

# MINISTERIAL ORDER N° 9/DC/04 OF 07/06/2004 ON CONDITIONS TO BE INCORPORATED INTO TELECOMMUNICATIONS AND RADIOCOMMUNICATIONS LICENSES

## The Minister of Infrastructure,

Given the Constitution of the Republic of Rwanda of 4 June 2003, as amended to date, especially in its Articles 120 paragraph one and 121 paragraph one-2° ;

Given Law n° 44/2001 of 30 November 2001 governing Telecommunications, especially in its Articles 5 and 33 paragraph 6;

Given Law n° 39/2001 of 13 September 2001 establishing an Agency for the Regulation of certain public utilities, especially in Article One;

Upon the proposal by the Regulatory Board;

After consideration and approval by the Cabinet, meeting in its session of 28 January 2004;

## ORDERS :

### CHAPTER ONE GENERAL PROVISIONS

#### Article one : Definitions

On account this Order, the terms referred to below shall be thus defined :

Board	The regulatory Board of the Rwanda Utilities Regulatory Agency of Public Utilities created by Law n° 39/2001
Radio communications Licence	Any license granted by the Board pursuant to Article 33 of Law n° 44/2001 entitling the beneficiary to make use of a certain radio-frequency range or range(s).
Individual Telecommunications Licence	Any license : <ul style="list-style-type: none"><li>- granted by an express and individual decision of the Minister or, in the event of delegation, by an express, individual decision of the Board, pursuant to Article 5 of Law n° 44/2001; and</li><li>- entitling the beneficiary to undertake certain telecommunications activities within, to and/or from the territory of the Republic, in accordance with standard and, deemed necessary, supplementary particular terms.</li></ul>
Standard Telecommunications Licence	Any licence : <ul style="list-style-type: none"><li>- granted by the Board pursuant to Article 5 of Law n° 44/2001 without an express or individual decision ; and</li><li>- containing standard terms governing a certain category of telecommunications activity occurring within, to and/or from the Republic.</li></ul>
Law n° 39/ 2001	Law n° 39/2001 of 13 September 2001 establishing an Agency for the Regulation of certain public utilities
Law n° 44/2001	Law n° 44/2001 of 30 November 2001 governing Telecommunications
Minister	Minister responsible for telecommunications
Dominant Organization	A private person or organization designated as a dominant organization by the Board pursuant to Article 49 of Law n° 39/ 2001
Republic	The Republic of Rwanda

For all other terms, except as otherwise provided by this Order, the definitions set forth in Law n° 39/ 2001 and in Law n° 44/ 2001 shall, where applicable, apply to this Order.

## **Article 2 : Scope**

In application of Article 5 and Article 33 of Law n° 44/ 2001, this Order sets forth the conditions to be incorporated into Standard Telecommunications Licenses, Individual Telecommunications Licenses and Radiocommunications Licences.

## **CHAPTER II : TELECOMMUNICATIONS LICENCE CONDITIONS**

### ***SECTION 1: STANDARD TELECOMMUNICATIONS LICENCES***

#### **Article 3 : Principle**

Subject to decisions made pursuant to Article 18 of present Order, Standard Telecommunications Licenses shall incorporate general conditions and, where appropriate, conditions related to :

- the installation of the network ;
- the supply of services ; and
- marketing.

Such Licences shall also contain indications regarding the contributions and fees resulting there from as well as the liabilities and penalties that may be applied. Finally, they shall set miscellaneous conditions necessary for their exploitation and list the appendices attached to them.

#### **Article 4 : General conditions**

Every Standard Telecommunications Licence shall indicate :

- (i) its scope, including the precise networks and/or services concerned ;
- (ii) reference texts, national and international, which bind the licensee ;
- (iii) duration, terms for renewal and transfer ;
- (iv) eligibility criteria notably with regard to shareholding and participations ;
- (v) technical requirements, notably in terms of staff training, human and material resources.

#### **Article 5 : Network installation**

Every Standard Telecommunications License shall contain details regarding :

- (i) interoperability, standards and specifications of network installations ;
- (ii) rights and obligations, in relation to network infrastructure, notably as regards/safety ;
- (iii) allocation of radio frequencies ;
- (iv) numbering obligations ;
- (v) rights and obligations concerning interconnection and where appropriate access ;
- (vi) leased lines ;
- (vii) access to private and public land, including where possible environmental and town and country planning ;
- (viii) coverage and roll-out ;
- (ix) co-location and facility sharing ;
- (x) international gateway, where applicable ;
- (xi) terms of use during major disasters to ensure communications between emergency services and the authorities of the Republic ;
- (xii) measures to be taken to avoid harmful interference and limit the exposure of the general public to any electromagnetic fields caused the telecommunications network in question;
- (xiii) protection measures against unauthorised access.

### **Article 6 : Service provision**

Every Standard Telecommunications Licence shall contain details regarding :

- (i) how service continuity will be maintained ;
- (ii) service quality ;
- (iii) universal access obligations, if any ;
- (iv) model of subscriber contract ;
- (v) options open to visiting and itinerant users, where applicable ;
- (vi) communications confidentiality and security ;
- (vii) commitments in respect of national security and judicial demands ;
- (viii) cryptography ;
- (ix) emergency call services (medical services, fire brigades, police etc..).

### **Article 7 : Service marketing**

Every Standard Telecommunications Licence shall contain details regarding :

- (i) principle of freedom to set tariffs ;
- (ii) principle of non-discrimination between customers and/or subscribers ;
- (iii) invoices, including form, content and method of calculation ;
- (iv) tariff publication modalities ;
- (v) accounting procedure ;
- (vi) terms for provision of directories, where applicable ;
- (vii) rules for sub-contracting ;
- (viii) provisions relating to competition, notably with regard to anti-competitive conduct and abuse of a dominant position ;
- (ix) insurance ;
- (x) Modalities for the resolution of disputes with customers and/or subscribers.

### **Article 8 : Contributions and fees**

Standard Telecommunications Licences shall indicate :

- (i) initial license fees ;
- (ii) periodic (e.g. annual) license fees ;
- (iii) universal access contributions ;
- (iv) initial and periodic fees for any associated radiocommunications license and/or number allocation ;
- (v) any other fees, taxes, contributions or charges, including administrative fees.

### **Article 9 : Liability and penalties**

Every Standard Telecommunications License shall :

- (i) indicate the general liability applicable to the licence as well as the fines and non-financial penalties, such as license suspension and withdrawal, applicable to the licence in the event of breach ;
- (ii) set forth the monitoring rights of the Board and licence's corresponding obligations.

### **Article 10 : Miscellaneous provisions**

Every Standard Telecommunications Licence shall contain information concerning :

- (i) the rules governing licence modification ;
- (ii) rights of appeal available to the licensee ;
- (iii) resolution of disputes between operators ;
- (iv) what should occur in the event of unlawful use of the network or service ;
- (v) force major ;
- (vi) requirement for any other authorisation ;
- (vii) required form of communications ;

- (viii) licence implementation costs ;
- (ix) language ;
- (x) such other incidental provisions the Board may formulate.

The License shall also state the principle that breaches of the license are not waived through silence and the principle that the rights and duties of Rwandan authorities pursuant to the license shall not prejudice any other powers granted to them under applicable legislative or regulatory provisions.

#### **Article 11 : Appendices**

Every Standard Telecommunications Licence shall include as appendices:

- (i) comprehensive details concerning the licensee, including where applicable its share capital and participations ;
- (ii) a certified copy of any Radiocommunications Licence associated with the Standard Telecommunications Licence ;
- (iii) a certified copy of any decision allocating numbers or blocks of numbers to the licence
- (iv) comprehensive details concerning coverage and roll-out obligations ;
- (v) comprehensive details concerning quality of services.

#### **Article 12 : Text of licenses to be published**

For the sake of transparency, the Board shall, as soon as is practicable after its drafting, publish in the Official Gazette an example of each category of Standard Telecommunications License, and shall hold copies available for examination during normal business hours by any interested party.

Without prejudice to any confidentiality provisions in force, the Board shall also :

- (i) within two (2) months of the end of each financial year, publish in the Official Gazette the identity of all natural persons and organizations to which a Standard Telecommunications Licence has been granted over the financial year in question.
- (ii) make available, for examination during normal business hours by any interested party, an exhaustive and regularly updated list of all natural persons and organizations to which a Standard Telecommunications Licence has been granted.

### ***SECTION 2: INDIVIDUAL TELECOMMUNICATIONS LICENCES***

#### **Article 13 : Minimum required conditions**

Individual Telecommunications Licenses shall include:

- (i) the conditions set forth in this Order for Standard Telecommunications Licences ; and
- (ii) such other conditions as the Minister may determine, provided however that such conditions :
  - (a) help to ensure the achievement of the objectives of the Board as set forth notably in Article 3 of Law n° 44/2001 ; and
  - (a) are consistent with the relevant principles, rules and limitations set forth in applicable legislative and regulatory texts.

#### **Article 14 : Text of licences to be published**

Without prejudice to any applicable confidentiality provisions, the Board shall, for the sake of transparency, publish in the Official Gazette, each Individual Telecommunications License granted, at the expense of the beneficiary thereof, and shall hold copies available for examination during normal business hours by any interested party.

### **SECTION 3: DOMINANT ORGANISATIONS**

#### **Article 15 : Dominant organizations**

In application of Article 5 paragraph 5 of Law n° 44/2001, Standard Telecommunications Licenses and Individual Telecommunications Licenses granted to Dominant Organizations shall be subject to more stringent onerous conditions than those granted to other private individuals and organizations installing and/or operating networks, or providing services, in the market for which the Dominant Operator has been designated as dominant.

### **CHAPTER III : RADIOCOMMUNICATIONS LICENCE CONDITIONS**

#### **Article 16 : Standard format**

Subject to any particular conditions which, pursuant on particular conditions to be incorporated into the radio communications licence, any radio communications licences may be required to be attached to any Radio communications Licence, all Radio communications Licences shall, in application of Article 33 of Law n° 44/2001, be in standard format, to be published by the Board in the Official Gazette.

Subject to decisions made pursuant to Article 18 below, the standard format for Radiocommunications Licences shall include the following conditions :

- (i) designation of the service, or of the type of network or technology, for which the rights of use of frequencies have been granted ;
- (ii) effective and proper use of frequencies, including, where appropriate, coverage requirements ;
- (iii) technical and operational conditions necessary to avoid harmful interference and limit the exposure of the general public to electromagnetic fields ;
- (iv) duration ;
- (v) terms on which the rights granted may be transferred at the initiative of the beneficiary of the Radiocommunications Licence ;
- (vi) fees for the use of the frequency allocated ;
- (vii) any commitments which the beneficiary of the Radio communications Licence may have made in the course of a selection process launched pursuant to Article 33 of the Law n° 44/2001;
- (viii) obligations under relevant international agreements relating to the use of frequencies.

#### **Article 17 : Text of licences to be published**

For the sake of transparency, the Board shall, as soon as practicable after its drafting, publish in full in the Official Gazette a copy of the standard format of a Radiocommunications Licence, and shall hold copies available for examination during normal business hours by any interested party.

Without prejudice to any applicable confidentiality provisions, the Board shall also :

- (i) within two (2) months of the end of each financial year, publish in the Official Gazette the identity of any private individual and organizations to which a Radio communications Licence has been granted within the financial year in question;
- (ii) hold available, for examination during normal business hours by any interested party, an exhaustive and regularly-updated list of all natural persons and organizations to which a Radiocommunications Licence has been granted.

### **CHAPTER IV: FINAL AND MISCELLANEOUS PROVISIONS**

#### **Article 18 : List modification**

Upon proposal by the Board, the Minister shall modify the lists, and/or remove or add any conditions and provisions to be incorporated into Standard Telecommunications Licenses, Individual Telecommunications Licences and/or Radio communications Licences, as set forth in this Order. In this case, the Minister shall publish a modification decision in the Official Gazette at least two (2) months prior to the introduction of the modifications concerned.

**Article 19 : Form of communication**

Unless the context requires otherwise, all notifications and communications required or possible under this Order shall be :

- (i) sent to the recipient by registered post with return receipt requested ; or
- (ii) hand delivered to the recipient, and a duly signed delivery receipt obtained. Where the recipient is an organisation, the delivery receipt shall also be duly stamped.

**Article 20 : Previous and contrary provisions**

All prior provisions and contrary to this Order are hereby repealed.

**Article 21 : Entry into force**

This Order shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Done in Kigali, on 07/06/2004

The Minister of Infrastructure  
**Dr. NTAWUKULIRYAYO Jean Damascène**  
(sé)

**Seen and sealed with the Seal of the Republic :**

The Minister of Justice  
**MUKABAGWIZA Edda**  
(sé)