

LICENSING RULES FOR COMMUNICATIONS NETWORKS AND SERVICES

CONSULTATION DRAFT

Communications Commission of Kiribati

**12 February 2014**

PART 1 - PRELIMINARY

1. These Rules establish the licensing framework for communications networks and services in Kiribati and are made pursuant to Part IV Sections (30), (31), (32), (36), (37), and (38) of the Communications Act of 2012.
2. The Commission recognizes that the communications sector is dynamic and ever-changing. It will continue to review and refine these Rules from time to time to ensure their relevance, taking into consideration technological innovation, market developments, and international best practices in this area.

*Definitions and Interpretation*

1. In these Rules, unless the context otherwise requires-

‘Act’means the Communications Act of 2012

‘Class license’ means a license authorizing a communications service where there is no foreseen limit

‘Commission’ means the Communications Commission of Kiribati

‘communications’ means the conveyance from one device to another of any message by means of any wire, radio, optical, electric, magnetic, electromagnetic, or similar system

‘communications facility’ means any infrastructure, building, including a switching equipment location, mast site, tower, pole, trunk line, access line, duct or other underground facility, or other passive equipment that is used or is capable of being used for communications or for any operation directly connected with communications, but excluding customer equipment

‘communications market’ means a market for communications services or access

‘communications network’ means a system that uses electricity or electromagnetic energy for providing communications services between network termination points

‘communications service’ means a service for the transmission of communications by means of a communications network

‘day’ means a calendar day

‘exempt service’ means a communications (a) provided only over an exempt network

‘exempt network’ means a communications network that is (a) not used to provide any communications service for which a charge is imposed; (b) wholly within one property or a number of properties which together comprise a campus; (c) used only for a person’s private or internal requirements (including the requirements of an organization’s staff, a related entity or a holding company, subsidiary company or associated company).

‘Outer island’ means all inhabited islands in the Republic of Kiribati except for South Tarawa and Kiritimati

‘person’ means a natural person over the age of 18

‘annual gross revenue’ means the total revenue derived from the licensed services during a license year

‘license year’ means the period of 12 months from the anniversary of the date that the license was issued.

‘Regulatory framework’ means the Communications Act of 2012; and any regulations, rules, decisions, orders, notices, determinations, and technical standards made by the Commission in its lawful exercise of its powers under the Act.

‘service provider’ means a person who holds an Individual license to provide communications network and/or communications services.

‘specified communications network’ means a communications network that includes a line or radiocommunications link, or series of lines or radiocommunications links, between two fixed points, including—(a) radiocommunications transmission links; (b) cable transmission links; and (c) cable access networks.

PART 2 – LICENSES FOR COMMUNICATIONS NETWORKS AND SERVICES

1. The Act requires that a person shall have a license issued by the Commission to:
2. Own or operate a specified communications network; or
3. Provide a communications service in Kiribati or between any place in Kiribati and any place outside of Kiribati.
4. The Act exempts communications networks that are not being used for commercial purposes and their communications services from requiring a license and any other communications network and service that the Commission may exempt from time to time.

*Types of licenses that may be issued*

1. The Act authorizes the Commission to issue two types of licenses:
2. Individual licenses to authorize the ownership or operation of any specified communications network and the provision of any communications service; and
3. Class licenses to authorize the provision of any communications service.
4. With the exception of exempt networks and services, the Commission shall issue Individual licenses for:
5. the ownership and/or operation of all specified communications networks
6. all communications services that may be limited in order to ensure sustainable competitive markets pursuant to Section 31 (2) of the Act or limited based on the availability of natural resources such as radio frequency spectrum and numbering resources.
7. A list of network and communications services that require an Individual license can be found in Schedule 2. This list is not exhaustive and persons are invited to apply for any other service (s) that they are eligible and capable of providing.
8. The Commission shall authorize Class licenses for all communications services where there is no foreseen limit. The Class licenses available for registration are included in Schedule 2 and shall be amended from time to time to include additional categories of class licenses as the market develops.
9. These Rules do not apply for a license for radio frequency spectrum. Any person who proposes to provide a communications service that requires the use of radio spectrum must first apply for a radio spectrum license before submitting an application for a license under these Rules.

PART 3 – LICENSE CONDITIONS

*General conditions*

1. All categories of licensees are required to comply with the laws of Kiribati and in particular the Communications Act of 2012; and any regulations, rules, decisions, notices, orders, determinations, and technical standards made by the Commission in its lawful exercise of its powers under the Act (hereinafter referred to as the Regulatory Framework).
2. Licensees are free to select the most appropriate technology for their services, based on their own commercial decisions, subject to type approval, resource limitations, physical constraints, and public interest concerns, if any. Once the license is granted however, a licensee will be required to seek the Commission’s prior approval for any subsequent changes to its networks and/or service offerings.
3. A Licensee who provides communications services to the public in Kiribati’s outer islands may be eligible for any designated subsidies and/or other assistance that becomes available as a result of the establishment of a Universal Access Fund.

*Special conditions*

1. The Commission shall prescribe special terms and conditions for each specified license category. These conditions will be detailed in Individual and Class licenses and will apply uniformly for all licensees of the same category.
2. The Commission may vary the conditions of a license or impose additional conditions from time to time. Before doing so, the Commission shall consult with the affected licensees and publish a draft of the proposed variation.
3. A licensee may also apply to the Commission to vary a license term or condition.

PART 4- ELIGIBILITY

1. Any application or registration for a license must be made by an eligible person.
2. The following are eligible persons for the purpose of these Rules:
3. A company incorporated under the Companies Act of Kiribati
4. A natural person over the age of 18
5. A Kiribati government agency or an organization or statutory body created pursuant to the laws of Kiribati.
6. There are no foreign equity limits imposed on applicants for communications networks and services licenses under the Foreign Investment Act of 1985.

PART 5 - APPLICATION PROCESS FOR AN INDIVIDUAL LICENSE

1. The Commission shall issue an Individual license for a period up to 20 years, which may renewed for a further period.
2. Applications for an Individual license shall be:
3. in accordance with Schedule 1
4. accompanied by a police clearance form
5. accompanied by the application fee described in Schedule 2.
6. The Commission shall notify the applicant in writing within 7 days of having received the application. The Commission reserves the right to request additional information or seek clarification of any information provided.
7. Applications that are submitted without the required application fee will be rejected and the applicant must start the process again.
8. The Commission will evaluate an application for an Individual license on a case by case basis, taking into account the applicant’s:
9. organizational structure, qualifications of the management team, and financial strength
10. business plan
11. technical plans/network design and the capability of the applicant to implement the plans
12. any other relevant information provided by the applicant.
13. The Commission will also consider the benefits that will be brought to the sector by the applicant in terms of its proposed financial investments to enhance the country’s existing communications infrastructure, including its capacity, capability, and coverage; technological and service innovation; and the range and choice of proposed products and services.
14. In cases where the applicant is applying for a license to compete in the same communications market as an existing license holder (s), the Commission will make a decision as to whether approving or rejecting the application will promote “sustainable and workably competitive markets” pursuant to Section 31 (2) of the Act.
15. The Commission shall approve or reject an application for an Individual license within a period not to exceed 45 days from the date of receiving an applicant’s application form.
16. In cases where an application has been rejected, the Commission shall provide detailed reasons for the rejection.
17. In cases where applications are approved, the Commission shall issue the license within a period not to exceed a further 30 days.
18. Once a license is awarded, the Commission will register the license by publishing it on its website.

PART 6 - REGISTRATION PROCESS FOR A CLASS LICENSE

The Commission shall not limit the number of Class licenses that can be issued for a specified category of communications services.

1. Eligible persons may register for a Class license:
2. in person at the offices of the Commission
3. online at [www.cck.ki](http://www.cck.ki).
4. Eligible persons must confirm that they have read and will comply with any related license terms and conditions as part of the registration process for a Class license.
5. A Class license is granted upon registration and remains in force provided that the Licensee complies with the terms and conditions of the license, any required fees described in Schedule 2, and the applicable Regulatory Framework.
6. The Commission may amend or update the terms and conditions of a Class License from time to time in order to respond to new market developments. The Licensee is responsible for ensuring its on-going compliance with any new amendments, which shall be published on the Commission’s website at [www.cck.ki](http://www.cck.ki).

PART 7 - LICENSING FEES

1. Pursuant to Section 37 (3) (a) of the Act, the Commission shall endeavor to minimize the annual license fees payable by licensees listed in Schedule 2 and shall review these fees from time to time with the objective of reducing barriers to market entry and promoting a prosperous communications industry.

*Application fee*

1. The application fee is the non-refundable fee of an amount set by the Commission from time to time.
2. A person applying for a license must pay the application fee specified in Schedule 2 that relates to the category of license applied for. In cases where the applicant is applying for more than one licensed service, only one application fee will be charged based on the licensed service with the highest application fee.

*Annual license fee*

1. The annual license fee is based on a percentage of annual gross revenues for licensed services. These fees are indicated in Schedule 2.
2. A licensee shall pay the license fee in two installments each year as follows:
3. The first installment of 50% of the annual license fee determined by a reasonable estimate of the expected annual revenue for the license year, payable within six months of the license issue/anniversary date ; and
4. A following installment of 50% of the annual license fee determined by actual revenue statements for the license year and including an adjustment for under or over payment for the first payment of the year, payable 13 months of the license issue/anniversary date.
5. The Commission and a licensee may mutually agree to other timeframes for the payment of the annual license fee as needed.

*Penalty for non-payment*

1. A licensee that has not paid its annual license fee:
2. Within 30 days of the time period specified in Rule 39 or another mutually agreed timeframe, shall incur a surcharge of 10% of the license fee, which shall be payable in addition to the license fee
3. Within 90 days, shall be subject to the Commission’s processes for the suspension and revocation of a license.

*Calculation of Estimated Gross Revenue*

1. A licensee shall estimate its annual gross revenue for licensed services for a given license year based on:
2. Its most recent financial statements
3. The amount of gross revenue derived for the licensed services during the previous license period
4. The projected gross revenue for the licensed services for the current license period.

*Calculation of Actual Gross Revenue*

1. A licensee shall submit to the Commission within three months from the end of its financial year:
2. Audited financial statements reporting the annual gross revenue received from licensed services
3. A signed statement showing how the annual charge for the license fee was calculated in respect to gross revenues for licensed services
4. Any other information that the Commission deems necessary, within reason, to verify the calculation of the estimated and actual fees due and payable by a licensee.
5. The Commission shall hold in confidence any financial information submitted by a licensee or any other information that the licensee has marked as confidential.
6. The Commission may require payment of a revised annual license fee in cases where it can demonstrate that the information provided by the licensee is incomplete or inaccurate.

PART 8 – REVOCATION, SUSPENSION, DEALING OR SURRENDER OF A LICENSE

1. The Commission may suspend or revoke a license in cases where the licensee:
2. fails to comply with a material term or condition of its license such as the failure to pay its license fees
3. has mislead the Commission in its license application or in its submission of any information required under the Regulatory Framework
4. is insolvent, in receivership, or bankrupt.
5. The Commission may also revoke a license that has been surrendered voluntarily by licensee. In such cases, a licensee shall give the Commission at least 30 days prior written notice.
6. Before suspending or revoking a license, the Commission shall:
7. Consider the impact on the public of any suspension or cancellation of services
8. Give the licensee written notice of its intention to do so
9. Give the licensee an opportunity to rectify the issue(s) under concern for a period of time specified in the notice.
10. The Commission shall only revoke a license under Rule 46 (a) and (b) where it believes that suspension is not appropriate due to the seriousness of the breach.
11. A licensee shall not transfer its license or assign, sublet or otherwise dispose of, or admit any other person to participate in, any of the benefits of its license or the powers or authorities granted by its license without the Commission’s prior written approval. For example, all licensees are required to notify and/or get Commission approval of any changes to their shareholdings and/or changes of control. The failure to notify the Commission may lead to the imposition of penalties pursuant to the Act.