



# RULES ON THE PROVISION OF ICT FACILITIES AND ICT SERVICES

**Bhutan InfoComm and Media Authority  
Royal Government of Bhutan  
Thimphu: Bhutan**

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## **1. Legal Basis**

These Rules on Provision of ICT Facilities and ICT Services is issued by the Bhutan InfoComm and Media Authority (the “Authority”) in accordance with Sections 36, 40, 41, 45, and 46 of the Bhutan Information, Communications and Media Act of 2006 (“the Act”) that requires the Authority to specify the types of Information and Communication Technology (ICT) Facilities and Services to be licensed; to specify the period for which a license is generally granted; to determine and specify the fees required to be paid for the granting of a license; determine such obligations, conditions, restrictions, tariffs and rates subject to which the licensee shall provide its facilities or services, as the case may be; and to establish procedures relating to the refusal, disconnection or interruption of ICT Facilities or ICT Services and the administration and resolution of subscriber complaints.

## **2. Effective Date**

These Rules shall come into force from the **22 Day of April 2008**.

## **3. Scope of Application**

These Rules shall apply to all ICT Facilities and ICT Services to be provided within the Kingdom of Bhutan.

## **4. Amendments**

These Rules may be amended by the Authority, as and when required, after a two third majority of votes of the members.

## **5. Interpretation**

The power to interpret these Rules shall vest with the Authority who may issue such instructions as may be necessary to give effect to and to implement the provisions of these Rules.

## **6. Definitions**

All terms used in these Rules shall have the same meaning as accorded to them in the Act. In

addition, in these Rules:

**“Adjusted Gross Revenue”** is defined as the Licensee's annual gross revenue from Licensed Services minus payments made by the Licensee for interconnection and other inter-operator services that are acquired by the Licensee in connection with the provision of the Licensed Services determined for the most recently completed financial year of the Licensee. The annual instalments of the National ICT Development Fund are also to be deducted from the gross revenue of the Licensee.

**“Business Process Outsourcing (BPO)”** is the process of hiring another company to handle its business activities through the use of ICT.

**“Commercial Operation”** means the use of an ICT Facility by a Licensee to provide an ICT Service to any other person or Licensee, with or without charging a fee for that service.

**“Communication System”** means facilities, equipment or components which are used for the emission, transmission or reception of messages by any wire, cable, radio, wireless, microwave, laser, satellite, optical (including all free space optical techniques) or other electromagnetic system, or by any similar technical system; Provided the facilities, equipment or components are located in Bhutan, or operated from ships, aircraft or spacecraft registered or operating in Bhutan.

**“Effective Service”** means the day on which the license terms and conditions have been agreed and signed between the Licensee and the Authority.

**“License fee report”** means a report which shows the statement of the Licensee’s annual contribution payable to the Authority.

**“Multi Service Operator (MSO)”** means any person or an organization that receives broadcasting services from broadcaster (Service Provider) or from their authorized agency and re-transmits the same to one or more cable operators.

## **7. Types of ICT Facilities and ICT Services which are required to be licensed**

7.1 All ICT Facilities are required to be licensed by the Authority with the exception of Communication Systems which are used solely for a person’s own use and are operated

within the spectrum range and the power limitations determined by the Authority.

7.2 For greater certainty, the types of ICT Facilities that require a license include:

- i. public switched telephone facilities, whether fixed, wireless or cellular, using either packet or circuit based switching or routing techniques;
- ii. Communication Systems used for interconnection;
- iii. Cable facilities, cables and cable landing points, whether underground or on land, which originate on, or terminate on, or traverse the territory of Bhutan;
- iv. Communication Systems incorporating orbiting or geo-stationary satellites, including very Small Aperture Transmission (VSAT) satellites, which are used for the transmission of messages; and
- v. Dark fibre or other unlit fibre.

7.3 All ICT Services that use an ICT Facility to provide services to the public, whether or not for a fee or for commercial profit, are required to be licensed.

7.4 For a greater certainty, the types of ICT Services that require a license include:

(a) Telephony:

- (i) All forms of wholesale telephony or any other form of supply of communication system capacity, whether as interconnection services or as airtime, by one ICT Licensee to one or more other ICT Licensees or by an ICT Licensee to subscribers;
- (ii) All forms of retail telephony involving the transmission to and from subscribers of signals over communication systems, including the domestic and international transmission of voice, data, facsimile, moving image or still image messages, regardless of the method of transmission; and

- (iii) All forms of providing (including selling, leasing, renting, donating, etc.) dark or unlit fibre to any person.
- (b) Television services:
  - (i) All forms of terrestrial television broadcasting transmitted from a station in Bhutan;
  - (ii) All forms of television broadcasting distributed by cable or satellite from a distribution point located in Bhutan; and
  - (iii) The streaming over the Internet of video material that is transmitted through the facilities of an Internet service provider in Bhutan.
- (c) Sound broadcasting services: All forms of sound broadcasting transmitted from a station in Bhutan;
- (d) Internet services:
  - (i) Internet services providers, regardless of the scope or type of services provided; and
  - (ii) Application service providers.
- (e) The supply of directory listing in any medium, format or sequence in information whereby the identity of subscribers may be made public.

## **8. License applications**

- 8.1 Applications for new licenses and the renewal of existing licenses must be made only to the Authority.
- 8.2 The Authority may consider applications for ICT Facility and ICT Service licenses of the types listed in the following Tables 1 to 6.

8.3 The following Tables 1 to 6 shall be used as guide only and the Authority shall be free to classify applications and to issue licenses in converged form.

**Table 1: Major Public ICT Facilities**

(Licensees of these facilities are subject to a fee based upon initial fee and a percentage of annual adjusted gross revenue as determined by the Authority.)

<b>Type</b>	<b>Description</b>	<b>Comments or explanatory notes</b>
A	Fixed wireline	A wireline facility (network) providing access to ICT Service(s) to residential and/or business Subscribers.
B	Fixed wireless	A wireless network (other than cellular Mobile) providing access to ICT service(s) to residential and/or business Subscribers.
C	Mobile network facilities	Mobile network facilities usually referred to any facilities that are required for installing any mobile cellular services.
D1	Fibre optic cable-Domestic	Whether “lit” or “unlit”.
D2	Fibre optic cable- International	Whether “lit” or “unlit”.
E1	Satellite (incl VSAT) - Domestic	
E2	Satellite (including VSAT)- International	
F	Broadcast network	As used for “over-the-air” radio and TV broadcasters

**Table 2: Radio Stations**

(Licensees of these facilities are subject to a fixed license fee, annually, as established by the Authority)

<b>Type</b>	<b>Description</b>	<b>Comments or explanatory notes</b>
J	Amateur radio station	Radio transmitting and receiving equipment which: (a) is used solely for a person's own use; (b) operates on radio frequencies to be specified by the Authority; and (c) is limited in output power to a level specified by the Authority.
K	Aircraft radio station	For aircraft registered in Bhutan.
L	Spacecraft radio station	For spacecraft registered in Bhutan.

**Table 3: Transmitters**

(Licensees of these facilities are subject to a fixed license fee per transmitter, annually, as determined by the Authority)

<b>Type</b>	<b>Description</b>	<b>Comments or explanatory notes</b>
M	Ground to air radio	Radio transmitting equipment which is used to communicate from the ground to aircraft on the ground and in the air using standard aviation

		frequencies
N	Land (Mobile) two-way radio	Base station, mobile radio transmitters (including hand-held) and repeater station operating on designated frequencies in Bhutan.

**Table 4: Spectrum**

(An annual spectrum license fees will be applicable as per the provision of the National Radio Rules)

<b>Type</b>	<b>Description</b>	<b>Comments or explanatory notes</b>
O	All transmitters/transponders other than those licensed under Tables 2 or 3, or those otherwise exempted by the Authority.	Each transmission frequency or channel requires an individual License. This requirement extends to all use of spectrum whether that use is in connection with a public or private facility.  Certain types of low power radio equipment may be exempted from any licensing requirement, or may be covered by a class License.

**Table 5: Miscellaneous**

(Licensees are subject to a fixed annual license fee, determined by the Authority)

<b>Type</b>	<b>Description</b>	<b>Comments or explanatory notes</b>
P	Radio dealer	A licensed dealer in radio transmitters is exempted from obtaining in advance an import license for each radio that they import for subsequent resale.
Q	Radio Operator	
R	Radio Importation	
S	Multi Service Operator (MSO)	

**Table 6: ICT Services**

(Licensees of these services are subject to an initial fee and regulatory fee, as established by the Authority)

<b>Type</b>	<b>Description</b>	<b>Comments or explanatory notes</b>
1	Fixed Telephony Services	Whether utilizing fixed wireline or fixed wireless facilities. Refer also to paragraph (4)(a), above, of these Rules for a description of telephony.
2	Reserved for future use	
3	Mobile Telephony Services *	
4	Resale of Telephony	Also includes those services sometime referred to as calling card services and PCO's.
5	Internet Telephony	Includes Voice over Internet and Voice over

		Internet protocol.
6	Public Service Television Broadcasting **	Sometimes referred to as “on air” broadcasting. Refer also to paragraph (4)(b), above, of these Rules.
7	Subscription Television Broadcasting	Sometimes referred to as “cable broadcasting” or “wireless cable broadcasting”.
8	Sound Broadcasting	Includes FM services
9	Internet Service Provider	
10	The provision, by lease or otherwise, of ICT infrastructure by a Licensee to a third party	
11	The publication of directories derived from ICT subscriber records	
12	Business Process Outsourcing (BPO)	Call centers, Medical transcript etc.

Note:

\* The license for mobile service shall be allocated based on either auction or beauty contest or mixture of both.

\*\* The Television Broadcasting Service licence shall be calculated separately as it involves both ICT Facility as well as ICT services.

### **9. Duration of license for ICT Facility licenses and for ICT Service licenses**

A license for an ICT Facility shall be granted for a period of fifteen year (15) and for a period of ten (10) years an ICT Service, including media service. However, a consolidated licence shall be granted for fifteen (15) years.

Licences may be renewed as per the provisions of the Act.

## **10. Person liable to pay the License Fee**

The license fees shall be payable by all persons granted licenses in accordance with Section 38 of the Act for the ICT Facilities and ICT Services set out above in Tables from 1 to 6 above.

### **10.1 Licence Fee**

- i. License fees shall be comprised of an initial fee and a regulatory fee.
- ii. A sum of Ngultrum hundred thousand (Nu.100,000.00) and Ngultrum ten thousand (Nu.10,000.00) would be charged as an initial licence fee for ICT Facility and ICT Service, respectively.
- iii. A sum of Ngultrum fifty thousand (Nu. 50,000.00) would be charged as an initial licence fee for Multi Service Providers (MSO) and Television Broadcasting Services.
- iv. The regulatory fee shall be 1% of the Adjusted Gross Revenue of each Licensee's revenues.
- iv. Both components of the license fee shall be remitted by the Licensees to the Authority. However the regulatory fee will be charged based on an annual basis by the Authority, forthwith upon submission of the Licensee's annual audited financial statements.
- vi. Universal service fund would also be charged by the Authority as per the provision of the Act, as and when required to meet the social obligations, including the rural telecommunications services.

### **10.2 Fee for renewal of license**

The fee for renewal of license shall be payable as per the provision of the license terms and conditions, prescribed by the Authority.

### **10.3 Payment of License Fee**

- i. The Licensee shall be liable to pay its annual regulatory fee as well as the instalment fees, if any, exactly after completion of each year of Effective Service.

- ii. Sixty (60) days prior to the completion of Effective Service date, the Authority shall issue, to each Licensee, a letter of reminder to submit its annual audited financial balance sheet as well as Licence fee report.
- iii. Based on the audited financial balance sheet, an annual regulatory fee will be charged which should be deposited to the Authority within the stipulated period, as determined by the Authority.
- iv. Within thirty (30) days of receiving a Licensee's license fee report and audited financial statements, if the Authority disputes the exclusion of any item from the Licensee's turnover or the inclusion of any item deducted from the Licensee's turnover for the purpose of calculating its revenues, the Authority may serve the Licensee with a dispute notice.
- v. In the event a Licensee receives a dispute notice from the Authority, the Licensee and the Authority shall use their reasonable endeavours to reach a settlement in writing.
- vi. If the dispute is not resolved to the satisfaction of the Authority within thirty (30) days of the receipt by the Licensee of the dispute notice, then within twenty (20) days thereafter, the dispute shall be referred to an independent accountant to be agreed upon between the Licensee and the Authority.
- vii. The decision of the independent accountant in respect to the dispute shall be final and binding and the costs of the referral of the dispute notice including the fees charged by the independent accountant for adjudicating on the dispute notice shall be awarded by the independent accountant to the party in whose favour the dispute is resolved.

#### **10.4 Penalties for non-payment of license fees**

The requirement to pay license fees shall be included in all licenses issued by the Authority. Failure to pay a fee constitutes a breach of license sanctionable under Section 51 of the Act.

#### **11. Obligations of Licensees**

If the Licensee is prevented from performing any of its obligations under the license because of circumstances beyond its control:

- i. the Licensee shall notify the Authority of the obligations which it is prevented from

performing, and the reason why, as soon as reasonably practicable; and

- ii. the Authority may suspend those obligations and the Licensee shall not be liable to perform these obligations, for so long as the circumstances preventing performance continue, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under the license or other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee at its expense through the use of alternate sources or other means.

## **12. Procedural requirements**

12.1 Any subscriber which is aggrieved by the refusal, disconnection or interruption of ICT Facilities or ICT Services may, by written notice, inform the ICT Facility or ICT Service provider of the grievance and the notice shall specify:

- (a) the nature and circumstances relating to the complaint; and
- (b) the nature of any action which the subscriber requires the licensee to perform or refrain from performing.

12.2 Where, pursuant to Clause 12.1 above, a Licensee receives a notice of complaint it shall, no later than ten days after receiving the notice, provide a written response to the notice.

12.3 After the subscriber receives the written response, both parties shall, in good faith, attempt to resolve such complaint within thirty days following the date of receipt of the notice of complaint by the Licensee.

12.4 Where the complaint as set out in Clause 12.1 above has not been resolved between the parties within a period of thirty (30) days following the receipt of the relevant notice of complaint, any of the interested parties may submit a determination request to the Authority. However, no party shall submit a determination request to the Authority unless it has first made good faith and reasonable efforts to settle such dispute directly with the other party.

12.5 A determination request shall:

- (a) include the identity and address of the Licensee;
- (b) include the details of all ICT Facilities or ICT Services, if applicable, to which the issue relates;
- (c) set out the issues in dispute and any associated issues those have been agreed between the parties;
- (d) be accompanied by a written account which includes:
  - (i) dates and copies of any correspondence, setting out any efforts that have been taken by either the complaining subscriber or the licensee to settle the dispute;
  - (ii) the matters which the party making the determination request wishes the Authority to determine; and
  - (iii) a clear and concise statement of the relief sought by the party making the determination request.
- (e) be accompanied by a processing fee (part of which may be refunded by the Authority) in an amount to be determined by the Authority by subsequent Rules.

12.6 The party making the determination request shall provide a copy of the determination request to the other party on the same date on which it has submitted the determination request to the Authority.

12.7 The respondent shall file with the Authority and provide the party making the request with a written response within twenty (20) days of receiving the determination request.

12.8 Upon receipt of a determination request, the Authority may take one or more of the following actions:

- (a) request such other information from any person as may be affected by the dispute as it may deem necessary;
- (b) direct the parties to continue reasonable efforts to resolve the dispute;
- (c) decline to determine the dispute on the basis of one or more of the grounds listed in Clause 11.1.10 below;
- (d) issue a notice for a public hearing pursuant to Clause 11.1.12 below, setting out procedures and issues to be addressed; and the Authority may issue a notice to other licensees, interested parties and the general public advising of the public hearing and inviting submissions on the issues to be addressed;
- (e) appoint a mediator or arbitrator to deal with the dispute and in such event may establish the terms of reference of any mediator or arbitrator which shall include:
  - (i) whether the outcome of any such mediation or arbitration will be binding;
  - (ii) the procedures for such mediation or arbitration;
  - (iii) any dates by which the mediation or arbitration process will be concluded; and
  - (iv) guidelines for the allocation of costs incurred by the parties in relation to mediation or arbitration;
- (f) act as adjudicator of the dispute and, where it decides to do so, it shall establish in its own terms of reference and procedures for such adjudication which shall include:

- (i) whether the outcome of any such mediation or arbitration will be binding;
  - (ii) the procedures for such mediation or arbitration;
  - (iii) any dates by which the mediation or arbitration process will be concluded; and
  - (iv) guidelines for the allocation of costs among the parties; or
- (g) such other course of action as it considers necessary to resolve such dispute.

12.9 Where the Authority has received two or more determination requests of a similar nature involving one or more of the same parties it may, for reasons of efficiency and consistency, elect to deal with such determination requests as if they were a single dispute.

12.10 The Authority may decline at any time to deal with a determination request if it determines that:

- (a) the matter is not within the Authority's jurisdiction;
- (b) the subject matter of the complaint does not sufficiently concern any obligation under the Act, any other law in effect in Bhutan or any agreement entered into by a licensee or any order of the Authority which deals with or relates to ICT Facilities, ICT Services or interconnection and infrastructure sharing;
- (c) the determination request is an abuse of process;
- (d) the party making the determination request has not made reasonable efforts to settle the dispute with the other party;
- (e) the subject matter of the complaint is also the subject of current court litigation as between the parties.

12.11 In determining a dispute, the Authority shall act expeditiously, and in doing so may have regard to:

- (a) the subject matter of the complaint;
- (b) the need to inquire into and investigate the complaint;
- (c) the objectives and functions of the Authority; and
- (d) all matters affecting the merits, and fair settlement of the dispute.

12.12 The authority may elect to conduct a hearing to assist in its determination of a dispute. In conducting the hearing, the Authority shall not be bound by the rules of evidence governing the admissibility of evidence in judicial proceedings. The Authority shall notify parties in advance of the date and subject of any proposed hearing and shall afford the parties and its witnesses a reasonable opportunity to be heard at the hearing. The parties to the dispute may elect to be represented at a hearing in whole or in part by a third party, including a legal representative. The parties to the dispute shall file a written brief no later than fifteen (15) days prior to the hearing outlining their position and shall include any materials in support of such position.

12.13 A party who made the determination request may withdraw from determination by the Authority before the Authority makes its final determination, provided that it agrees and settles any costs occasioned by the determination request or any matter arising from such request as determined by the Authority.

12.14 The Authority shall determine whether the refusal, disconnection or interruption of ICT Facilities or ICT Services was unjust or unfair and if so, the amount of damages to be awarded to the aggrieved subscriber.

12.15. In any proceedings pursuant to these Rules, the Authority may elect to receive submissions as to costs and the Authority may, having regard to the circumstances of

the dispute, award costs to be paid by any party to a dispute. An award of costs may include:-

- (a) any or all of the costs of the Authority;
- (b) any or all the costs of the party who requested the determination;
- (c) any or all costs of the respondent or of any interested party or licensee.

12.16 The determinations of the Authority, whether preliminary or final, shall be in writing and state the reasons upon which they are based.

12.17. A determination of the Authority shall be binding upon the parties. However, nothing in these Rules precludes a party to such a dispute from appealing a determination of the Authority, in accordance with the provisions of Section 49 of the Act.