

Fiji Licensing Workshop
Suva 31 March 2011

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**ITU-EC Project for Harmonisation
of ICT Policies in ACP countries**

Mrs Fua'tai (Gisa) Purcell

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Agenda

1. Welcome
2. ITU-EC Project for Harmonisation of ICT Policies in ACP countries
3. Licensing Principles and Best Practice
4. Licensing in Fiji – the project so far
5. Draft Licensing Regulations
6. Next steps
7. Further discussion
8. Close Workshop

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Licensing Principles and Best Practice

Jim Holmes

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Welcome

TAF Chairperson Mereseini Vuniwaqa
TAF CEO Ronald Box

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What is a licence?

- The nature of operator licences has caused issues in the past – particularly if regarded as a contract with the licensee
- Modern practice is to regard a licence as a legal authorisation to provide services in accordance with its terms:
 - It is a grant rather than a contract
 - It gives rise to legal rights and obligations
 - It may also give rise to reasonable expectations of continuity and of renewal

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Sources of best practice

- ITU reviews practices
- The book is 6 years old but still very useful
- The March 2010 study for the Pacific
 - Practices differed widely
 - Generally the more recent the review of licensing the better the practices – for example, in PNG in 2010

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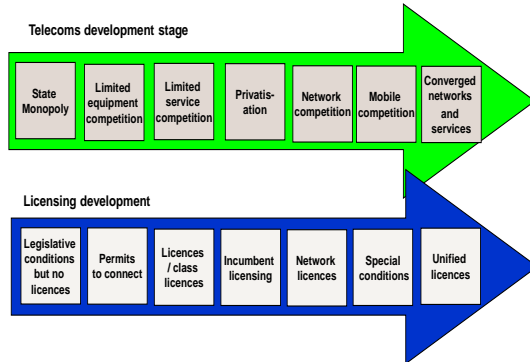
Best practices

Convergence and future proofing (unified licensing)

- Unified licensing permits the licensee to provide all or any services and does not require further intervention by the Regulator to license new and innovative services
- Unified licences may also extend to platforms as well as services
- With convergence at technology, service and market levels it is inappropriate to have licensing based on historical distinctions no longer relevant – otherwise we will have a major regulatory barrier to investment and market development

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The development of licensing has matched the development of the telecoms industry and reflects the important distinctions at various stages of industry development.

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Best practices

Transparency of process

- Licensing processes and administration need to be very clear
- Regulators should reduce process complexity and cycle times.
- This is a classic case for keeping it simple, and removing barriers

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Best practices

So what is current licensing best practice?

- Convergence and future proofing (unified licensing)
 - technologies
 - services
- Transparency of process
- Streamlined administration
- Brevity

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Best practices

Streamlined administration

- Simplified applications
- Regulators should reduce the volumes of unused information requested of applicants and licensees.
- Lots of information does not equal control

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Best practices

Brevity

- Traditional licences were extremely detailed – why?
- Dangers of repeating the Act and Regulations in licences
- Aspirational aims in the Promulgation of 2008 are to be applauded – an extract of the Register
- How brief can we keep licences?

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Best practices - summary

- Keep it general
- Keep it simple
- Keep it relevant
- Keep it short

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Licensing in Fiji so far

- Telecommunications Promulgation 2008
- 2009 Initial draft Licensing Regulation subject to public consultation
- Public consultation comments received and assessed
- Many very good comments were received
- An external consultant prepared a revised draft of the Licensing Regulations – this time reducing the licence categories
- February 2011 – all papers associated with the project were reviewed again by me
- March 2011 – I prepared further revised draft Licensing Regulations for discussion with industry stakeholders
- This week – individual stakeholder discussions were held. Thank you for your time and very useful comments so far

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Draft Licensing Regulations

Jim Holmes

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Licensing in Fiji – the project so far

Jim Holmes

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Substantive Clause by Clause in the Draft

Clause	Subject	Issues	Comments
2	Interpretation (Definitions)		Any other definitions needed?
3	Types of Licences	One licence covering all services and network operation Reseller issue	Should we provide for Class Licences at this stage? Changes planned
4	Applications	(d) Payment on account	Will be removed
5	Eligible persons	Any others	Foreign corporations?
6(1)	Suitability of applicant	Discretion of TAF	Should it be curtailed or more minutely defined?
6(2)	Need for a specific reason not to grant a licence	Effectively a presumption in favour of licence application approval absent specific reasons	Getting a licence should be easy.
7	Written reasons for rejection of application	Transparency of administration	
8	Grant of licence	Licence is effectively a copy of the register	Licence will be as short and simple as the register

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Substantive Clause by Clause in the Draft

Clause	Subject	Issues	Comments
9	General condition – compliance	Incorporates the FCC decisions and also requires these decisions to be lawful. Technical standards.	The second point picks up criticism of an earlier draft. Need to be developed and documented
10	Special conditions to prevail	Substantial discretion in relation to individual licence	Should there be further guidance in the regulations or elsewhere?
11	Financial year for calculating revenue	Prior year adopted	
12	Maximum and minimum licence fees	Maximum is based on a % and minimum is a fixed \$ amount	Issue raised about the FJD 1 million fee and the relationship of the fees to the funding needs of the TAF and Tribunal
13	Annual return	For fee calculations	Should there be a default to encourage filing a return? The fine seems paltry.
14	Invoice	Puts a time limit on the TAF	Other time limit proposed in discussion
15	Gross annual revenue	Based on the Promulgation	

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Next steps

- A further period of consultation in the light of the issues discussed at this workshop?
- Because of Easter and also the need for some licensees to coordinate within their organisations we are suggesting 12 May – but no extensions.
- No further documents for the additional consultation.
- As soon as possible after the close of the Consultation Period a final version will be submitted to the Authority for formal consideration and adoption.

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Substantive Clause by Clause in the Draft

Clause	Subject	Issues	Comments
16	No annual fee for first year	Some other clauses to be adjusted to this one	Note that application fees are still payable
17	Audit requirements	A routine requirement	
18	Variation of licence conditions	Following provision in Promulgation	Should a distinction be made between general and special conditions?
19	Licence renewal	This relies heavily on the Promulgation	Should there be a presumption of renewal absent specific factors?
20	Change of particulars of licensee	(1)(a) may be too draconian and lead to excessive changes, especially in relation to 5% shareholding.	Renumbering needed. Perhaps change to any matter on the register (which the licensee has a copy of) should be advised.
21	Assignment or transfer of a licence	Essentially this is a mainly a competition matter hence reference to the FCC	
22	Responsibility for apparatus	For the avoidance of doubt.	
23	Facilities record keeping	Routine	But TAF may have to provide further guidance on this.

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Further Discussion

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Substantive Clause by Clause in the Draft

Clause	Subject	Issues	Comments
24	Regular inspection of dangerous facilities		May need expansion over time
25	Register and extracts		
26	Shareholding	Perhaps this might eliminate the need for Clause 22(1)(a)	Perhaps 22(1)(a) might be a reference to 28
27	Licensee agreements	Any agreements could have competition impacts and hence referral to FCC	
28	Ministerial and Authority liability	No liability – replaces earlier indemnity requirement	
29	Savings	No exemptions to be implied by these Regulations from other requirements	
31	Existing licensees	Migration arrangements	TAF needs confirmation of current details and this ensures that.
Schedule 1	Application information		Form to be designed
Schedule 2	Maximum and minimum value for fee		
Schedule 3	Threshold amounts		
Schedule 4	Register contents		To be further discussed with TAF

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