–
- (a) be legal entities duly incorporated in The Bahamas;
 - (b) conduct the administration and management of the business from premises in The Bahamas;
 - (c) be a fit and proper person to establish, maintain and operate a network or carriage service or use radio spectrum;
 - (d) demonstrate to the satisfaction of URCA that they have sufficient intention, financial strength and resources to meet their obligations under this Act and to provide networks or carriage services in an effective manner and consistent with the electronic communications policy objectives; and
 - (e) meet any other requirements (including but not limited to the provision of information and data) that URCA may require.
- (4) URCA shall review all applications for individual licences and within thirty calendar days of receipt of any application–
- (a) approve the application and grant a licence or licences;
 - (b) reject the application specifying the reasons for the rejection; or
 - (c) request further information necessary or desirable to evaluate the application. In this case URCA shall have a further one (1) calendar month from the date of receipt of that information to evaluate the licence application under this subsection (4).
- (5) If the Minister, exercising powers under section 30, or URCA, exercising powers under section 29, intends to restrict the number of individual licences to be granted for the right to use the same or similar radio spectrum, then the Minister or URCA, as appropriate, shall select such licensees for those individual licences pursuant to a competitive selection process.
- (6) A competitive selection process under subsection (5) shall provide for selection by the Minister or URCA, as appropriate, based upon objective criteria, including–
- (a) applicants’ financial bids, whether submitted with applications or made in an auction;
 - (b) relevant experience, capability or other qualifications of applicants;
 - (c) commitments of applicants with respect to the type, quality and geographical coverage of the relevant services or other factors; or
 - (d) any combination of the foregoing.”

[Communications Act of 2009, Section 26]

Barbados – GOOD: much detail making application procedures clear

- “9(1) The applicant shall be notified of the decision of the Minister
- (a) within 3 months of the date of the receipt of the application by the Minister; or
 - (b) in a case involving non-compliance referred to in regulation 7, within 3 months from the date when the defect was corrected.
- (2) Notwithstanding paragraph (1), where the Minister, with good reason, requires more time to consider an application, the applicant shall be so informed not later than 30 days from the date the decision was to have been issued, shall be given the reason for the delay; and shall be provided with a reasonable estimate of the time when the Minister can be expected to give his decision.
- (3) The conditions under which a licence is granted under this Act shall be non-discriminatory.
- (4) For the purposes of paragraph (3), "non-discriminatory" means that
- (a) there shall be similar treatment of all telecommunications providers that are of a similar type of telecommunications network or service; and

(b) that no telecommunications provider or class of telecommunications providers shall be favoured over another provider or class of providers.”

- 11(2) An applicant for a licence under this Part shall be required to satisfy the Minister that
- (a) the applicant will comply with all interconnection obligations, universal service obligations, licence limitations, network build-out requirements and any other such obligations imposed by this Act for the type of telecommunications network or telecommunications service in respect of which the applicant seeks a licence;
 - (b) all legal requirements for the holding of the licence have been complied with;
 - (c) the applicant possesses the technical qualifications necessary to fully perform the obligations attached to the licence for which the applicant is applying; and
 - (d) the applicant satisfies the financial requirements, as imposed by the Minister, to construct and operate the telecommunications network or to provide the telecommunications services associated with the licence for which the applicant is applying.”

“12(1) In determining whether to grant a licence under this Part, the Minister shall consider

- (a) whether an applicant
 - (i) is a person of fit and proper character;
 - (ii) is, or is affiliated with, an undischarged bankrupt; and
 - (iii) has had a licence revoked or is affiliated with a person who has had a licence revoked; and
- (b) any other matter that he considers relevant.

(2) The Minister may grant to an applicant under this Part

- (a) a carrier licence for the ownership and operation of a telecommunications network; or
- (b) a service provider licence for the provision of telecommunications services, where the Minister is satisfied that the applicant has complied with the provisions of section 11 and that the applicant satisfies the required criteria referred to in subsection (1).”

[Telecommunications Act of 2002, Sections 9, 11 and 12]

Belize – GOOD: has a specific licensing and authorization regulation in addition to Telecommunications Act

- (5) Before granting an Individual Licence, the PUC shall give notice-
 - (a) stating that it proposes to grant an Individual Licence;
 - (b) stating the reasons why it proposes to grant the Individual Licence; and
 - (c) specifying the time(not being less than fourteen days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made; and shall consider any representations or objections which are duly made and not withdrawn.
- (6) A notice under paragraph (4) above shall be given by publishing same in such manner as the PUC considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.
- (7) In deciding whether to approve an Individual Licence, the PUC shall take the following into account:
 - (a) the matters set out in the application;
 - (b) any submission received during the process of consultation as set out in paragraph (5) above;
 - (c) criteria for granting a licence as set out in section 16 of the Act;
 - (d) other relevant matters.
- (8) The PUC shall notify the applicant in writing of its decision within ninety days of receipt of the application.

- (9) Where the PUC decides to grant an Individual Licence it shall issue the licence in conformity with the provisions of the Act and upon payment of the prescribed fees.
- (10) Where an application is refused, the PUC shall notify the applicant in writing giving reasons for its refusal.
- (11) Where it is proposed that the number of licences to be granted for the operation of a particular type of telecommunications network or the provision of a particular type of telecommunications service should be limited, the PUC shall,
- (a) publish a consultative document containing detailed reasons for the proposed limitation;
 - (b) consider any representations made to it in respect of the proposed limitation;
 - (c) publish a notice in the Gazette and two local newspapers having national circulation stating the
 - (i) grounds and period during which licences will be granted; and
 - (ii) reasons for proposing to limit the number of licences; and
 - (d) undertake a periodic review of any limitation imposed on the number of licences granted.

6. (1) An application for a licence under this Part shall be made in writing in such form and in such manner, and shall contain such information and particulars and shall be accompanied by such details as may from time to time be specified by the PUC.

[Telecommunications (Licensing Classification, Authorisation and Fee Structure), Regulations, 2002, Sections 5 and 6]

Dominican Republic – GOOD: has a specific licensing and authorization regulation in addition to Telecommunications Act – both docs are clear and between both, there is clarity on the type of information to be submitted as well as regarding procedures.

6.1 Cualquier persona interesada en obtener una Autorización para prestar servicios de telecomunicaciones en la República Dominicana, deberá presentar la correspondiente solicitud al INDOTEL, por vía de su Director Ejecutivo, la cual quedará sujeta al trámite y procedimiento establecido en este Reglamento.

19.1. Cualquier persona jurídica interesada en prestar u operar un servicio público de telecomunicaciones, ya sean éstos servicios portadores, finales o de difusión, deberá obtener una Concesión. Los servicios de transporte de larga distancia nacional e internacional se incluyen dentro de la categoría de servicios portadores sujetos a concesión.

19.3. Las Concesiones serán otorgadas mediante Resolución del Consejo Directivo del INDOTEL, ya sea:

- Directamente, a solicitud de parte, de conformidad con lo establecido en este Capítulo; o
- Mediante concurso público, si requieren el uso del espectro radioeléctrico para la provisión de servicios públicos de radiocomunicaciones, de conformidad con lo establecido en el Capítulo VII de este Reglamento, o en cualquier otro caso sujeto al procedimiento de concurso por Resolución motivada del Consejo Directivo del INDOTEL.

[Licensing Regulation – Reglamento De Concesiones, Incripciones En Registros Especiales Y Licencias Para Prestar Servicios De Telecomunicaciones En La Republica Dominicana]

Dominica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – GOOD: has a specific licensing and authorization regulation in addition to Telecommunications Act

“(1) The Minister shall notify the applicant of his decision within 30 days of receipt of the recommendation from the Commission.

(2) Where ECTEL has recommended that an individual licence be granted, and the Minister so decides, the Minister shall issue the individual licence consistent with the provisions of section 31 of the Act and upon payment of the prescribed Fees.

(3) Where the application is refused the Minister shall in his notification to the applicant state in writing the reasons for his refusal.”

“(1) The Minister shall issue an individual licence, class licence authorisation and frequency authorisation on terms that are non-discriminatory.

(2) For the purpose of paragraph 1 above, an individual licence, class licence or frequency authorisation is issued on nondiscriminatory terms if -

- (a) telecommunications providers of similar types of telecommunications networks are treated similarly;
- (b) the licence or authorisation does not favour any one telecommunications provider or class of telecommunications providers; and
- (c) the issuance of the licence or authorisation does not, and is not likely to, adversely affect competition in any market.”

“Where it is proposed that the number of licences to be granted for the operation of a particular type of telecommunications network or the provision of a particular type of telecommunications service should be limited, the Commission shall on the recommendation of ECTEL:

- (a) publish a consultative document containing detailed reasons for the proposed limitation;
- (b) consider any representations made to it in respect of the proposed limitation;
- (c) publish a notice in the Gazette and in a local newspaper having a wide circulation stating the:
 - (i) grounds and period during which licences will be granted; and
 - (ii) reasons for proposing to limit the number of licences; and
- (d) undertake a periodic review of any limitation imposed on the number of licences granted.”

[Dominica, Telecommunications (Licensing and Authorisation) Regulations of 2002, Sections 6, 11 and 17]

[St. Kitts, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 8]

[St. Lucia, Telecommunications (Licensing and Authorisation) Regulations of 2002]

[St. Vincent, Telecommunications (Licensing and Authorisation) Regulations of 2007, Section 14]

Grenada – GOOD: (however, Grenada is the only ECTEL member without a specific Licensing and Authorisation Regulation)

“31(1) The Minister shall, before granting an individual license, take into account-

- (a) the purpose of the Treaty;
- (b) the recommendation of ECTEL;
- (c) whether the objective of universal service will be promoted including the provision of public telephony services sufficient to meet reasonable demand at affordable prices;
- (d) whether the interests of subscribers, purchasers and other users of telecommunications services will be protected;
- (e) whether competition among telecommunications providers of telecommunications services will be promoted;
- (f) whether research, development and introduction of new telecommunications services will be promoted;
- (g) whether foreign and domestic investors will be encouraged to invest in telecommunications;
- (h) appropriate technical and financial requirements;
- (i) whether the public interest and national security interests will be safeguard;
- (j) Such other matters as are prescribed.”

[Telecommunications Act of 2000, Section 31]

Guyana – LIMITED: although the 2001 Consultation is good, there has been no apparent decision and the Telecommunications Act only touches on the key issues.

“A new licensing approach is proposed, in order to encourage maximum participation in the sector. The process for authorizing new telecommunications services will be simple, open, non-discriminatory, transparent and light-handed.”

[Consultation Paper, Reform of the Telecommunications Sector in Guyana of 2001]

“Before granting a licence to which this section applies, the Minister or Director shall give notice –

- (a) stating that he proposes to grant the licence and setting out its effect;
- (b) stating the reasons why he proposes to grant the licence;
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made, and shall consider any representations or objections which are duly made and not withdrawn.”

[Telecommunications Act of 1998]

Haiti – NONE: the Law mentions nothing about licensing procedures except that the State has the monopoly over telecommunications services and may grant licenses or authorizations for certain activities.

“Article 1.- L’Etat Haïtien a le monopole des services de télécommunications. Dans l’exercice de ce privilège, il peut s’adjoindre ou se substituer des personnes civiles ou morales par l’octroi de concessions ou permis d’exploitation.”

[Décret du 12 Octobre 1977 sur les Telecommunications]

Jamaica – GOOD

“10(1) The Minister shall by a direction in writing to the Office, require the directions to invite applications for the grant of carrier or service provider licences or both and such direction shall specify -

- (a) the number of licences to be issued;
- (b) the facilities or specified services, as the case may be, in relation to which the licences will be granted.

(2) Upon receipt of a direction under subsection (1), the Office shall -

- (a) publish a notice in a daily newspaper circulating in the Island, containing information as to-
 - (i) the service area to be covered by the licence;
 - (ii) the technical limits of the licence;
 - (iii) the technical, legal and financial requirements to be met by applicants;
 - (iv) the number of licences to be issued;
 - (v) the type of conditions to be included in a licence; and
 - (vi) such other information as the Office considers relevant;
- (b) determine the period within which applications shall be submitted, not being less than sixty days in cases where a limited number of licences are to be issued;
- (c) publish at the end of that period and in the manner specified in paragraph (a), a notice of each application submitted;
- (d) afford members of the public a reasonable opportunity to comment on any matter regarding such applications within such period as the Office may determine, being not less than thirty days after the publication of the notice pursuant to paragraph (c).

(3) Where any comments made pursuant to subsection (2)(d) include a proposal for refusal of an application, such comments shall contain a statement of the reasons for that proposal.”

[Telecommunications Act of 2000, Section 10]

Suriname – FAIR: no detail provided in the Law, only general principles

“9 (1) Het is verboden telecommunicatie-infrastructuur aan te leggen, te ontwikkelen en te exploiteren zonder een daartoe strekkende concessie, bij resolutie verleend door de President, op advies van de Minister, na de TAS gehoord te hebben.- *THE CONCESSION IS GRANTED BY PRESIDENTIAL RESOLUTION UPON THE ADVICE OF THE MINISTER AND AFTER CONSULTATION OF THE REGULATOR*

...

(4) Een concessie wordt slechts verleend, indien zulks strekt tot bevordering van een doelmatige verzorging van de telecommunicatie in het algemeen maatschappelijk en economisch belang. – *CONCESSIONS ARE ONLY GRANTED IN THE INTEREST OF PROMOTING EFFECTIVE PROVISION OF TELECOMMUNICATIONS FOR THE GENERAL SOCIAL AND ECONOMIC GOOD OF THE COUNTRY*

(5) Een concessie wordt niet verleend dan nadat ten genoegen van de President is aangetoond dat de in lid 2 van dit artikel bedoelde rechtspersoon tenminste beschikt over voldoende financiële middelen, technische kennis, organisatorische bekwaamheid en ervaring terzake de telecommunicatie. – *APPLICANTS MUST PROVIDE SUFFICIENT PROOF TO THE PRESIDENT OF SUFFICIENT FINANCIAL MEANS, TECHNICAL AND ORGANIZATIONAL SKILLS AND EXPERIENCE IN PARTICULAR RELATING TO TELECOMMUNICATIONS*

(6) Verlening van een concessie geschiedt door middel van een vergelijkende toets en/of een veiling ingevolge en in overeenstemming met een uitnodiging, voorbereid door de TAS, en dienaangaande uitgaande van de Minister en gepubliceerd in het Advertentieblad van de Republiek Suriname. *CONCESSIONS ARE GRANTED THROUGH COMPETITIVE TENDERS OR AUCTIONS PURSUANT TO AN INVITATION FROM THE MINISTER AS PREPARED BY THE REGULATOR AND PUBLISHED IN THE OFFICIAL GAZETTE”*

“13. Voor het aanbieden van gereguleerde en niet-gereguleerde diensten door anderen dan concessiehouders is een vergunning vereist van de TAS; bij staatsbesluit wordt bepaald welke diensten gereguleerd zijn.- *OPERATORS WISHING TO OFFER REGULATED AND NON REGULATED SERVICES NOT UNDER THE CONCESSION ARE REQUIRED TO APPLY FOR AN AUTHORISATION FROM THE REGULATOR – THE REGULATOR DETERMINES WHICH SERVICES ARE REGULATED”*

[WET van 11 november 2004, houdende regels met betrekking tot voorzieningen voor telecommunicatie (Wet Telecommunicatievoorzieningen)]

Trinidad and Tobago – GOOD: has a specific Authorisation Framework in addition to Telecommunications Act

“1. The Authority will adopt a competitive selection process such as comparative evaluation, auction or any other method or combination of methods for recommending the award of concessions or the granting of licences, where it determines that there should be a limit to the number of providers in the market, or where it determines that based on its spectrum plans, the spectrum resources for the provision of those services are limited.

2. Where the Authority determines that there shall be no limit on the number of providers in a particular market category, or where the available spectrum resources exceed demand, a First-Come First Served award method will be adopted, subject to the applicant meeting the evaluation criteria set out by the Authority in respect of the relevant concession/ licence.

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

4. The Authority will put in place fair and transparent procedures for dealing with unsuccessful applicants in any authorization process.”

[Authorisation Framework for the Telecommunications and Broadcasting Sectors of Trinidad and Tobago of 2005]

International Examples and Regional Harmonization

ECTEL

The National Telecommunications Regulatory Commission hereby notifies the public that from the 8th January 2007 in the evaluation of an Individual Licence application the following criteria apply:

1. Legal (5 points)
2. Financial (60 points)
3. Technical (35 points)

A successful applicant must obtain:

- a minimum overall score of 65% and
- a minimum of half the points allocated to the financial component.

[Revised Criteria for the Evaluation of an Individual Licence Application]

ECOWAS

“When a Member State intends to grant individual licenses:

It shall grant the licenses according to open, non-discriminatory and transparent procedures, and, for this purpose, all candidates shall be subject to the same procedures unless there is an objective reason for subjecting them to different treatment;

It shall establish reasonable time frames; *inter alia*, it shall inform the applicant of its decision as soon as possible, and at the latest six weeks following receipt of request.”

[ECOWAS, Supplementary Act A/SA.3/01/07 on the Legal Regime Applicable to Network Operators and Service Providers, Chapter IV, Article 16.1]

European Union

“(7) The least onerous authorisation system possible should be used to allow the provision of electronic communications networks and services in order to stimulate the development of new electronic communications services and pan-European communications networks and services and to allow service providers and consumers to benefit from the economies of scale of the single market.

(8) Those aims can be best achieved by general authorisation of all electronic communications networks and services without requiring any explicit decision or administrative act by the national regulatory authority and by limiting any procedural requirements to notification only. Where Member States require notification by providers of electronic communication networks or services when they start their activities, they may also require proof of such notification having been made by means of any legally recognised postal or electronic acknowledgement of receipt of the notification. Such acknowledgement should in any case not consist of or require an administrative act by the national regulatory authority to which the notification must be made.

(9) It is necessary to include the rights and obligations of undertakings under general authorisations explicitly in such authorisations in order to ensure a level playing field throughout the Community and to facilitate cross-border negotiation of interconnection between public communications networks.”

[Common regulatory framework for electronic communications networks and services (Framework Directive) of 2002, Sections 7-9]

3.2 Competitive, Convergent and Technology Neutral Licensing Framework

International Best Practices and Regional Trends:

- The licensing framework is no longer service-specific and there been a move to a system of unified licensing in which large categories of facilities and/or services fall within each category, towards a general authorization regime, or towards a system providing for specific categories of licensing for facilities and services
- The law provides for clear reasons given for individual licensing (e.g., public order, use of scarce resources)
- The categories of licensing (e.g., individual, class, declaration, registration, open entry) are clearly defined
- Where there is a framework based on individual and class licenses, licenses are hierarchical whereby an individual license replaces a class license and allows the individual license holder to offer all types of facilities and services in both license categories
- Licenses or authorizations are technology-neutral
- The law provide for exceptions for certain activities within the different categories of licensing
- Operators are permitted to obtain exemptions to use spectrum in bands which have licences on an unlicensed basis
- Licenses do not provide for exclusivity
- Any quantitative restrictions exist on the number of licenses must be clearly justified and based solely on the lack of scarce resources.

Regional Examples

Antigua and Barbuda – NONE: references limited to dealer licenses. Do not address issues associated with the licensing of persons to provide of public telecommunications services

*** Fair provisions, without specific indication of technology or service neutrality is considered in Telecommunications Bill of 2007, Section 14**

Bahamas – GOOD

“19. URCA shall only grant an individual licence as opposed to promulgating a class licence or issuing an exemption determination if this is necessary to specify particular terms relevant to a particular licensee or if it considers that other reasons necessary or expedient to further the electronic communications policy objectives or make the grant or an individual licence necessary.”

“20(1) URCA shall publish the conditions of a standard network and carriage services individual licence (the “individual operating licence”) to comprise substantially the same conditions for all licensees, subject to the provisions of Part VI and Part VII.

(2) URCA may make such modifications, variations or restrictions to any of the standard individual operating licence conditions as it requires for reasons justified by reference to the communications policy objectives.

(3) URCA may grant a licence for the use of radio spectrum subject to such conditions as it considers appropriate under the communications policy objectives.

(4) Conditions of licences that relate to the same or similar networks or carriage services shall not unfairly discriminate between licensees.

[Communications Bill of 2009]

Barbados – GOOD: simplified application procedures

“4 (4) Where a person referred to in paragraph (1) [one seeking a carrier licence, service provider licence, a dealer’s licence or a VSAT licence] requires the use of spectrum, in respect of the service for which the licence is sought, that person shall at the time of making an application pursuant to that paragraph, also make an application for a spectrum licence in accordance with the relevant provisions of the Telecommunications (Spectrum Management and Licensing) Regulations, 2003.”

[Telecommunications (Public Telecommunications Licensing) Regulations of 2003, Section 4]

Belize – NONE: licenses are still technology/service specific

The Schedules still specifically list Fixed Public (wireline or wireless), mobile cellular, etc. licenses.

[Belize Telecommunications (Licensing Classification, Authorisation and Fee Structure), Regulations, 2002]

Dominican Republic – GOOD: has a specific licensing and authorization regulation in addition to Telecommunications Act – moving towards larger categories. Individual licensing only required for use of scarce resources (spectrum)

19.1. Cualquier persona jurídica interesada en prestar u operar un servicio público de telecomunicaciones, ya sean éstos servicios portadores, finales o de difusión, deberá obtener una Concesión. Los servicios de transporte de larga distancia nacional e internacional se incluyen dentro de la categoría de servicios portadores sujetos a concesión.

29.2. Los interesados en prestar u operar cualesquiera de los servicios enunciados a continuación, deberán solicitar al INDOTEL una Inscripción en Registro Especial, de conformidad con el Capítulo III de este Reglamento:

- (a) Servicios de valor agregado; incluyendo, entre otros, servicios de acceso a Internet cuando éste se provea sobre las redes de terceros, correo electrónico, vídeo texto, correo de voz, servicios de facsímil cuando se presten sobre una infraestructura de valor agregado y servicios de información;
- (b) Servicios de radioaficionado;
- (c) Servicios móviles aeronáuticos;
- (d) Servicios móviles marítimos;
- (e) Servicios de reventa;
- (f) Servicios privados de telecomunicaciones;
- (g) Servicios de acceso satelital, previo acuerdo efectuado con una Concesionaria autorizada de la República Dominicana, que sea titular de las Licencias correspondientes, o las obtenga a esos fines del INDOTEL.

El Consejo Directivo del INDOTEL podrá modificar o ampliar los tipos de servicios sujetos a Inscripción.

38.1. Se requerirá una Licencia para el uso del dominio público radioeléctrico, para ofrecer un servicio de radiocomunicaciones de conformidad con los instrumentos y recomendaciones emanadas de los organismos internacionales que rigen la materia, salvo que el uso de dicho espectro radioeléctrico no requiera de Licencia, conforme el Reglamento General de Uso del Espectro Radioeléctrico.

[Telecommunications Act, 2001 and Licensing Regulation – Reglamento De Concesiones, Inscripciones En Registros Especiales Y Licencias Para Prestar Servicios De Telecomunicaciones En La Republica Dominicana]

Dominica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – GOOD

“17(1) The Minister shall issue an individual licence, class licence authorisation and frequency authorisation on terms that are non-discriminatory.

(2) For the purpose of paragraph 1 above, an individual licence, class licence or frequency authorisation is issued on nondiscriminatory terms if -

- (a) telecommunications providers of similar types of telecommunications networks are treated similarly;
- (b) the licence or authorisation does not favour any one telecommunications provider or class of telecommunications providers; and
- (c) the issuance of the licence or authorisation does not, and is not likely to, adversely affect competition in any market.”

[Dominica, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 17]

[St. Kitts, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 17]

[St. Lucia, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 17]

[St. Vincent, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 23]

Grenada – FAIR: no specific mention of technology neutrality, broadly worded licenses or movement towards a unified licensing framework

“Licences and frequency authorisations granted under this Act shall contain all of the following conditions...

- (g) non-exclusivity of the licence, and exclusively or otherwise of the frequency authorization...
- (m) specification of the fees depending on the divergent or convergent* nature of the services provided.

*Convergent nature means the process of multiple telecommunications services provided over a single medium.”

[Telecommunications Act of 2000, Schedule 2]

Guyana – FAIR: although the 2001 Consultation is good, there has been no apparent decision and the Telecommunications Act only touches on the key issues.

“There will be two types of authorizations to provide telecommunication services and to establish and operate telecommunications networks. Individual licences would be issued for networks and services that require access to radio spectrum or other scarce resources and which have more comprehensive rights and obligations attached to them. General authorizations (“class licences”) would be issued for networks and services which do not require access to radio spectrum or other scarce resources and that carry a limited number of rights or obligations. It is proposed that these will include: ISPs, Resellers, Private telecommunications networks, and Value-added service providers, including information service providers.”

[Consultation Paper, Reform of the Telecommunications Sector in Guyana of 2001]

Jamaica – GOOD: Authorisation is based on facilities (network) and broad service baskets.

“3. A licence granted under section 13 of the Act shall, in the case of –

- (a) a carrier licence, be in the form prescribed as Form 2 in the Schedule and
- (b) a service provider licence, be in the form prescribed as Form 3 in the Schedule.”

[Telecommunications (Forms) (Amendment) Regulations of 2009, Regulation 2]

Trinidad and Tobago – GOOD: Authorisation is based on facilities (network) and broad service baskets.

“21. (1) No person shall operate a public telecommunications network, provide a public telecommunications service or broadcasting service, without a concession granted by the Minister.

- (2) A person who wishes to operate a network or provide a service described in subsection (1), shall apply to the Authority in the manner prescribed.

[Telecommunications Act, 2001, Sections 21]

“1. A concession is granted by the Minister to authorise the operation of a public telecommunications network (Section 21) and/or the provision of any public telecommunications service or broadcasting service. An application for a concession must be submitted to, and evaluated by, the Authority before a recommendation is made to the Minister to grant the concession.

2. A licence is granted by the Authority to authorise the operation or use of any radiocommunication service or any radiotransmitting equipment, including that on board any ship, aircraft or other vessel in the territorial waters or airspace of Trinidad and Tobago, (Section 36). Where the operation of a public telecommunications network or the provision of a public telecommunications or broadcasting service requires use of spectrum, the required licence applications will be processed as part of the concession application. Where radio transmitting equipment is used for a private or “closed-user group” communication service, licences are required for the radio transmitting equipment employed. A concession however is not required.”

“The Authority shall facilitate the Government in ensuring minimal barriers to entry and competition in converged telecommunications markets by adopting, as far as practicable, a service- and technology-neutral approach to authorising telecommunications networks, and public telecommunications and broadcasting services.”

[Authorisation Framework for the Telecommunications and Broadcasting Sectors of Trinidad and Tobago of 2005, Sections 1.1 and 3.3]

International Examples and Regional Harmonization**ECTEL – GOOD**

“The licence classes that have been developed by the Eastern Caribbean Telecommunications Authority (ECTEL) are technology neutral. Thus, the determining factor for licence classification will be the service that will be provided...”

- (a) Individual Licence: The services that fall under this licence are generally infrastructure oriented. Those services often provide the network/foundation upon which other services (such as Value Added Services) can be supported.
- (b) Class Licence, Type A: The services that fall under Type A Class Licence are those for which applicants seek to be providers of telecommunications services, such Internet Service Provision and International Simple Voice Resale.

- (c) Class Licence, Type B: The services that fall under Type B Class Licence are those for which applicants would be users of telecommunications services. They include Amateur Radio, Land Mobile Radio, Maritime Mobile Radio and Aeronautical Mobile Radio Services.
- (d) Class Licence, Type C: The services that fall under Type C Class Licence are those that can be construed as other support services and controls for the sector. They include Type Approval, Terminal Equipment Dealer's Certification and Customer Premises Wiring."

[Revised Criteria for the Evaluation of an Individual Licence Application of 2002]

European Union

- (2) Convergence between different electronic communications networks and services and their technologies requires the establishment of an authorisation system covering all comparable services in a similar way regardless of the technologies used.
- (3) The objective of this Directive is to create a legal framework to ensure the freedom to provide electronic communications networks and services, subject only to the conditions laid down in this Directive and to any restrictions in conformity with Article 46(1) of the Treaty, in particular measures regarding public policy, public security and public health.
- (4) This Directive covers authorisation of all electronic communications networks and services whether they are provided to the public or not. This is important to ensure that both categories of providers may benefit from objective, transparent, non-discriminatory and proportionate rights, conditions and procedures.

[Common regulatory framework for electronic communications networks and services (Framework Directive) of 2002]

ECOWAS

"Member States shall promote technology and service neutrality so as to be able to accommodate convergence and new technologies."

[ECOWAS, Supplementary Act A/SA.3/01/07 on the Legal Regime Applicable to Network Operators and Service Providers, Chapter II, Article 5.1]

"Convergence between different telecommunication networks and services and their technologies requires a licensing framework which covers comparable services whatever the technology used."

[ECOWAS, Supplementary Act A/SA.3/01/07 on the Legal Regime Applicable to Network Operators and Service Providers, Chapter III, Article 6.2]

United States

"Single authorization. Authorization will be granted to provide any or a combination of the following services in a single license: common carrier, non-common carrier, private internal communications, and broadcast services. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service."

[United States, 47 C.F.R. § 27.10(a)]

"Permissible Operations: Flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operations, fixed and mobile wireless commercial services (including FDD- and TDD-based services), as well as fixed and mobile wireless uses for private, internal radio needs. Could also include two-way interactive, cellular, and mobile television broadcasting services."

[United States, FCC, Auction 49: Lower 700 MHz Band, Permissible Operations, *available at* http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=49]

Nigeria

“The Licensee is authorized by this License to construct, maintain, operate and use an International Gateway and a Network consisting of a Cellular Communication System, a Fixed Wireless Access Telecommunications System, Fixed Wireline Telecommunications System or a combination of any of these systems comprising Radio, Cable or Satellite or their combination, in the designated License Area, deployed for the purpose of providing point to point or switched/unswitched point to multipoint Communications for the conveyance of voice, data, video or any kind of Message.”

[Nigeria, Unified Access Service License under Section 32 of Nigerian Communications Act of 2003, Schedule 2, Condition 24.1]

3.3 Scarce Resource (Frequency) Licensing

International Best Practices and Regional Trends:

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

Regional Examples

Antigua and Barbuda – NONE: There is no clear recognition or defined approach of scarce resource management.

* Detailed provisions included in Telecommunications Bill of 2007, Sections 14-20

Bahamas – GOOD: although it is good that there is no separate license, and that the law contains some basic principles, it lacks detail which is left to Regulation

26. Individual licence applications and renewals.

(1) Persons wishing to apply for an individual licence or licences must submit an application in the form and manner and with the information specified by URCA. URCA may specify that a fee is payable on application.

- (2) Where reasonably practicable, URCA must treat a person seeking an individual licence to provide a network or carriage service and the right to use radio spectrum for such network or carriage service under a single or coordinated application or registration process or other arrangement which minimises the administrative burdens and uncertainties for such persons of dual application or registration processes.

[Communications Bill of 2009, Section 26]

38. Spectrum trading.

- (1) Subject to subsection (2), a licensee shall not be permitted to assign the use of radio spectrum to a third party.

- (2) URCA may publish rules and regulations relating to the transfer of radio spectrum rights by a licensee on a permanent or temporary basis to a third party.

[Communications Bill of 2009, Section 38]

Barbados – GOOD: very complete and transparent procedures

10. (1) No person shall ...

- (c) use spectrum for the purpose of (i) operating any telecommunications network; or (ii) providing a telecommunications service without a spectrum licence issued in accordance with Part IX

23. Where the licensee of (a) a private telecommunications network; or (b) a private telecommunications service, uses spectrum, the licensee must also obtain a spectrum licence in accordance with section 44.

44. (1) An applicant for a spectrum licence shall submit his application to the Minister in the prescribed form together with the prescribed application fee.

- (2) The provisions of Part IV [*Licensing requirements in respect of public telecommunications*] apply to the application for and the granting and assignment of a spectrum licence and the conditions in respect thereof.

- (3) The Minister may, in accordance with the Spectrum Plan, modify a spectrum licence after consultation with the licensee where he is of the view that it is necessary for the better use of spectrum.

- (4) Where the Minister proposes to modify a spectrum licence under subsection (3), he shall give the licensee one year's prior written notice of the intended modification.

- (5) Where a spectrum licence is modified under subsection (4), the licensee shall be given by the Minister fair and reasonable compensation for the modification.

- (6) The Minister may, in accordance with the spectrum plan, temporarily modify a spectrum licence after consultation with the affected spectrum licensee if the Minister is of the view that the modification is necessary for reasons of national security, but where he does so, he shall advise the affected licensee by giving to that licensee 2 days prior written notice.

- (7) The spectrum licensee may apply to the Minister for a modification of a spectrum licence in accordance with this Act, and the Minister may modify that licence.

- (8) The Minister shall publish the fact of the modification and its general effect in the *Official Gazette*.

- 45.** (1) The Minister may suspend, revoke or refuse to renew a spectrum licence
- (a) for any of the reasons specified in section 19 [(a) the licensee contravenes this Act; (b) the licensee fails to observe a term or condition specified in the licence; (c) the licensee is in default of payment of any licence fee prescribed; or (d) the suspension or revocation is necessary in the interest of national security or in the public interest.]; or
 - (b) where the radio equipment in respect of which the licence was granted interferes with the radio equipment of a person to whom a spectrum licence has been granted.

(2) The provisions of section 19(2) shall apply to the suspension, revocation or refusal to renew a spectrum licence except that the licensee shall be given 60 days notice of the Minister's intention to so suspend, revoke or refuse to renew a spectrum licence.

[Barbados Telecommunications Act, 2002, Sections 10, 23 and 44-45]

- 4.** Where a person referred to in paragraph (1) requires the use of spectrum, in respect of the service for which the licence is sought, that person shall at the time of making an application pursuant to that paragraph, also make an application for a spectrum licence in accordance with the relevant provisions of the *Telecommunications (Spectrum Management and Licensing) Regulations, 2003*.

[Telecommunications (Licensing) Regulations of 2003, Regulation 4 (2)(b)]

- 6.** The Minister may determine the number of spectrum licences to be issued in the various authorised services to ensure the efficient use and management of the spectrum.

- 7.** (1) A person other than a person referred to in regulation 3 [transitioning licensees] who is desirous of obtaining a spectrum licence under sections 10(1)(c) and 23 of the Act shall apply to the Minister in accordance with the provisions of section 44 of the Act and these Regulations.

(2) An application under paragraph (1) shall be in the Form 3 set out in Part I of the *Schedule* and shall be accompanied by the appropriate fee.

- 15.** (1) Where a spectrum licensee is desirous of renewing the spectrum licence, the licensee shall apply to the Minister no later than one year prior to the expiration date of the spectrum licence or at such other time as the Minister determines.

(2) The Minister may renew a spectrum licence upon a request by the spectrum licensee made in accordance with sections 11, 23 and 44 of the Act and these Regulations for such additional period as is determined by the Minister.

(3) The renewal by the Minister referred to in paragraph (2) may be made upon expiration of the spectrum licence where the licensee has not

- (a) materially contravened the Act or any Regulations made thereunder;
- (b) breached a material term of its spectrum licence;
- (c) failed to act in accordance with the Spectrum Plan; or
- (d) defaulted on any licence fee owed to Government.

(3) On granting a renewal of a spectrum licence, the Minister may vary the terms of the spectrum licence where the conditions then prevailing require such variation and it is reasonable to do so.

(4) Where a variation is made under paragraph (3), and the variation relates to a redistribution of the spectrum, the licensee shall be entitled to be compensated for any loss that may reasonably have been incurred from the variation, in accordance with standards established by the Minister.

[Telecommunications (Spectrum Management and Licensing) Regulations of 2003, Sections 7, 12]

18. (1) Where a spectrum licensee wishes to
- (a) assign its spectrum licence or any rights under that licence pursuant to section 20 or 44 of the Act; or
 - (b) transfer control of operations under the Act, the spectrum licensee shall apply in writing to the Minister for prior approval and shall not transfer control or assign its licence or any rights under that licence until the licensee has received written approval from the Minister.
- (2) The Minister shall make a determination with respect to an application under paragraph (1) no later than 3 months from the date the application was filed.
- (3) The Minister shall have regard to the following matters where relevant, when deciding on a request for assignment or transfer:
- (a) the circumstances of each transfer or assignment so as to ensure that spectrum licensees are not unduly restricted in the management of their commercial affairs;
 - (b) whether the assignee or transferee satisfies the criteria for the grant of a spectrum licence;
 - (c) where the assignment or transfer is from one or more individuals to a body corporate owned or controlled by the same individual or individuals, the extent to which the assignment or transfer achieves a change in their relative interests;
 - (d) where the assignment or transfer is from a body corporate to its shareholders, the extent to which there is a change in the interests of the assignor; and
 - (e) where the assignment or transfer is the result of a corporate reorganization, the extent to which there is a change in beneficial ownership.
- (4) Notwithstanding paragraph (3), the Minister shall not withhold approval of the assignment where
- (a) the assignment or transfer achieves no material change in the relative interests of the assignee and assignor;
 - (b) the assignment or transfer is
 - (i) to a wholly owned subsidiary of the assignor,
 - (ii) from a body corporate to its parent company,
 - (iii) between wholly owned subsidiaries, or
 - (iv) results from a corporate re-organisation that involves no change in the beneficial ownership or management of the assignor.

[Telecommunications (Spectrum Management and Licensing) Regulations of 2003, Section 18]

20. (1) All spectrum users are required to use the spectrum efficiently, in accordance with international best practices and, where required, to recognise the legitimate interests of existing users.
- (2) The use of any spectrum by the spectrum licensee may be withdrawn by the Minister after reasonable notice to the spectrum licensee to that effect where the frequency remains unused by the spectrum licensee for 12 consecutive months; but at the written request of the spectrum licensee and where the licensee shows good cause for the non-use of the spectrum, multiple 6 month extensions of the spectrum licence may be granted on payment of the appropriate fee.

[Telecommunications (Spectrum Management and Licensing) Regulations of 2003, Section 20]

Belize – FAIR: The Law does not specify that there is a need for a separate spectrum license – that is determined in the regulations.

- (2) A licence shall be required in order to enable a person to -
- (a) operate a telecommunication network, whether aeronautical, terrestrial or maritime fixed, mobile or satellite based;
 - (b) provide telecommunication services that offer real time voice or data services;

(c) operate any system that uses scarce resources such as the radio frequency spectrum, numbering or public rights of way in order to provide telecommunication or broadcasting service to the public.

12. (1) The PUC shall be vested with the control, planning, administration, management and licensing of the radiofrequency spectrum.

[Belize Telecommunications Act, 2002, Sections 2 and 12]

4. (7) A Frequency Authorisation from the PUC shall be required for any service that requires the use of specified frequencies. An application for such frequency authorization shall be made to the PUC in addition to the application for the provision of the service in an Individual Licence.

7. (1) An application for a licence under this Part shall be made in writing in such form and in such manner, and shall contain such information and particulars and shall be accompanied by such details as may from time to time be specified by the PUC.

(2) An application for a licence under this section shall be accompanied by a non-refundable fee as contained in the Schedule to these Regulations.

(3) Within fourteen days after making an application, the applicant shall publish a notice of the application in two local newspapers having national circulation.

(4) Upon receipt of an application for a frequency authorisation, the PUC shall review the application, notifying the applicant of any further information required to process such application.

(5) In deciding whether to approve a frequency authorisation, the PUC shall take the following into account:

- (a) the matters set out in the application;
- (b) any submissions received from the public;
- (c) any regional, national or international Spectrum Management Plan; and
- (d) any other relevant matters.

(6) After review, the PUC shall decide whether the frequency authorization should be granted and issue its decision in writing no later than sixty days from receipt of the application.

(7) Where an application is approved the PUC shall issue the frequency authorisation on payment of the prescribed fee. Where a licence is refused, the PUC shall state in writing its reasons for such refusal.

10. (1) The PUC shall issue an Individual Licence, Class Licence and Frequency Authorisation on terms that are non-discriminatory.

[Belize Telecommunications (Licensing Classification, Authorisation, and Fee Structure) Regulations, 2002]

Dominican Republic – GOOD: clear procedures in law and especially in licensing regulations.

24.1 The regulatory body must notify its intent to initiate public tendering for the granting of concessions or licenses when it is required to use the radioelectrical spectrum attributed to public radio communications services, except in cases of emergency justified to the regulatory body. Exceptions to this procedure shall be the institutions of the State and those authorities operating not-for-profit, as well as religious institutions recognized by the State and who act pursuant to what is established by Article 8 of the Constitution of the Republic.

[Dominican Republic Law 153-98]

19.6. A menos que se especifique lo contrario en la Ley o en sus Reglamentos, todo servicio público de radiocomunicaciones que sea un servicio portador, servicio final o teleservicio o servicio de difusión sonora, televisiva o por cable, estará sujeto a un concurso público, exceptuando las Concesiones y Licencias vigentes, en lo relativo al alcance y naturaleza de las mismas, sin perjuicio de lo establecido en los artículos 119 de la Ley y 80 de este Reglamento, respecto del proceso de adecuación que deberán cumplir.

19.7. Si la demanda de espectro radioeléctrico excede la capacidad disponible, el Consejo Directivo del INDOTEL podrá, conforme a lo que sea establecido en el Plan Nacional de Atribución de Frecuencias (PNAF) y el Reglamento de Uso del Espectro Radioeléctrico, modificar mediante una Resolución, los tipos de servicios que a partir de su decisión, deberán someterse a concurso público.

38.1. Se requerirá una Licencia para el uso del dominio público radioeléctrico, para ofrecer un servicio de radiocomunicaciones de conformidad con los instrumentos y recomendaciones emanadas de los organismos internacionales que rigen la materia, salvo que el uso de dicho espectro radioeléctrico no requiera de Licencia, conforme el Reglamento General de Uso del Espectro Radioeléctrico.

Art. 39. Licencias para Servicios Públicos de Radiocomunicaciones

Para la prestación de un servicio público de radiocomunicación se deberá obtener una Licencia *mediante un concurso público*, de conformidad con lo establecido en la Ley y el Capítulo VII de este Reglamento.

[Dominican Republic Licensing Regulations 07-02]

Dominica – FAIR: procedures are reasonable but lack detail

35. (1) An applicant for a frequency authorisation shall submit his application to the Commission in accordance with the prescribed form together with the prescribed application fee.

(2) The Commission shall, upon receipt of the application and after consultation with ECTEL, recommend to the Minister whether or not the particular applicant shall be granted a frequency authorisation.

(3) The Minister may grant the frequency authorization where the Commission recommends accordingly.

36. (1) The Minister may, in granting a frequency authorisation, include all or any of the terms and conditions specified in Part 1 of the Second Schedule.

(2) A frequency authorisation shall include all the terms and conditions as specified in Part II of the Second schedule.

39. (3) The Minister may, on receipt of a recommendation from ECTEL, modify a frequency authorisation where he and the licensee agree in writing.

(4) The Minister may on the receipt of a recommendation from ECTEL modify any licence or frequency authorization without the agreement of the licensee if he is of the view that the modification is necessary in the public interest or for reasons of national security.

[Dominica Telecommunications Act, 2000]

12. (1) An application for a frequency authorisation shall be submitted in writing to the Commission and shall:

(a) be in the prescribed form and contain such information and particulars as are set out in Schedule 3; and

(b) be accompanied by the prescribed application fee.

[Dominica, Telecommunications (Licensing and Authorisation) Regulations of 2002, Sections 12-15]

17. (1) The Minister shall issue an individual licence, class licence authorisation and frequency authorisation on terms that are non-discriminatory.

[Dominica, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 17]

Grenada – FAIR: procedures and conditions fairly clear

28(1) A person shall not establish or operate a telecommunications network or provide a telecommunications service without a licence.

(2) Where a frequency authorisation is necessary for or in relation to the operation of a telecommunications network or a telecommunications service, a person shall not operate that network or service without that authorisation.

34(1) An applicant for a frequency authorisation shall submit his application to the Commission in accordance with the prescribed form together with the prescribed application fee.

(2) The Commission shall, upon receipt of the application recommend to the Minister whether or not the particular applicant shall be granted a frequency authorisation

(3) The Minister may grant the frequency authorization where the Commission recommends accordingly.

35(1) The Minister may, in granting a frequency authorisation, include all or any of the terms and conditions specified in Part 1 of the Second Schedule. **[CONDITONS THAT MAY BE INCLUDED IN LICENCES AND FREQUENCY AUTHORISATIONS]**

(2) A frequency authorisation shall include all the terms and conditions as specified in part II of the Schedule. **[CONDITONS THAT MUST BE INCLUDED IN LICENCES AND FREQUENCY AUTHORISATIONS]**

38. (3) The Minister may modify a frequency authorization where he and the licensee agree in writing.

(4) The Minister may on the receipt of a recommendation from ECTEL modify any licence or frequency authorisation without the agreement of the licensee if he is of the view that the modification is necessary in the public interest or for reasons of national security.

[Grenada Telecommunications Act of 2000]

Guyana – NONE: no provisions in the law (only provides for wireless telegraphy licenses)

The radio spectrum in Guyana is managed by the National Frequency Management Unit (NFMU). The NFMU was established under the *Guyana Frequency Management Unit Order 1990*, made under *The Public Corporations Act*. As part of the process of privatization of GT&T, the NFMU took over the radio spectrum management responsibilities performed prior to 30 September 1990 by the Frequency Management Unit of GT&T's predecessor, the Guyana Telecommunications Corporation.

The NFMU has broad powers to manage the radio frequency spectrum, to establish frequency allocations, to assign radio frequencies and authorize radio communications. In this capacity, the NFMU has issued licences to cellular operators and other users of the radio spectrum in Guyana.

[Consultation Paper, Reform of the Telecommunications Sector in Guyana of 2001]

Haiti – NONE

L'exploitation d'un réseau de radiotéléphonie privé est sujette à une autorisation du CONATEL tandis que l'exploitation d'un réseau de radiotéléphonie à caractère commercial est sujette à une concession.

Les réseaux et services de télécommunications sont soumis à l'un des régimes juridiques suivants :

- Régime de la concession ;
- Régime de l'autorisation ;
- Régime de déclaration au préalable.

Concession (contrat): Droit accordé par l'État Haïtien à travers le Ministère des Travaux publics, Transports et Communications, sur recommandation du CONATEL, à une personne physique ou morale d'établir et/ou d'exploiter un réseau de télécommunications ouvert au public (utilisé pour la fourniture au public de services de télécommunications) conformément aux dispositions légales régissant la matière et selon les conditions définies dans le contrat de concession et des clauses techniques et administratives qui feront partie intégrante du contrat.

Autorisation (assignation, permis): Droit accordé par le CONATEL d'établir et/ou d'exploiter un réseau de télécommunications indépendant (réservé à un usage privé ou partagé entre groupe d'utilisateurs) conformément aux dispositions légales régissant la matière.

Déclaration au préalable: déclaration préalable au CONATEL au démarrage d'une activité de la catégorie visée.

[Licensing Guidelines as published on CONATEL web-site]

Jamaica – FAIR: contains basic principles but could be clearer and more detailed

20. - (1) The Minister shall take such steps as he considers necessary or desirable use of to regulate the use, for any purpose, of the spectrum within Jamaica or between spectrum. Jamaica and elsewhere.

(2) For the purposes of this section, the Minister shall -

- (a) allocate the spectrum for facilities and specified services within Jamaica;
- (b) determine methods for assignment of the spectrum;
- (c) issue licences authorizing the use of specified portions of the spectrum;
- (d) institute procedures for ensuring the compliance by licensees with any obligations regarding the use and operation of the spectrum, imposed by or under the licence, any provisions of this Act or any regulations made hereunder.

(3) The Minister may make regulations with respect to the implementation of the policy with regard to management of the spectrum.

(4) The Minister may, subject to subsection (5), delegate any of his functions under this Part (other than the power of delegation) to the Spectrum Management Authority established under section 21.

(5) In the absence of a delegation under subsection (4), the Minister shall, in carrying out his functions under this Part, seek the recommendation of the Spectrum Management Authority.

(6) In this Act "spectrum" means the continuous range of electromagnetic wave frequencies up to and including a frequency of 420 terahertz.

23. - (1) The Minister may, on the recommendation of the Authority and subject to subsection (4), grant a licence (hereinafter referred to as a "spectrum licence") authorizing the use of such portion of the spectrum as may be specified therein.
- (2) For the purposes of this section, the Minister may, in writing, direct the Authority to -
- (a) invite applications for spectrum licences;
 - (b) review such applications and make recommendations to the Minister concerning assignment of the spectrum in accordance with the provisions of the national plan referred to in section 22 (1).
- (3) A person may, in the same application, apply for a carrier licence, a service provider licence and a spectrum licence and in such a case, a copy of the application shall be sent to the Minister and the Office.
- (4) The Minister may grant a spectrum licence in connection with the provision of a facility or specified service only to an applicant who is the holder of a carrier licence or service provider licence or, as the case may be, is eligible for the grant of a carrier licence or service provider licence.
- (5) In making recommendations to the Minister under subsection (2)(b), the Authority shall have regard to the prescribed standards.
- (6) The Minister may make regulations prescribing methods for assignment of the spectrum and the standards required as to the technical, financial and legal requirements of applicants.
- (7) A person to whom a spectrum licence is granted under this section shall, pay such fees as the Minister may determine by notice in writing to that person.

25. Every person who is the holder of a spectrum licence shall comply with the spectrum. terms and conditions of that licence and the directions of the Authority in relation to the use of the spectrum

[Jamaica Telecommunications Act 2000]

St. Kitts and Nevis – FAIR: provides some procedures but could be clearer

5. (5) No person shall operate a telecommunications network or provide a telecommunications service, other than a broadcasting service, if the operation of the network or service requires the use of frequency spectrum, unless that person is granted a frequency license by the Authority.

[St. Kitts and Nevis Telecommunications Act]

St. Lucia – FAIR: provides some procedures but could be clearer

“frequency authorisation” means an authorisation granted by the Minister under section 36 to use radio frequencies in connection with the operation of a network or the provision of services under an individual licence or class licence or otherwise;

29. — (1) A person shall not establish or operate a telecommunications network or provide a telecommunications service without a licence.
- (2) Where a frequency authorisation is necessary for or in relation to the operation of a telecommunications network or a telecommunications service, a person shall not operate that network or service without that authorisation.

- 36.— (1) An applicant for a frequency authorisation shall submit his application to the Commission in accordance with the prescribed form together with the prescribed application fee.
- (2) The Commission shall, upon receipt of the application and after consultation with ECTEL, recommend to the Minister whether or not the particular applicant shall be granted a frequency authorisation.
- (3) The Minister may grant the frequency authorisation where the Commission recommends accordingly.

37.— (1) The Minister may, in granting a frequency authorisation, include all or any of the terms and conditions specified in Part 1 of the Second Schedule.

(2) A frequency authorisation shall include all the terms and conditions as specified in Part II of the schedule.

[St. Lucia Telecommunications Act, 2000]

St. Vincent and the Grenadines – FAIR: application procedures are clear

17. An application for a frequency authorisation shall be submitted in writing to the Commission and shall-
- (a) be in the prescribed form and contain such information and particulars as are set out in the Seventh Schedule.
 - (b) be accompanied by the prescribed application fee which shall be nonrefundable.

[Telecommunications (Licensing and Authorisation) Regulations of 2007]

Suriname – FAIR: application considerations are outlined, but the process seems limited to beauty contests. Also there seems to be limitation of use of spectrum attained.

- “1. Otherwise than by virtue of a concession, it is prohibited to have present, to install, to use or to operate radio-electromagnetic transmitters, unless such is done by virtue of a license issued by the TAS
2. By or pursuant to state decree radio-electromagnetic transmitters may be designated that require no license as referred to in paragraph 1 of this Article.
3. By or pursuant to state decree rules may be laid down with regard to:
 - a. the licenses referred to in paragraph 1 of this Article;
 - b. the installation, the presence and the use of radio-electromagnetic transmitters, irrespective whether or not these require a license.
4. The rules referred to in paragraph 3 of this Article serve to guarantee an efficient use of the ether; they may also serve the purpose of an efficient maintenance of telecommunications in the general social and economic interest.
5. The rules referred to in paragraph 3 of this Article are in any case related to:
 - a. the granting of licenses as referred to in paragraph 1 of this Article, in the process of which a distinction may be made according to the term of the license, the nature of the radio-electromagnetic transmitter, the purpose for which the transmitter is granted, the regulations to be attached to said licenses as well as the restrictions subject to which they may be granted;
 - b. the power to operate radio-electromagnetic transmitters, with the categories being described;
 - c. the technical requirements to be set as regards radio-electromagnetic transmitters;”

6. A license shall be refused in case:
 - a. the granting thereof is in contravention of the rules laid down by virtue of paragraph 5 of this Article;
 - b. an efficient use of the ether requires such;
 - c. an efficient care of telecommunications requires such in the general social and economic interest;
 - d. this was applied for to spread broadcasting programs and the granting thereof would be in contravention of the spreading of broadcasting programs permitted by law;
 - e. a license as referred to in paragraph 1 of this Article granted earlier, was revoked:
 - 1st on grounds of the provisions laid down in Article 101 paragraph 1 under a;
 - 2nd due to violation of the rules laid down by or pursuant to this act or the regulations attached to the license or the restrictions subject to which it was granted;
 - f. the applicant has not yet observed his obligations ensuing from a license granted to him earlier;
 - g. the application does not comply with the rules laid down to that effect by virtue of Article 48 paragraph 1.

7. A license shall be revoked in case:
 - a. the license holder requests such;
 - b. the grounds on which the license was granted no longer apply;
 - c. the license holder does not comply with the rules laid down by this act or the regulations attached to the license and the restrictions subject to which it was granted;
 - d. an efficient use of the ether requires such;
 - e. an efficient care of telecommunications requires such in the general social and economic interest.

[Article 46, Telecommunications Act]

Trinidad and Tobago – GOOD: clear procedures and has incorporated technology neutrality and flexibility

- “36.** (1) Subject to subsection (2), no person shall—
- (a) establish, operate or use a radio-communication service;
 - (b) install, operate or use any radio-transmitting equipment; or
 - (c) establish, operate or use any radio-communication service on board any ship, aircraft, or other vessel in the territorial waters or territorial airspace of Trinidad and Tobago, other than a ship of war or a military aircraft or satellite registered in Trinidad and Tobago, without a licence granted by the Authority.
- (2) Where spectrum is required in respect of a concession that has been applied for under Part III, the licence application shall be processed as part of the concession application pursuant to section 21.
- (3) The Authority shall notify the applicant of its determination within ninety days of receipt of application.”

[Telecommunications Act, 2001 Section 36]

- “6. (1) The Authority may determine that any specified part of the radio spectrum shall be assigned, on an exclusive or shared basis, for use by persons by the grant of licence, subject to such conditions as the Authority considers appropriate.
- (2) Subject to this, the Authority may, upon payment of fees determined by the Authority, grant any person the right to use any specified part of the radio spectrum referred to in subsection (1) for such a period as it may specify.

- (3) The Authority may also determine that any specified part of the radio spectrum shall be made available for use under a class licence, whereby users may for the duration of the class licence access the spectrum without the need for an individual licence, subject to compliance at all times with the terms and conditions of the class licence.
- (4) Where the Authority considers it appropriate, users operating under a class licence may be required to provide the Authority with details of the stations operating under the licence, in accordance with the conditions specified in the licence, and the Authority may levy a charge in order to recover the costs involved.
7. The procedure for assigning radio spectrum, the conditions for participating in the assignment of radio spectrum and the fees payable for the use of radio spectrum shall be determined by the Authority on a competitive or non-competitive basis and, without limiting the methods which may be used, may include one or a combination of the following methods:
- (a) procedures for licensing frequency bands by auction;
 - (b) procedures for licensing frequency bands by tender;
 - (c) procedures for licensing frequency bands at a fixed price; or
 - (d) procedures for licensing frequency bands based on stated criteria.

The Authority may decide not to grant a licence for the use of any spectrum unless the applicant meets such requirements as the Authority may determine.

10. No person granted a licence may authorise another person to use the spectrum assigned to that licensee, without the express permission of the Authority, such permission not to be unreasonably withheld
11. Any person granted a licence for use of spectrum shall require the approval of the Authority for any transfer of the licence or for any change of control of the licensed radiocommunication service or for any other form of agreement with a third party under which the third party would obtain any rights or privileges under the licence
16. The grant of any licence referred to in these Regulations does not exempt the licensee from obtaining any other approval, permit, licence or other authorisation required by law for or in connection with the possession, establishment, installation maintenance, provision or operation of any radiocommunication service or transmitting device.
17. The Authority may issue any of the following types of Radiocommunications licences;
- (a) spectrum licence;
 - (b) station licence; or
 - (c) class licence.
18. Spectrum or station licences will be granted via a procedure defined by the Authority, including but not limited to a first come, first served basis or a competitive process
21. The Authority may, in consultation with the licensee and where there are compelling reasons, change any radio frequency assigned to the licensee under the spectrum licence or station licence. In such circumstances, the Authority will endeavour to provide reasonable notice to affected users in order to ensure minimum disruption of services.
22. (1) A spectrum licence will be granted to users to operate radiocommunications systems within a specified frequency band on a technology neutral basis i.e. no restrictions will be placed on the type of technology used. Flexibility will also be provided on the range of services which can be provided within the given frequency band. A spectrum licence will be made available generally for the offering of public or closed user group telecommunications or broadcasting services.

(2) A spectrum licence authorises the licensee to use the radio frequencies or frequency bands specified in the licence in accordance with the Act, these Regulations and the conditions of the licence.

(3) A spectrum licence shall authorise a licensee to—

(a) install and operate fixed or mobile telecommunications equipment which only operates in the spectrum granted in the licence.

(b) re-use any part of the assigned spectrum in their network.”

[Trinidad and Tobago Draft Spectrum Regulations of November 2005 (v.05), Section 6, 7]

International Examples and Regional Harmonization

ECOWAS

“In the interests of having a management regime that embraces the principle of technological neutrality, Member States shall ensure that radio spectrum management powers are vested in the national regulatory authority overseeing telecommunications by giving that entity a mandate covering ICT in the broadest sense.”

[ECOWAS, Supplementary Act A/SA.5/01/07 on the Management of the Radio-Frequency Spectrum, Chapter III, Article 12]

“Where demand is greater than supply, Member States shall make preferential use of auctions as a means of assigning major spectrum licenses to competing applicants, in the interests of ensuring transparency, objectivity and impartiality in the transfer (or assignment) process.”

[ECOWAS, Supplementary Act A/SA.5/01/07 on the Management of the Radio-Frequency Spectrum, Chapter II, Article 7]

“Member States shall ensure that all classes of users are encouraged to make optimum use of the spectrum they occupy.”

[ECOWAS, Supplementary Act A/SA.5/01/07 on the Management of the Radio-Frequency Spectrum, Chapter II, Article 5]

“Member States shall manage spectrum in ways that promote flexibility while respecting the ITU international allocations.”

[ECOWAS, Supplementary Act A/SA.5/01/07 on the Management of the Radio-Frequency Spectrum, Chapter II, Article 10]

Jordan

“Subject to paragraph (b) of this Article, no person shall use any electromagnetic waves below 3,000 gigahertz transmittable in space without obtaining a license in accordance with conditions specified by the Commission.”

[Jordan, Telecommunications Law of 1995, as amended 2002, Article 31(a)]

“The holder of a License for the use of Radio Frequencies shall conform to the conditions and standards specified in the License, including:

1. The frequencies assigned to him.
2. The type and specifications of both the antenna and the station.
3. The specific geographical area licensed for the placement of wireless mobile stations.
4. The site where the antenna shall be erected.
5. Qualifications of the person operating the Radio Station.
6. Any other technical conditions that may assist in the efficient and effective use of the Radio Frequency Spectrum.”

[Jordan, Telecommunications Law of 1995, as amended 2002, Article 37(a)]

“A specific period of validity shall be set for the public telecommunications network license or the license for the use of the frequencies, and it shall be renewed pursuant to instructions issued by the Commission.”

[Jordan, Telecommunications Law of 1995, as amended 2002, Article 38]

“Based on the direction of the Board, and on the recommendation of the Minister, the Cabinet may authorize the use of competitive bidding to grant licenses to use the radio frequency spectrum, in cases where it will serve the public interest. In making this determination, the Board shall not base such a finding of public interest solely or primarily on the expectation of revenues derived from the auction.”

[Jordan, Telecommunications Law of 1995, as amended 2002, Article 32]

Bahrain

“No Person shall operate a Telecommunications Network which uses radio frequency spectrum in the Kingdom, or operate or use any Radiocommunications Equipment associated with such a network without obtaining a License therefore from the Authority.”

[Bahrain, Telecommunications Law of 2002, Chapter IX, Section 43]

“The Authority shall, within thirty days after the date of submission of an application for a [Spectrum] License, decide whether to grant the License. If it requires any further information, it shall notify the applicant of such requirement within fifteen days of the submission of the application. In such case, the final decision shall be passed within the longer of:

1. Fifteen days after the receipt of such required further information, and
2. One hundred and fifty days of submission of the License application.”

[Bahrain, Telecommunications Law of 2002, Chapter IX, Section 44(c)]

3.4 Simplified License Application Procedures

International Best Practices and Regional Trends:

- The framework keep license conditions and filing requirements to a minimum
- Applicants can apply for large categories of facilities and/or services in the same application, which may involve a “check the box” style of notification/application or allow the applicant to list the types of facilities and/or services it plans to offer
- Procedures in case of expansion of activities at a later stage are simple –e.g., there a simple information requirement (Singapore)
- Where there is a system of individual and class licensing rather than a general authorization regime, the filing requirements for the class license are treated as if it is a general authorization
- License application procedures for activities falling under the class license regime are kept to a minimum and are different from applications for individual licenses in terms of the amount of detail applicants must provide
- Activities, such as value-added services or Internet cafes, which fall under an open entry regime may still be subject to declaration or registration but are no longer subject to waiting for approval to begin activities. Entities may begin offering such services prior to approval
- Time limits for acting upon license requests are reasonable

- The reason to refuse to issue a license is reasoned and transparent and communicated formally to the applicant
- The terms of a license are fixed at the time the license is officially delivered

Regional Examples

Antigua and Barbuda – LIMITED. There seems to be a registration system established. It is unclear if this approach is also used for licensing service providers, or is limited to dealer licensing.

“(1) Licences under this Act may be granted by telecommunications officer and by any person duly authorized in writing by the Governor-General in that behalf and shall be for such period and subject to such fees, if any, as the Cabinet may determine.

(2) The telecommunications officer and every person authorized as aforesaid shall keep a register in which he shall enter the particulars contained in every licence issued by him.”

[Telecommunications Act, Chap 423]

*** Fair, but not service-neutral procedures included in Telecommunications Bill, 2007**

Bahamas – GOOD

“22. Class licences not requiring registration: URCA may establish one or more class licences not requiring registration. Any person meeting the specified qualification criteria can provide the specified network or carriage service or use the specified radio spectrum in accordance with the published conditions in the class licence.

23. Class Licences requiring registration:

(1) In the event that URCA establishes one or more class licences requiring registration, It must publish a standard registration form for class licences issued under section 19(3)(c)(i).

(2) URCA shall publish guidelines for registration and deregistration of class licensees.

(3) Any person meeting the specified qualification criteria published by URCA for a class licence requiring registration may register and remain registered for that class licence by filing with URCA the appropriate complete, correct and signed registration form and paying any application or other fees if so prescribed by URCA.

(4) URCA must provide written notice of non-effective registration to a person filing a registration form under subsection (3) if–

- (a) the person fails to qualify with any criteria applicable to, and so is ineligible for, the relevant class licence;
- (b) the registration form is incomplete, incorrect or unsigned; or
- (c) the fee prescribed has not been paid.

(5) Unless URCA provides the notice under subsection (4), registration shall take effect forty-five calendar days after filing

- (a) the complete, correct and signed registration form; or
- (b) a completed, corrected or signed registration form filed in response to a notice under subsection (4).

(6) URCA may not restrict the number of persons that may register under a class licence.”

[Communications Act of 2009, Sections 22 and 23]

Barbados – FAIR: Despite the clear separation between the class licensing and open access regimes, registration process crosses various ministries, complicating the process

“The Telecommunications (Regulated Services) Order, 2003 S.I. No.108 has been published and lists the following services as services to be regulated by the Fair Trading Commission.

- (a) international telecommunications services,
- (b) domestic voice telecommunication services,
- (c) services in respect to interconnection charges,
- (d) leased circuits, and
- (e) international simple resale.

Unregulated Services

- All other telecommunication services in Barbados will be unregulated.
- All service providers are required to submit a list of all the services they provide and the prices charged for each service.
- When a Service Provider wishes to introduce a new service, the Minister responsible for Telecommunications shall be informed at least one (1) working day prior to the introduction of such service.”

[Barbados Unregulated Services Policy of 2003]

“2. In these Regulations, “class licence” means a general authorisation or licence which covers a group or class of users and which permits that group or class of users to offer certain telecommunication services to the public on the conditions set out in the licence.

3. The Minister may issue a class licence for the provision of the following services on such terms and conditions as are specified in the licence, in the Act or these Regulations:

- (a) internet services;
- (b) paging services;
- (c) services provided by sellers and dealers; and
- (d) services of service providers that are
 - (i) Callback or Call Re-Origination,
 - (ii) Internet-based Voice or Data,
 - (iii) Store-and-Retrieve (S&R) Value-Added,
 - (iv) International Calling Card (ICC); and
 - (v) Audiotex.

[Telecommunications (Class Licence) Regulations of 2003]

Belize – FAIR: licenses are still technology/service specific and licensing procedures still too detailed

[Belize Telecommunications (Licensing Classification, Authorisation and Fee Structure), Regulations, 2002]

Dominican Republic – FAIR: simpler application procedures for authorizations and large category of services in one application

13. Telecommunications services are classified as: a) Carrier services; b) End services or teleservices; c) Value added services; and d) Transmission services.

19. A concession granted by the regulatory body shall be required for the rendering to third parties of public telecommunications services, with the exceptions provided for in the present chapter. The regulation shall provide for the procedures for competition, collection for a particular type of concession, and shall respect the principles of equality and non-discrimination.

20. A license granted by the regulatory body shall be required for use of the public radioelectric domain, with the exceptions established by the regulation.

21.- When for the rendering of a public telecommunications service concessions and licenses are required, they shall be granted simultaneously.

Regulation

19.4. La obtención de una Concesión no exime a su titular de la obligación de obtener cualesquiera otras autorizaciones necesarias para prestar el servicio y para la efectiva implementación de los sistemas autorizados.

19.5. Se podrá solicitar simultáneamente más de un servicio en cada solicitud de Concesión.

[Telecommunications Law and Licensing Regulation – Reglamento De Concesiones, Inscripciones En Registros Especiales Y Licencias Para Prestar Servicios De Telecomunicaciones En La Republica Dominicana]

Dominica; St. Kitts and Nevis; and St. Lucia – FAIR: although the application procedures for class licenses are simpler than for individual licenses (e.g., individual license applications must be presented to ECTEL for approval while class license applications are decided by the Commission and the Minister), the class licensing regime requires a lengthy approval process (e.g., it can take up to 75 or 90 days for approval) rather than notification requirement as under a general authorization regime.

“7(1) An application for a class licence shall be submitted in writing to the Commission and shall -

- (a) be in the prescribed form and contain such information and particulars as are set out in Schedule 2; and
- (b) be accompanied by the prescribed application fee.

8. The Commission, upon receiving an application for a class licence may consult with members of the public, experts, industry or other persons, or adopt any other reasonable process to aid it in recommending whether or not to grant a licence to a person to operate under a class licence.

9. (1) Upon completion of the process under regulation 8, the Commission shall forward the application to the Minister together with its recommendations as to whether a class licence could be granted or not.

(2) In making its recommendation to the Minister the Commission shall take into account -

- (a) the matters set out in the application;
- (b) any submissions received during the process set out in regulation 8; and
- (c) other relevant matters.

10. (1) The Minister shall decide whether to grant a class licence to the applicant within 75 days [90 days in St. Kitts and St. Lucia] of the application being received by the Commission.

(2) The Minister’s decision to grant or not to grant a class licence to a person does not licence that person to own or operate any telecommunications network, or provide any telecommunications service, other than that prescribed in the class licence.”

[Dominica, Telecommunications (Licensing and Authorisation) Regulations of 2002, Sections 7-10]

[St. Kitts, Telecommunications (Licensing and Authorisation) Regulations of 2002, Sections 9-12]

[St. Lucia, Telecommunications (Licensing and Authorisation) Regulations of 2002, Sections 8-11]

Grenada – FAIR: class licenses are issued on the same terms to all applicants, but remain service-specific.

“Class licence” means a licence, as distinct from an individual licence, issued on the same terms to each applicant of a category of users in respect of the operation of a type of telecommunications network or telecommunications service specified under section 6; [Telecommunications Act of 2000, Section 3]

Guyana – LIMITED: although the 2001 Consultation is good, there has been no apparent decision

“General authorizations (“class licences”) for networks and services which do not require access to radio spectrum or other scarce resources and that carry a limited number of rights or obligations. It is proposed that these will include:

- ISPs
- Resellers
- Private telecommunications networks that are used only for internal communications purposes of a business, Government, NGO or other organization
- Value-added service providers, including information service providers
- Any other services that do not require an individual licence

Over time, the National Telecommunications Policy may be amended to permit other types of services to be provided under a general authorization.

General Authorizations will, by definition, not require the issuance of a specific licence. The terms of the general authorizations will establish the conditions for provision of each type of service (e.g. ISPs, resellers, etc.)

The conditions of general authorizations will be published and available to all.

Any person that complies with the conditions of a general authorization may commence offering services upon filing a registration.

Registrations to provide services under a general authorization shall include names, addresses, service description and other information required by the conditions of the general authorization.

A registration may be revoked for breach of the conditions of a general authorization.”
[Consultation Paper, Reform of the Telecommunications Sector in Guyana of 2001]

Jamaica – FAIR: Despite simplification of the licensing framework, the process remains of obtaining approval for the grant of licence.

“11. - (1) An application for a licence under this Act shall be made to the Office for licence. in the prescribed form and shall be accompanied by the prescribed application fee...

(4) After taking action in accordance with subsection (2) in respect of an application, the Office shall make recommendations thereon to the Minister.

13. - (1) Upon receipt of a recommendation from the Office pursuant to section licence. 11(4), the Minister may, subject to subsections (2) and (3) -

- (a) in the case of an application for a carrier licence, grant that licence authorizing the licensee to own and operate the facilities specified in the application;
- (b) in the case of an application for a service provider licence, grant that licence authorizing the licensee to provide the services specified in the application;
- (c) in the case of a dealer licence, grant the licence authorizing the licensee to sell, trade in or import any prescribed equipment;

- (d) refer the recommendation back to the Office for further consideration; or
- (e) refuse to grant the licence and the Minister shall as soon as practicable give written reasons for such refusal”

[Telecommunications Act of 2000, Section s11 and 13]

St. Vincent and the Grenadines – FAIR: although the application procedures for class licenses are simpler than for individual licenses (e.g., individual license applications must be presented to ECTEL for approval while class license applications are decided by the Commission and the Minister), the class licensing regime requires a lengthy approval process (e.g., it can take up to 71 days for approval) rather than notification requirement as under a general authorization regime

“9. An application for a Class Licence shall be for either a Class Licence Type ‘A’ Service or Class Licence Type ‘B’ Service and shall be submitted to the Commission–

- (a) in the prescribed form and contain such information and particulars as are set out in the Fifth and Sixth Schedules respectively; and
- (b) be accompanied by the prescribed application fee which shall be nonrefundable Consultations on Class Licence Application.

10. The Commission, upon receiving an application for a Class Licence may consult with ECTEL, members of the public, experts, industry or other persons, or adopt any other reasonable process to aid it in recommending whether or not to grant the licence to the applicant.

11(1) Subject to regulation 5, and notwithstanding regulation 10, the Commission shall within sixty (60) days of receipt of a Class Licence application forward the application to the Minister together with its recommendations.

(2) In making its recommendation to the Minister the Commission shall take into account -

- (a) the matters set out in the application
- (b) any submissions received during the process set out in regulation 10; and
- (c) other relevant matters.

12(1) The Minister shall within twenty-one (21) days of receipt of the recommendation for a Class Licence from the Commission notify the applicant of his decision in writing.

(2) Where the application is refused the Minister shall in his notification to the applicant state in writing the reasons for his refusal.”

[Telecommunications (Licensing and Authorisation) Regulations of 2002, Sections 9-12]

Suriname – FAIR: The process based on grant of licence pursuant to review by TAS by concessionaires, with a grant of licence from TAS to other persons.

1. It is prohibited to install, develop and operate telecommunications infrastructure, without a concession to that effect, granted by the President by resolution, at the advice of the Minister, after having heard the TAS.

A license issued by the TAS shall be required for persons other than concession holders to offer regulated and non-regulated services; it shall be stipulated by state decree which services are regulated.

[Telecommunications Act, Art. 9 and 13]

Trinidad and Tobago – FAIR: application process for class licenses is simpler than for individual licenses requiring scarce resources.

“The two methods for receiving applications from prospective concessionaires and licensees are:

5.3 Methods of Application for Concessions/ Licences

1. General Application; and
2. Response to a Request for Proposal.

5.3.1 General Application

Where the Authority determines that a First Come First Served method will be used to recommend the award of a concession or grant a licence, a general application form will be available at the Authority's office.

The form will require the applicant to provide the information and materials to be used for evaluating the application. For concessions where the use of radio-transmitting equipment is required, the concession application form will indicate the relevant licence application form that should be attached.

5.3.2 Response to an Invitation by the Authority to Participate in a Competitive Selection Process

Where competition is introduced for the first time in highly profitable markets, where there is demand for spectrum or other resources that may be limited, or where there is a need to limit the entry of providers in a particular market, the Authority shall publicly issue requests for proposals (RFPs) to invite interested parties to participate in a competitive selection process for the relevant concession(s) and/ or licence(s).

The RFP issued by the Authority will include all specific instructions and details particular to the process to be adopted by the Authority for that concession/ licence, and the criteria and associated weightings to be used in the evaluation process."

[Authorisation Framework for the Telecommunications and Broadcasting Sectors of Trinidad and Tobago of 2005, Section 5.3]

International Examples and Regional Harmonization

European Union

"The least onerous authorisation system possible should be used to allow the provision of electronic communications networks and services in order to stimulate the development of new electronic communications services and pan-European communications networks and services and to allow service providers and consumers to benefit from the economies of scale of the single market. Those aims can be best achieved by general authorisation of all electronic communications networks and services without requiring any explicit decision or administrative act by the national regulatory authority and by limiting any procedural requirements to notification only. Where Member States require notification by providers of electronic communication networks or services when they start their activities, they may also require proof of such notification having been made by means of any legally recognised postal or electronic acknowledgement of receipt of the notification. Such acknowledgement should in any case not consist of or require an administrative act by the national regulatory authority to which the notification must be made.

[Common regulatory framework for electronic communications networks and services (Framework Directive) of 2002]

ECOWAS

“(1) For each call for tender for the purpose of proposing the establishment and/or operation of a specific telecommunication service or network under the individual license regime, the administration shall establish in the terms of reference:

- (a) the conditions for the establishment of the network;
- (b) the conditions for the provision of the service;
- (c) the coverage area or the service and implementation schedule;
- (d) the radio frequencies and blocks of numbers allocated along with the conditions of access to elevated points belonging to the public domain;
- (e) the minimum professional and technical qualifications along with the financial guarantees required of applicants;
- (f) the conditions for operating the service, including those relating to the provision of universal service and the principle of equality of treatment of users;
- (g) arrangements for payment of the fee;
- (h) arrangements for payment of the financial consideration;
- (i) duration of the license’s validity and conditions for its renewal.”

[ECOWAS, Supplementary Act A/SA.3/01/07 on the Legal Regime Applicable to Network Operators and Service Providers, Article 15]

3.5 License Conditions**International Best Practices and Regional Trends:**

- The detail of the legal and regulatory texts is not copied verbatim in the licenses – i.e., the licenses refer to the relevant legal provisions without copying text of regulations
- License conditions are justified, proportionate, non-discriminatory, cost efficient and transparent
- The objective is to minimise all costs imposed on licensees
- The legal framework reflects a gradation of rights and obligations according to specific situation (e.g., obligations just applicable for dominant operators/operators with SMP, specific obligations linked to use of numbers or spectrum)
- There is provision in the licenses to allow an operator to apply to the regulator for forbearance from regulation
- Over time a build-up of dated regulation has the potential to hinder sector development. Licensing objectives are to minimize the regulatory burden imposed on licensees
- It is possible and indeed a duty on the regulator for license conditions to be reviewed periodically and if necessary removed or modified.
- There are periodic reviews of regulation either which can be initiated by the regulator or on application by licensees

Regional Examples

Antigua and Barbuda – LIMITED: The conditions are very general with high risk of variation due to Cabinet decree.

“18. (1) The Cabinet may make rules in respect of any matter and for any purpose relating to telecommunications and for more effectually carrying into effect the purposes of this Act and may attach to any breach of any such rules a penalty not exceeding five hundred dollars recoverable on summary conviction.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for the following matters-

(6) the types and forms of licences and the manner in which applications for licences are to be made;
 (d) the terms on which and the conditions and restrictions subject to which licences shall be granted and the duties of licensees;
 (e) the conditions under which telecommunications may be worked in Antigua and Barbuda and on ships or on any aircraft while in or over Antigua and Barbuda or the territorial sea thereof;”

[Telecommunications Act, Chap 423]

* **Good provisions are included in the Telecommunications Bill of 2007, Section 10]**

Bahamas – GOOD

“(1) URCA shall publish the conditions of a standard network and carriage services individual licence (the “individual operating licence”) to comprise substantially the same conditions for all licensees, subject to the provisions of Part VI and Part VII.

(2) URCA may make such modifications, variations or restrictions to any of the standard individual operating licence conditions as it requires for reasons justified by reference to the communications policy objectives.

(3) URCA may grant a licence for the use of radio spectrum subject to such conditions as it considers appropriate under the communications policy objectives.

(4) Conditions of licences that relate to the same or similar networks or carriage services shall not unfairly discriminate between licensees.”

[Communications Bill of 2009, Section 20]

Barbados – GOOD

“(3) The conditions under which a licence is granted under this Act shall be non-discriminatory.

(4) For the purposes of paragraph (3), “non-discriminatory” means that

- (a) there shall be similar treatment of all telecommunications providers that are of a similar type of telecommunications network or service; and
- (b) that no telecommunications provider or class of telecommunications providers shall be favoured over another provider or class of providers.

(5) For the purposes of paragraph (3), a licence issued to a designated universal service carrier or issued to a licensee declared to be dominant by the Minister, shall not be considered to be discriminatory in respect of terms contained in the licence that are related to the designation and obligations imposed upon the licensee as the universal service carrier or as a dominant provider.”

[Telecommunications (Public Telecommunications Licensing) Regulations of 2003, Section 8]

Belize – FAIR: not very detailed although the principle is there

10. (1) The PUC shall issue an Individual Licence, Class Licence and Frequency Authorisation on terms that are non-discriminatory.

(2) For the purpose of this regulation, an Individual Licence, Class Licence or Frequency Authorisation is issued on non-discriminatory terms if:

- (a) telecommunication providers of similar types of telecommunications networks are treated similarly;
- (b) the licence or authorisation does not favor any one telecommunications provider; and
- (c) the issuance of the licence or authorisation does not, and is not likely to, adversely affect competition in any market.

[Belize Telecommunications (Licensing Classification, Authorisation and Fee Structure), Regulations, 2002, Section 10]

Dominican Republic – FAIR: not clear, does not mention parity or public consultation – subsection (i) in particular is worrying

30. In general, and without prejudice of others established by the regulation, the following shall be essential obligations of concessionaires of public telecommunications services:

- a) Compliance with the minimum expansion plan of the services provided for in the concession document, in the plans established by a particular timetable, under penalty of revocation of its concession;
- b) Continuity in the rendering of the public services in its charge;
- c) The rendering of service to interested parties who request it within the zone of service, under non-discriminatory conditions, in the terms and with the quality conditions set by their concessions or the regulatory body in the pertinent regulations.
- d) To permit free access to its networks and to the services which they render through them, under regulated and nondiscriminatory conditions, to providers and users of telecommunications services, to generators and receivers of information, and to providers and users of information services;
- e) The establishment, by the concessionaires who provide local telephone service, gradually, so that it includes all its systems, of a mechanism for access and automatic identification of the client's telephone number, which will permit the user of the service to select the domestic or international long distance services of the provider of his choice. Access to other different providers than the one who offers the local service shall be achieved by dialing the same number of digits to identify any concessionaire rendering long distance services. For that, the concessionaires who provide local telephone service must give to the concessionaires rendering long distance services equal access to their network and services of invoicing, and are prohibited from any type of discrimination. This system of access and its evolution until getting to the "Equal access system" will be put into effect by following the technical standards adopted by the countries of the World Zone Number 1 on this point. The form of application of these norms, their terms and evolution, shall be established by the regulatory entity by means of the pertinent regulations.
- f) To participate in the perception of "Contribution to the development of telecommunications" (CDT) in the form foreseen in this law and its regulation;
- g) To permit officials of the regulatory body, both owners of concessions and their dependents, free access to their installations, dependencies, and equipment, for the sole and exclusive purpose that they may be able to inspect compliance with the pertinent legal and regulatory norms, in the cases foreseen by this law for request of inspection or information;

- h) In the event that a concessionaire renders several public telecommunications services, it must keep separate accounting for each service, making it possible to control fair and effective competition; and
- i) Others which this law, its regulations of application, concessions, or licenses may establish.

[Telecommunications Law 1998]

Dominica; St. Kitts and Nevis; St. Lucia and St. Vincent & the Grenadines – GOOD

“(1) The Minister shall issue an individual licence, class licence authorisation and frequency authorisation on terms that are non-discriminatory.

(2) For the purpose of paragraph 1 above, an individual licence, class licence or frequency authorisation is issued on nondiscriminatory terms if -

- (a) telecommunications providers of similar types of telecommunications networks are treated similarly;
- (b) the licence or authorisation does not favour any one telecommunications provider or class of telecommunications providers; and
- (c) the issuance of the licence or authorisation does not, and is not likely to, adversely affect competition in any market.”

[Dominica, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 17]

[St. Kitts, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 17]

[St. Lucia, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 17]

[St. Vincent, Telecommunications (Licensing and Authorisation) Regulations of 2007, Section 23]

Grenada – FAIR: although the law provides for certain conditions that *must* be in license, it also allows for certain conditions that *may* be in license, which can lead to disproportionate requirements on some licensees over others in the same license category.

(1) The Minister may, in “granting the individual licence, include all or any of the terms and conditions specified in Part 1 of the Second Schedule [this includes, among others, duration of license, build-out requirements, interconnection obligations, and universal service obligations].

(2) An individual licence shall include the terms and conditions specified in Part 2 of the Second Schedule [this includes requirements for initial and annual fees, provision of information to ECTEL, and fees for universal service].

[Telecommunications Act of 2000, Section 30]

Guyana – FAIR: although the 2001 Consultation is good, there has been no apparent decision

Licensing should be carried out in an open, transparent and non-discriminatory fashion. Not only the licensing process, but also other aspects of the regulatory and fiscal framework for the telecommunications sector should treat licensees in a fair and equitable manner. During the transition to competition, it is common to introduce some degree of asymmetric regulation, to limit potential abuses of market power by dominant operators. However, such asymmetric regulation must be seen as transitional, and should be removed as soon as markets are workably competitive.

Haiti – NONE: no mention in the law

Jamaica – FAIR: although there are specific conditions that apply equally to all licensees of the same category, the law provides the Minister with significant space to apply conditions to some licensees and not others within the same category. However, this effect may be minimized since the Minister must provide reasons to the licensee if additional conditions apply to it.

“(3) A licence granted under this section shall be in the prescribed form and, subject to subsection (5), shall be subject to the following conditions -

- (a) the licensee shall not operate a facility, provide specified services or use any frequencies designated in the licence beyond the period of the licence or in any manner other than that authorized by the licence;
- (b) the licence or any right granted thereby shall not be assigned or otherwise transferred except in accordance with this Part;
- (c) such other condition as may be considered necessary to ensure that the licensee complies with the requirements specified in section 11 (1)(a) to (d) [e.g., compliance with interconnection or universal service obligations];
- (d) subject to subsection (4), such other condition as the Minister deems reasonably necessary to achieve the objects of this Act.

(4) Where a licence contains a condition such as is referred to in subsection (3)(d), the Minister shall inform the applicant in writing of the reasons for that condition.

(5) A licence granted under this Act may, on the expiry thereof, be renewed in accordance with section 15.

(6) A licence granted under this Act shall, unless sooner revoked, be valid -

- (a) in the case of a carrier licence, for such period as is specified therein;
- (b) in any other case, for such period, not exceeding fifteen years, as may be so specified.”

[Telecommunications Act of 2000, Section 13]

Suriname – FAIR: although there are specific conditions that apply equally to all licensees of the same category, the law provides the Minister with space to apply conditions to some licensees and not others within the same category – see 19 (2).

“ 19 (1) Aan een concessie worden voorwaarden verbonden die overeenkomstig artikel 9 lid 1 bij resolutie worden vastgesteld. – CONCESSIONS ARE SUBJECT TO CONDITIONS DETERMINED BY THE PRESIDENT UPON PROPOSAL OF THE MINISTER AFTER CONSULTATION OF THE REGULATOR.

(2) Behalve de voorwaarden in elk bijzonder geval aan een concessie te verbinden, hebben de voorwaarden met het oog op de uitvoering van artikel 9 leden 1 en 3, artikel 10 lid 2 en artikel 14 leden 1 en 2 in elk geval betrekking op:

- de omvang en aard van de concessie;
- de duur van de concessie;
- de gronden voor intrekking van de concessie;
- het in stand houden van een goede telecommunicatieinfrastructuur en een goede dienstverlening;
- de wijze en mate van dienstverlening;
- de samenwerking tussen concessiehouders;
- het vaststellen van algemene voorwaarden;
- de geheimhouding;
- de bescherming van de persoonlijke levenssfeer;
- het verstrekken van periodieke informatie aan de TAS ten dienste van het toezicht overeenkomstig door de Minister vast te stellen regels.

CONDITIONS SHALL BE determined according to the needs of each individual license and may also include conditions relating to:

- the scope and nature of the concession
- the term of the concession
- reasons for withdrawal
- quality of service
- scope of services
- cooperation between concession-holders
- general conditions
- protection of privacy
- protection of personal data
- information to regulator to enable supervision

(3) Een besluit tot vaststelling van nieuwe of wijziging van bestaande voorwaarden wordt genomen met inachtneming van een bedrijfsmatige en op continuïteit gerichte exploitatie door de concessiehouder. – *DECISIONS TO DETERMINE NEW OR CHANGED CONDITIONS ARE TAKEN WITH DUE CONSIDERATION TO EFFICIENT MANAGEMENT AND CONTINUITY IN THE PROVISION OF EXPLOITATION BY THE CONCESSION HOLDER.*

(4) De TAS kan regels vaststellen met betrekking tot de door een concessiehouder te hanteren tarieven en de wijziging daarvan. *THE TAS CAN DETERMINE RULES RELATING TO TARIFFS AS WELL AS CHANGES TO TARIFFS.*"

[WET van 11 november 2004, houdende regels met betrekking tot voorzieningen voor telecommunicatie (Wet Telecommunicatievoorzieningen)]

Trinidad and Tobago – GOOD

"The Authority has prepared a modular form of radiocommunication licence, to match the modular concession, which sets out conditions of general application to all licensees, followed by conditions and spectrum authorisations specific to different types of radio communications networks and equipment. Accordingly, the following structure shall be adopted for licences to be granted by the Authority:

- Title of Licence
- (Private/Public) Spectrum Licence or (Name of Station) Station Licence
- Definition
- Section A: General Conditions applicable to all licences.
- Section B: Conditions applicable to specific type of licence (spectrum, station or class)
- Schedule A: Technical Specifications
- Schedule B: Frequencies/Spectrum assigned to licensee
- Schedule C: Reference to concession(s) to which the licence is related, where applicable."

[Authorisation Framework for the Telecommunications and Broadcasting Sectors of Trinidad and Tobago of 2005, Section 7.10]

International Examples and Regional Harmonization

European Union

"(3) The objective of this Directive is to create a legal framework to ensure the freedom to provide electronic communications networks and services, subject only to the conditions laid down in this Directive and to any restrictions in conformity with Article 46(1) of the Treaty, in particular measures regarding public policy, public security and public health.

- (4) This Directive covers authorisation of all electronic communications networks and services whether they are provided to the public or not. This is important to ensure that both categories of providers may benefit from objective, transparent, non-discriminatory and proportionate rights, conditions and procedures.
- (9) It is necessary to include the rights and obligations of undertakings under general authorisations explicitly in such authorisations in order to ensure a level playing field throughout the Community and to facilitate cross-border negotiation of interconnection between public communications networks.
- (11) The granting of specific rights may continue to be necessary for the use of radio frequencies and numbers, including short codes, from the national numbering plan. Rights to numbers may also be allocated from a European numbering plan, including for example the virtual country code 3883 which has been attributed to member countries of the European Conference of Post and Telecommunications (CEPT). Those rights of use should not be restricted except where this is unavoidable in view of the scarcity of radio frequencies and the need to ensure the efficient use thereof.
- (17) Specific obligations which may be imposed on providers of electronic communications networks and services in accordance with Community law by virtue of their significant market power as defined in [the Framework Directive] should be imposed separately from the general rights and obligations under the general authorisation.”
- [Common regulatory framework for electronic communications networks and services (Framework Directive) of 2002, Sections 3, 4, 9, 11, 17]

Ireland

“2.1 An Authorised Person may:-

- (a) subject to Regulation 8(3) of the Authorisation Regulations, provide the electronic communications networks or services as described in a notification under Regulation 4(2) or 4(4) or, where a notification is not required, as described in a determination by the Commission made in accordance with Regulation 4(6) of the Authorisation Regulations,
- (b) apply for a consent under section 53 of the 2002 Act, and
- (c) apply for a licence under section 254(1) of the Planning and Development Act, 2000 for the establishment of overground electronic communications infrastructure and any associated physical infrastructure.

2.2 Where the Authorised Person is providing an Electronic Communications Service or Network to the public he/she may:

- (a) under the conditions of, and in accordance with, the Access Regulations negotiate interconnection with and where applicable obtain access to or interconnection from another Authorised Person or another undertaking deemed to be authorised in another Member State to provide a publicly available Electronic Communications Network or Service; and
- (b) be given an opportunity by the Commission to be designated under Regulation 7 of the Universal Service Regulations to carry out obligations referred to in that Regulation.

2.3 For the avoidance of doubt, the Authorisation is non-exclusive.

4.4. Where the Commission concludes that a relevant market is effectively competitive, the Commission shall not impose any specific obligations on any Authorised Person. In cases where an Authorised Person had previously been designated as having Significant Market Power (“SMP”) in such market and such specific obligations already exist, the Commission shall, after giving reasonable notice to any parties which it considers to be affected by such withdrawal, withdraw such specific obligation from the Authorised Person concerned.

4.5 Where the relevant market is not effectively competitive, the Commission shall designate the Authorised Person(s) with SMP (“SMP Operators”) in that market in accordance with Regulation 25 of the Framework Regulations. In relation to such SMP Operators, the Commission shall impose, maintain or amend such specific obligations as the Commission considers appropriate in accordance with the provisions of the Framework, Access and Universal Service Regulations.”

[General Authorisation for the Provision of Electronic Communications Networks and Services of 2003, Sections 2 and 4]

3.6 Transparent License Administration

International Best Practices and Regional Trends:

- There are provisions in licenses to accommodate legal framework changes
- Licenses should be transferrable to third parties? If the transfer of the license to a third party requires prior consent from the regulatory authority, the procedure should be transparent and clear
- Is there an exception for transfer of a license obtained through competition or tender procedures
- Procedures to amend a license must be transparent
- Timeframes for modifications are reasonable
- The license must provide for termination rights and renewal that are appropriate to each party
- The Legal framework shall provide for an effective dispute resolution process with clear, specific time periods for resolution
- All parties must be clear on the process

Regional Examples

Antigua and Barbuda – NONE

*** Good provisions are included in the Telecommunications Bill of 2007, Sections 8 and 19]**

Bahamas – GOOD

“27(1) URCA may by determination, on its own motion or on the written application of the relevant licensee, modify, vary, restrict the conditions of, or revoke, any licence granted to a licensee if–

- (a) it is necessary to comply with or conform to international treaties, commitments or standards or the laws of The Bahamas;
- (b) it is necessary to further the communications policy objectives and there is justification for the causing of any hardship that may result to that licensee;
- (c) the licensee has repeatedly contravened, or failed to cure a material contravention of this Act or any other regulatory measure, including any condition of its licence;
- (d) the licensee made a statement or omitted to make a statement resulting in a material misrepresentation in its licence application or registration;

- (e) the licensee has entered into receivership or liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a competent court or tribunal for its compulsory winding-up or dissolution;
- (f) the licensee is not providing the network or carriage service authorised by and specified in its licence and URCA is satisfied that the licensee does not have the intention or the financial strength and resources to provide such network or carriage service;
- (g) it is in accordance with the procedure specified in section 95; or
- (h) it is in accordance with the terms of the licence.

(2) Subject to any determination being suspended pursuant to section 102(2), any determination made by URCA to modify, vary, restrict or revoke a licence shall take effect on the date specified which shall not be less than thirty calendar days after the date of written notice given to a licensee affected by that determination, and such licensee may before the date specified in the notice given appeal to the Tribunal against such modification, variation, restriction or revocation.

(3) URCA may provide that modifications, variations, restrictions or revocations of class licences apply only to specified licensees or to all licensees under the class licence.

(4) In modifying, varying, restricting or revoking any licence, URCA must take into account continuity of service to users.”

[Communications Bill of 2009, Section 27]

Barbados – GOOD

“11(1) Where a modification of a licence pursuant to section 18 of the Act is proposed, the licensee shall submit an application for modification to the Minister in the relevant form.

- (2) An application for modification of a licence shall contain the statements
- (a) that indicate clearly the parts of the licence to be modified;
 - (b) that set out comprehensively and accurately relevant facts and technical information respecting the modification.

(3) The Minister may request additional information in respect of an application for modification in order to determine whether to grant the modification requested.

- (4) In considering a request by a licensee to modify its licence, the Minister shall take into account
- (a) the considerations specified in section 11 of the Act; and
 - (b) any submission received from the licensee in relation to the proposed modification.

(5) Where the Minister determines that a request for a modification will result in substantial changes to the existing licence, the Minister may require payment of a licence modification fee in accordance with the Telecommunications (Licence Fees) Regulations, 2003.”

“12(1) Where a licensee wishes to

- (a) assign its licence or any rights under the licence; or
- (b) transfer control of operations under section 20 of the Act, the licensee shall apply in the relevant form to the Minister for approval.

(2) The licensee shall not assign or otherwise transfer the licence or any rights under the licence until written approval has been granted by the Minister.

(3) A licensee who makes an application under paragraph (1) shall submit information supporting the legal, technical and financial qualifications of the proposed assignee or transferee.

(4) The Minister in determining an application made under subsection (1) shall have regard to the following matters where relevant:

- (a) whether the assignee or transferee satisfies the criteria for the grant of a licence;
- (b) the circumstances of each assignment or transfer to ensure that the assignee or transferee is not unduly restricted in the management of its commercial affairs.”

[Telecommunications (Public Telecommunications Licensing) Regulations of 2003, Sections 11 and 12]

Belize – FAIR: not enough detail although the principle is there

11. (1) The PUC may revoke a licence if it determines that any declaration made during the application process or on the application form is false or misleading.

(2) The holder of a licence or authorization shall notify the PUC in writing if either of the following occurs:

- (a) any of the matters forming part of the licence application changes in a material respect;
- (b) the licensee enters into any agreement to merge part or all of its telecommunications activities in Belize with any person.

(3) Where the PUC proposes to vary or revoke or suspend a licence or authorisation, the PUC shall notify the licensee or authorisation holder

- (a) of the reasons for the proposed variation, revocation or suspension; and
- (b) specifying a period of not less than thirty days from the date of the notice within which representation with respect to the proposal may be made.

(4) Where the proposal in paragraph (3) above is the result of a breach of a term, provision or limitation of the licence or authorisation

- (a) the notice given to the licensee or authorization holder shall state that the proposal will be withdrawn or modified if the breach is remedied within the period of thirty days commencing with the date of the notice; and
- (b) the PUC shall within the period of thirty days following the period referred to in paragraph (a), confirm, modify or withdraw the proposal.

[Belize, Telecommunications (Licensing Classification, Authorisation, and Fee Structure) Regulations, 2002, Section 11]

Dominican Republic – GOOD: clear provisions in the law

27.1 The concessions shall have the duration which the interested party may request between five (5) and twenty (20) years, and shall be renewal, at the request of the interested party, for equal terms.

27.2. Requests for renewal must be made within a term no greater than one (1) year prior to the end of the period of effectiveness, and the regulatory entity must make a pronouncement in a maximum term of six (6) months, from date of receipt of the request. Once said term has expired without any express negative ruling from the regulatory body, the renewal shall be deemed to have been granted.

27.3. The only causes for non-renewal of the concession shall be those provided for for its revocation.

27.4. The regulatory body may, every five (5) years, review the conditions of rendering of service. Said review shall be performed after consultation with the parties, and observing the respect for acquired rights, economic equilibrium fo the contract, and investments made by the concessionaire companies.

27.5. The licenses which may be granted linked to a concession of public telecommunications services shall have the same duration as said concession, including its renewals.

- 28.1. The transfer, assignment, lease, or granting of the right of use of any title and the incorporation of a lien over the concessions or licenses must be carried out, under penalty of forfeiture, after authorization of the regulatory body, which may not be denied it without justified cause. The acquiring party, who must fulfill the requirements demanded by the granting party, shall be submitted to the same obligations as the concessionaire or licensee.
- 28.2. In the situations foreseen in the previous paragraph, the sale or assignment of shares or corporation participation (equity) which implies the loss by the seller or assigner, of corporate control or the possibility of forming the corporate will, shall require the authorization of the regulatory body.
- 28.3. Transfers shall not be authorized when the concessionaire of the public telecommunications services has not complied, in quality and time period, with the minimum plan of expansion foreseen in its concession contract, or when said concession is in conditions of being revoked. Neither shall transfers be authorized until the cancellation of the rights, charges for noncompliance, and taxes foreseen by this law which the concessionaire has pending payment.
- 28.4 In the situations foreseen in the above paragraph, the sale or assignment of shares or corporation equity (participation) which implies the loss by the seller or assigner of the corporate control or of the possibility of forming corporate will shall be prohibited.
- 29.1. The following shall be causes for revocation of the concession or registration and, in such case, of the corresponding licenses:
- a) Noncompliance in quality and time period with the minimum plan of expansion foreseen in its concession;
 - b) The state of cessation of payments of the concessionaire, declared by irrevocable ruling of the competent court;
 - c) Reincidence in the commission of very serious infractions, with definitive sanction applied;
 - d) The illegitimate use of resources from the “Telecommunications and universal service development fund”;
 - e) The impossibility of compliance with the corporate object of the concessionaire according to its statutory mandate insofar as it is related to the concession and/or license granted;
 - f) Disconnection, when it implies the definitive impossibility of continuing to render the service; and
 - g) Unjustified suspension of the service.

29.1 Revocations may be total or partial, for one or more services.

[Telecommunications Law 1998]

Dominica; St. Kitts and Nevis; and St. Lucia – GOOD

- “(1) Where the Minister proposes to vary or revoke or suspend a licence or authorisation, he shall notify the licensee or authorisation holder -
- (a) of the reasons for the proposed variation, revocation or suspension; and
 - (b) specifying a period of not less than two months from the date of the notice within which representation with respect to the proposal may be made.
- (2) Where the proposal is the result of a breach of a term, provision or limitation of the licence or authorisation -
- (a) the notice given to the licensee or authorisation holder shall state that the proposal will be withdrawn or modified if the breach is not remedied within the period of 30 days commencing with the date of the notice; and

(b) the Minister shall within the period of 30 days following the period referred to in subparagraph (a), confirm, modify or withdraw the proposal.”

[Dominica, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 19]

[St. Kitts, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 20]

[St. Lucia, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 20]

Dominica – GOOD

“39(1) The Minister may, on the receipt of a recommendation from ECTEL, modify an individual licence where he and the licensee agree in writing.

(2) The Minister may, on receipt of a recommendation from ECTEL, modify a class licence following appropriate consultation with members of the relevant class.

(3) The Minister may, on receipt of a recommendation from ECTEL, modify a frequency authorisation where he and the licensee agree in writing.

(4) The Minister may on the receipt of a recommendation from ECTEL modify any licence or frequency authorization without the agreement of the licensee if he is of the view that the modification is necessary in the public interest or for reasons of national security.

(5) A licensee who seeks a modification of a licence shall apply in the same manner as he did for the initial licence.”

[Telecommunications Law of 2000, Section 39]

Grenada – FAIR: law provides for modification, but does not prescribe timeframes in which modifications may occur nor does it address whether licenses are transferable

“38(1) The Minister may modify an individual licence where he and the licensee agree in writing.

(2) The Minister may modify a class licence following appropriate consultation with members of the relevant class.

(3) The Minister may modify a frequency authorization where he and the licensee agree in writing.

(4) The Minister may on the receipt of a recommendation form ECTEL modify any licence or frequency authorisation without the agreement of the licensee if he is of the view that the modification is necessary in the public interest or for reasons of national security.

(5) A licensee who seeks a modification of a licence shall apply in the same manner as he did for the initial licence.”

[Telecommunications Act of 2000, Section 38]

Guyana – GOOD

“12(1) Subject to the following provisions under this section, the Director may modify the conditions of a licence granted under section 7.

(2) Before making any modifications in the conditions of a licence under this section, the Director shall give notice –

(a) stating that he proposes to make the modifications and setting out their effect;

(b) stating the reasons why he proposes to make the modifications; and

(c) specifying the time (not being less than twenty-eight days from the date of the publication of the notice) within which representations or objections with respect to the proposed modifications may be made, and shall consider any representations or objections, which are duly made and not withdrawn, by or on behalf of the licensee or any other person likely to be affected by the modifications.

(3) A notice under subsection (2) shall be given by publication in such manner as the Director considers appropriate for the purposes of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and, in the case of a licence granted to a particular person, by sending a copy of the notice to that person...”

[Telecommunications Act of 1998, Section 12]

Haiti – NONE: no mention in the legal texts

Jamaica – GOOD

“17(2) A licensee may, with the prior approval of the Minister assign its licence or any rights thereunder or transfer control of its operations.

(3) An application for approval of an assignment or transfer under this section shall be made in writing to the Minister who shall grant such approval if he is satisfied that the assignee satisfies the requirements of section 11(1) (a) to (d) as regards the obligations imposed on a licensee by this Act or the licence.”

[Telecommunications Act of 2000, Section 17]

St. Kitts and Nevis – GOOD

12(1) A licence granted under this Act may, on the recommendation of the Authority, be modified where the Minister and the licensee, by agreement in writing, agree to modify the licence.

(2) Notwithstanding the provisions of subsection (1) of this section, and subject to any special conditions concerning modification in the relevant licence, the Minister may, on the recommendation of the Authority, modify any licence without the agreement of the licensee if the modification is necessary in the public interest or for reasons of national security.”

[Telecommunications Act of 2000, Section 12]

St. Lucia – GOOD

“40(1) The Minister may, on the receipt of a recommendation from ECTEL:

- (a) modify an individual licence where the Minister and the licensee agree in writing;
- (b) modify a class licence following appropriate consultation with members of the relevant class.
- (c) modify a frequency authorisation where the Minister and the licensee agree in writing.
- (d) modify any licence or frequency authorisation without the agreement of the licensee if the Minister is of the view that the modification is necessary in the public interest or for reasons of national security.

(2) A licensee who seeks a modification of a licence shall apply in the same manner as he or she did for the initial licence.”

[Telecommunications Act of 2000, Section 40]

St. Vincent and the Grenadines – GOOD

“15(1) A Licensee wishing to transfer a licence shall apply to the Minister in writing at least ninety (90) days prior to the proposed date of transfer, or such other period as may be determined by the Minister.

Section III

- (2) The written application of the Licensee and a completed application form by the proposed transferee for a licence shall be jointly submitted to the Minister who shall as soon as practicable forward the same to ECTEL, in the case of an Individual Licence, and to the Commission in the case of a Class Licence, for its evaluation in accordance with the procedures set out in these regulations for the evaluation of the particular licence.
- (3) Upon completion of its evaluation of the application ECTEL or the Commission, as the case may be, shall forward its recommendation to the Minister.
- (4) The Minister acting on such advice may approve or disapprove the transfer.
- (5) Where the application is refused the Minister shall in his notification to the applicant state in writing the reasons for his refusal.
- (6) The Minister shall respond to the applicant within twenty-one (21) days of receipt of a recommendation from ECTEL or the Commission as the case may be.
- (7) Transfer in this Part shall include any method by which a licence is to be recorded in the name of another person other than the initial Licensee.”

“25(1) Where the Minister proposes (herein called the “Proposal”) to vary suspend or revoke a Licence or Frequency Authorisation, he shall notify the Licensee or Frequency Authorisation holder –

- (a) of the reasons for the proposed variation, suspension or revocation and
- (b) of the date on which the variation, suspension or revocation is proposed to take effect, and the period within which representations on the Proposal may be made...”

[Telecommunications (Licensing and Authorisation) Regulations of 2007, Sections 15 and 25]

Suriname – FAIR: some provisions are included in the law, but it could be clearer

“20 (1) Een wijziging van de in artikel 19 leden 1 en 2 bedoelde concessievoorwaarden wordt niet eerder van kracht dan een jaar na de vaststelling bij resolutie, tenzij een daarbij aan te geven algemeen belang dat dringend vordert of de desbetreffende concessiehouder met het eerder van kracht worden instemt.- *CHANGES TO CONDITIONS OF CONCESSIONS ENTER INTO FORCE NO SOONER THAN ONE YEAR AFTER THEIR ADOPTION BY RESOLUTION, UNLESS THERE ARE REASONS OF PUBLIC ORDER TO HAVE THE CHANGES ENTER INTO FORCE EARLIER.*

(2) Bij niet naleving van de bij of krachtens deze wet vastgestelde regels en voorschriften kan de concessie op advies van de Minister, na de TAS gehoord te hebben, door de President worden ingetrokken.*CONCESSIONS MAY BE WITHDRAWN BY THE PRESIDENT UPON THE ADVICE OF THE MINISTER AND AFTER CONSULTATION OF THE REGULATOR IN CASE OF NON-RESPECT OF THE RULES*

[WET van 11 november 2004, houdende regels met betrekking tot voorzieningen voor telecommunicatie (Wet Telecommunicatievoorzieningen)]

Trinidad and Tobago – GOOD

“(2) A licence may be amended by the Minister, where force majeure, national security considerations, changes in national legislation or the implementation of international obligations requires amendment to the licence.

(3) Where a licence is amended pursuant to subsection (2), on grounds of national security, the rights of the concessionaire to compensation shall not be prejudiced.”

[Telecommunications Act of 2001, Section 39]

“All concessionaires and licensees will require the prior approval of the Authority for any transfer of the concession/ licence, for any change of control of the concessionaire/ licensee and for any other form of agreement with a third party under which the third party would obtain any rights or privileges under the concession/ licence, which would normally require the grant of a concession to that party. The third-party must be an entity that would have qualified to hold the concession or licence on first grant.”

[Authorisation Framework for the Telecommunications and Broadcasting Sectors of Trinidad and Tobago of 2005]

International Examples and Regional Harmonization

Singapore

“2. Before making modifications to the conditions of a license of a public telecommunication licensee under this section, the Authority shall give notice to the licensee —

- Stating that it proposes to make the modifications in the manner as specified in the notice and the compensation payable for any damage caused thereby; and
- Specifying the time (not being less than 28 days from the date of service of notice on such licensee) within which written representations with respect to the proposed modifications may be made.

“3. Upon receipt of any written representation referred to in subsection (2), the Authority shall consider such representation and may

- Reject the representation; or
- Amend the proposed modifications or compensation payable in accordance with the representation, or otherwise, and, in either event, it shall thereupon issue a direction in writing to such licensee requiring that effect be given to the proposed modifications specified in the notice or to such modifications as subsequently amended by the Authority within a reasonable time.

[Singapore, Telecommunications Act of 1999, Part II, Section 7]

Uganda

“1. The Commission may, upon reasonable grounds, modify the conditions of any license if the Commission considers modification necessary to achieve the objectives of this Act, or is in the public interest; taking into account the justified interests of operators and the principles of fair competition and equality of treatment.

“2. Before modifying any condition of a license, the Commission shall give the operator sixty days notice stating the reasons for the intended modifications and giving the operator opportunity to make any representation.

“3. The Commission shall give due consideration to any representations made by the operator.

“4. The Commission shall grant an operator a period of time to comply with the modification of the license where modification causes undue hardship to the operator...

“7. An operator may appeal to the Tribunal if the operator is aggrieved by a decision of the Commission or the Minister under this section.”

[Uganda, Uganda Communications Act of 1997, Part VII, Section 36]

3.7 Sanctions and enforcement

International Best Practices and Regional Trends:

- The law contains clear procedures for when a licensee fails to comply with license conditions (e.g., withdrawal, amendment, or suspension of the license)?
- The license or legal framework includes specific enforcement provisions
- The regulatory authority has to give the licensee notice of any suspected or alleged license violations that come to the attention of the regulatory authority. If so, the timeframe for the licensee to investigate and take corrective action shall be clear and proportionate
- The licensee shall be provided with an opportunity to present his views before the enforcement action
- The licensee can appeal any decision by the regulatory authority regarding licensing to an independent institution
- Licensees can appeal against all fines imposed by the regulator and to a body independent of the regulator
- Sanctions and Fines are graduated and proportionate to infringement and the reality in the market

Regional Examples**Antigua and Barbuda – LIMITED**

20. Any person guilty of an offence under this Act shall, where no penalty is expressly provided, be liable on summary conviction to a penalty not exceeding three thousand dollars or to imprisonment with or without hard labour, for a term not exceeding six months, or to both such imprisonment and fine.

*** Good provisions included in Telecommunications Bill of 2007, Section 18]**

Bahamas – GOOD

“(1) URCA may issue an order concurrently with a determination under section 99 or an adjudication under section 103 –

- (a) ordering the licensee or, where such person is not a licensee, a person that contravenes any provision of this Act or a licence condition to do or to refrain from doing such things as are specified in the order to remedy, prevent or rectify the breach or anticipated breach which is the subject matter of the determination or adjudication; and, if appropriate
- (b) imposing a fine on the licensee or, where such person is not a licensee, a person subject to the provisions of section 109, objectively justified and non-discriminatory, and notifying the licensee that the licence may be revoked if the licensee fails to comply with such determinations and/or to pay the fine.

(2) Where URCA imposes an order under this section –

- (a) the order shall be in writing;
- (b) the order shall specify the contravention that the licensee has committed and the penalty imposed by URCA;
- (c) a copy of the order shall be given to the licensee; and
- (d) the order shall be applicable and in force unless suspended by the Tribunal.

(3) An order may be enforced in the same manner as an order of the court.

- (4) If the licensee fails to comply with an order or part of an order within the time determined by URCA, URCA may –
- (a) impose a fine or subsequent fine on the licensee; and, if appropriate
 - (b) revoke the licence with immediate effect under section 27(1)(g), provided that it shall have notified the licensee in the relevant order that non-compliance with the order could result in either or both of a fine or licence revocation, as appropriate.
- (5) Once the licensee satisfies the requirements of the order, the licensee shall not be liable to any further investigation by URCA in respect of the offence.

[Communications Bill of 2009, Section 95]

Barbados – GOOD

“19(1) The Minister may suspend or revoke a licence granted under this Part where

- (a) the licensee contravenes this Act;
 - (b) the licensee fails to observe a term or condition specified in the licence;
 - (c) the licensee is in default of payment of any licence fee prescribed; or
 - (d) the suspension or revocation is necessary in the interest of national security or in the public interest.
- (2) Where the Minister has reasonable grounds for believing that a licence granted under this Act ought to be suspended or revoked, the Minister shall, before suspending or revoking the licence, give the licensee 60 days notice in writing of his intention to do so, specifying the date and the grounds on which he proposes to suspend or revoke the licence; and shall give the licensee an opportunity
- (a) to make written submissions in respect of those grounds;
 - (b) to remedy the breach of the licence or a term or condition of the licence; or
 - (c) to submit to the Minister, within 30 days of the receipt of the notice, or such longer time as the Minister may specify, a written statement of objections to the suspension or revocation of the licence which the Minister shall take into account before reaching a decision.
- (3) The suspension or revocation of a licence referred to in subsection (2) shall take effect on the date specified by the Minister in the notice referred to in that subsection or such other date as the Minister specifies.”

[Telecommunications Act of 2002, Section 19]

Belize – FAIR: not enough detail although the principle is there

11. (1) The PUC may revoke a licence if it determines that any declaration made during the application process or on the application form is false or misleading.
- (2) The holder of a licence or authorization shall notify the PUC in writing if either of the following occurs:
- (a) any of the matters forming part of the licence application changes in a material respect;
 - (b) the licensee enters into any agreement to merge part or all of its telecommunications activities in Belize with any person.
- (3) Where the PUC proposes to vary or revoke or suspend a licence or authorisation, the PUC shall notify the licensee or authorisation holder
- (a) of the reasons for the proposed variation, revocation or suspension; and
 - (b) specifying a period of not less than thirty days from the date of the notice within which representation with respect to the proposal may be made.

- (4) Where the proposal in paragraph (3) above is the result of a breach of a term, provision or limitation of the licence or authorisation
- (a) the notice given to the licensee or authorization holder shall state that the proposal will be withdrawn or modified if the breach is remedied within the period of thirty days commencing with the date of the notice; and
 - (b) the PUC shall within the period of thirty days following the period referred to in paragraph (a), confirm, modify or withdraw the proposal.

[Belize, Telecommunications (Licensing Classification, Authorisation, and Fee Structure) Regulations, 2002, Section 11]

Dominican Republic – GOOD: the Law provides for clear provisions on sanctions and enforcement, foreseeing gradated sanctions according to the degree of infringement as well as in relation to situation. The Law also provides for clear appeal procedures.

104. Administrative faults under the provisions of the present law are classified as very serious, serious, and light [note: these are specified in Articles 105-107]

110.1. The value of the imposable sanction shall depend on :

- a) The number of infractions committed;
- b) Recurrence;
- c) Social repercussion of same.

112.1. For cases in which it is presumed that the infraction can be classified as very serious, the regulatory body may provide for the adoption of precautionary measures such as provisional closure of the installations, or the provisional suspension of the concession; and in its case, may request judicially the provisional seizure of the equipment or apparatus.

112.2. For effects of the provisional closure and confiscation, the regulatory body will make the pertinent request of the corresponding judge; the resolution which authorizes such measure shall be transcribed, so that it provide for the corresponding action, authorizing the breaking of doors and support of the public force, in case such is necessary.

112.3. In the cases of infractions related to undue use of the radioelectric spectrum, the personnel authorized by the regulatory body which detects it may provide for the provisional closure, and suggest to the regulatory body the judicial request for seizure of the equipment.

112.4. In matters of flagrant crimes, pursuant to the Criminal Code, the regulatory body may request the support of the public force and the intervention of the public ministry for the performing of its duties.

96.1. The decisions of the Executive Director and of the Board of Directors may be the object of an appeal for reconsideration, which must be submitted within the term of ten (10) calendar days, counting from the notification or publication of the appealable act. Both the Executive Director and the Board of Directors must issue a pronouncement in a maximum term of ten (10) calendar days from the date of the appeal.

96.2. Also, the decisions of the Executive Director may be the object of a heirarchical appeal before the Board of Directors; the latter must be brought simultaneously with the appeal for reconsideration. The Board of Directors must issue a pronouncement in a maximum term of ten (10) calendar days from the date of said motion for appeal.

96.3. The decisions of the Board of Directors shall be the object of a heirarchical appeal before the jurisdiction of administrative matters of contention, in the form and terms provided by law governing the subject.

97. The appeals against the decisions of the Board of Directors may be based only on the following causes:

- a) Exceeding one's powers;
- b) Lack of substantial basis in the facts of the cause;
- c) Evident error of law; or
- d) Noncompliance with the procedural norms established by this law or by the regulatory body itself.

[Telecommunications Law, 1998]

Dominica; St. Kitts and Nevis; and St. Lucia – GOOD

"19(1) Where the Minister proposes to vary or revoke or suspend a licence or authorisation, he shall notify the licensee or authorisation holder -

- (a) of the reasons for the proposed variation, revocation or suspension; and
- (b) specifying a period of not less than two months from the date of the notice within which representation with respect to the proposal may be made.

(2) Where the proposal is the result of a breach of a term, provision or limitation of the licence or authorisation -

- (a) the notice given to the licensee or authorization holder shall state that the proposal will be withdrawn or modified if the breach is not remedied within the period of 30 days commencing with the date of the notice; and
- (b) the Minister shall within the period of 30 days following the period referred to in subparagraph (a), confirm, modify or withdraw the proposal.

[Dominica, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 19]

[St. Kitts, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 20]

[St. Lucia, Telecommunications (Licensing and Authorisation) Regulations of 2002, Section 20]

Grenada, Dominica – GOOD

"(1) The Minister may suspend or revoke a licence, or vary a term and condition of that licence if it is not a statutory term or condition by a notice in writing served on the licensee.

(2) The Minister may suspend, revoke or refuse to renew a licence where -

- (a) the radio apparatus or station in respect of which the licence was granted interferes with a telecommunications service provided by a person to whom a licence is already granted for that purpose;
- (b) the licensee contravenes this Act;
- (c) the licensee fails to observe a term or condition specified in his licence;
- (d) the licensee is in default of payment of the licence or renewal fee or any other money owed to the Government;
- (e) ECTEL recommends the suspension or revocation;
- (f) the suspension or revocation is necessary for reasons of national security or the public interest.

(3) Before suspending or revoking a licence under subsection (2), the Minister shall give the licensee two months notice in writing of his intention to do so, specifying the grounds on which he proposes to suspend or revoke the licence, and shall give the licensee an opportunity -

- (a) to present his views;
- (b) to remedy the breach of the licence or term and condition; or
- (c) to submit to the Minister within such time as the Minister may specify, a written statement of objections to the suspension or revocation of the licence, which the Minister shall take into account before reaching a decision.

(4) This section also applies with any necessary modification to a frequency authorisation holder.”

[Dominica, Telecommunications Act of 2000, Section 40]

[Grenada, Telecommunications Act of 2000, Section 39]

Guyana – GOOD

“15(1) Where a telecommunications operator refuses or fails to comply with a final order, the licence granted to him under section 7 may be revoked by the Director by order served on the telecommunications operator provided that no licence may be revoked under this section unless the Director has given the telecommunications operator a reasonable opportunity of being heard.

16(1) If a telecommunications operator is aggrieved by a final or provisional order under section 13 or an order revoking a licence under section 15 and desires to question its validity on the ground that the making or confirmation of it was not within the powers of section 13 or 15 or that any of the requirements of section 14 or 15 have not been complied with in relation to it, he may within forty-two days from the date of service on him of a copy of the order make an application to the Court under this section.

(2) On any such application the Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the telecommunications operator have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.”

[Telecommunications Act of 1998, Sections 15 and 16]

Haiti – NONE: no mention in the legal texts

Jamaica – GOOD

“14(1) Where the Office has reason to believe that a licensee has contravened revocation of the conditions of the licence or, as the case may be, has failed to pay any amount licence. required under section 16, the Office shall give to that licensee notice in writing –

- (a) specifying particulars of such contravention; and
- (b) requiring the licensee to justify its actions to the Office or otherwise to take such remedial action as may be specified in the notice.

(2) Where the Office gives any notice under subsection (1), the Office shall send a copy thereof to the Minister for his information.

(3) Where a licensee fails to justify its actions to the satisfaction of the Office or fails or refuses to take any remedial action specified in the notice issued under subsection (1), the Office shall notify the Minister in writing of the fact of such failure or refusal.

(4) Where a licensee fails to comply with any requirements of a notice under subsection (1), the Office may -

- (a) on the first occasion of such failure, recommend to the Minister that the licence be suspended for a period not exceeding three months; or
- (b) if the failure occurs on any second or subsequent occasion, recommend to the Minister that the licence be suspended for such period as the Office considers appropriate or be revoked.

(5) Before suspending or revoking a licence, the Minister shall direct the Office to notify the licensee accordingly and shall afford the licensee an opportunity to show cause why the licence should not be suspended or revoked.

- (6) Subject to subsection (7), the Office may recommend to the Minister that a licence be suspended or revoked, as the case may be, if, on its own initiative or on representations made by any other person, the Office is satisfied that the licensee has -
- (a) knowingly made any false statement in an application for a licence or in any statement made to the Office;
 - (b) knowingly failed to provide information or evidence that would have resulted in a refusal to grant a licence;
 - (c) wilfully failed to comply with the terms of its licence;
 - (d) wilfully contravened any provision of this Act or any rules or regulations made hereunder;
 - (e) violated or failed to comply with a cease and desist order issued under section 63;
 - (f) provided services not authorized by its licence;
 - (g) operated a facility without a carrier licence;
 - (h) failed to make payments in a timely manner in connection with the universal service obligation levy or in respect of the regulatory fee imposed pursuant to section 16.

(7) Before taking action under subsection (1), the Office shall carry out such investigations as may be necessary and afford the licensee concerned an opportunity to be heard.

- (8) For the purpose of this section, the Office may -
- (a) summon and examine witnesses;
 - (b) call for and examine documents;
 - (c) require that any document submitted be verified by affidavit;
 - (d) adjourn any investigation from time to time.

[Telecommunications Act of 2000, Section 14]

St. Vincent and the Grenadines – GOOD

“25(1) Where the Minister proposes (herein called the “Proposal”) to vary suspend or revoke a Licence or Frequency Authorisation, he shall notify the Licensee or Frequency Authorisation holder -

- (a) of the reasons for the proposed variation, suspension or revocation and
- (b) of the date on which the variation, suspension or revocation is proposed to take effect, and the period within which representations on the Proposal may be made;

(2) Where the Proposal is the result of a breach of these regulations or a term, provision or limitation of the Licence or Frequency Authorisation the notice given to the Licensee or Frequency Authorisation holder shall state that the Proposal shall be withdrawn if the breach is remedied within the period of 30 days commencing from the date of the notice;

(3) Where the Licensee or Frequency Authorisation holder fails to remedy the breach as stated in sub-regulation (2) the Minister shall not later than seven (7) days after the last day for remedy by the Licensee or Frequency Authorisation holder: -

- (a) Suspend the Licence or Frequency Authorisation for a period not exceeding three (3) months (the “Suspension Period”) during which period the Licensee or Frequency Authorisation holder shall cease all activity related to his licence or frequency authorisation and shall remedy the breach;
- (b) revoke the Licence or Frequency Authorisation where the Licensee or Frequency Authorisation holder fails to remedy the breach during the Suspension Period.”

[Telecommunications (Licensing and Authorisation) Regulations of 2007, Section 25]

Suriname – FAIR: there are some provisions but no detail

“20 (2) Bij niet naleving van de bij of krachtens deze wet vastgestelde regels en voorschriften kan de concessie op advies van de Minister, na de TAS gehoord te hebben, door de President worden ingetrokken. *CONCESSIONS MAY BE WITHDRAWN BY THE PRESIDENT UPON THE ADVICE OF THE MINISTER AND AFTER CONSULTATION OF THE REGULATOR IN CASE OF NON-RESPECT OF THE RULES*”

[WET van 11 november 2004, houdende regels met betrekking tot voorzieningen voor telecommunicatie (Wet Telecommunicatievoorzieningen)]

Trinidad and Tobago – GOOD

- “30. (1) Subject to this section, the Minister, on the recommendation of the Authority, may suspend or terminate a concession where—
- (a) the concessionaire has failed to comply materially with any of the provisions of this Act, Regulations made hereunder or the terms and conditions of the concession; or
 - (b) the concessionaire has failed to comply materially with any lawful direction of the Authority.
- (2) A concession may be amended by the Minister, where *force majeure*, national security considerations, changes in national legislation or the implementation of international obligations requires amendment to a concession.
- (3) Where a concession is amended pursuant to subsection (2), on grounds of national security, the rights of the concessionaire to compensation shall not be prejudiced.
- (4) The Minister shall, before exercising the power of termination or suspension conferred by this section—
- (a) serve on the concessionaire, a written notice to the effect that—
 - (i) he is considering exercising the power and setting out the ground on which it may be exercised; and
 - (ii) the concessionaire may within thirty days of the notice being served, make written representation to the Authority;
 - (b) take into consideration any representation made to the Authority under paragraph (a)(ii).
- (5) During the period that the Minister is considering exercising his power to suspend or terminate the concession, the concessionaire shall continue to operate until such time as the Minister makes a determination and in the event that the period of the concession comes to an end before the determination by the Minister is made, an interim renewal of the concession on the same terms shall be granted.
- (6) Before amending a concession, the Minister shall serve on the concessionaire written notice of the proposed amendment, giving reasons for the amendment and the date by which the amendment shall take effect.
- (7) A decision of the Minister pursuant to this section may be reviewed by the High Court.
- 39(1) Subject to this section, the Minister may, on the recommendation of the Authority, suspend or terminate a licence where—
- (a) the licensee has failed to comply materially with any of the provisions of this Act, regulations made hereunder or the terms and conditions of the licence; or
 - (b) the licensee has failed to comply materially with any lawful direction of the Authority...

- (4) The Minister shall, before exercising the power of suspension or termination conferred by this section—
- (a) serve on the licensee, a written notice to the effect that—
 - (i) he is considering exercising the power and setting out the ground on which it may be exercised; and
 - (ii) the licensee may within thirty days of the date on which the notice was served, make written representation to the Authority;
 - (b) take into consideration any representation made to the Authority under paragraph (a)(ii).
- (5) During the period that the Minister is considering exercising his power to suspend or terminate the licence, the licensee shall continue to operate in accordance with the terms of the licence until such time as the Minister makes a determination and in the event that the period of the licence comes to an end before the determination by the Minister is made, an interim renewal of the licence on the same terms shall be granted...
- (7) A decision of the Minister pursuant to this section may be reviewed by the High Court.”
[Telecommunications Act of 2001, Sections 30 and 39]

International Examples and Regional Harmonization

Brazil

“Prior to the nullification of acts and contracts, interested parties shall be assured the opportunity to present statements thereon. . .”

[Brazil, Regulation of the National Telecommunications Agency, Decree No. 2338, of 7 October 1997, Annex I, Article 67]

ECOWAS

“1. When the holder of a license or authorization fails to comply with a condition attached to the license or authorization, the national regulatory authority may, in accordance with termination clauses, withdraw, amend or suspend the license or authorization or impose specific measures aimed at ensuring compliance.

“2. The national regulatory authority shall, at the same time, give the entity a reasonable opportunity to state its view on the application of the aforementioned measures and, except in the case of repeated breaches by the entity, the entity shall have the opportunity, within a defined period of time, to remedy the breach...”

[ECOWAS, Supplementary Act A/SA.3/01/07 on the Legal Regime Applicable to Network Operators and Service Providers, Chapter VII, Article 25]

Annex 1: Overview of Licensing Frameworks (IBPs) around the world

A.1.1 EUROPEAN UNION¹⁸

The European Union’s New Regulatory Framework of 2002 is seen by many countries as an example for a licensing framework. Until 2003, the provision of electronic communications services or networks would in most EU Member States be subject to an individual license. Member States felt though that the need to require prior permission and to provide proof of having fulfilled numerous conditions created an unnecessary bureaucratic bottleneck for the free provision of electronic communication services, and therefore looked for ways to make procedures more simple and, at the same time looked to define a flexible regulatory framework which would accommodate different circumstances between Member States and convergence in the best way possible.

Under the 2002 Authorization Directive, Member States can no longer use the instrument of individual licenses to regulate the sector. They are required to establish a general authorization for all types of electronic communication services and networks, including fixed and mobile networks and services, data and voice services, broadcasting transmission networks and services etc. This general authorization may include one or more general legislative acts, but it can no longer impose on a service provider the need to obtain an explicit administrative decision before starting his business. Authorities may ask for notification in order to keep a register, but the service provider does not have to wait for the reply to this notification, nor should he be asked to provide more information than necessary for the identification of the company.

For three types of rights and two types of obligations, individual regulatory decisions will generally remain necessary, namely rights of way, rights to use radio spectrum, rights to use numbers, obligations related to significant market power (SMP) and obligations relating to universal service provision.

The general authorization must guarantee at least the following basic rights:

1. the right to **provide electronic communications networks and services**, whether public or non-public, subject to a number of conditions. However, while undertakings must comply with the conditions of the general authorization, non-compliance with one or more conditions can generally not be used by the national regulatory authority to stop an undertaking from providing a service or network.(see below under ‘compliance with conditions’).
2. the right to apply for rights to **install facilities** and to have such applications treated by the relevant authority in an objective, non-discriminatory way.
3. the right to negotiate **interconnection** with other providers and to obtain support from the national regulatory authority when such negotiations with operators with significant market power fail. (this right is only guaranteed for providers of public services and networks).
4. the right to be considered for designation as **universal service** provider of to provide elements of the universal service. (this right is only guaranteed for providers of public services and networks).

In general, the Authorization Directive ensures that undertakings providing electronic communications networks and services have **the right to be treated in a non-discriminatory, objective, transparent and proportionate fashion** by the national regulatory authorities.

To ensure a level playing field for all providers and users of communication networks and services, it is important to **guarantee non-discriminatory access to a range of resources that are essential for the**

¹⁸ Source: www.europa.eu.int

provision of these networks and services, namely telephone numbers, short codes, IP addresses, Internet domain names, protocol parameter and port numbers, radio frequencies and rights of way. While these resources may be in theory adequate, technological and organizational restrictions may create temporary scarcity. Efficient management is necessary to prevent or solve temporary scarcity, to ensure efficient use and to organize the assignment of the resources to individual users, service or network providers.

The general authorization must also include applicable obligations:

All conditions that apply to all or certain types of network or service providers must be included in the general authorization and cannot be duplicated in the individual regulatory decisions that cover rights of way, right to use spectrum or numbers and obligations related to significant market power and universal service. Moreover, these general conditions must be limited to those included in the catalogue of conditions in part A of the Annex to the Authorization Directive. Member States cannot impose conditions that are not in the Annex, except in very special cases where this is necessary to guarantee national security. Such exceptions are subject to strict criteria of necessity, proportionality and effectiveness.

The exhaustive list of part A of the Annex includes 18 categories of conditions concerning : contributions to the funding of universal service, administrative charges, interoperability of services and interconnection of networks, accessibility of numbers, environmental and town planning requirements, must carry obligations, personal data and privacy protection, consumer protection, restrictions on the transmission of illegal content, information to be provided as part of a notification procedure, legal interception facilities, terms of use during major disasters, limitation on exposure of the public to electromagnetic fields, access obligations, network integrity, network security, usage of unlicensed radio frequencies, technical standards. In addition, there are obligations relating to significant market power and obligations relating to universal service provision, as provided under the respective Directives.

Sector specific conditions not falling in any of these categories are not allowed. Member States may impose two types of levies on providers of electronic communication networks or services, namely administrative charges and usage fees.

Administrative charges:

Administrative charges are intended to cover the costs of the national regulatory authorities for managing the general authorization system, assigning of rights of use, policing competition in the market and ensuring the provision of universal service. Article 12 of the Authorization Directive allows, but does not require Member States to impose administrative charges. They may also finance the regulator's expenses from the general budget. To allow undertakings to verify that costs and charges are in balance, the regulator is required to publish a yearly overview of administrative costs and of the charges collected. If no balance is achieved, adjustments need to be made.

How exactly the charges are distributed over the undertakings concerned, is not prescribed by the Authorization Directive. Nevertheless, the Directive states that systems for administrative charges should not distort competition or create barriers to entry in the market. An example of a fair and simple distribution criterion would be a turnover related key. If administrative charges are very low, a flat rate or flat rate plus turnover related element could also be appropriate.

Usage fees

In addition to administrative charges, Member States may impose fees for rights to use radio frequencies, numbers and for rights of way. Such usage fees are intended to ensure the optimal use of these resources and should be proportionate to that purpose. The Authorization Directive also requires that fees are objectively justified, transparent and non-discriminatory. Subject to these conditions, usage fees can be set at a fixed level or determined by auctions such as in the case of scarce radio spectrum. Usage fees may consist of a periodic or one-off payment or of both.

Compliance with conditions

Under the new Authorization Directive it will no longer be possible for regulators to require operators to provide proof of compliance with the conditions under the general authorization before they can start their business. Furthermore, following Article 11 of the Directive, regulators cannot request systematic (e.g. annual) proof of compliance with the majority of conditions that may be attached to the general authorization or to rights of use or rights of way. The only exceptions are for conditions related to the payment of administrative charges, usage fees and contributions to the universal service fund. For all other conditions, regulators may only require proof of compliance on a case-by-case basis when they have received a complaint or have other reasons to believe that conditions are not complied with. These new rules are intended to have a significant deregulatory effect.

Breach of conditions

When a national regulatory authority considers that a service or network provider is in breach of a condition, he must notify this to the provider concerned and allow one month for the provider to solve the problem or to explain why he does not agree with the national regulatory authority's assessment. If the national regulatory authority does not find the provider's response satisfactory, a financial or other penalty may be imposed.

Penalties must always be proportionate with the gravity of the breach. Only in cases of serious and repeated breaches may the national regulatory authority prevent an undertaking from continuing to provide services or networks.

National regulatory authorities may always take urgent action in case of a breach of conditions that causes an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks and services.

Appeal

Undertakings have a right to appeal to an independent body against all decisions taken by the national regulatory authority that affect them. However, during the appeal the measure taken by the national regulatory authority will remain in force.

Clarity of structure

It is very important for service and network providers to be able to obtain a complete overview of any sector specific rules that may apply to them. The replacement of individual licenses by a general authorization will significantly improve the transparency of the regulatory regime applied to the electronic communications services and networks sector. The requirement not to duplicate in the general authorization any conditions that are not specific to the electronic communications sector will reinforce this effect. In addition, the individual rights of use for numbers or radio spectrum should not duplicate conditions that are already included in the general authorization.

Publication

The Authorization Directive also requires that all relevant information on rights, conditions, procedures, charges, fees and decisions relating to the general authorization and to rights of use is published in a way that makes it easily accessible for all interested parties (a website would be the most obvious instrument to achieve this). Member States must also ensure that all this information is kept up to date.

Local levels of government

In some areas that are not regulated at a central level, it may be particularly difficult for undertakings to find their way to applicable rules and procedures. This is likely to be the case for rights to install facilities as they are mostly managed at the local level of government. To facilitate the task of undertakings who need to install cables, masts or antennas, national regulatory authorities must make reasonable efforts to ensure that all relevant information (rules, procedures, fees etc.) is available through a user friendly overview, for instance by creating a website with links to information held at local levels.

Consultation

Transparency also means that any change of rules should not come as a surprise to those to whom the rules apply. When a Member State intends to make changes in rights, obligations or procedures that are applicable to providers of electronic communications networks and services, they are obliged to consult interested parties before they adopt any changes. Such public consultations should allow interested parties at least four weeks to express their opinions except in exceptional circumstances.

A.1.2 MALAYSIA

In 1994, Malaysia adopted the National Telecommunications Policy (NTP) aimed at encouraging competition in the telecommunications sector and setting the scene for liberalization of the telecommunications sector in Malaysia. One important aspect of the NTP was related to how the industry structure was perceived within the regulatory framework. The industry structure was described in the NTP as comprising two major components:

- Network infrastructure, made up of:
 - a. basic network infrastructure.
 - b. value added network infrastructure.
- Telecommunications Services, made up of:
 - a. basic telecommunications services.
 - b. value-added telecommunications services.

The view was consistent with then prevailing licensing practices where licenses were service-specific and technology-specific.

However, with the passage of the Communications and Multimedia Act of 1998 (CMA), the licensing structure was changed and licenses are now issued for four major categories of activities:

Network Facilities Providers are the owners of facilities. They are the fundamental building block of the convergence model upon which network, applications and content services are provided, and include:

Network Service Provider	Earth Stations Fixed links and cables Public payphone facilities Radio communications transmitters and links Satellite hubs Satellite control station Space station Submarine cable landing center Switching center Towers, poles, ducts and pits used in conjunction with other
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	<p>network facilities</p> <p>Broadcasting and production studios</p> <p>Incidental network facilities</p> <p>Private network facilities</p> <p>Internet cross-connect equipment</p> <p>Networks of broadband access switches or multiplexers and fixed links and cables offered</p> <p>Limited purpose network facilities, including for the sole purpose of end users in buildings or a single clustered building complex</p> <p>Radio communications transmitters for public mobile radio network services</p> <p>Radio communications transmitters for public radio paging network services</p> <p>Radio communications transmitters and links for broadband point to point and point to multipoint wireless internet network service</p> <p>Radio communications transmitters and links for public wireless video communications network</p> <p>Radio communications transmitters and links for public wireless data network services</p>
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Network Services Providers provide the basic connectivity and bandwidth to support a variety of applications. Network services enable connectivity or transport between different networks. A network service provider is typically also the owner of the network facilities. However, a connectivity service may be provided by a person using network facilities owned by another.

	INDIVIDUAL LICENSE	CLASS LICENSE	GENERAL AUTHORISATION
Network Service Provider	<p>Bandwidth services</p> <p>Broadcasting distribution services</p> <p>Cellular mobile services</p> <p>Access applications service</p> <p>Space service</p>	<p>Niche customer access</p> <p>Niche connection service</p>	<p>Incidental network services</p> <p>LAN services</p> <p>Private network services</p> <p>Router</p> <p>Internetworking</p>

Applications Service Providers provide particular functions such as voice services, data services, content-based services, electronic commerce and other transmission services. Applications services are essentially the functions or capabilities that are delivered to end-users.

	INDIVIDUAL LICENSE	CLASS LICENSE	GENERAL AUTHORISATION
Applications Service Provider	<p>PSTN</p> <p>Public cellular services</p> <p>IP telephony</p> <p>Public payphone service</p> <p>Public switched data service</p>	<p>Audiotext hosting services provided on an opt-in basis</p> <p>Directory services</p> <p>Internet access services</p> <p>Messaging services</p>	<p>Electronic transaction service</p> <p>Interactive transaction service</p> <p>Networked advertising boards and Cineplex</p> <p>Web hosting or client server</p>

Content Applications Service Providers are a special subset of applications service providers including traditional broadcast services and newer services such as online publishing and information services.¹⁹

	INDIVIDUAL LICENSE	CLASS LICENSE	GENERAL AUTHORISATION
Content Applications Service Provider	Satellite broadcasting subscription Broadcasting Terrestrial free to air TV Terrestrial radio broadcasting	Not issued	Internet content applications services

A.1.3 SINGAPORE

Licenses in Singapore are either facilities-based or service-based type of operations. Categorised at a higher hierarchical level, a facilities-based operator (FBO) may offer services that a service-based operator (SBO) is permitted to offer, but not vice versa. Thus, a service-based operator that decides to build its own network would seek a facilities-based license to replace its service-based license. This means that a licensee only ever holds one type of license, which covers all the facilities and/or services that it intends to offer.

Under this framework, all facilities-based licenses are individual licenses, but service-based licenses can be either individual or class, according to the table below. Once awarded an individual service-based license, an entity can offer any service under that category, but it must seek the regulator’s prior approval for any subsequent changes to their network and service offerings. Similarly, a class service-based license allows an entity to offer any services listed under that category. In addition, licensees must comply with any specific conditions associated with the new network or service offerings.

Singapore: License Categories and Range of Operations and Services

License Category	Individual or Class	Range of Operations/Services (includes, but not limited to)
Facilities-based operator (FBO)	Individual	<ul style="list-style-type: none"> • Public Switched Telephone Services • Public Switched Message Services • Public Switched Integrated Services Digital Network Services • Leased Circuit Services • Public Switched Data Services • Public Radiocommunication Services • Public Cellular Mobile Telephone Service (PCMTS) • Public Radio Paging Services (PRPS) • Public Trunked Radio Services (PTRS) • Public Mobile Data Services (PMDS) • Public Mobile Broadband Multimedia Services • Public Fixed-Wireless Broadband Multimedia Services • Terrestrial Telecommunication Network for Broadcasting • Satellite Uplink/Downlink for Broadcasting Purposes

¹⁹ See [www.mcmc.gov.my/mcmc/what we do/licensing/cma/framework.asp](http://www.mcmc.gov.my/mcmc/what_we_do/licensing/cma/framework.asp)

License Category	Individual or Class	Range of Operations/Services (includes, but not limited to)
Service-based operator (SBO)	Individual	<ul style="list-style-type: none"> • International Simple Resale (ISR) • Resale of Leased Circuit Services • Public Internet Access Services • Internet Exchange Services • Virtual Private Network Services • Managed Data Network Services • Store-and-Forward (S&F) Value-Added Network Services • Mobile Virtual Network Operation • Bandwidth Capacity Exchange Operation • Backhaul Bandwidth Capacity Services • Live Audiotext Services • Prepaid Services for other telecommunication services, <i>e.g.</i>: <ul style="list-style-type: none"> - Call-back / Call Re-origination Services - Internet Based Voice and Data Services - International Calling Card (ICC) Services - Resale of Public Switched Telecommunication Services • Global Mobile Personal Communications by Satellite Services • IP Telephony Services • Voice & Data Services with Masking of Calling Line Identity • Satellite Mobile Telephone or Data Services • Mobile Communications on Aircraft
Service-based operator (SBO)	Class	<ul style="list-style-type: none"> • Call-back/Call Re-origination Services • Internet Based Voice and Data Services • Resale of Public Switched Telecommunication Services • Store-and-Retrieve (S&R) Value-Added Network Services • International Calling Card (ICC) Services • Audiotext Services • Public Chain Payphone Services

A.1.4 ARGENTINA

In August 2000, Decree 764/2000²⁰ marked the beginning of the liberalization of the telecommunications market in Argentina. The main points of the Decree are:

- License regime – The Decree foresees a single category of license to provide the different kind of services (either fixed or mobile, wire line or wireless, national or international, with or without own infrastructure). There are no special requirements with regard to foreign investment and coverage.
- Interconnection regulation – The Decree establishes the obligation for the all operators to interconnect their networks and foresees the interconnection fee as well as the obligation of the number portability. The general objectives are to protect the user and client, promote new services and improve service quality, attract new investments, promote competition, reduce communications prices and promote regional integration.

²⁰ The Decree 764/2000 was signed in Sunday 4th August and took into force November 8th 2000.

- The assignment of the radio spectrum resources may be carried out through competitive biddings, public auctions or on demand.
- Universal service – A universal service fund will be created to finance the provision of services in non-profitable geographical areas and marginal sectors and all telecommunications services providers must contribute with 1% of their revenues.

The Licensing Regulations for telecommunications services annexed to the Decree n. 764/2000, establish the principle of single telecommunications license for the provision to the public of any type of telecommunications service, fixed or mobile, wired or wireless, national or international, with or without own infrastructure. When the applicant's business requires the use of the radio frequencies, an additional (to the telecommunications license) permission must be obtained²¹.

According to the definitions of the Licensing Regulations, a National Public Telecommunications Network is the whole of the networks through which the telecommunications public correspondence is transported, and allows the communication between users and from or towards any other service or public telecommunications network, national or international. The telecommunications licenses are granted without a specific time limit and are valid throughout the Argentina's territory.

The lease of telecommunications infrastructure to service providers and the resale of telecommunications services require the possessing of the telecommunications license²².

According to the Licensing Regulations, the telecommunications license authorizes its holder to provide telecommunications services as specified in the license. A licensed operator can apply for the radio frequencies permission, and can negotiate and establish interconnection agreements with other operators.

The licensee has three types of obligations: general obligations, obligations towards other operators and obligations towards end-users or customers.

The general obligations include (among others) the requirement to start operating within 18 month from the date of the license's issuing; the annual provision to the Communications secretariat of the relevant information about the provision of its services and about the implementation of the Technical and Investment Plans (those plans have to be submitted by the operator, when it applies for the telecommunications license). In addition, the operator shall make the investment for the development of the Universal service and pay a control, supervision and verification rate of 0.5% of its income.²³

The obligations towards other operators consist of the obligation to establish interconnection with both national public telecommunications network and private operator's networks and obligations of access to and sharing of specific network facilities²⁴.

Finally, the obligations towards users/customers include the requirements of the pricing and contractual information transparency, the confidentiality of communications, and when the voice telephony is concerned, the free access to emergency calls²⁵.

In order to launch the procedure, applicants must pay a free 5,000 Pesos (1,328 Euros).

The telecommunications license application dossier shall consist of documents providing information about (1) the applicant itself and the corporation, and (2) the business the undertaking is willing to carry out.

²¹ The Section 4 of the Annex I (Licensing Regulations for telecommunications services), of the Decree 764.

²² The Sections 7 and 8 of the Annex I (Licensing Regulations for telecommunications services), of the Decree 764.

²³ Section 10.1. of the Licensing Regulations.

²⁴ Section 10.2. of the Licensing Regulations.

²⁵ Section 10.3. of the Licensing Regulations.

The documents related to the applicant or the corporation must provide with the applicant's identification information. In addition, the applicant shall present three specific statements:

- the statement accepting the jurisdiction of the Courts of Administrative Proceedings, located in Buenos Aires in case of disputes involving the operator and the Communications Secretary or the National Communications Commission.
- the statement declaring the applicant's knowledge and obligation to comply with the telecommunications framework rules, and,
- the statement by which the applicant undertakes to adopt security systems and procedures, tending to safeguard the confidentiality of communications.

The documents related to the services that the applicant intends to offer must consist of:

- the technical description of the services
- the technical and investment plans for the first three years of the operation and the description of the geographical coverage that the operator intends to have during the said period. The Investment Plan shall be consistent with the Technical Plan and with the economic information concerning the coverage and the future incomes expected from the services provision²⁶

Before the Communications Secretary announces its decision, the National Communications Commission can ask the applicant to provide any additional information it considers necessary²⁷.

The Provider shall be able to assign or transfer the license, prior authorization from the Communications Secretariat, which authorization can not be denied to it if the provider who is transferring or assigning its license:

- does not have any debt whatsoever with the Argentine State.
- has made the investments provided for in subsection f) of paragraph 10.1. of the Licensing regulation;
- has fulfilled the commitments made with the Argentine State related to the provision of the telecommunications service;
- has fulfilled the requirements and/or conditions that its original license imposes for the assignment or transfer of its license, where appropriate; and
- has obtained, where appropriate, the authorization for the transfer of the authorization and/or permit for the use of the radio frequencies under the terms of the corresponding regulations; and

as long as the Provider who is receiving the license:

- has submitted the information required by paragraph 9.1. of Licensing Regulation
- states and accepts under sworn statement that it is informed on and obliges itself to fulfill every obligation assumed by the provider who is assigning its license, as regards the license being assigned.

²⁶ Section 9 of the Licensing Regulations.

²⁷ Section 9.3 of the Licensing Regulations.

A.1.5 INDIA

Following an extensive consultation process, TRAI²⁸ recommended to the government that there shall be three categories of licenses:

- *Licensing through Authorization* – This category will cover the services for the provision of passive infrastructure and bandwidth services to service provider(s) and Internet Services including existing restricted Internet telephony (PC to PC, SIP device to SIP device using lease line only and PC to phones-phones outside India only) but not internet telephony in general. In the existing licensing regime these services have nil/very low entry and license fee. Though the license fee for IP-II services in the existing regime is 6%, TRAI is of the opinion that no license fee should be charged on IP-II service providers. The service providers of these services may only notify themselves with DoT before starting the services. At the time of Notification, these service providers may submit a compliance certification to Authorization conditions, like security, etc.
- *Class License* – All services including satellite services which do not have both way connectivity with Public network shall be covered under Class license. There shall, however, be certain exceptions as follows:
 - Radio Paging and PMRTS Services and
 - Niche Operators.

These exceptions have mainly been defined so as to provide easy terms and conditions for Radio Paging and PMRTS services. These services are losing their competitive edge and their number of subscribers are either falling or in some areas growing at a very slow rate. Of course, while considering this, TRAI kept in mind that an attempt to revive these services should not become a competitive threat to other telecommunication services. Keeping this in mind, TRAI included Radio Paging and PMRTS services in the category of ‘Licensing through Authorization’ wherein service providers are not required to pay any entry fee or annual license fee. Regarding niche operators, as explained later, they are part of class license category as far as entry fee and annual license fee is concerned but unlike class licensees, niche operator may offer fixed telecommunication services including multimedia services within the areas specified for their operations.

- *Unified License* – All Public networks including switched networks, irrespective of media (wireline including cable & fiber, wireless, etc.) and technology including IP based technology, capable of offering voice and/or non-voice (data services) including internet telephony shall be covered under this category.

This licensing framework shall be hierarchical in nature with Unified license being at the highest hierarchical level. This is to say that the Unified Licensees shall be able to offer the services that Class licensees and licensee licensed through authorization offer, but not vice versa. Such a licensing regime would enable a licensee to provide any or all telecommunication services by acquiring a single license. Similarly a Class licensee shall be able to offer the services that licensee licensed through authorization offer, but not vice versa. In case a Class licensee or licensee licensed through Authorization wishes to offer services covered under Unified License they shall apply for a Unified license.

²⁸ See: www.trai.gov.in

Annex 2: Notification Form Relating to General Authorization in Ireland

The principle which ComReg wishes to apply to the design and completion of the form is to minimise the requirements placed on notifying entities through simplifying reporting requirements while promoting transparency regarding the availability of services and the identity of companies and individuals who are authorised to provide networks and services.

(1) Network	(2) Service	(3) Further Details of Network and/or service	(4) Geographical area where network and/or service is available	(5) Publicly Available? Yes/No	(6) Commencement Date	
					(A) Planned	(B) Actual

Column 1: Where network is not provided by notifying person, this should be left blank – details may be given in Column 3. Where services only are provided (i.e. over another provider’s network) network details should not be completed. Choose only from list of networks as indicated.

[Only the following networks may be included in Column 1: Fixed Telephony Network, Mobile Telephony Network, Satellite Network, Broadcast Network, Electricity Cable System, Other Fixed Network (specified in Column 3), Other Wireless Network specified in Column 3), N/A where network elements are not provided by notifying person. If entry choices do not accurately reflect network please enter “other” and provide further details in column 3.]

Column 2: Choose only from list of services as indicated. If entry choices do not accurately reflect service please enter “other” and provide further details in column 3.

Where there are a variety of networks and services provided, the relationship between an individual service and the networks should be clear.

[Only the following services may be included in Column 2: publicly available telephone services, Other Voice Services, Broadcast Services, Data Services, Other Electronic Communication Service (specified in Column 3), N/A where electronic communications services are not provided by notifying person.]

Column 3: This column should be used to provide further details of the network and/or the service.

Column 4: For each Service/Network, please provide details of the geographical area where it is available. Separate entries will be necessary if different networks/services are provided in different areas

Column 5: A statement is required as to whether the network or service is made available to members of the public within the geographic area of availability. Entry is “Yes” or “No”.

Column 6A: Where networks or services are not currently provided, enter planned date; preferably the calendar month but planned quarter is also acceptable. (The planned date will not be made publicly available – the public register will only state whether the network/service is currently available). There is no requirement to commence the provision of the network or service by the planned date.

Column 6B: Where networks or services have been provided prior to 25 July 2003, actual date is not required – enter “pre-25 July 2003”. Where the commencement date is after 25 July, enter the actual date.

Annex 3: WATRA Licensing Guidelines – Accra, September 2005

Although licensing methods vary widely among countries, there are some common features that are considered to be among the best licensing practices.

Three general approaches to authorizing telecommunications services can be identified:

- 1) *Granting individual licenses.*
- 2) *Granting general authorizations, including class licenses.*
- 3) *Allowing open entry*

In recognition of the realities that exist in the market, there are a number of options to license the different types of networks and services. These options essentially relate to the level of regulatory intervention being introduced according to the type of network or service offered. At the same time market players must be treated in a transparent, non-discriminatory and proportional way; no undue burdens must be imposed on them

While more competition is to be introduced in the telecommunications sector, authorizations regimes remain necessary in order to ensure that certain public interest objectives are attained.

Undertakings in an open environment could still have to comply with requirements relating both to predominantly technical issues as well as to certain public service objectives.

The following guidelines have been inspired from international best practices and from renowned publications, text and documents such as the ITU 2002 Report on Effective Regulation, the World Bank *Infodev* Regulatory Handbook – Module 2 on Licensing, the UEMOA Directives²⁹, the COMESA Licensing Guidelines, the 1997 EU Licensing Directive, the General Agreement on Trade in Services (GATS) and the 1997 Agreement on Basic Telecommunications of the World Trade Organization (WTO).

1. Basic Principles

1.1 Competition

1.1.1 Considering the need for new developments in the telecommunications market as well as the ECOWAS decision which promoted the process of total liberalization of telecommunications infrastructure and services by 1 January 2006, it is recommended that competition is introduced in all ECOWAS countries as soon as possible, thereby opening the market to new entrants.

1.1.2 Where transition periods are foreseen for certain member states, it is recommended that such be limited such as to permit these countries to follow the regional trend.

1.2 Harmonization of procedures

1.2.1 There is a need to harmonize the categories of telecommunications networks and services as well as licensing procedures.

1.2.2 ECOWAS Member States (“Member States”) will strive to define and adopt common classifications of telecommunications networks and services as well as common licensing procedures.

²⁹ The UEMOA Directives were validated by experts from the 8 UEMOA Member States in the presence of traditional UEMOA partners and ECOWAS representatives during a workshop held in Cotonou from 18 to 22 July 2005. These Directives will be presented to Ministers in charge of telecommunications for their approval before the end of 2005.

1.3 Provision of Service between ECOWAS Member States

1.3.1 Member States will facilitate the provision of services between Member States or in different Member States of the ECOWAS Region in the formulation and application of their respective licensing regimes.

1.3.2 In order to facilitate the establishment of such regional networks or networks in several Member States, the regulatory authorities of Member States shall coordinate to the extent possible their licensing procedures for companies wishing to establish or exploit a telecommunications network and/or a telecommunications service in more than one ECOWAS Member State so that a company need only to complete one authorisation request which it can subsequently submit in the various Member States.

2. Market Structure

2.1 Competitive Framework

2.1.1 It is recommended that infrastructure-based competition is promoted to the largest extent possible given that this model has the advantage of favorizing a maximum degree of competition while accommodating simultaneously the development of the sector in terms of universal service.

2.1.2 Nevertheless, and especially in the initial phases of competition, service-based competition must also be considered within the licensing approach given that such competition can be considered a mechanism to ensure rapid market access by allowing such entrants to complement the networks of infrastructure-based operators. Under this model, new entrants could, however, be inclined to offer just services on competing networks, and not deploy their own infrastructure.

2.2 Licensing Regime

2.2.1 Given the existing market realities, the proposal is to introduce a licensing framework which accommodates such realities and aiming to achieve the desired market structure.

2.2.2 This framework is aimed at being technology and service neutral so as to be able to accommodate convergence and the introduction of new technologies. Convergence between different telecommunications networks and services and their technologies requires a licensing framework which covers comparable services whatever the technology used.

2.2.3 The recommendation is to promote technology neutrality to the greatest extent possible (e.g., not specify technologies such as GSM, CDMA or UMTS) and/or service (e.g. unified license which does not limit the activities such as fixed or mobile).

2.2.4 Nevertheless, in the interests of transparency and simplicity, Member States may decide that fixed and mobile networks may be licensed separately.

Because of the nature of the mobile market, it is not generally considered appropriate to apply exactly the same conditions to that business. Certain market characteristics that are applicable in the fixed market and require regulation, do not necessarily exist in the mobile market. The following conditions, which are generally contained in fixed licenses should not be included in mobile licenses. These are:

- Public payphones.
- Leased circuits
- Linked Sales

2.3 No Barriers to Entry

2.3.1 Member States should impose no limits which are not in conformity with their respective regulations on the number of operators or service providers in the market.

2.3.2 If a Member State limits the number of licenses, such a limitation must be justified by the Member State taking consideration of the following principles:

- The Member State will give due consideration to the necessity to maximize advantages for users and facilitate the development of competition;
- The Member State shall give interested parties the opportunity to express their opinion by conducting public consultations on planned limits in the number of licenses;
- Member States shall publish their respective decisions to limit number of licenses as well as the justification of such decisions;
- Member States will regularly re-examine such decisions;
- Where the number of licenses is limited, Member States will launch a public tender for such activities.

2.3.3 Where a Member State determines that the number of licenses can be increased, it will take the necessary actions to publish such a decision and launch a call for tender for additional licenses.

2.4 Level of Intervention

2.4.1 The Licensing Framework consists of three levels of intervention, ranging from individual licenses to class license (authorization or declaration) to open entry³⁰.

2.4.2 Different telecommunications networks and services will be categorized into the different categories according to the adapted market structure.

2.4.3 The decision to require individual licenses in certain cases must take into market realities of individual ECOWAS countries into consideration.

2.4.4 Individual licenses shall be required in the following cases:

- To exploit or offer public telecommunications networks or offer public voice telephony service.
- If the government of a particular country, for reasons of public policy, determines that the service shall be offered in a certain way (e.g., measures concerning public order, public security or public health.)

2.4.5 Nevertheless, in order to promote the development of the sector in the Region and to allow more choice to consumers, ECOWAS Member States may decide to exempt certain activities, networks or services (e.g., ISP) from a particular licensing category or indeed determine that they are included in the open entry category. The aim of such a provision is to give flexibility to regulators.

³⁰ There is a difference in terminology and legal systems between Anglophone countries, with legal systems based on “Common Law”, which distinguish between 3 levels of intervention going from individual license to class license to open entry, and, Francophone and Lusophone countries, with legal systems based on the “Civil Law” system, which tend to opt for four categories: license, authorization, declaration and open entry. Such terminology should be clarified in the definitions contained in the legal texts to be adopted at ECOWAS level (such as has been done by UEMOA in the draft Directive No. [X+!]/2005/CM/UEMOA on the harmonization of regimes applicable to telecommunications network operators and service providers). In addition, certain countries in the region have evolved to a system of general authorizations especially as concerns class licensing, where operators are subject to conditions which are included in the general regulatory framework rather than being granted a written document stating their rights and obligations. The fact of having a document at the level of class licenses is an administrative choice which is really linked to the legal and administrative traditions of countries and does not change the legal nature of the rights and obligations of the parties concerned.

2.4.6 In the interest of clarity, it must be understood that unauthorized is not unregulated. The activities which fall under the regime of open entry are subject to the general regulatory framework which includes, for example, conditions relating to, for example, terminal equipment approval or principles of non-interference.

2.5 Proposed Market Structure

2.5.1 The proposed licensing structure is as follows:

- Individual License: e.g.,: Network Operators – owning and exploiting any type of communications infrastructure (e.g., satellite, terrestrial, mobile or fixed); Public voice telephony service providers
- Authorization:e.g.,: Private Networks
- Declaration: e.g.,: Value Added Services, Reseller³¹s
- Open Entry: e.g.,: WiFi Networks for private use ; Internal Networks

3. Form of the Licence

3.1 Form of the Licence

3.1.1 The recommendation is that the license text includes the principle without literally copying legal or regulatory texts applicable to the sector. Such an approach will effectively promote transparency and equal treatment of all licensees and give the regulator the flexibility to adapt regulation to changing market conditions. Nevertheless, it is clear that specific conditions of licensees will be an integral part of their license.

3.1.2 The text of the license should not also not include conditions which are already applicable but which are not specific to the telecommunications sector. Nevertheless, national regulatory authorities may inform network operators and service providers of any regulations affecting their operations by referring them to information published on their respective web-sites.

4. Rights and Obligations

4.1 Principles

4.1.1 Conditions imposed upon operators and service providers must be non-discriminatory, proportional and transparent and must be justified in relation to the targeted network or service.

4.1.2 All holders of a telecommunications license will have a basic set of rights and these rights shall be applicable to all licensed operators regardless of whether they are service based or network based operators. However, the ability of a licensee to avail of those rights and entitlements may be conditional upon them being able to meet physical or technical requirements. For example, any incumbent fixed telecommunications operator may be required to set out certain conditions for access and interconnection to its network, including certain technical specifications. Any licensee capable of meeting those requirements should be entitled to enter into arrangements for such access or interconnection.

4.1.3 Certain other conditions which will be contained in all licenses will not be activated unless a specific determination or finding is made by the NRA.

³¹ The difference between authorization and declaration is linked to the level of intervention of the regulator. In the case of authorization, applicants will be required to submit their applications (generally containing summary legal and technical information) and await the approval of the regulator to commence service. A declaration is more a simple registration with the regulator whereby applicant may be required to submit summary information to register, but will not be required to await approval prior to starting service.

4.1.4 For example there are a range of conditions that should only apply if a licensee is found to be dominant in a relevant market. Where the NRA intends to make a finding of dominance, there is a statutory consultation process that should be followed.

4.1.5 Where operators wish to have access to scarce resources (such as frequency spectrum, numbers or land), NRA's should retain the right to put in place additional regulatory requirements, including (but not limited to) the requirement to participate in specific application procedures or competitive selection processes. In addition, those conditions in the licenses of all licensees that relate to scarce resources should be activated where an operator gains access to such resources. The NRA shall consult separately in relation the allocation of scarce resources where appropriate.

4.1.6 Conditions regarding the regulation of the activities of a dominant operator shall not, in principle, apply to new entrants. Such conditions will in principle only apply where the regulatory authority determines, after appropriate market analysis, that a licensee is in fact in a dominant position.

4.1.7 Other licensees will only be subject to conditions linked to quality of service and consumer protection. Nevertheless, certain conditions relating to the provision of services to the public, and in particular including emergency calls, directory services and public payphones, may be applicable.

4.1.8 In addition, since it is not possible to foresee future market developments, regulatory authorities must have the ability to be able to designate an operator(s), other than the historic operator, as having a universal service obligation in the future.

4.1.9 Any licensee must make appropriate provisions to take into consideration the needs of disabled people.

5. Procedures

5.1 Fees

5.1.1 The fees associated with obtaining a license or authorization should not create a barrier to market entry. Therefore, to the extent that a Member State imposes fees on the issuance of a license or general authorization, the fees should seek to cover only the administrative costs incurred in the issuance, management, control and enforcement of the applicable authorization scheme and in any case respond to public policy requirements as determined by government by means of Sectoral Policy.

5.1.2 Apart from entry fees, fees may also be imposed for the use of spectrum or numbers, with the aim of ensuring optimal use of resources. Such fees should not prevent the development of innovative services or competition in the market.

5.1.3 Charges must be imposed in a non-discriminatory manner so that one operator is not charged more than another without some objective basis for so doing. Any fees also shall be published in an accessible and appropriately detailed manner.

5.2 Public Consultations

5.2.1 To ensure fairness and transparency in the licensing or authorization process, the Member States should consult with industry, the public and other stakeholders.

5.3 Public Availability of Licensing Criteria

5.3.1 Where a license is required, the following should be published and made publicly available:

- all licensing criteria.
- the period of time normally required to reach a decision concerning an application, and
- the terms and conditions of individual licenses.

- 5.3.2 The reasons for the denial of any license must be made known to the applicant upon request.
- 5.4 Licensing Procedures
- 5.4.1 Member States shall define and apply licensing mechanisms that facilitate market entry and allow the progressive dismantlement of obstacles to competition and to the development of new services.
- 5.4.2 Any license conditions must be objectively justified, proportionate, non-discriminatory and transparent.
- 5.4.3 Member States generally should keep license conditions and filing requirements to a minimum. It would be unduly burdensome, for example, to require applicants for general authorizations to submit excessive amounts of business information to the regulator, such as: business plans; extensive technical filings; showings of experience; bank statements; or information detailing the source of funding.
- 5.4.4 Any entity that fulfills the conditions adopted and published by the Member State shall be entitled to receive an individual license.
- 5.4.5 Furthermore, all applicants shall be subject to the same procedures, unless there is an objective reason for differentiation.
- 5.4.6 Member States should adopt and adhere to reasonable time limits for acting upon license requests.
- 5.4.7 Refusal to issue a license or any decision to amend a license shall be taken in a transparent manner and the reasons should be communicated formally to the applicant.
- 5.4.8 A procedure also should be initiated to permit an entity to appeal any decision by the regulatory authority to an independent institution.
- 5.4.9 Licenses should be issued to the applicant personally. Transfer to third parties, if applicable, shall be done only with prior consent of the regulatory authority. However, a license obtained through competition or tender procedures should not be transferable. An exception to this condition is admissible when the applicant has declared in advance his intention to set up a company entirely owned by him to operate the licensed activities.
- 5.4.10 Member States should prescribe the maximum license period and indicate the conditions of its renewal.
- 5.4.11 Member States should promote the principle of technology neutrality and refrain from imposing limitations of service offered over a given network except in the case of the protection of public safeguard or moral standards.
- 5.4.12 Member States should ensure that license targets to further universal service goals do not discourage competition.
- 5.4.13 Member States should refrain from granting licenses with exclusivity, except when mandated by the legislation or the country's policy, and when dictated by unavailability of necessary resources or other relevant reasons.
- 5.4.14 The terms of a license should be considered fixed at the time the license is officially delivered. Should the need to change the terms arise, the agreement should require the regulator or licensee to notify the other party in a timely and reasonable fashion of any such changes before they are implemented.

5.4.15 A license agreement should not require the licensee to adhere to unspecified terms in a separate agreement between the Member State and a third party unless the terms are fully reiterated in the current license.

5.5 Reviewing, Terminating and Revoking Licenses

5.5.1 When a licensee fails to comply with a condition attached to the license, the regulatory authority may withdraw, amend, or suspend the individual license or impose, in a proportionate manner, specific measures aimed at ensuring compliance.

5.5.2 The regulatory authority shall, at the same time, give the entity a reasonable opportunity to state its view on the application of the conditions and, except in the case of repeated breaches by the entity, the entity shall have an opportunity, within a defined period of time, to remedy the breach. If the breach is remedied, the regulatory authority shall, within a defined period of time, annul or modify its decision and state the reason for its decision. If the breach is not remedied, the regulatory authority shall, within a defined period of time after its initial intervention, confirm its decision and state the reasons for its actions. The decision shall be communicated to the entity within a defined period of time (i.e., one week).

5.5.3 A license agreement should provide termination rights that are appropriate to each party.

5.6 Authorisation Regime

5.6.1 Service providers may be required to notify the regulator before providing the intended service. Service providers also may be required to provide information to the regulator to ensure compliance with any applicable conditions of operation.

5.6.2 In such instance, the service provider may be required to wait for a reasonable and defined period of time (e.g., up to four weeks) before starting to provide the services covered by the general authorisation.

5.6.3 Information that may be included for general authorizations include:

- “Legal” information: Individuals may be required to show that they are registered as single businessmen. Commercial partnerships, however, can be required to show by means of a statement accompanied by a certificate from the relevant commercial registration office that they are legally established and that their contract of partnership includes the business of providing telecommunications services. Individuals or partnerships whose registration or license has been suspended or has been revoked should not be allowed to register.
- “Technical” information: The entities may also be required to previously inform the NRA of the services they intend to commence and to provide the information that shows that they can fulfill the applicable conditions and modes applicable to the licensable activity, namely:
 - Detailed description of the service they propose to provide.
 - Technical project stating the equipment's to be used.
 - Indication of the entity in whose network the service is based.

5.6.4 NRAs may retain the right to request further clarification.

5.7 Right of Review, Remediation and Appeal for Authorisations

5.7.1 If the regulator finds that a service provider does not comply with the conditions of a general authorization, it may inform the service provider that it is not entitled to use the general authorization and/or impose on the service provider proportionate measures to ensure compliance. The service provider shall have an opportunity to state its views on the application of any such conditions and to remedy any breaches within a defined period of time.

5.7.2 If the service provider is able to correct the breaches or deficiencies within a specified period of time, the regulator shall annul or modify its initial decision and state the reasons for this decision. If the service provider is unable to correct the deficiencies, the regulator shall, within a defined period of time (e.g., two months of its initial decision) confirm its decision and state the reasons for its decision. This subsequent decision shall be communicated to the service provider within a defined period of time (e.g., one week).

5.7.3 A procedure also should be established to permit the regulated entity to appeal the regulator's decisions to an independent institution.

5.8 Enforcement

5.8.1 License conditions should be enforceable and clear on the rights and obligations of the licensee.

5.8.2 The regulatory authority should undertake, when deemed necessary, reasonable and appropriate methods to enforce the terms and conditions of a licensee's operations.

5.8.3 A license agreement should include provisions to facilitate enforcement processes and access, when deemed necessary, to a licensee's documents, provided that privacy and confidentiality are respected.

5.8.4 A license agreement should require the regulatory authority to give the licensee notice of any suspected or alleged license violations that come to the attention of the regulatory authority and allow a reasonable time for the licensee to investigate and take corrective action, if appropriate.

5.8.5 A licensee should be provided with an opportunity to present his views before changes of the terms of the license take effect.

5.9 Sanctions

5.9.1 Where license conditions are not respected, sanctions may be imposed. A range of sanctions may be foreseen, including:

- Fines
- Restriction of the scope and/or the duration of the license
- Suspension
- Withdrawal of Licence

5.9.2 Where one of the sanctions mentioned above is imposed, it will be widely communicated amongst ECOWAS Member States.

5.10 Dispute Resolution

5.10.1 Disputes must be handled according to national legislation.

5.10.2 Parties may, however submit their case to the Judicial entity of ECOWAS or to any other competent judicial authority.

Annex 4: Sample Licence Provisions

RECOMMENDATION

When drafting individual or class licenses according to the licensing classification selected (facilities based vs. service based, or licensing based on services, or technology-neutral licensing), it should be remembered that there should be a general set of terms and conditions that are applicable to all. Then there are terms and conditions applicable to certain situations (for example to control dominance), service providers (for example GMPCS) and terms and conditions linked to the use of scarce resources (for example linked to the use of spectrum or numbers or rights of way). The following chart gives sample licensing provisions as they appear in best practices around the World.

Condition No.	Heading	Purpose
Part I – GENERAL PROVISIONS		
1	Definitions	Sets out the meaning attributed to certain terms used throughout the license document.
2	Scope of the License	Establishes to whom the license is issued, the nature of the license, the requirements with regard to the control of the licensee and obligations with respect to any changes in control of the licensee that may take place.
3	License fee	Requires the licensee to pay a fee for the license.
4	Provision of Information	This condition sets out some detail on how information required by the NRA may be obtained and obliges the licensee to comply with requests and provide all relevant information and assistance to obtain information. This is a crucial condition as the information requested will enable the NRA to make determinations in the best interest of users and the market as a whole.
5	Compliance	States that the licensee must comply with any and all directions issued by the NRA or as set down in law.
6	Fair Competition	Requires all licensees to behave in a fair way and not engage in anti-competitive practices.
7	Misuse of data	Requires the licensee to handle information received in a manner that does not benefit it or any associated companies
8	Exceptions and Limitations	While it is assumed that the licensee will at all times make every endeavor to comply with its license and any directions given to it by the NRA, if such compliance is prevented by force majeure, the licensee must inform

		the NRA, set out the impact on its duty to comply with the License and set out how it intends to rectify the situation. The NRA will consider such matters on a case by case basis.
9	Integrity of the Network	This condition provides for the Licensee to take steps necessary to ensure the integrity of the network. This is important so as to make sure that services to the public are not interrupted.
10	Interests of the country	Requires the licensee to take all reasonable steps to prevent its network and services from being used to harm the interests of the country.
11	Term and Renewal	Provides for the length of validity of the license and for the licensee to seek renewal of the license.
12	Cessation of Services	Provides for the manner in which a licensee may cease service and the steps required of it in doing so. This is designed to ensure continuity of supply for the licensees customers.
Part II – SPECIFIC CONDITIONS WHICH ARE APPLICABLE, AS REQUIRED		
13	UAS	Requires the licensee to provide the UAS specified by the NRA and to comply with any direction from the NRA with regard to this condition as may be issued from time to time. It also may deal with the establishment of a fund to meet the cost of providing the universal service should that be considered necessary.
14	Emergency Calls	Requires the licensee to provide emergency calls free of charge and to ensure the codes ‘112’ and ‘999’ are used exclusively for such calls.
15	Directory Information	Requires the licensee to provide its customers with access to any Directory Information Service offered by any licensed operator and co-operate in making information available to enable a Directory Information Service be provided. It also requires the licensee to ensure that it does not use information for any purpose other than the Directory Information Service, and comply with data protection legislation.
16	Public Payphones	Requires the licensee to maintain and operate payphones, sets out the services to be available from them and information to be made available to users. It also requires the licensee to give notice of its intention to withdraw a payphone from a specific location.
17	Service Levels	The licensee is required to provide a development plan setting out its targets for the ongoing development of the network and services, and a monitoring plan which measures achievement of those targets. This is designed to ensure the on-going development of the network and to ensure that the country is provided with the highest level of infrastructure and service.

18	Consumer Protection	Requires the licensee to publish certain information with regard to its services and conditions, the manner in which it will deal with customer complaints, the provision of itemized billing and the publication of a consumers code for the resolution of disputes and in relation to the non-payment of bills and disconnections. It also requires licensees to prepare a draft statement on its minimum service levels for customers.
Part III – CONDITIONS LINKED TO THE USE OF SCARCE RESOURCES		
19	Numbering	Requires the licensee to maintain its numbering allocation in an appropriate manner. It is further prohibited from charging customers for any number allocated unless authorized by the NRA.
20	Radio Frequency Spectrum	This condition is designed to ensure that the Licensee operates any radio based infrastructure including its mobile network and services in such a way as to avoid interference to other users and that its systems comply with the international standards with regard to non-ionizing radiation emissions
21	Access to Land	Entitles licensee to the powers and rights set out in the Telecommunications Law, subject to compliance with other relevant laws and codes within the country, e.g. planning laws.
22	Access	Access to the network and services of the incumbent operator may be important to aid the introduction of competition into the telecoms sector. Due to constraints on land and to protect the environment, there may be circumstances where the only feasible means of accessing a customer for an operator may be by sharing or gaining access via another operator’s property or network. This condition provides that the incumbent must, if so directed provide such access on equal terms and conditions to the access it provides itself.
Part IV – SPECIFIC CONDITIONS RELEVANT TO CERTAIN OPERATORS (E.G. WHERE DETERMINED TO BE DOMINANT)		
23	Determination of Dominance	Under this condition the NRA may apply the conditions in Part IV of the License to any licensee that has been found to have a dominant position in a relevant market in accordance with Section 5 of the Telecoms Law.
24	Equal Access	The licensee, where requested by another operator, must grant ‘equal access’ – allowing the other operator access to its customers over the Licensees network using a selection of access methods as set out in the license. This is designed to facilitate the introduction of competitive service providers whose services can be used by customers by dialing a short code or prefix.
25	Interconnection	This condition is critical. It provides for new entrants being able to piggy-back on the licensee’s network to provide service to its customers. It enables faster roll-

		out of competition in advance of new entrants building such own network as they may require. In addition it is the means by which service competition will develop. The Licensee’s charges for interconnection services must be non-discriminatory and cost-oriented.
26	Leased Circuits	A key building block in enabling new entrants to compete will be the ability to offer a full suite of services. The ability to buy wholesale leased lines at terms that are no less favorable than those offered by the Licensee to its own associated companies or business divisions will be an important element in meeting this aim. In addition, larger customers are significant users of leased circuits and this condition requires transparency and non-discrimination in relation to charges to such customers.
27	Separate Accounts	To aid the NRA in ensuring compliance with other conditions, the ability of the licensee to show that there is no below cost and/or cross subsidization of any element of the business will be paramount. Keeping separate accounts for different activities is essential to calculate this.
28	Cross Subsidization	This condition prohibits unfair cross-subsidization and is intended to aid new entrants in assuring them that they are competing on a fair and equitable basis.
29	Undue Preference & Unfair Discrimination	This condition requires the Licensee to treat all classes of customers in a similar manner and provide them with similar terms and conditions.
30	Linked Sales	This condition prevents the Licensee from ‘bundling’ services or products so that a user or new entrant must purchase products or services which it does not require.
31	Price Regulated Services	This condition requires the Licensee to publish details of new services or prices, discounts on services or special offers and submit information relating to the proposal to the NRA. The purpose of this is to ensure that any such changes/introductions are compliant with the requirement to be transparent, non-discriminatory and cost-justified.

Annex 5: Legal Texts Consulted

A.5.1 Regional Texts

Antigua and Barbuda

Draft ICT Policy, available at: www.ab.gov.ag/gov_v2/government/parliament/laws/itc_draft_policy.pdf

Telecommunications Act of 2007, available at:
www.laws.gov.ag/bills/2007/Telecommunications_2007.pdf

Bahamas

The Communications Bill, 2009, available at:
[www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/GOV--Welcome--BILLS+PDF/\\$FILE/TheCommunicationsBill,2009_01.tuesday%2021.pdf](http://www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/GOV--Welcome--BILLS+PDF/$FILE/TheCommunicationsBill,2009_01.tuesday%2021.pdf)

Utilities Regulation and Competition Authority Act, 2009, available at:
[www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/GOV--Welcome--BILLS+PDF/\\$FILE/Copy_of_URCA_ACTApril_9,2009_\(Working_Copy\)_FINALCOPYTuesdayafternoon.pdf](http://www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/GOV--Welcome--BILLS+PDF/$FILE/Copy_of_URCA_ACTApril_9,2009_(Working_Copy)_FINALCOPYTuesdayafternoon.pdf)

Barbados

Telecommunications Act of 2002, available at:
www.telecoms.gov.bb/Documents/telecommunications_act_cap282b.pdf

Telecommunications (Public Telecommunications Licensing) Regulations of 2003, available at:
www.telecoms.gov.bb/Documents/Regulations/2003/si79.pdf

Barbados Unregulated Services Policy of 2003, available at:
www.telecoms.gov.bb/Documents/Policies/pdf/Barbados%20Unregulated%20Services%20Policy.pdf

Belize

Telecommunications Act of 2002, available at:
www.puc.bz/publications/Belize%20Telecommunications%20Act_20-07-02.pdf

Dominica

Telecommunications Act of 2000, available at:
www.ectel.int/Telecoms%20Regulations/Dominica/TelecommunicationsAct2000.pdf

Telecommunications (Licensing and Authorisation) Regulations, 2002, available at:
www.ectel.int/Telecoms%20Regulations/Dominica/SRO072002_Licensing&Authorisation.pdf

Dominican Republic

General Telecommunications Law No. 153-98, available at:
www.indotel.gob.do/component/option,com_docman/Itemid,578/task,cat_view/gid,20/

Grenada

Telecommunications Act of 2000, available at:
www.ectel.int/Telecoms%20Regulations/Grenada/Telecommunications%20Act%2031%20of%202000.pdf

Guyana

Consultation Paper, Reform of the Telecommunications Sector in Guyana of 2001, available at:
www.itpag.org.gy/downloads/telecomsreform.pdf

Competition and Fair Trading Bill of 2004, available at:
www.mintic.gov.gy/documents/Competition_and_Fair_Trading_Bill.pdf

Guyana Telecommunications Act, 1990, available at: www.gina.gov.gy/gina_pub/laws/Laws/cap4702.pdf

Haiti

Décret du 12 octobre 1977 sur les télécommunications, available at: www.conatel.gouv.ht/legislation/loitelecom.pdf

Jamaica

Draft Jamaica Telecoms Policy of 2007, available at:

[www.mmt.gov.jm/PDF%20Files/MMT/Draft%20Telecoms%20Policy%20\(MMT\)%20-%20May%202007.pdf](http://www.mmt.gov.jm/PDF%20Files/MMT/Draft%20Telecoms%20Policy%20(MMT)%20-%20May%202007.pdf)

The Telecommunications Act of 2000, available at:

www.mct.gov.jm/telecommunications_%20act_2000.pdf

St. Kitts and Nevis

Telecommunications Act, 2000, available at: www.ectel.int/Telecoms%20Regulations/St.%20Kitts/ACT.pdf

Telecommunications (Licensing and Authorisation) Regulations, 2002, available at:

www.ectel.int/Telecoms%20Regulations/St.%20Kitts/LICENSING%20&%20AUTHORISATION.pdf

St. Lucia

Telecommunications Act, 2000, available at:

www.ectel.int/Telecoms%20Regulations/St.%20Lucia/Telecommunications2000.pdf

Telecommunications (Licensing and Authorisation) Regulations, 2008, available at:

www.ectel.int/Telecoms%20Regulations/St.%20Lucia/Licensing%20&%20Authorisation_121_of_2008.pdf

St. Vincent and the Grenadines

Telecommunications Act, 2001, available at:

www.ectel.int/Telecoms%20Regulations/St.%20Vincent%20Grenadines/Telecommunications_Act_1_of_2001.pdf

Telecommunications (Licensing and Authorisation) Regulations, 2007, available at:

www.ectel.int/Telecoms%20Regulations/St.%20Vincent%20Grenadines/Licensingand0Authorization.pdf

Suriname

Wet Telecommunicatievoorzieningen (S.B. 2004 no. 151), available at: www.mintct.sr/telecomwet.htm

Trinidad and Tobago

Telecommunications Act of 2001, available at:

www.tradeind.gov.tt/Legislation%20Policies/Trinidad%20Legislation/The%20Telecommunications%20Act,%202001.pdf

Telecommunications (Amendment) of 2004, available at:

www.ctu.int/attachments/030_A_ACT_to_amend_the_Telecommunications%20Act_2001.pdf

A.5.2 International and Harmonized Texts**ECOWAS**

Supplementary Act A/SA.3/01/07 on the Legal Regime Applicable to Network Operators and Service Providers, available at: www.itu.int/ITU-D/treg/projects/itu-ec/index.html

Supplementary Act A/SA.5/01/07 on the Management of the Radio-Frequency Spectrum, available at: www.itu.int/ITU-D/treg/projects/itu-ec/index.html

ECTEL

ECTEL Licensing Guidance Notes, available at:

www.ectel.int/Regulatory%20Framework/LicensingGuidancNotesRevisedSept112002.pdf

Bahrain

Telecommunications Law of 2002, available at: www.tra.org.bh/en/pdf/TelecommunicationsLaw-secondedition-English.pdf

Brazil

Regulation of the National Telecommunications Agency, Decree No. 2338, of 7 October 1997, available at: www.anatel.gov.br/Portal/exibirPortalInternet.do

European Union

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0021:EN:HTML>

Ireland

European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003 (S.I. No. 306 of 2003), available at: www.irishstatutebook.ie/2003/en/si/0306.html

Jordan

Telecommunications Law of 1995, as amended 2002, available at: www.trc.gov.jo/index.php?option=com_content&task=view&id=3&Itemid=164&lang=english

Nigeria

Unified Access Service License under Section 32 of Nigerian Communications Act of 2003, available at: www.ncc.gov.ng/LicenseDocuments/Unified%20Access%20Service%20License.pdf

Singapore

Singapore Telecommunications Act, available at: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-323&doctitle=TELECOMMUNICATIONS%20ACT%0a&date=latest&method=part

Uganda

Communications Act of 1997, available at: www.ucc.co.ug/ucaCap106LawsOfUganda.pdf
The Telecommunications (Licensing) Regulations, 2005, available at: www.ucc.co.ug/regulate.php

United States

Communications Act of 1934, as amended, 47 C.F.R. § 27.10

Annex 6:

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

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British Virgin Islands	Telecommunications Regulatory Commission	MALONE	Guy Lester
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