



LICENSING RULES FOR COMMUNICATIONS NETWORKS AND
SERVICES

FINAL

Communications Commission of Kiribati

4 MARCH 2014

(Revised July 2014)

CCK 032014

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 will 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.

Short title and effective date

3. These Rules may be cited as the Communications Licensing Rules 2014 and are effective as of 4 March 2014.

Definitions and Interpretation

4. The words and expression used in these Rules shall have the same meaning set forth in the Communications Act 2012, including the definitions set forth below:

'Act' means the Communications Act 2012

'Annual gross revenue' means the total revenue derived from the licensed services during a licence year minus any general business licence fees paid to the Government

'Class licence' means a licence authorizing the provision of any 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 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; or (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 islands

‘person’ means a natural or legal person

‘licence year’ means the period of 12 months from the anniversary of the Licence effective date

‘Regulatory framework’ means the Communications Act 2012 and any 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 licence to provide communications networks and 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 – LICENCES FOR COMMUNICATIONS NETWORKS AND SERVICES

5. The Act requires that a person shall have a licence issued by the Commission to:
 - (a) Own or operate a specified communications network; or
 - (b) Provide a communications service in Kiribati or between any place in Kiribati and any place outside of Kiribati.

6. The Act exempts communications networks that are not being used to provide any communication services for which a charge is imposed; wholly within one property and used only for a person’s private or internal requirements from requiring a licence.

Types of licences that may be issued

7. The Act authorizes the Commission to issue two types of licences:
 - (a) Individual licences to authorize the ownership or operation of any specified communications network and the provision of any communications service; and

- (b) Class licences to authorize the provision of any communications service.
8. With the exception of exempt networks and services, the Commission shall issue Individual licences for the ownership and/or operation of the communications networks and services in Schedule 2 or for any other communications network and service that an eligible applicant applies for. The number of these Individual licences may be limited in order to sustain competitive markets pursuant to Section 31 (2) of the Act or limited based on the availability of natural resources such as radio frequency and numbering resources.
9. The Commission shall authorize Class licences for all other communications services, which shall not be limited. The Class licences available for registration are included in Schedule 2 and shall be amended from time to time to include additional communications services as the market develops.
10. These Rules do not apply for a licence for radio frequency spectrum. Any person who proposes to provide a communications service that requires the use of radio spectrum must apply for a radio spectrum licence before or at the same time of submitting an application for a licence under these Rules.

PART 3 – LICENCE CONDITIONS

General conditions

11. All licensees are required to comply with the general licence terms and conditions included in Schedule 4 where applicable.
12. 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

13. The Commission may impose special terms and conditions for specified classes of licensed services. These special terms and conditions will be detailed in Individual licences and will apply uniformly to all licensees providing such services.

Amendment of conditions

14. The Commission may vary the general licence conditions of a licence after public consultation and after publishing a draft of the amendment, where
- (a) new or amended international treaties, commitments, recommendations, standards or the laws of the Republic of Kiribati require the modification; or
 - (b) the modification will further the objectives of the Act.

15. The Commission may vary special licence conditions after consultation with the affected licensees.
16. A licensee may, by written notice to the Commission, apply to vary a licence condition. If the Commission is satisfied that the application has merit, it shall
 - (a) conduct a public consultation about the proposed variation if the application relates to a general licence condition; and
 - (b) if the application relates to a special licence condition, consult with any licensees the Commission considers may be affected by the proposed variation.
17. The Commission shall only vary a licence condition in response to an application from a licensee where it is satisfied that there are compelling reasons to do so.
18. A 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.

PART 4- ELIGIBILITY

19. Any application or registration for a licence must be made by an eligible person.
20. The following are eligible persons for the purpose of these Rules:
 - (a) a company incorporated under the Companies Ordinance of Kiribati or a foreign company registered under the Companies Ordinance
 - (b) any society registered under the Cooperative Societies Ordinance
 - (c) a natural person over the age of 18
 - (d) a Kiribati government agency or an organization or statutory body created pursuant to the laws of Kiribati.
21. There are no foreign equity limits imposed on applicants for communications networks and services licences under the Foreign Investment Act of 1985.

PART 5 - APPLICATION PROCESS FOR AN INDIVIDUAL LICENCE

22. The Commission may issue an Individual licence for a period up to 20 years, which may renewed for a further period.
23. Applications for an Individual licence shall be:
 - (a) in accordance with Schedule 1
 - (b) accompanied by the application fee described in Schedule 2.
24. An application for an Individual licence shall include all proposed service offerings.
25. 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.

26. Applications that are submitted without the required application fee will be rejected and the applicant must start the process again.
27. The Commission will evaluate an application for an Individual licence on a case by case basis, taking into account the applicant's:
 - (a) organizational structure, qualifications of the management team, and financial strength
 - (b) business plan
 - (c) technical plans/network design and the capability of the applicant to implement the plans
 - (d) any other relevant information provided by the applicant.
28. 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.
29. In cases where the applicant is applying for a licence to compete with 2 or more existing licence holders in the same communications market, the Commission may 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. The Commission may conduct a market study, consult existing licensees and/or procure the services of an independent third party to assist with this decision making process.
30. The Commission may use a tendering process to select eligible applicants for Individual licences that may be limited. In this case, the Commission shall develop and publish:
 - (a) an invitation to submit tenders for the issue of the licence, formal requirements for a valid tender, and the date by which tenders must be received
 - (b) the selection criteria against which tenders will be assessed and
 - (c) the relative weighting of each selection criteria.
31. The Commission shall approve or reject an application for an Individual licence within a period not to exceed 45 days from the date of receiving an applicant's application form.
32. In cases where an application has been rejected, the Commission shall provide detailed reasons for the rejection.
33. In cases where applications are approved, the Commission shall issue the licence within a period not to exceed a further 30 days.
34. Once a licence is awarded, the Commission will register the licence by publishing it on its website.

PART 6 - REGISTRATION PROCESS FOR A CLASS LICENCE

The Commission shall not limit the number of Class licences that can be issued for the specified communications services in Schedule 2.

35. Eligible persons may register for a Class licence by completing the Registration Form in Schedule 3 and submitting the form:
- (a) in person at the offices of the Commission or
 - (b) online at www.cck.ki.
36. Eligible persons must confirm that they have read and will comply with the general licence terms and conditions, where applicable, and the Regulatory Framework as part of the registration process for a Class licence.
37. A Class licence is granted upon registration and remains in force provided that the:
- (a) information in the Class Licence Registration Form is complete and accurate
 - (b) licensee complies with general licence terms and conditions and the applicable Regulatory Framework, and the
 - (c) licensee pays any required licence fees described in Schedule 2.

PART 7 - LICENSING FEES

38. Pursuant to Section 37 (3) (a) of the Act, the Commission shall endeavor to minimize the annual licence fees 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

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

Annual licence fee

41. The annual licence fee is based on a percentage of annual gross revenues for licensed services.
42. A licensee shall pay the annual licence fee no later than 13 months from its licence effective/anniversary date each year.

43. A licensee shall calculate the annual licence fee according to actual gross revenues earned for a given licence year.
44. The Commission and a licensee may mutually agree to other timeframes for the payment of the annual licence fee as needed.

Penalty for non-payment

45. A licensee that has not paid its annual licence fee:
 - (a) within 30 days of the time period specified in Rule 42 or another mutually agreed timeframe as per Rule 44, shall incur a surcharge of 10% of the licence fee, which shall be payable in addition to the licence fee
 - (b) within 90 days, shall be subject to the Commission's processes for the suspension and revocation of a licence.

Calculation of Actual Gross Revenue

46. A licensee shall submit to the Commission within three months from the end of its financial year:
 - a) a signed financial statement showing how the annual charge for the licence fee was calculated in respect to gross revenues for the licensed services
 - b) 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, including audited financial statements.
47. In cases where the annual gross revenues for licensed services are less than \$7000, the licensee shall be required to pay an annual licence fee of \$100 for that licence year and any payments made in excess of that amount shall be refunded by the Commission.
48. The Commission shall hold in confidence any financial information submitted by a licensee or any other information that the licensee has marked as confidential.
49. The Commission may require payment of a revised annual licence 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 LICENCE

50. The Commission may suspend or revoke a licence in cases where the licensee:
 - (a) fails to comply with a material term or condition of its licence such as the failure to pay its licence fees
 - (b) has misled the Commission in its licence application or in its submission of any information required under the Regulatory Framework
 - (c) is insolvent, in receivership, or bankrupt.

51. The Commission may also revoke a licence that has been surrendered voluntarily by a licensee. In such cases, a licensee shall give the Commission at least 30 days prior written notice.
52. Before suspending or revoking a licence, the Commission shall:
- (a) Consider the impact on the public of any suspension or cancellation of services
 - (b) Give the licensee written notice of its intention to do so
 - (c) Give the licensee an opportunity to rectify the issue(s) under concern for a period of time specified in the notice.
53. The Commission shall only revoke a license under Rule 50 (a) and (b) where it believes that suspension is not appropriate due to the seriousness of the breach.
54. A licensee shall not transfer its licence or assign, sublet or otherwise dispose of, or admit any other person to participate in, any of the benefits of its licence or the powers or authorities granted by its licence 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.