



TRBR CONSULTATION PAPER ON THE OPERATORS LICENCING FRAMEWORK



Stakeholders are requested to send their comments preferably by **4pm, 6th September 2021**. For any clarifications / information may be contacted on Tel. No 27621 or email enquiries@trbr.vu

1. EXECUTIVE SUMMARY

The telecommunication licensing framework in Vanuatu has only experienced a decade of existence since the introduction of competition in the telecommunications market. The Unified licensing approach was implemented allowing the two major telecoms operators (Digicel and Telecom Vanuatu Limited) to have all their services fall under one single unified license.

As technology continue to evolve, investors continue to explore opportunities to invest in the market to meet the raising consumer demand, as such, TRBR has observed significant interest for investment over the last decade. Therefore, the raising demand for investment opportunity prompted the Regulator to develop an appropriate licensing regime to accommodate such investment and to encourage more investors to participate in growing the Telecommunications, Radiocommunications and Broadcasting Market in Vanuatu.

Since 2009 TRBR has granted licenses to several small ISPs as well, and few of these Licensees have exited the market due to failure to comply with their license conditions and the laws of Vanuatu, therefore, TRBR's intention to classified License into individual and class categories purposely is to protect and promote the growth of investment in different market segments. These changes will also allow the Regulator to also understand the nature of business of a specific service provider and be able to prescribe standard terms and conditions pursuant to section 7(4) of the TRBR Act.

2. Background

After the Liberalization of the Telecommunication market in 2009, the Telecommunication, Radiocommunication and Broadcasting Regulator established a unified license framework pursuant to Part 3 of the TRBR Act. The Act has also granted the Regulator, exceptional authority to grant licenses and exceptions upon application and prescribe the standard terms and conditions of the License and exception. Under the unified license requirements, all telecom operators are expected to pay a license fee based on 2.25% of their net revenue and net revenue is defined under section 1 of the TRBR Act.

As the Telecommunications and Broadcasting markets in Vanuatu continue to experience growth, TRBR feels now is the right time to introduce an Operator License Regulation in order to encourage and accommodate investment opportunities in different markets segments in Vanuatu.

3. Objective

The main objective of this document is to explore opportunities to improve the existing licensing framework and to provide an appropriate framework that is suitable to fast forward economic activities in the industry.

Its rational is not limiting service innovation but encourages the use of any technology ensuring greater flexibility and efficient use of resources. Further, to provide opportunity for

market creation and to encourage meaningful connectivity and the uptake of digital services especially in the rural areas.

With this licensing regime, TRBR will be able to:

- To ensure that market participants are appropriately qualified for market segments.
- To provide a mechanism to aid the enforcement of the obligations established in the broader legal and regulatory framework for telecommunications and broadcasting.
- To establish appropriate standard terms and conditions for specific class of license; and
- To design a suitable License fee structure that is appropriate for different classes of license in the telecommunication and broadcasting sector.

TRBR has therefore prepared the draft Regulation at Annex A for that purpose. As required under section 7 of the Act, TRBR is engaging in a public consultation process before finalizing the proposed Regulation.

4. CONSULTATION FEEDBACK INFORMATION

TRBR welcomes and invites submissions of comments and feedback to this consultation document from all interested parties. Submissions must be clear by quoting the main corresponding sections and sub sections of the draft Regulation, when providing your responses.

In the interest of transparency, TRBR will make public all or parts of any submissions made in response to this Consultation Document unless there is a specific request to treat all or part of a response in confidence. If no such request for confidentiality is received by TRBR, the TRBR will assume that the response is not intended to be confidential.

Further, TRBR will evaluate requests for confidentiality according to relevant legal principles, and if a request for confidentiality appears to be without merit, and relates to information which is not confidential, or results in the substance of the submission being obscured, TRBR maintains its discretion to determine whether the information claimed to be confidential is to be treated as such.

Where information claimed to be confidential is included in a submission, respondents are requested to provide both a confidential and a non-confidential version of their submission. TRBR however may consult with respondents in the event of uncertainty as to the confidentiality of the information provided.

TRBR will accept comments in English, French or Bislama.

If comments are submitted in printed format, they should be submitted on A4 paper accompanied, wherever possible, by a USB memory stick containing the comments, in electronic format.

Comments on this consultation document should be provided to TRBR via the following means:

- Via email to consultation@trbr.vu

- Faxed to (678) 24470

- Posted or hand delivered to:

Telecommunications Radiocommunication and Broadcasting Regulator P O Box 3547, Port Vila, Vanuatu

The deadline for public Comments is 4pm, 6th September 2021.

For any phone enquiries regarding this Consultation document, please call the following numbers: - (678) 27621, (678) 27487 or 34621

For more information about TRBR's Consultation Guidelines, please visit the following website www.trbr.vu.

REPUBLIC OF VANUATU

**TELECOMMUNICATIONS, RADIOCOMMUNICATIONS AND
BROADCASTING REGULATION ACT NO. 30 OF 2009**

**Telecommunications, Radiocommunications and Broadcasting (Service Provider
Licensing) Regulation Order No. ___ of 2021**

In exercise of the powers conferred on me by subsection 7(3) of the Telecommunications, Radiocommunications and Broadcasting Regulation Act No. 30 of 2009 and with the approval of the Prime Minister, I, BRIAN WINJI, Telecommunications, Radiocommunications and Broadcasting Regulator, make the following Regulation.

PART 1 PRELIMINARY

1. Definitions

In this Regulation, unless the contrary intention appears:

Act means the Telecommunications, Radiocommunications and Broadcasting Act No. 30 of 2009; and

Eligible Revenue means, in respect of a Licensee, the gross revenues earned during a Fiscal Year from the supply of Telecommunications Services by that Licensee, less

- (a) interconnection charges remitted to other Licensees; and
- (b) outpayments made by the Licensee, on an arm's length basis, to any persons outside Vanuatu for the carriage of Telecommunications Services that originate in Vanuatu to destinations outside Vanuatu, or that originate outside Vanuatu and terminate in Vanuatu.

Financial year means, for the purpose of this regulation, a twelve-month period, that is:

- (a) nominated for the purpose of this Regulation by a Licensee and advised to the Regulator; or
- (b) in default of (a), the twelve-month period commencing on 1st April and ending on the subsequent 31st March.

Unified Licence has the meaning in Section 6(3) of this Regulation.

All terms, unless otherwise stated or clearly implied by the context in which they are used, have the same meaning as in the Act.

2. Scope

Unless otherwise expressly stated, this Regulation only applies in respect of the administration of service provider licensing and of the exception's arrangements provided for in the Act.

3. Commencement

This Regulation shall commence on and have effect from2021.

PART 2 CATEGORIES OF LICENCES FOR SERVICE PROVIDERS

4. Categories of Licences

Service Provider licences shall be issued on an Individual Licence basis or on a Class Licence basis in the sub-categories outlined in Parts 3 and 4, respectively, of this Regulation.

PART 3 INDIVIDUAL LICENCES

5. Individual Licences – General

- (1) The Regulator may grant individual licences in circumstances where the Regulator receive an application from the person seeking the licence and where the particulars of the applications and of the licence type are considered by the Regulator to warrant assessment on an individual basis.
- (2) Individual licences shall be considered the default licence category for Service Operators, and individual licensing shall apply unless there is an arrangement in place for a class licence to grant permission for the provision of the specific service that the applicant intends to provide.
- (3) No individual Licensee will be automatically granted licences for the use of radio spectrum. In all cases, the allocation of the specific radio spectrum to Licensees will be awarded, if at all, to Licensees by the Regulator pursuant to section 7 of the Act.

6. Individual Network Operator Licence

- (1) The Regulator may grant an Individual Network Operator Licence to a Service Provider that provides or has satisfied the Regulator that it intends to provide telecommunications services or content services using telecommunications network facilities that it controls and operates for the purpose.
- (2) An Individual Network Operator shall be permitted under its licence to control and operate telecommunications network facilities in Vanuatu for the purpose of providing telecommunications services and shall be permitted under its licence to provide telecommunications services in Vanuatu.
- (3) An Individual Network Operator Licence includes the permission to provide services under an Individual Service Provider Licence and publish content under an Individual Content Provider Licence. The Regulator may issue an Individual Network Operator Licence as a Unified Licence, which shall entitle the Licensee to provide any Telecommunications Services or content other than broadcasting service content. For the avoidance of doubt, the holder of an Individual Network Operator Licence shall not be required to apply for or to have separate Individual Service Provider or Individual Content Provider licences.

7. Individual Service Provider Licence

The Regulator may grant an Individual Service Provider Licence to a Service Provider that provides or has satisfied the Regulator that it intends to provide telecommunications services using telecommunications network facilities controlled and operated by a Network Operator Licensee.

8. Individual Content Provider Licence

- (1) The Regulator may grant an Individual Content Provider Licence to a Service Provider that provides or has satisfied the Regulator that it intends to provide content, whether in audio, video, or text mode,

as a separate service associated with telecommunications network services provided by a Network Operator Licensee or with a telecommunications service provided by a Service Provider.

- (2) The Regulator may grant a licensee permission to provide content in accordance with section 16 of the Act.

9. Standard Conditions of Individual Service Provider Licences

- (1) Standard Conditions applicable to Individual Service Provider Licences are set out in Schedule 1 to this Regulation. The Schedule may be amended by Regulator from time to time.
- (2) Standard Conditions may apply to all Individual Service Provider Licences or only to Individual Service Provider Licences in nominated categories, as set out in Schedule 1 to this Regulation.

10. Special Conditions of Individual Service Provider Licences

- (1) Special Conditions are those that apply only to specifically identified individual licensees.
- (2) Special Conditions are set out in Schedule 2 to this Regulation in relation to the licensees there identified. The Schedule may be amended by the Regulator from time to time.

PART 4 CLASS LICENCES

11. Class Licences – General

- (1) The Regulator may establish class licensing arrangements for the control and operation of telecommunications network facilities, for the provision of telecommunications services, and for the provision of content services, in Vanuatu.
- (2) Without limiting the scope for class licensing arrangements in any way, class licensing will generally be considered for the provision of services where the following factors, or some of them apply:
 - (a) the service is provided as a complete service for resale to retail customers by the service provider.
 - (b) the service is an incidental part of the provision of a non-telecommunications services provided by the service provider, such as access to telecommunications services to hotel guests; and/or
 - (c) the eligibility criteria and conditions associated with licensing to provide the service are simple and clear would not require the intercession of the Regulator through an individual application process.
- (3) Nothing in sub-section (2) shall require the Regulator to institute a class licensing arrangement for the provision of any service or by any type of service provider.
- (4) Class Licence types shall be those listed in Schedule 3 of this Regulation from time to time.

12. Class Licensee Registration

- (1) Applicants for a class licence shall complete an Application and Registration form as specified from time to time and shall submit the form to the Regulator together with any application fee that the Regulation has specified for class licences.
- (2) The Regulator will take no more than 30 days to clarify any matter that it might wish to clarify with the applicant and to advise of an explicit acceptance or explicit rejection of the application.
- (3) Except in the event of contact within 30 days of the receipt of the application by the Regulator in the circumstances set out in sub-section (2), the applicant may consider that the application has been deemed to be successful after that time and provide the services permitted by the relevant class licence subject to the conditions that apply.
- (4) Standard conditions relating to class licences are set out in Schedule 4 to this Regulation.

PART 5 GRANT OF LICENCE

- (1) The Regulator may reject an application to grant a licence to an eligible person:
 - (a) for failure to provide a complete application containing all required information and documentations as specified by the Regulator; and/or
 - (b) after careful evaluation of the competitiveness of the market by the Regulator and a determination by the Regulator that the grant of the licence sought in those circumstances will or would be likely to have the effect of detracting from achievement of one or both of the objects in section 1 of the Act.
- (2) The Regulator shall notify the Licensee of the grant of a licence by issuing a certified copy of the Licence to the Licensee.
- (3) The Regulator must within 14 days notify the applicant in writing of a decision to reject an application for a licence and the Regulator's reasons for such rejection.

PART 6 EXCEPTIONS

13. Circumstances in which an exception may be given.

- (1) Without limiting the scope or application of Section 14(1) of the Act in any way, the circumstances in which the Regulator might give an exception include a part exception in relation to one or some only of the obligations that would otherwise exist under the terms and conditions of a licence.
- (2) an exception will not relieve any person from any obligation to pay the equivalent of fees that would have applied to the licence to which an exception has been granted, unless relief from such fees is explicitly stated in the instrument giving the exception.
- (3) Where an exception has been given which expressly relieves a person from an obligation to pay the equivalent of licence fees, the exception must state the period of exemption from fees, subject to a maximum period of 3 years.
- (4) Sub-section (3) shall apply in the case of exceptions given before the Commencement Date, provided that:
 - (a) The five-year maximum exception shall be applied from the date of the exception or a date four years prior to the Commencement Date, whichever is the earlier; and
 - (b) No licence fees or equivalent amounts shall be payable until the conclusion of the period determined in paragraph (a).
- (5) For the avoidance of doubt, and subject to sub-section (6), Section 15 of the Act, which makes provision for the amendment, revocation, and renewal of licences, applies equally to the amendment, revocation and renewal of exceptions.
- (6) The Regulator may revoke or amend an exception in any circumstances provided that before the revocation or amendment comes into effect, the Regulator has provided the grantee of the exception with at least 12 months' notice in writing, gives the grantee an opportunity to make submissions on the proposed revocation or amendment, and considers any submissions so made.

PART 7 FEES & ANNUAL RETURN

14. Fees

The fees that shall apply for the work required by the Regulator to grant a licence or exception or to amend or revoke a licence or exception at the request of a person are set out in Schedule 5 to this Regulation.

15. Annual Return filed by Licensees.

- (1) A licensee shall, within three months from the end of the Licensee financial year file with the Regulator
 - a) A return in respect of that financial year reporting the
 - I. Amount of annual gross revenue
 - II. Amount of settlement charges payable to or receivable from another Licensee
 - III. Method by which amount on the above is calculated.
 - b) Statement showing a calculation of the charges for the license fee that would be payable in respect of the annual gross revenue net of the settlements as set out in the return.
- (2) The return must include the certificate stating it is true and correct in all respect and signed by the licensee.
- (3) If a Licensee fails to provide the final return within the three months after the end of licensee's financial year, the licensee may lodge a provisional return instead covering the same three months applicable to that Licensee.
 - a) Clearly identifies its return as a provisional return.
 - b) Submit a final return within the 6 months of the licensee financial year.
- (4) A Licensee who falsely reports or provides a report that considered to commit an offence for the purpose of this regulation and shall be liable to fine an amount proposed by the Regulator.

SCHEDULE 1 – STANDARD CONDITIONS OF INDIVIDUAL SERVICE PROVIDER LICENCES

1. All Individual Service Provider Licences

- (1) The conditions set out in sub-section 1.2 shall be standard conditions in all Individual Service Provider Licences, that is, Network Operator, Service Provider and Content Provider Licences described in Sections 6, 7 and 8 respectively of the Regulation.
- (2) A licensee holding an Individual Service Provider Licence shall:
 - (a) pay all applicable licence fees and levees.
 - (b) comply with the Act, regulations, orders and directions and the laws of Vanuatu.
 - (c) comply with the requirements of all relevant international convention's relation to telecommunications, radiocommunications and broadcasting, including the ITU Convention and the recommendations made under that convention.
 - (d) take all reasonable steps to ensure that the charging mechanism used in connection with any of its facilities and services are accurate and reliable in all material aspects, and remains accurate and reliable; and
 - (e) indemnify the Regulator against any claims or proceedings arising from any breaches or failings on the part of the licensee.

2. Standard Conditions relating only to Individual Service Provider licences:

- (1) Who hold a Network Operator Licence – None.
- (2) Who hold a Network Operator Licence – None; and
- (3) Who hold a Network Operator Licence – None.

3. Special Condition for Individual Network Provider

- (1) A Licensee granted an individual Network Provider Licence by the Regulator shall not be required to obtain an individual service provider license and an individual content provider License unless specifically required to do so by the Regulator.
- (2) The standard condition set out in section 1(2) shall apply to all Network service provider.
- (3) Network facilities and services eligible to be provided by Licensees under this category is provided in Schedule 5.

4. Special Condition for Individual Service Provider License

- (1) A Licensee granted an individual service provider license wish to supply content service must seek permission from the regulator to operate such service.
- (2) The standard condition set out in section 1(2) shall apply to all Network service providers.
- (3) Services eligible to be issued license under this category is provided in Schedule 5.

5. Special Condition for Individual Content Provider

- (1) A content provider licence may be for the provision of services on either,
 - (a) A community service basis; or
 - (b) A commercial basis,

and an applicant for an individual content provider licence shall specify which in its application for grant of the licence.

- (2) Individual Network Licensees who intend to provide content services must apply formally to the Regulator for prior approval to do so and must provide such information on the business plans and other detail of the content as the Regulator may require.
- (3) The Regulator may exercise his discretion to order exemptions as stipulated in section 16B of the Act.
- (4) The standard condition set out in section 1(2) shall apply to all Individual Content Providers.

SCHEDULE 2 – SPECIAL CONDITIONS OF NOMINATED INDIVIDUAL SERVICE PROVIDER LICENCES

There are no special conditions for nominated Individual Service Provider Licensees at the Commencement of this Regulation.

SCHEDULE 3 - APPROVED TYPES OF CLASS LICENCE

1. Incidental Service Provision Class Licence

- 1.1 This Class Licence may be used to permit the provision of telecommunications and to members of the public who are clients and customers of the licensee in relation to other services, and where the provision of telecommunications and services is merely an incidental and minor part of that other service.
 - 1.2 Examples of such incidental service provision are:
 - (a) The resale of telecommunications and services obtained from an individual licensed service provider by hotels, motels, resorts, and other providers of accommodation services as an incidental part of such services; and
 - (b) The resale of telecommunications and services from facilities provided by an individual licensed service provider in the public areas of shops, hotels, or other commercial premises, including public telephones.
2. There are no other types of Class Licence approved by the Regulator at this time.

SCHEDULE 4 - STANDARD CONDITIONS OF CLASS LICENCES

1. All Class Licences

1.1 The conditions set out in sub-section 1.2 shall be standard conditions in all Class Licences.

1.2 A licensee registered as a Class Licensee shall:

- (a) pay all applicable licence fees and levies.
- (b) comply with the Act, regulations, orders and directions and the laws of Vanuatu.
- (c) comply with the requirements of all relevant international conventions' relation to telecommunications, radiocommunications and broadcasting, including the ITU Convention and the recommendations made under that convention.
- (d) take all reasonable steps to ensure that the charging mechanism used in connection with any of its facilities and services are accurate and reliable in all material aspects, and remains accurate and reliable; and
- (e) indemnify the Regulator against any claims or proceedings arising from any breaches or failings on the part of the licensee.

SCHEDULE 5: LICENCE CATEGORIES

Categories	Authorized Services	Duration	Type of Licence
Network Provider Licence -Facility Network Provider Licence -Service	Earth Station VSATs Line LINK Radiocommunication Link Switching Center Exchange node Tower mast Bandwidth Public cellular Service Switching service International gateway service Facilities access service Broadcasting distribution service space service	15 years	Individual Network Provider Licence
Application service	International connectivity service PSTN telephony service Public cellular service Internet access service IP telephony service Directory service Messaging service Audio text messaging service Public payphone service	15 years	Individual Service Provider Licence
Unified Licence	All of the services listed above, together with content services other than broadcasting content	15 years	Unified Licence
Content service	Television Broadcast Commercial subscription Television broadcasting Commercial Radio Broadcasting Commercial Television Broadcast Community Radio Broadcasting Community	10 years 10 years 10 years 5 years 5 years	Individual Content Service Provider License
Class License	Reseller of Network Reseller of Service Reseller of Content	10 years 10 years 10 years	Class License provider

SCHEDULE 6 – FEES FOR ISSUING SERVICE PROVIDER LICENCES, RELATED ADMINISTRATIVE TASKS AND ANNUAL LICENSE FEE

1. ADMINSTRATIVE FEE

Description of task	Fee (Vatu including VAGST)
1. Receive and process application for Individual Licence or Exception (irrespective of outcome)	10,000
2. Issue of Individual Licence or grant of Individual Exception	(Included in 1.)
3. Receive and process request from Licensee to revoke or amend an Individual Licence or Exception (irrespective of outcome)	10,000
4. Confirm registration of Class Licence	5,000

2. LICENSE FEE:

1. Telecommunication Individual license fee shall be applied at the standard rate of 2.25% of eligible net revenue.
2. The fee schedule prescribe is applicable and shall be applied to the Broadcasting Service Providers and Class license holder.

Two-part license fee proposal, A and Bx were

A = a fixed fee (low)

B = eligible net revenue (above a minimum threshold)

X = 2.25%

Column 1 (A)	Column 2 (B)	Column 3 (X)
Fixed annual fee	Eligible Annual Net revenue threshold	Percentage charges
VT 20,000	VT 2,000,000	2.25%

- a) If the net revenue of the Licensee exceeds the net revenue threshold in Column 2, then the annual fee will be the fixed annual fee in Column 1 plus an additional amount calculated by applying the percentage in Column 3 to the amount by which the eligible net revenue exceeds the threshold amount in Column 1.

If eligible net revenue threshold of the Service Provider in the financial year is below figure in column 2, the Licensee shall pay an annual fixed fee prescribe in column 1.