

S.I. 2003 No. 79 (Corrected Copy)

**Telecommunications Act, 2002
(Act 2001-36)**

**TELECOMMUNICATIONS (PUBLIC TELECOM-
MUNICATIONS LICENSING)
REGULATIONS, 2003**

The Minister in exercise of the powers conferred on him by section 110 of the *Telecommunications Act*, makes the following Regulations:

1. These Regulations may be cited as the *Telecommunications (Public Telecommunications Licensing) Regulations, 2003*. Short title.

2. In these Regulations,

Interpreta-
tion.

"existing carrier" means a person defined as such in section 2 of the Act and includes a person who is the successor to any entity referred to therein;

"existing service provider" means a person defined as such in section 2 of the Act and includes a person who is the successor to any entity referred to therein;

"public telecommunications" means telecommunications referred to under Part IV of the Act.

3. (1) The Minister may grant licences in respect of the activities or services specified in section 10 of the Act Transitional arrangement respecting licences.

(a) in accordance with the Transition Timetable set out in paragraphs 5 to 9 of the *First Schedule* to the Act; and First Schedule.

(b) in accordance with the provisions of Part IV of the Act.

(2) A person who is the holder of a licence in respect of an existing telecommunications service

- (a) shall retain the licence until it expires or is earlier revoked; and
- (b) where a renewal of the licence is required, shall apply for a renewal in accordance with the Act and Regulations.

Application
for licence.

4. (1) A person who is desirous of obtaining

- (a) a carrier licence,
- (b) a service provider licence;
- (c) a dealer's licence; or
- (d) a VSAT licence

as required under section 10(1)(a), (b), (d) and (e) respectively of the Act shall apply to the Minister for the appropriate licence.

(2) An application for a licence under paragraph (1)

(a) shall be in accordance with section 11 of the Act;

Schedule.

(b) shall be in the relevant form set out in the *Schedule* to these Regulations;

Schedule.

(c) shall contain the information regarding the structure and finances of the applicant as set out in Parts B, C, D, E, F, G and H of the *Schedule* accompanied by an undertaking in writing that the applicant shall discharge the obligations specified in section 11(2)(a) of the Act; and

(d) shall contain such additional information as is required to enable the Minister to determine whether the applicant is in compliance with section 11(2) of the Act.

(3) There shall be paid in respect of every application referred to in paragraph (1), at the time of making the application, a non-refundable application fee as set out in the *Telecommunications (Licensing Fees) Regulations, 2003*. S.I. 2003
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(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*. S.I. 2003
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(5) A person referred to under paragraph (1) shall submit such information as regards

- (a) ownership of the proposed operation for which the licence is being sought; and
- (b) any interests held in other operations and services for which licences are required under the Act.

(6) No licence shall be issued to an applicant who has a controlling interest in another carrier unless that applicant has first obtained the written approval of the Minister.

5. (1) Upon receipt of an application referred to in regulation 4 the Minister shall review the application and determine whether Processing
of applica-
tions.

- (a) any further information is required to process the application; or
- (b) the application should be approved or refused and

notify the applicant accordingly.

(2) Where additional information is required to enable a determination to be made respecting the application, the Minister shall

- (a) request, in writing, the submission of the additional information; and
- (b) specify the time within which the information referred to in paragraph (1) is to be provided.

Accuracy and completeness of information.

6. (1) The information contained in an application or submitted in connection with an application shall be accurate and complete.

(2) Where before the grant or refusal to grant a licence referred to in paragraph (1) information submitted with an application is no longer accurate and complete in all material respects, the applicant shall immediately notify the Minister of that fact and within 10 business days, amend or request the amendment of its application so as to furnish such additional or corrected information as may be appropriate.

(3) Notwithstanding paragraph (2) the Minister may, where good cause is shown for a delay in the submission of the information required under that paragraph, receive such information within a later period as is stipulated in writing.

(4) Where an applicant fails to inform the Minister of any inaccuracies or incompleteness of the information or to supply the additional or corrected information as requested in sub-paragraph (2), a licence issued on the basis of the information submitted shall be revoked.

Refusal of applications.

7. (1) Subject to regulation 6, where an application does not comply with the Act or these Regulations the Minister shall, inform the applicant in writing of the non-compliance and notify the applicant that the defect must be corrected within 21 business days from the date of the notice.

(2) Where the applicant fails to correct the application within the period specified in paragraph (1) the application shall be refused.

(3) The refusal of an application by reason of the non-compliance with this regulation shall not prejudice the submission of a new application.

8. The Minister shall make a final determination with respect to an application taking into account all the considerations specified in sections 4, 11 and 12(1) of the Act. Determination of the Minister.

- 9.** (1) The applicant shall be notified of the decision of the Minister Notification of Minister's decision.
- (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.

(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.

Renewal of
licences.

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10. (1) The Minister may renew a licence granted under the Act in accordance with the provisions of sections 11 and 12 of the Act and under these Regulations on payment of the relevant fee set out in the *Telecommunications (Licence Fees) Regulations, 2003*.

(2) An application for the renewal of a licence shall be in the relevant form set out in the *Schedule*.

(3) A licence shall not be renewed where the applicant

(a) materially contravened the Act or any Regulations made thereunder;

(b) breached a material term of its licence; or

(c) defaulted on any licence fee owed to the Government.

(4) Where a licensee is desirous of renewing a carrier licence, the licensee shall apply to the Minister no later than 3 years prior to the expiry date of the licence or at such later date as the Minister determines.

(5) Where a licensee is desirous of renewing

(a) a service provider licence; or

(b) a VSAT licence

the licensee shall apply to the Minister no later than one year prior to the expiry date of the licence or such later date as the Minister determines.

(6) The Minister may on the grant of a renewal of a licence, vary the terms of the licence if the circumstances require a variation and it is reasonable to do so.

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. Modification of licence.

(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*.

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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,

Transfer of control or assignment.

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.

Payment
of annual
licence fee.

13. The annual licence fee referred to in section 13 of the Act shall be paid no later than 30 days following the anniversary of the grant of the licence.

Register.

- 14.** The Register referred to under section 21 shall contain
- (a) the names of the persons to whom licences have been granted;
 - (b) the type of licence granted to each person;
 - (c) a brief description of the proposed telecommunications network, telecommunications service or VSAT facility service; and
 - (d) an address of each licensee, each director of the licensee and the person responsible for the day-to-day management of the licensee.

SCHEDULE

PART A

(Regulation 4 (2)(b))

FORM 1

APPLICANT'S DETAILS

Please indicate whether the licence is for

- | | | | | |
|---|---------|--------------------------|-----|--------------------------|
| <input type="checkbox"/> a carrier licence | Renewal | <input type="checkbox"/> | New | <input type="checkbox"/> |
| <input type="checkbox"/> service provider licence | Renewal | <input type="checkbox"/> | New | <input type="checkbox"/> |
| <input type="checkbox"/> dealer's licence | Renewal | <input type="checkbox"/> | New | <input type="checkbox"/> |
| <input type="checkbox"/> VSAT licence | Renewal | <input type="checkbox"/> | New | <input type="checkbox"/> |

1. Name (if individual): _____

2. Nationality (if individual): _____

3. Address of Applicant (registered office or principal place of business):

4. Mailing Address (if different from registered office address):

5. Applicant is a (n):

- | | | | |
|---------------------------|--------------------------|-------------|--------------------------|
| Individual | <input type="checkbox"/> | Corporation | <input type="checkbox"/> |
| Unincorporate Association | <input type="checkbox"/> | Partnership | <input type="checkbox"/> |

SCHEDULE – Cont’d**PART A – Cont’d**

6. Telephone No.: _____
7. Facsimile No.: _____
8. “E-mail” address: _____
9. Name of Manager of entity: _____
10. Person in Barbados to be contacted in absence of Manager:
- Name: _____
- Address: _____
- Telephone No.: _____
- “E-mail” Address: _____
- Facsimile No.: _____
11. Indicate
- (a) the approximate number of persons currently or to be employed by applicant: _____
- (b) the number of persons you expect to hire within the next year specific to the proposed network: _____

SCHEDULE – Cont’d

PART B

(Regulation 4(2)(c))

SYSTEM AND SERVICE DETAILS

The applicant shall provide the following information:

1. Service or Trade Name (if any).
2. Description of the telecommunication system to be installed, including system configuration, architecture and operation and if appropriate, how the system is interconnected with other public telecommunications networks or services.
3. Description of the equipment (e.g. copper wire, fibre, radio transmitters/receivers, switches), the technical configuration and conformity information of each piece of equipment to applicable standards.
4. The technical and operational configuration of the system proposed should be explained fully, the explanatory information shall include
 - (a) a description of the equipment to be used, and its technical specification,
 - (b) a statement of the equipment's conformity with applicable standards (i.e. confirmation of compliance with the ITU-T, ITU-R recommendations and other specifications or standards which are specifically relevant to the proposed service),
 - (c) the source and availability of the equipment,
 - (d) a clear diagram showing the conveyance of messages from the beginning (i.e. ways of accessing the applicant's system) to the end (i.e. termination of the message) with directional arrows marked on the diagram and labels indicating the company running each part of the network, and
 - (e) a clear indication of where the applicant's system fits into the chain of conveyance of a call and what operation is performed by the applicant's system in respect of that call.
5. The geographic service area in which it is desired to provide service and to what number and categories of customer the services would be offered.

SCHEDULE – Cont'd**PART B – Cont'd***Regulation 4 (2)(b))***SYSTEMS AND SERVICE DETAILS – Cont'd**

6. Where there is a requirement for spectrum this should be indicated and a copy of your spectrum licence application must be attached to this application.
7. Description of services to be provided, the expected commencement date for the provision of services and the implementation programme if it is proposed to introduce the service in phases. Each of the services or products to be offered should be described - perhaps most easily under sub-headings for each group - for example, "basic voice", "basic data" and "value added services".
8. Special operational features.

SCHEDULE – *Cont'd*

PART C

(Regulation 4 (2)(c))

TECHNICAL SUPPORT DETAILS

1. Description of the technical support facilities in Barbados.
2. Description of the technical personnel responsible for day-to-day operation and maintenance of the support facilities.
3. Description of the routine maintenance procedure.

SCHEDULE - *Cont'd***PART D***Regulation 4 (2)(c)***EXPERIENCE IN TELECOMMUNICATIONS**

1. Please list your experience in telecommunications both in Barbados and Overseas.
2. Please state whether you or another company in your shareholding structure described in Part C, paragraph 1, have applied for a licence or been refused a licence elsewhere.

SCHEDULE – *Cont'd*

PART E

*(Regulation 4 (2)(c))***1. Marketing strategy**

Referring back to the services or "products" listed in "services proposed" above, the applicant could usefully summarise its marketing strategy. What are the main target markets (e.g. other telecoms companies) or retail (e.g. business or domestic consumers) and what is the sales plan (e.g. direct selling through salesmen or advertising, or indirect selling through partnerships with retailers).

2. Business plan

A summary business plan detailing committed and budgeted investment, anticipated revenues and a sign of when the applicant expects to move into profit on the proposal under consideration. The Minister is particularly interested in the security of financing.

3. Management structure

A description of the management structure with résumés of the careers of key members of staff to show their technical competence and experience. Contingency plans in the event of a system failure could usefully be referred to in this section.

SCHEDULE – *Cont'd*

PART F

*(Regulation 4(2)(c))***FINANCIAL INFORMATION**

The applicant shall provide

1. A statement of accounts which shall contain
 - (a) an income statement;
 - (b) a balance sheet;
 - (c) statement of investment portfolio and portfolio transactions; and
 - (d) a statement of changes in net assets.
2. An income statement referred to in paragraph (1) shall set out
 - (a) dividend revenue;
 - (b) interest revenue;
 - (c) other revenue;
 - (d) management fees;
 - (e) audit fees;
 - (f) directors' fees;
 - (g) other fees;
 - (h) other expenses;
 - (i) income before taxes; and
 - (j) net income for the accounting period.

SCHEDULE – Cont’d

PART F – Cont’d

(Regulation 4 (2)(c))

- 3.** A balance sheet referred to in paragraph (1) shall set out
 - (a)* cash, term deposits and short term debt instruments, if such instruments are not included in the statement of investment portfolio;
 - (b)* dividends and accrued interest receivable;
 - (c)* accounts receivable;
 - (d)* description of assets;
 - (e)* total assets;
 - (f)* description of liabilities;
 - (g)* total liabilities;
 - (h)* aggregate proceeds on sale of services; and
 - (i)* realized profit or loss on trade.

SCHEDULE - *Cont'd*

PART G

*(Regulation 4 (2)(c))***DOCUMENTARY EVIDENCE**

The application **must** also provide the following documents:

1. A copy of Certificate of Incorporation and Business Registration Certificate.
2. A certified list of current directors or a copy of "Notification of first secretary and directors" and where applicable, a copy of "Notification of changes of secretary and directors" issued by the Registrar of Companies.
3. Documents showing the authorised, issued and paid-up share capital and the current share holding structure of the company, e.g. "Annual Return" or "Return of allotments".
4. Audited reports of the company and its holding companies for the last 3 years (where applicable).
5. A budgeted Profit and Loss Statement for the proposed service for the first 5 years of operation. The statement should include the number of subscribers, planned system capacity, level of charge, annual revenue and costs.
6. Documentary evidence to demonstrate the financial capability of the company for providing the capital investment required. The financial document may be in the form of banker's confirmation on amount deposited or credit facilities available.
7. Brochure or catalogue of equipment or system to be installed.
8. Schematic diagram showing the technical set-up and connections.

SCHEDULE – *Concl'd*

PART H

(Regulation 4 (2)(c))

DECLARATION OF APPLICANT

To: The Ministry responsible for Telecommunications

(a) *I/We hereby declare that the information and particulars given by
*me/us in this form and in the documents submitted are to the best of
*my/our knowledge true and correct;

(b) *I/We agree to accept the conditions in the **NOTES** above.

* Delete whichever is not required

Signature: _____

Name (block letters): _____

Position held: _____

Date: _____

Made by the Minister this 24th day of April, 2003.

REGINALD FARLEY
Minister responsible for Telecommunications.

