

Tonga

**COMMUNICATIONS LICENSING RULES
2017**



COMMUNICATIONS LICENSING RULES 2017

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COMMUNICATIONS LICENSING RULES 2017
COMMUNICATIONS ACT 2015

*IN EXERCISE OF THE POWERS conferred by section 47 of the
Communications Act 2015, the Regulator hereby makes the following Rules-*

PART I – PRELIMINARY

1 Short title

These Rules may be cited as the Communications Licensing Rules 2017.

2 Commencement

These Rules shall come into force on the date they are published in the Gazette.

3 Definitions

- (1) Subject to subsection (2), unless the context otherwise requires, terms used in these Rules have the same meaning as in the Act.
- (2) In these Rules, unless the context otherwise requires:
“Act” means the Communications Act 2015; and
“financial year” means a period of 12 months ending on 30 June.

The following terms are defined in the Act:

- (a) business day;

- (b) network operator;
- (c) Regulator;
- (d) service provider.

PART II — APPLICATIONS FOR NETWORK OPERATOR LICENCES AND REGISTRATION AS SERVICE PROVIDERS

4 Network operator licence application process

- (1) Every application for a network operator licence shall be:
 - (a) in written or electronic form;
 - (b) in the form set out in Schedule 1;
 - (c) delivered to the Regulator at the contact details notified by the Regulator on its website; and
 - (d) shall be accompanied by:
 - (i) the attachments required by the form in Schedule 1; and
 - (ii) the application fee set out in Schedule 3.
- (2) The Regulator may request the applicant to give the Regulator further information about the application within 20 business days after the Regulator receives the application, attachments and application fee.
- (3) The Regulator shall endeavour to make a decision to accept or refuse an application for a network operator licence in accordance with section 32 of the Act and issue the applicant with a licence by the later of:
 - (a) 20 business days after the Regulator receives the application, attachments and application fee in accordance with this section 4; and
 - (b) 20 business days after the Regulator receives the further information requested by the Regulator under subsection (2).

5 Service provider registration process

- (1) Every application for registration as a service provider shall be:
 - (a) in written or electronic form;
 - (b) in the form set out in Schedule 2;
 - (c) delivered to the Regulator at the contact details notified by the Regulator on its website; and
 - (d) shall be accompanied by:
 - (i) the attachments required by the form in Schedule 2; and
 - (ii) the application fee set out in Schedule 3.

- (2) The Regulator may request the applicant to give the Regulator further information about the application within 10 business days after the Regulator receives the application, attachments and application fee.
- (3) The Regulator shall make a decision to accept or refuse an application for registration as a service provider in accordance with section 41 and notify the applicant in writing by the later of:
 - (a) 10 business days after the Regulator receives the application, attachments and application fee in accordance with section 5; and
 - (b) 10 business days after the Regulator receives the further information requested by the Regulator under subsection (2).
- (4) If the Regulator does not notify the applicant in writing of a decision to accept or refuse an application for registration as a service provider by the date required by subsection (3), the applicant shall be deemed to be registered as a service provider.

6 Obligation to notify

- (1) A network operator shall promptly notify the Regulator in writing of any change in the information provided to the Regulator in the form (but not attachments) submitted in accordance with section 4.
- (2) A service provider shall promptly notify the Regulator in writing of any change in the information provided to the Regulator in the form (but not attachments) submitted in accordance with section 5.

PART III — LICENCE AND REGISTRATION FEES

7 Annual return to be lodged by the licensee

- (1) A network operator shall, within 60 business days from the end of a financial year, lodge with the Regulator an annual return for that financial year, in the form notified by the Regulator (if any), reporting:
 - (a) the amount of its eligible revenues for that financial year;
 - (b) the amount of licence fee payable by the network operator for that financial year, calculated in accordance with section 36 of the Act; and
 - (c) sufficient details of the method used to calculate the amount in (b) as would enable the Regulator to verify the network operator's calculations.
- (2) A service provider shall, within 60 business days from the end of a financial year, lodge with the Regulator an annual return for that financial year, in the form notified by the Regulator (if any), reporting:
 - (a) the amount of its eligible revenues for that financial year;

- (b) the amount of registration fee payable by the service provider for that financial year, calculated in accordance with section 43 of the Act; and
 - (c) sufficient details of the method used to calculate the amount in (b) as would enable the Regulator to verify the service provider's calculations.
- (3) The Regulator may notify network providers and service providers of the form in which annual returns referred to in subsections (1) and (2) shall be lodged (including, but not limited to, by publishing the form on its website).

8 Audit requirements

- (1) As soon as practicable after submitting an annual return under section 7, a network operator or service provider shall submit to the Regulator a certificate signed by a qualified auditor, stating that the reported eligible revenues are true and correct in all respects.
- (2) A person is a qualified auditor if they are an auditor who is qualified under section 208 of the *Companies Act 1995*.

9 Invoicing of licence fee or registration fee

- (1) Subject to subsection (3)(b), the Regulator shall invoice a network operator or service provider for the licence fee or registration fee (as applicable) in two equal instalments.
- (2) The invoice for the first instalment under subsection (1) shall be issued within 20 business days of lodgement by the network operator or service provider of the annual return referred to in section 7.
- (3) The invoice for the second instalment under subsection (1):
 - (a) shall be issued within 20 business days of the date that is 6 months after lodgement by the network operator or service provider of the annual return referred to in section 7; and
 - (b) may reflect an adjusted amount that is equal to:
 - (i) the licence fee or registration fee that would have been calculated if audited financial results submitted in conjunction with the certificate mentioned in section 8 had been used for the calculation of the licence fee or service provider fee instead of information in an annual return lodged under section 7;
 - (ii) less the amount of the first instalment invoiced under subsection (2).

10 Payment of licence fee or registration fee

- (1) A licensee shall pay the licence fee or registration fee to the Regulator no later than 20 business days after the Regulator issues the licensee with an invoice under section 9 specifying the amount of licence fee or registration fee payable.
- (2) A licensee shall pay the licence fee or registration fee by cash or a cheque drawn on a business account, delivered to a payment intake point as notified by the Regulator from time to time.

11 Pro rata reduction of fixed amount in the first year

- (1) Where a network operator obtains a licence after the first day of a financial year, the fixed amount payable by the network operator under section 36 of the Act shall be reduced pro rata by the number of days the network operator did not hold a licence for that financial year.
- (2) Where a service provider is registered after the first day of a financial year, the fixed amount payable by the service provider under section 43 of the Act shall be reduced pro rata by the number of days the service provider was not registered for that financial year.

12 Calculation of the licence fee and registration fee

The following amounts required for the calculation of the fees under sections 36 and 43 of the Act are set out in Schedule 3 of these rules:

- (1) threshold amount;
- (2) fixed amount; and
- (3) fixed percentage.

SCHEDULE 1

Application for network operator licence	
Date of application	
Full legal name of applicant	
If the applicant is not a natural person, full name of the person signing the confirmation below under the authority of the applicant	
Contact details	
Postal address	
Telephone number	
Email address (if any)	
Website (if any)	
Eligibility requirements	
Please tick the appropriate box (select one only):	<p>The applicant is a:</p> <p><input type="checkbox"/> company as defined under the Companies Act 1995 OR</p> <p><input type="checkbox"/> natural person who is a citizen of the Kingdom and of at least 18 years of age OR</p> <p><input type="checkbox"/> partnership, one of the members of which is a citizen of the Kingdom and of at least 18 years of age OR</p> <p><input type="checkbox"/> charitable trust, incorporated society, or other body organised under a law of the Kingdom that has capacity to contract OR</p> <p><input type="checkbox"/> government school, recognised school or registered school under the Education Act OR</p> <p><input type="checkbox"/> entity listed in Schedule 1 of the Public Service Act 2002</p>
Details of prior infringements and non-compliance with the conditions of a communications licence in country by the applicant	

<p>Details of prior convictions for unlawful conduct relating to dishonesty in the provision of communications services in any country by:</p> <p>(a) the applicant;</p> <p>(b) if the applicant is a partnership, any of the partners; and</p> <p>(c) if the applicant is a company, any of the directors of the applicant.</p>	
<p>If the applicant is a natural person, has the applicant ever been declared bankrupt in any country? If yes, please provide details.</p>	
<p>If the applicant is a partnership, have any of the partners ever been declared bankrupt in any country? If yes, please provide details.</p>	
<p>If the applicant is a company, have any of the directors of the applicant ever been declared bankrupt in any country? If yes, please provide details.</p>	
Confirmation	
<p>I confirm that:</p> <ul style="list-style-type: none"> • I am the applicant or am acting under the applicant's authority; and • the information provided in this application is complete and correct. 	<p style="text-align: center;">..... Signature of applicant or person acting under the applicant's authority</p>

Attachments

Applicants are required to attach the following information and copies of any supporting documentation to an application for a network operator licence:

1. Details of any licence under the Communications Act 2015 held by:
 - (a) the applicant;
 - (b) if the applicant is a partnership, any of the partners; and
 - (c) if the applicant is a company, any of the directors of the applicant.
2. The applicant's proposed technical and service roll-out.

3. A description of the nature of the communications facilities and communications services, area of coverage and the types of technology to be used by the applicant.
4. If the applicant is a company:
 - (a) a copy of the applicant's:
 - (i) certificate of incorporation;
 - (ii) company constitution;
 - (iii) current company extract from the Companies Office;
 - (iv) latest annual financial statements audited by a qualified auditor or in such other form as approved by the Regulator; and
 - (v) latest annual report;
 - (b) details (including name, birthdate and contact details) about each director of the applicant;
 - (c) details (including name, birthdate and contact details) about each direct or indirect shareholder of the applicant with a direct or indirect interest in the applicant of over 5%; and
 - (d) for each natural person referred to in (b) or (c), copies of proof of their identity (including name, birthdate and contact details).
5. If the applicant is a natural person:
 - (a) proof of their identity (including name, birthdate and contact details); and
 - (b) evidence of their citizenship of the Kingdom.
6. If the applicant is a partnership:
 - (a) a copy of:
 - (i) any written partnership agreement;
 - (ii) the partnership's latest financial statements audited by a qualified auditor or in such other form as approved by the Regulator;
 - (iii) evidence of that a member of the partnership is a citizen of the Kingdom;
 - (b) for each partner proof of identity (including name, birthdate and contact details).
7. If the applicant is a charitable trust, an incorporated society, or other body organised under a law of the Kingdom that has capacity to contract, evidence of that status.

8. If the applicant is a government school, evidence of its establishment under section 17 of the Education Act.
9. If the applicant is a recognised school, a copy of the applicant's certificate of recognition under the provisions of the Education Act.
10. If the applicant is a registered school, a copy of the applicant's certificate of registration under the provisions of the Education Act.

SCHEDULE 2

Application for registration as a service provider	
Date of application	
Full legal name of applicant	
If the applicant is not a natural person, full name of the person signing the confirmation below under the authority of the applicant	
Contact details	
Postal address	
Telephone number	
Email address (if any)	
Website (if any)	
Eligibility requirements	
Please tick the appropriate box (select one only):	<p>The applicant is a:</p> <p><input type="checkbox"/> company as defined under the Companies Act 1995 OR</p> <p><input type="checkbox"/> natural person who is a citizen of the Kingdom and of at least 18 years of age OR</p> <p><input type="checkbox"/> partnership, one of the members of which is a citizen of the Kingdom and of at least 18 years of age OR</p> <p><input type="checkbox"/> charitable trust, incorporated society, or other body organised under a law of the Kingdom that has capacity to contract OR</p> <p><input type="checkbox"/> government school, recognised school or registered school under the Education Act OR</p> <p><input type="checkbox"/> entity listed in Schedule 1 of the Public Service Act 2002</p>
Details of prior infringements and non-compliance with the conditions of a communications licence in country by the applicant	

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<p>Details of prior convictions for unlawful conduct relating to dishonesty in the provision of communications services in any country by:</p> <p>(a) the applicant;</p> <p>(b) if the applicant is a partnership, any of the partners; and</p> <p>(c) if the applicant is a company, any of the directors of the applicant.</p>	
<p>If the applicant is a natural person, has the applicant ever been declared bankrupt in any country? If yes, please provide details.</p>	
<p>If the applicant is a partnership, have any of the partners ever been declared bankrupt in any country? If yes, please provide details.</p>	
<p>If the applicant is a company, have any of the directors of the applicant ever been declared bankrupt in any country? If yes, please provide details.</p>	
Confirmation	
<p>I confirm that:</p> <ul style="list-style-type: none"> • I am the applicant or am acting under the applicant's authority; and • the information provided in this application is complete and correct. 	<p style="text-align: center;">..... Signature of applicant or person acting under the applicant's authority</p>

Attachments

Applicants are required to attach the following information and copies of any supporting documentation to an application for registration as service provider:

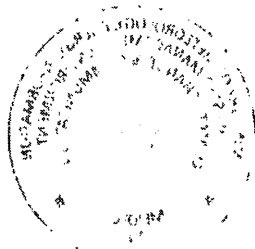
1. Details of any licence under the Communications Act 2015 held by the applicant, by:
 - (a) the applicant;
 - (b) if the applicant is a partnership, any of the partners; and

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- (c) if the applicant is a company, any of the directors of the applicant.
- 2. The applicant's proposed technical and service roll-out.
- 3. A description of the nature of the communications services and area of coverage, and the types of technology to be used by the applicant.
- 4. If the applicant is a company:
 - (a) a copy of the applicant's:
 - (i) certificate of incorporation;
 - (ii) company constitution;
 - (iii) current company extract from the Companies Office;
 - (iv) latest annual financial statements audited by a qualified auditor or in such other form as approved by the Regulator; and
 - (v) latest annual report;
 - (b) details (including name, birthdate and contact details) about each director of the applicant;
 - (c) details (including name, birthdate and contact details) about each direct or indirect shareholder of the applicant with an direct or indirect interest in the applicant of over 5%; and
 - (d) for each natural person referred to in (b) or (c), copies of proof of their identity (including name, birthdate and contact details).
- 5. If the applicant is a natural person:
 - (a) proof of their identity (including name, birthdate and contact details); and
 - (b) evidence of their citizenship of the Kingdom.
- 6. If the applicant is a partnership:
 - (a) a copy of:
 - (i) any written partnership agreement; and
 - (ii) the partnership's latest financial statements audited by a qualified auditor or in such other form as approved by the Regulator;
 - (iii) evidence of that a member of the partnership is a citizen of the Kingdom;
 - (b) for each partner proof of identity (including name, birthdate and contact details).

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7. If the applicant is a charitable trust, an incorporated society, or other body organised under a law of the Kingdom that has capacity to contract, evidence of that status.
8. If the applicant is a government school, evidence of its establishment under section 17 of the Education Act.
9. If the applicant is a recognised school, a copy of the applicant's certificate of recognition under the provisions of the Education Act.
10. If the applicant is a registered school, a copy of the applicant's certificate of registration under the provisions of the Education Act.



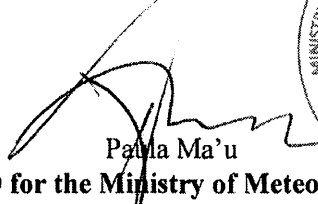
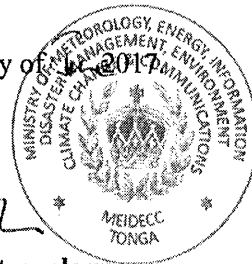
SCHEDULE 3

Fees and amounts payable by network operators and service providers

Type of fee or amount	Amount	Reference
Application fee	TOP 200	subsection 47(1)(b) of the Act
Threshold amount	TOP 250,000	subsection 36(4) of the Act subsection 43(4) of the Act
Fixed amount	TOP 10,000	subsection 36(3) of the Act subsection 43(3) of the Act
Fixed percentage	1.50%	subsection 36(5) of the Act subsection 43(5) of the Act

NOTE: These fees will expire after 3 years from the date on which they came into force (see sections 36(5)(a) and 43(5)(a) of the Act). After this time, new fees will be set by an amendment to these rules.

Made at Nuku'alofa this 2nd day of June 2017

Patia Ma'u
**CEO for the Ministry of Meteorology,
 Energy, Information, Disaster
 Management, Environment, Climate
 Change and Communications**