

DRAFT TELECOMMUNICATIONS (LICENSING AND AUTHORIZATION) REGULATIONS

LTA – REG - 0001



REPUBLIC OF LIBERIA
Liberia Telecommunications Authority



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Republic of Liberia
TELECOMMUNICATIONS (LICENSING AND AUTHORIZATION)
REGULATIONS, 2008

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REPUBLIC OF LIBERIA
STATUTORY RULES AND ORDERS

2008 No. 1

Published in the Official Gazette of the Republic of Liberia Xth March 2008

IN EXERCISE of the powers conferred by Part IV and Part VI of the Telecommunications Act, 2007, the Liberia Telecommunications Authority makes the following Regulations:

TELECOMMUNICATIONS (LICENSING AND AUTHORIZATION)

REGULATIONS, 2008

LTA – REG - 0001

PART I

PRELIMINARY

1. Citation

These Regulations may be cited as the Telecommunications (Licensing and Authorizations) Regulations, 2008.

2. Interpretation

In these Regulations –

- (a) “Act” means Telecommunications Act of 2007;
- (b) “Class License” means the services listed in Schedule A;
- (c) “Frequency Authorization Holder” means a person to whom a Frequency Authorization has been granted under the Act;

- (d) “Liberia Telecommunications Authority” or “LTA” means the regulatory authority established and empowered pursuant to Part III of the Act;
- (e) “Licence” means an individual license or class license issued pursuant to Part IV of the Act;
- (f) “Licensee” means a person who holds a license under the Act;
- (g) “Minister” means the Minister of Posts and Telecommunications, or such other Minister as is designated by regulation under the Act from time to time;
- (h) “Ministry” means the Ministry of Posts and Telecommunications, or such other Ministry as is designated by regulation under the Act from time to time;
- (i) “person” means a natural or other legally recognized person or entity, and includes a joint stock company, a limited liability company, a partnership, a sole proprietorship, a joint venture, or other form of entity whether incorporated or unincorporated.

PART II

LICENSE SCOPE AND CLASSIFICATION

3. Exemption Orders

- (1) The LTA may issue an order (an “exemption order”) exempting specified activities or classes of persons from the requirement to hold a licence.
- (2) An exemption order may be made subject to such conditions as the LTA deems necessary and that are consistent with this Act and any applicable regulations and rules.

4. Categories of License

- (1) The two classes of license shall be:
 - (a) an Individual License; and
 - (b) a Class License.

- (2) An Individual License granted by the LTA in accordance with the Act authorizes a person to establish or operate a public telecommunications network or facility necessary to provide telecommunications service.
- (3) The provision of telecommunications services to the public and the ownership or operation of telecommunications networks used to provide telecommunications services to the public shall require an Individual License where:
 - (a) the licensee requires or is granted by LTA exclusive use of scarce physical or other resources, including radio spectrum (which shall be subject to, and require, a separate radio spectrum license or general authorization); or
 - (b) the licensing procedures referred to in Article 6 of these Regulations indicate that the licensee will be subject to individually defined obligations or will have the benefit of individually defined rights.
- (4) A Class License granted by the LTA in accordance with the Act authorizes a person to:
 - (a) establish or operate elements of a telecommunications network or facility that is not connected to a public network for the sole and exclusive use of that entity and does not provide telecommunications service to the public; or
 - (b) lease or otherwise obtain telecommunications network elements like transmission capacity, switching services, ducts or fiber from other Licensees to provide telecommunication service to the public for the purpose of providing a Class License.
- (5) Activities subject to a Class License are specified in Schedule A.
- (6) The LTA shall publish in the Official Gazette of the Republic of Liberia the telecommunications networks and services that are subject to an Individual License, a Class License or a Frequency Authorization.
- (7) Frequency Authorization shall be required for the operation of a telecommunications network or the provision of telecommunications service that requires the use of radio spectrum. Frequency Authorizations shall be issued under separate regulations issued by the LTA.

5. Scope of License

- (1) The grant of a License or Frequency Authorization to a person does not authorize that person to own or operate any telecommunications network, or provide any telecommunications service, other than that prescribed in the license or frequency Authorization.
- (2) A License is a unilateral grant of permission from the LTA to provide a telecommunications service or operate a telecommunications network, and shall not be regarded as a contract or bilateral agreement.

6. Confidentiality

- (1) A telecommunications service provider submitting information to the LTA pursuant to the requirements of these Regulations may request that the information submitted be treated as confidential.
- (2) All information for which the Agency grants a request to treat as confidential under Article 6 (1) shall be:
 - (a) provided by the disclosing party only to the LTA, which shall restrict access and disclosure to LTA personnel or contractors involved in resolution of the matter and who need to know the information which is subject to the request for confidentiality for the conduct of their duties; and
 - (b) purged from all documents which are either provided to another party to the proceeding or made publicly available; and
 - (c) protected by LTA personnel or contractors against improper disclosure or use, including by maintaining secure storage facilities.

PART III

ACTIONS BY LTA UPON RECEIPT OF APPLICATIONS

7. Request for Further Information

- (1) Upon receipt of an application for a License or Frequency Authorization, the LTA shall acknowledge the receipt of the application within three (3) days and shall review the application for completeness;
- (2) Where the application is incomplete, the LTA shall within seven (7) days notify the applicant of the further information required to process that application and that the LTA may refrain to act further until receipt of that information;
- (3) Where the LTA is satisfied with the completeness of an application for an Individual License or a Class License, it shall review the application.

PART IV

INDIVIDUAL LICENSES

8. Competitive Bid Process

- (1) In granting an Individual License, the LTA shall conduct an open, fair and transparent public competitive bid process or such other open, fair and transparent process as LTA may determine to be appropriate in the circumstances;
- (2) In granting an Individual License, the LTA shall comply with any relevant provisions of any applicable laws and regulations of the Government of Liberia, including those on procurement.

9. Notice of Terms, Qualifications and Procedures

The LTA shall publish a notice identifying the intended terms and conditions of the license, the qualifications or other application criteria, and any additional procedures applicable to the grant of license, including the time periods within which the LTA expects to assess license applications, notify applicants and reach any related decision.

10. Application for Individual Licenses

- (1) An application for an Individual License shall be submitted to the LTA and shall:
- (a) be in the form and contain such information and particulars as are prescribed by the LTA in the notice describing the individual license and additional licensing procedures and may include:
 - (i) applicant's details, including name, legal status, business address, the address of its registered office and other applicable contact information;
 - (ii) details regarding the type of telecommunications networks and telecommunications services and in the case of wireless telecommunications systems the required frequencies Authorizations for which the application is being submitted;
 - (iii) information regarding the applicant's directors, partner, management, officials and controlling persons;
 - (iv) information regarding the applicant's background and other licenses or frequency Authorizations held by the applicant or any of its affiliates;
 - (v) information describing the telecommunications network or telecommunications service to be supplied;
 - (vi) details regarding business plans, including the estimated date of commencement of the relevant activity;
 - (vii) information regarding the applicant's proposed rates; and
 - (viii) details, policies, strategies or representations regarding applicant's intention and ability to comply with the Act, these Regulations, or any conditions of a license or frequency Authorization granted under regulations issued by the LTA;
 - (ix) applicant's experience relevant to the License for which the applicant is applying; and
 - (x) any other information that LTA specifies.

- (b) be accompanied by any prescribed application fee, deposit or security, or any other license fee prescribed by the LTA, which shall be non refundable.
- (2) Each applicant shall be bound by the terms, commitments, offers, plans and obligations stated in their applications.

11. Procedure for Processing of Applications for Individual Licenses

- (1) Subject to Article 7 of these Regulations, upon receipt of an application for an Individual License, the LTA shall:
 - (a) subject to Article 8 of the Regulations, consult with members of the public, experts, industry or other persons, or adopt any other reasonable process to aid it in deciding whether or not to grant the License to the applicant.
 - (b) within sixty (60) days notify the applicant in writing of its decision to either:
 - (i) reject the application;
 - (ii) request that the applicant provide additional information to assist the LTA in making its decision; or
 - (iii) grant the application;
- (2) Where an application for an Individual License is granted, the LTA will engage in further consultations with the applicant to complete preparation of the applicable license terms and conditions and to complete the license award process in other respects without delay.
- (3) Where an application for an Individual License is refused, the LTA shall in its notification to the applicant state in writing the reasons for its refusal.

PART V
CLASS LICENSE

12. Notice of Terms, Qualifications and Procedures

The LTA shall publish a notice identifying the intended terms and conditions of the license, the qualifications or other licensing criteria, and any additional procedures applicable to the grant of license.

13. Application for Class License

An application for a Class License shall be submitted to the LTA and shall:

- (a) be in the form and contain such information and particulars as are prescribed by the LTA in the notice describing the class license and additional licensing procedures; and
- (b) be accompanied by any prescribed application fee, deposit or security, or any other license fee prescribed by the LTA, which shall be non refundable.

14. Decision by LTA on Class License

(1) Subject to Article 7 of these Regulations, upon receipt of an application for a Class License, the LTA shall:

- (a) consult with members of the public, experts, industry or other persons, or adopt any other reasonable process to aid it in deciding whether or not to grant the License to the applicant.
- (b) within sixty (60) days notify the applicant in writing of its decision to either:
 - (i) reject the application; or
 - (ii) grant the application.

(2) Where an application for a Class License is granted, the LTA will engage in further consultations with the applicant to complete preparation of the applicable

license terms and conditions and to complete the license award process in other respects without delay.

- (3) Where an application for a Class License is refused, the LTA shall in its notification to the applicant state in writing the reasons for its refusal.

PART VI

PROCEDURE FOR THE TRANSFER OF OWNERSHIP OR CONTROL

15. Transfer of Ownership or Control

- (1) Any Licensee wishing to transfer ownership or control of the Licensee shall apply to the LTA in writing at least ninety (90) days prior to the proposed date of transfer, or such other period as may be determined by the LTA.

- (2) If the LTA determines that:

- (a) a dominant service provider, or an affiliate of a dominant service provider is:

- i) the person ultimately acquiring ownership or control of the service provider; or

- ii) the person whose ownership or control is being transferred; or

- (b) as a result of the transfer, a person, alone or with its affiliates, would become a dominant service provider according to any applicable criteria, methodology or processes for the designation of dominant service providers published by the LTA,

LTA shall apply the provisions of Article 32 (2), 32 (3), 32 (4), 32 (5) and 32(6) of the Act.

- (3) Where application by a Licensee in accordance with Article 32 of the Act is refused, the LTA shall in its notification to the applicant state in writing the

reasons for its refusal. If the Licensee proceeds to complete the transfer of control of the Licensee, the LTA shall revoke the License of the Licensee.

16. Internal Restructuring or Name Change

Where a transfer is required as a result of a change of name in accordance with the General Business Law of the Republic of Liberia and results in no change to the beneficial ownership thereof, the provisions of Article 13 of these Regulations shall not apply and the Licensee shall within thirty (30) days notify the LTA of the change of name and the reasons for the change.

PART VII

FREQUENCY AUTHORIZATION

17. Application for Frequency Authorization

An application for a Frequency Authorization shall be submitted in writing to the LTA and shall:

- (a) be in the prescribed form and contain such information and particulars as are prescribed by the LTA in the notice describing the frequency authorization procedures.
- (b) be accompanied by the prescribed application fee which shall be nonrefundable.

18. Duties of LTA on Receipt of Application for Frequency Authorization

Upon receipt of an application for a Frequency Authorization, the LTA shall review the application.

19. Decision by LTA Regarding Grant of Frequency Authorization

- (1) In deciding whether or not to grant the Frequency Authorization, the LTA shall take into account:
 - (a) The matters set out in the application;
 - (b) The National Spectrum Management Plan, if such a plan exists;
 - (c) The Regional Spectrum Management Plan, if such a plan exists; and
 - (d) Other relevant matters.
- (2) Subject to the provisions of articles 5 and 7 of these Regulations, the LTA shall notify the applicant in writing of its decision within sixty (60) days of receipt of the application.
- (3) Where the application is approved, the LTA shall grant the Frequency Authorization on payment of the prescribed fee.
- (4) Where the application is refused the LTA shall in its notification to the applicant state in writing the reasons for its refusal.

20. Transfer of Frequency Authorization

The provisions of Part VII herein shall apply *mutatis mutandis* to the transfer of frequency Authorizations.

PART VIII

LICENSE AND AUTHORIZATION FEES

21. License and Authorization fees

- (1) Licensees and Frequency Authorization Holders shall pay fees to LTA as specified in a Regulation issued by the LTA from time to time.
- (2) The LTA shall set and collect fees having regard to, among other things, the following objectives:

- (a) the fees shall be used to fund, in whole or in part, the expenses of the LTA incurred in exercising responsibilities, functions and powers under this Act and other laws and such fees shall be proportionate to those expenses;
- (b) the fees shall be levied on different licensees and users of spectrum and numbers in an impartiality and competitively neutral manner; and
- (c) the fees may be based on a percentage of the revenues of licensees from the provision of their licensed telecommunications services.
- (b) fees may be levied to fund a specific telecommunications sector project initiated by the Government or the LTA following a process of public consultation appropriate to the circumstances.

PART IX

ENFORCEMENT OF A LICENSE OR FREQUENCY AUTHORIZATION

22. Enforcement of License conditions

- (1) Where the LTA is satisfied that a licensee or frequency authorization holder is contravening or has contravened any of the provisions of these regulations, his License or Frequency Authorization, the LTA shall commence an investigation for the purpose of securing compliance with the provision, regulation or condition in question.
- (2) The enforcement of conditions of a License or Frequency Authorization shall be subject to the following specific regulatory principles, practices and procedures:
 - (a) The LTA may begin an investigation in the following circumstances:
 - (i) upon receipt of a complaint by anyone;
 - (ii) where indicated by matters arising from an investigation of any person as part of the LTA's performance of its duties; or
 - (iii) where the LTA obtains information in the course of the performance of its duties or by other means and that information suggests that a contravention of the license term or condition may have occurred or is occurring of its own motion.

- (b) Upon a complaint about a particular conduct, the LTA shall determine whether there is reason to suspect that there is a breach of these regulations or a condition under the license or frequency Authorization and if so shall proceed to investigate the complaint;
- (c) In determining whether to proceed with an investigation, the LTA shall give priority to matters where:
 - (i) there has been a breach of these regulations
 - (ii) there has been a breach of a condition in the License or Frequency Authorization;
 - (iii) there appears to be substantial damage or risk of substantial damage arising from that breach
 - (iv) there appears to be significant public detriment;
- (d) Where the LTA has determined there is reason to suspect that there is a breach of these regulations or any condition of a license or frequency Authorization, the LTA shall in writing issue an investigation notice.
- (e) The LTA shall make the decision to issue an investigation notice after giving proper consideration to the merits of the case and deciding whether it has reason to believe that the Licensee or Frequency Authorization Holder concerned has breached these regulations or a condition under the license or Frequency Authorization.
- (f) The investigation notice shall state:
 - (i) that the LTA is investigating a possible breach of these regulations, a condition of the License or Frequency Authorization;
 - (ii) the reasons for the suspicion of a breach, including any matter of fact or law which is relevant to the investigation;
 - (iii) that information is required from the Licensee or Frequency Authorization Holder in order to proceed with the investigation;
- (g) In determining matters concerning the breach of a condition of a license or Frequency Authorization, the LTA in arriving at its decision:
 - (i) shall provide the Licensee or Frequency Authorization Holder with an opportunity to make representation on the matter before the LTA;

- (ii) may provide an opportunity for the public to make representation in connection with the material issues;
 - (iii) shall give consideration to the representations of the Licensee or Frequency Authorization Holder;
 - (iv) shall, where there has been a public consultation, give consideration to the public comments received;
 - (v) shall not be bound by technicalities, legal forms or rules of evidence;
 - (vi) shall act as expeditiously as a proper consideration of the matters may allow, having regard to the need to carefully and quickly inquire into and investigate the breach and all matters affecting the merits and fair settlement of the matter;
 - (vii) may inform itself of any matter relevant to the breach in any way it thinks appropriate.
- (h) the LTA's decision and directions shall be non-discriminatory and shall treat similarly situated parties in the same manner and on the same basis.
- (i) At any time during the investigation the LTA may issue an interim order directing the Licensee or Frequency Authorization Holder to cease and desist from a specified conduct, if the LTA is satisfied that:
- (i) there is prima facie evidence that the Licensee or Frequency Authorization Holder breached the provision of the these regulations or a condition in the License or Frequency Authorization;
 - (ii) continuation of the Licensee or Frequency Authorization Holder's conduct is likely to cause serious harm to other licensees or frequency holders, consumers or the general public;
 - (iii) the potential harm in allowing the Licensee or Frequency Authorization Holders to continue its conduct outweighs the burden on the Licensee or Frequency Authorization Holder;
 - (iv) issuance of the order is in the public interest;
- (j) where the LTA determines that the Licensee or Frequency Authorization Holder has contravened any of the conditions under these regulations, the License or Frequency Authorization, the LTA

may take any of the following enforcement actions, subject to Article 23 of these Regulations:

- (i) direct the Licensee or Frequency Authorization Holder to cease engaging in the provision of the service or use of the particular frequency or cease both as the case may be;
- (ii) direct the Licensee or Frequency Authorization Holder to take specific remedial action and provide proof to the satisfaction of the LTA that such remedial action has been undertaken;
- (iii) revoke the License held by the Licensee;
- (iv) reduce the remaining term of the License held by the Licensee;
- (v) refuse to renew or extend the term of the License held by the Licensee;
- (vi) impose a monetary penalty on the Licensee;
- (vii) refer the matter to the Attorney General - Minister of Justice for the purpose of instituting of criminal proceedings;
- (viii) take such other action as is permitted under applicable laws.

(k) Where the Licensee or Frequency Authorization Holder fails to comply with Articles 23 (j) (i), 23 (j) (ii) and 23 (j) (iii) of these Regulations, the LTA may take steps to enforce any order of the LTA, whether or not the order has been made an order of the court, or any other enforcement action available to it under the Act.

- (3) Any order or exercise of authority by the LTA that gives rise to a dispute that is not otherwise resolved may be submitted by the Licensee to arbitration in accordance with Article 75 of the Act.
- (4) Decisions or other actions by the LTA shall be subject to any other appeal, review or dispute processes provided for in the Act or any other applicable laws.
- (5) Prior to commencing any arbitration or other review or dispute processes, the Licensee shall notify the LTA in writing of its complaint and request a meeting with the LTA to discuss the complaint. The Licensee shall also prepare a full statement of the nature of the complaint, and deliver the statement to the LTA within 30 days of the date of the LTA's order or other activity complained of.

PART X
GENERAL PROVISIONS

23. Terms for Issuance of License

- (1) The LTA shall issue an Individual License, Class License and Frequency Authorization on terms that are non-discriminatory.
- (2) For the purpose of article 24 (1) of these Regulations, an Individual License, Class License or Frequency Authorization is issued on non-discriminatory terms if:
 - (a) telecommunications providers of similar types of telecommunications networks or telecommunications services are treated similarly;
 - (b) the License or Frequency Authorization does not favor any one telecommunications provider or class of telecommunications providers and
 - (c) the issuance of the License or Frequency Authorization is likely to enhance competition in any market.

24. Additional Obligations of Licensees

Every operator of a telecommunications network or telecommunications service shall:

- (a) comply with Articles 69 (National Security) and 70 (Public Emergencies) of the Act;
- (b) observe the conditions of its license, the Regulations and the Act.

25. Notice to the LTA

- (1) The holder of a License or Frequency Authorization shall notify the LTA in writing if any of the matters forming part of the application for license or Frequency Authorization changes in a material respect;
- (2) The holder of a License or Frequency Authorization shall notify the LTA in writing at least ninety (90) days prior to the proposed date of the merger if the

Licensee or Frequency Authorization Holder enters into any agreement or understanding to merge part or all of its telecommunications activities in Liberia with any person.

26. Revocation of License

- (1) Where the LTA proposes (herein called the “Proposal”) to amend, modify, suspend, revoke or not renew a License or Frequency Authorization, it shall provide notification (the “Notice”) to the Licensee or Frequency Authorization Holder in writing:
 - (a) that it is considering the proposed amendment, modification, suspension, revocation or non-renewal;
 - (b) of the reasons for the proposed amendment, modification, suspension, revocation or non-renewal; and
 - (c) of the date on which the amendment, modification, suspension, revocation or non-renewal is proposed to take effect, and the period within which representations on the Proposal may be made;
- (2) The Notice:
 - (a) shall give the licensee sufficient time, as determined by the LTA in its sole discretion, to prepare comments on the identified change;
 - (b) shall set out any procedures the LTA will use in considering the change; and
 - (c) may invite comments from other interested parties or the general public.
- (3) The LTA shall consider any comments made by the Licensee regarding the Proposal in a timely manner;
- (4) Where the Proposal is the result of a breach of these regulations or a term, provision or limitation of the License or Frequency Authorization the notice given to the Licensee or Frequency Authorization 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;
- (5) Where the Licensee or Frequency Authorization Holder fails to remedy the breach as stated in Article 27 (4) of these Regulations, the LTA shall not later than seven (7) days after the last day for remedy by the Licensee or Frequency Authorization Holder:

- (a) Suspend the License or Frequency Authorization for a period not exceeding three (3) months (the “Suspension Period”) during which period the Licensee or Frequency Authorization Holder shall cease all activity related to his License or frequency Authorization and shall remedy the breach;
 - (b) revoke the License or Frequency Authorization where the Licensee or Frequency Authorization Holder fails to remedy the breach during the Suspension Period.
- (6) If the LTA implements a variation in License pursuant to this Section, it shall provide the licensee with sufficient time, as determined by the LTA in its sole discretion, to implement any changes needed to comply with the License change.
- (7) Where a License is suspended, revoked or not renewed, the LTA shall take into account continuity of service to customers and include in its order such terms and conditions as it deems appropriate.

27. Registers

- (1) The LTA shall maintain Registers at its principal office containing:
- (a) each Individual License, Class License and Frequency Authorization;
 - (b) the names, registered office and/or principal place of business of each person licensed or authorized to operate;
 - (c) all notices identifying the intended terms and conditions of licenses, the qualifications or other applicant criteria, and the procedures applicable to the grant of license; and
 - (d) each application and all correspondence and decisions regarding the application.
- (2) The Registers shall be open to public inspection during normal working hours and may be made available electronically or in any format, as the LTA considers appropriate, subject to any determinations regarding confidential or commercially sensitive information made by the LTA pursuant to Article 6 of these Regulations and Article 11 (1) (p) of the Act.
- (3) The LTA shall make copies of entries in the Register available to members of the public on payment of a prescribed fee.

28. Transitional provisions

- (1) An application for a renewal of a License or Frequency Authorization issued pursuant to the Act shall be made in accordance with the provisions of these Regulations and the Act.
- (2) An application for a License or Frequency Authorization or for the transfer of a License or Frequency Authorization made prior to the passage of these Regulations, for which a decision has not been made by the LTA, shall be processed in accordance with these Regulations and the Act.

SCHEDULE “A”

Class Licenses

Internet service provider service

Closed user groups services

Private telecommunications services not offered to the public

Private networks