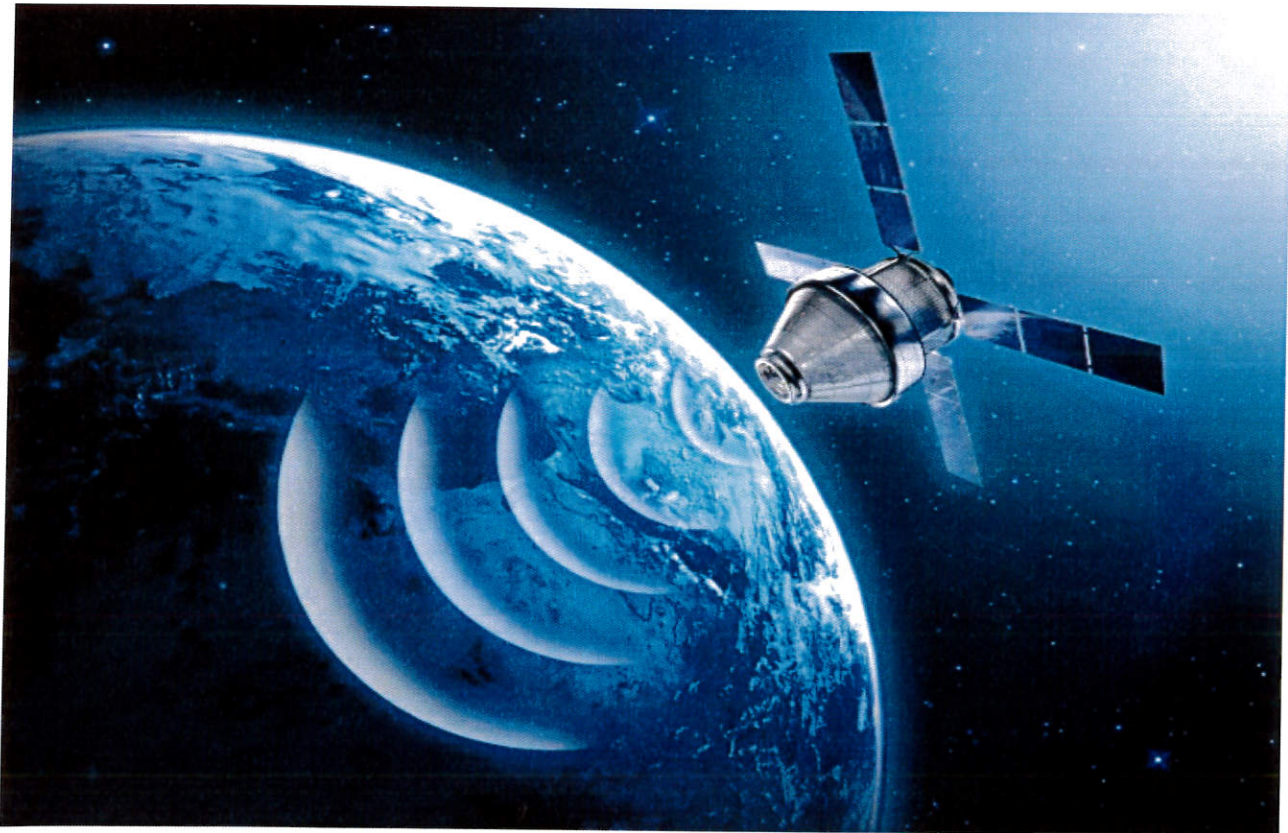




CONSULTATION ON THE SPECIAL TERMS AND
CONDITIONS FOR THE SATELLITE LICENCE – NOVEMBER
2023



1. INTRODUCTION

The Telecommunications Radiocommunications and Broadcasting Regulator (TRBR) is consulting on the special standard and specific terms and conditions of the Satellite telecommunications licenses in the case of services provided on both a wholesale and a retail basis in Vanuatu pursuant to the power set out in Section 12, 13, 14 and 15 of the Telecommunications, Radiocommunications, and Broadcasting Act (no 30 of 2009), (the “Act”).

Satellite technologies have been deployed for over 50 years to provide communications services initially these comprised services from satellites positioned in geostationary orbits above the equator. Over 30 years ago, with the inception of the Iridium satellite system, Low Earth Orbit (LEO) satellite constellations have provided alternative ways of delivering satellite services.

In the past half-decade, LEO satellite systems have been developed and commissioned to provide more advanced services at much lower cost than previously. Modern LEO systems, such as Starlink by Space X Corporation of the United States, involve constellations of over 4,000 satellites (at present) operating at an average altitude of approximately 550 kilometers and orbiting the Earth approximately every 96 minutes.

Starlink is only the best known of the current systems. There are others.

Modern satellite systems can provide broadband services at an affordable cost to retail customers around the globe in circumstances where terrestrial means of service provision might not be feasible because of terrain, cost, or limited local demand. In some circumstances such services may be a substitute for terrestrial services; in others, they may supplement or complement terrestrial services. Markets will determine how satellite-based services are accommodated into the menu of available services. This accommodation will undoubtedly be dynamic and changing over time.

2. SCOPE

The scope of the present public consultation is all satellite-based services. Still, there is likely to be an emphasis on LEO satellite services that can serve retail markets either directly by the satellite network operators or with various forms of intermediation (such as through partnerships with national operators or other commercial agents).

3. KEY ISSUES

Modern satellite technology is facilitating the delivery of broadband connectivity to geographical areas that are underserved or unserved by terrestrial telecommunications systems. In the process, these technologies are accessible in terms of price to retail

customers, including some residential customers as well as business, government, and other organizational customers.

The applications that can be run over low latency LEO satellite services include intelligible voice, IOT applications relevant to agriculture, aquaculture, manufacturing, energy generation, mining, and extractive industries, and many more sectors of the economy. They have vast potential to be socially and economically transformative.

It is not the purpose of this paper to seek to comprehensively describe the potential social and economic benefits of satellite services, but to note that they exist, and to signal that the TRBR wants to ensure that Vanuatu has the advantages and benefits at the earliest time.

The key issues for this consultation are not about whether Vanuatu should have the benefit of modern satellite-based services, including LEO satellite services, but how the regulatory framework should be amended to best facilitate this, and to avoid unintended consequences for the telecommunications sector and markets in the process.

The three key questions, from a regulatory perspective, are:

1. Should satellite-based service provision be subject to an operator licensing arrangement at all, or alternatively should it be subject to an exception (full or partial) as provided for in the Act, or some form of exemption (not specifically provided for in the current Act)?
2. Depending on the answer to the first question, what terms and conditions, if any, should apply to the provision of satellite-based services in Vanuatu?
3. Should it be necessary for the Satellite Company providing bandwidth or connectivity to be restricted at the wholesale level or have access to both wholesale and retail level?

4. DISCUSSION AND PRELIMINARY VIEWS

The TRBR has developed some preliminary views and it is these, together with any alternatives that stakeholders and other interested parties may wish to raise, that are being assessed through this public consultation process.

On the first question above, the TRBR is of the preliminary view that some form of permission or approval to provide satellite-based services is definitely required, for the proper administration of access to the Vanuatu retail and wholesale markets and for the protection of the interests of customers and users in those markets.

In relation to the alternatives raised in the first question, TRBR is of the preliminary view that an individual operator licensing approach is appropriate in the case of providers of satellite services. This is the default approach for all service providers in Vanuatu, and

there do not appear to be any circumstances that would warrant an exception within the Act (albeit with terms and conditions) or some new form of exemption.

The arguments in support of this approach are:

1. Other operators and service providers who may be in competition with satellite service providers are licensed. In the retail market, this is already the case with major operators such as Vodafone and Digicel. These operators can support resellers and others and therefore have wholesale capability as well. In the international capacity wholesale market, Interchange is an exception holder, rather than a license. That situation will be subject to review in 2024 when the exception expires. In summary, a level playing field in terms of regulatory treatment strongly suggests that a license for satellite-based service providers is appropriate.
2. Where satellite systems operators are providing wholesale services to Vanuatu, they will typically be doing so to customers who are service providers and therefore already licensed by TRBR. The licensing system will already be in place in those cases to provide the benefits and protections referred to earlier.
3. A licensing system can include special terms and conditions that consider the technological parameters of operation.

Further to the third point, and in response to the second key question, TRBR is proposing such special terms and conditions to provide for a level of regulatory and competitive equivalence. A draft set of special terms is attached to this discussion paper for comment and discussion by respondents.

5. SUMMARY OF QUESTIONS FOR CONSIDERATION

Respondents are free to discuss in their submissions any issue that they consider relevant to the consultation topic. However, it would greatly assist the TRBR if respondents could explicitly consider and respond to the three questions below:

1. Should satellite-based service provision be subject to an operator licensing arrangement at all, or should it be subject to an exception (full or partial) as provided for in the Act, or some form of exemption (not specifically provided for in the current Act)?
2. Depending on the answer to the first question, what terms and conditions, if any, should apply to the provision of satellite-based services in Vanuatu?

3. Are the draft special terms and conditions of license attached to this paper appropriate for satellite-based service licensing in Vanuatu, and, if not, how should they be amended to better serve that purpose?

6. CONSULTATION PROCESS

The TRBR now invites and welcomes comments and feedback to this consultation document from all interested parties.

In the interests of transparency, TRBR will publish submissions made in response to this Consultation Document, unless there is a specific request to treat all or part of a response in confidence. Respondents are required to clearly mark any information included in their submission that they consider confidential and include reasons why that information should be treated as such.

TRBR will evaluate requests for confidentiality according to relevant legal principles, if a request for confidentiality appears to be without merit, and relates to information that 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:

- a. Via email to consultation@trbr.vu
- b. Faxed to (678) 24470
- c. Posted or hand delivered to: Telecommunications Radiocommunication and Broadcasting Regulator P O Box 3547, Port Vila, Vanuatu

The deadline for submission of comments is 4 pm, 31st October 2023. 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 You are welcome to visit our website <http://www.trbr.vu> for more details on the latest developments in the telecommunication services industry and other related matters.

ATTACHMENT

DRAFT

SPECIAL TERMS & CONDITIONS FOR SATELLITE

NETWORKS AND SERVICES

(will become Schedule 1A if adopted and when finalized)

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1. Scope of the Licence

- (1) This schedule applies to all network licensees that:
- (a) Are individual network operators that own, manage, and/or provide satellite telecommunications networks and services in Vanuatu using satellite systems.
 - (b) Offer satellite-based communications services to consumers, businesses, or government entities in Vanuatu.
 - (c) Utilise the satellite system to facilitate voice, data, internet, broadcasting, or other telecommunications services.
 - (d) Have been granted necessary regulatory approvals, licenses, or authorization to operate within the Vanuatu telecommunications sector.

2. Interpretation

- (1) Words and phrases used in this Schedule 1A shall have the same meaning as they have in the Telecommunications, Radiocommunications, and Broadcasting Regulation Act No. 30 of 2009 as amended.

3. Term

- (1) The terms and conditions in this Schedule are part of the terms and conditions for operator licenses in Vanuatu.
- (2) This Schedule shall remain in effect for the same period as other operator license terms and conditions.

4. Mandatory Universal Access Policy Obligation

- (1) Telecommunication licensees (such as mobile operators and retail internet service providers) may use the satellite services to meet mandatory coverage obligations applying to the licensee according to Sections 17, 18, and 19 of the Act.
- (2) The licensee shall, upon request by other Telecommunications Licensees, provide access to its satellite services on a non-discriminatory basis to assist in meeting their mandatory coverage obligation specified under Sections, 17, 18, and 19 of the Act.

5. Establishment of Physical Presence

- (1) The Licensee shall within 6 months from the commencement date of the license, establish and maintain a physical presence in Vanuatu.
- (2) The physical presence shall include, not but be limited to, the establishment of an office, operational facility, and qualified personnel to facilitate local operations, including customer support.
- (3) The Licensee may request from the Regulator an extension to meet the physical presence in exceptional circumstances.

6. Network Fault Repair

- (1) The licensee shall establish and maintain procedures and resources for the timely detection, reporting, and resolution of network faults or service interruptions related to the Licensee's satellite telecommunications network in Vanuatu.
- (2) In the event of a network fault and service interruption, the Licensee shall initiate necessary steps to identify the cause of the fault and take appropriate action to restore the services within 24 hours.
- (3) In cases where the fault is anticipated to result in a prolonged service disruption, the Licensee must promptly notify both the Regulator and all its customers of the estimated timeframe for the resolution and restoration of services.

7. Security and Data Protection

- (1) The Licensee shall implement comprehensive security measures to safeguard the confidentiality, integrity, and availability of data and telecommunications services transmitted and processed through the satellite network.
- (2) The licensee shall comply with all applicable data protection and privacy laws and regulations within the jurisdiction of Vanuatu.

8. Governing law

This Schedule 1A shall be governed by and construed in accordance with the laws of Vanuatu.

*****END*****