



Telecommunications &
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A Consultation Paper on Proposed “Exceptions” Under Section 14 of the Telecommunications and Radiocommunications Regulation Act 2009 for Certain Wholesale Service Providers

**Inviting comments and input
5/12/2014**

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1 CONSULTATION FEEDBACK INFORMATION

- TRR welcomes and invites comments and feedback to this consultation document from all service providers, licensees and interested parties.
- We would appreciate your response to be clear and precise in respect to each question as provided in this consultation. Also, if you make reference to the draft exceptions, please quote the exact paragraph of the draft exceptions.
- More general comments on the consultation document should be indicated accordingly.
- In the interests of transparency, TRR 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 and TRR determines that there is confidential information that should be redacted or otherwise not disclosed. If no such request is made, TRR will assume that the response is not intended to be confidential. TRR will evaluate requests for confidentiality according to the provision of the Telecommunications and Radiocommunications Regulation Act 2009.
- Respondents are required to clearly mark any information included in their submission that they consider confidential. They shall provide reasons why that information should be treated as such. Where information claimed to be confidential is included in a submission, respondents are required to provide both a confidential and a non-confidential version of their submission.
- TRR will accept comments in English, French or Bislama.
- If comments are submitted in printed format, they must be submitted on A4 paper accompanied, wherever possible, by a disk containing the comments, in electronic format.
- Comments on this consultation document should be provided to TRR via the following means:
 - Email address consultation@trr.vu
 - Faxed to (678) 24470
 - Posted or hand delivered to:
Public Input – Proposed “Exceptions” Under Section 14 of the Telecommunications and Radiocommunications Regulation Act 2009 for Certain Wholesale Service Providers
Telecommunications and Radiocommunications Regulator
P O Box 3547, Port Vila, Vanuatu
- The deadline for receiving comments is **4pm, 19 December 2014**.
- For any phone enquiries regarding this Consultation document, please call the following numbers: (678) 27621 or (678) 27487.
- All comments will be reviewed by TRR and, at its discretion, may reject comments if it is not in public interest, discriminatory and defamatory in nature, profane, or contravening any laws of Vanuatu.

- After consideration of comments, TRR anticipates making a decision in relation to the above matters. TRR confirms that, at this stage, it has not yet made any final or reviewable decision in relation to these matters.
- For transparency, a record of every comment received will be made available for public information, unless comments are labeled 'In Confidence'.

1. PURPOSE

The Office of the Telecommunications and Radiocommunications Regulator ("TRR") proposes to issue "Exceptions," as defined in and contemplated by Section 14 of the Telecommunications and Radiocommunications Regulation Act 2009 ("the Act") for certain wholesale service providers that intend to provide, or are providing, wholesale telecommunications services, in the forms of Attachment 1 (for FCC and Speedcast), and Attachment 2 (for ICL). The purpose of the proposed Exceptions is to give effect to, and facilitate and implement the relevant provisions of, the Act.

2 INTRODUCTION

This consultation document seeks feedback from licensees, wholesale service providers and any interested person/parties on the approach the Regulator proposes to take to address the wholesale service providers intending to provide or providing telecommunications services in Vanuatu. In particular, cable and satellite providers. Since the submarine cable from Vanuatu to Fiji has become operational, a number of persons have commenced provision of wholesale telecommunications services in Vanuatu using the submarine cable's capacity and/or satellite services. Currently, those wholesale service providers are:

- (i) Interchange Ltd. ("ICL"), the owner of the submarine cable;
- (ii) Fidelity Communications Corporation ("FCC"); and
- (iii) Speedcast Pacific Pty. Ltd. ("Speedcast Pacific"), formerly known as "PacTel".

For the reasons summarized below, TRR proposes to issue an authorisation, in the form of Exceptions as provided for in Section 14 of the Act, for the supply of certain wholesale telecommunications services by each of ICL, FCC, Speedcast Pacific.

3 LEGAL AND REGULATORY FRAMEWORK

The Act establishes TRR as an independent statutory body with general and specified powers relating to monitoring and regulating the telecommunications sector.

The term "telecommunications service" in the Act is defined as follows:

telecommunications service means:

- (a) a service to provide any form of telecommunication to or from any place in Vanuatu, by means of a telecommunication network, where that service is provided, directly or indirectly, to the public or to any person outside Vanuatu; and
- (b) does not include broadcasting of radio or television intended for reception by the general public;

The reference to “directly or indirectly” identifies that a “telecommunications service” may be either a retail service (i.e. one provided “directly” to the public), or a wholesale service (i.e. one provided to a retail service provider and used by it to provide retail services to the public – and therefore provided “indirectly”).

The terms “telecommunications”, “telecommunications network”, and “telecommunications facility” are defined in the Act as follows:

telecommunication means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not;

telecommunications facility means any facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation connected with telecommunications;

telecommunications network means a system or series of systems comprising telecommunications facilities;

Part III of the Act, entitled “Licences and Exceptions,” envisages that all providers of telecommunications services (as defined in the Act), must do so under and in accordance with a Licence or an Exception. Section 12 of the Act provides:

12 Requirement to hold licence

- (1) A person must not provide a telecommunications service except under and in accordance with a licence or exception.

Sections 13 and 14 of the Act give TRR the power, subject to the Act and any Regulations, to issue Licences or Exceptions to persons or classes of persons for the supply of telecommunications services, and to determine the terms of the Licences and Exceptions.

Section 14 of the Act provides, among other things, that the Regulator may grant an Exception where, in the opinion of TRR, issuing a license would not be efficient or necessary.

4 PROPOSAL SUBJECT TO CONSULTATION

ICL, FCC and Speedcast Pacific are all providing “telecommunications services” in Vanuatu, indirectly, to the public or end-users. In particular, they supply wholesale internet services in Vanuatu that are used by licensed service providers to supply retail services in Vanuatu.

In light of the legal and regulatory framework referred to above, the Act envisages that such wholesale service providers are to provide wholesale telecommunications services under, and in accordance with, a Licence or Exception (and the applicable provisions of the Act).

There currently are a number of telecommunications service providers holding Licences under the Act. These Licences are broad in scope, and include a wide-range of services, including both retail services, and wholesale services such as interconnection. These Licensees have a wide range of obligations under their Licences and under the Act; including in relation to the supply of retail services to their customers and end users, and in relation to supply of (retail) Universal Services, and the payment of Universal Service levies determined by TRR under the Act.

The wholesale telecommunications services provided by ICL, FCC and Speedcast Pacific are much more limited in scope, and do not involve these companies providing retail services (i.e. services directly to end-users).

In light of the significant differences in the scope and nature of the wholesale services provided by ICL, Speedcast and FCC, as compared with the retail and wholesale services covered under the Licences issued to current Licensees, TRR proposes that it is not necessary, or not efficient, for these wholesale service providers to operate under a License, rather than an Exception pursuant to Section 14 of the Act. The fact that the wholesale services of ICL, Speedcast and FCC are inputs to retail services provided by one or more current Licensees, is also consistent with the wholesale service providers operating under a Section 14 Exception that has some terms different from current Licences, and which is appropriate to the limited wholesales services provided by Speedcast, FCC and ICL. TRR also notes that the above wholesale service providers have not made the type or scale of infrastructure investment made by Digicel and TVL, as Licensees, and that this also is consistent with applying Section 14 to these wholesale service providers.

The terms of the proposed Exceptions reflect the above differences in the scale, scope and type of services of these wholesale service providers, as compared with the services Licensees are authorized to provide. In particular, the proposed Exceptions differ, in some respects, from the terms of the Licences currently in effect. For example, current Licensees have a series of obligations relating to, *inter alia*, the supply by them of retail services, obligations in relation to (retail) “Universal Services” and Universal Service levies, and an obligation to pay a quarterly License Fee of 2.25% of the “Net Revenues” for respective quarters.

In contrast, the proposed Exceptions do not contain obligations relating to retail services, including Universal Service, and provide that TRR may, but is not required to, assess an Exception Fee of a maximum of 2.25% of “Net Revenues” of these wholesale providers.

5 DRAFT TERMS OF EXCEPTIONS FOR WHOLESALE SERVICE PROVIDERS

Attachment 1 provides a proposed form of “Exception” for each of FCC and Speedcast.

Attachment 2 provides a proposed form of “Exception” for ICL.

There is a difference in the provisions in Attachment 1, versus Attachment 2, relating to revocation or amendment of the Exception. This arises due to ICL having made significant investment in submarine cable facilities such that additional procedural protections are appropriate in relation to a possible future change to the proposed Exception for ICL.

6 REGULATORY IMPACT ASSESSMENT

The proposed Exceptions are intended to comply with the provisions of the Act referred to above, whilst drawing appropriate distinctions between these wholesale service providers, and Licensees that are authorized to provide a much broader range of services, including retail services.

The proposed Exceptions also are intended to promote the goal of clear and even-handed regulation of both retail and wholesale telecommunications services, and include many terms that are common to both current Licensees, and these wholesale service providers.

TRR also has not identified any adverse consequences or prejudice to existing Licensees if the proposed Exceptions were issued.

The benefits to the industry and, ultimately, consumers, from the proposed Exceptions for these wholesale providers also outweigh any negative effects from continuing with the current situation, in which these wholesale service providers do not have an express written authorization, under the Act, that specifically or adequately covers the wholesale services the subject of the proposed Exceptions.

7 CONSULTATION QUESTIONS

Q1 Do you support TRR's proposal to provide the proposed Exceptions?

Q2 If the answer to Q1 is 'no', please indicate why not and provide alternative approaches that you would prefer to see. Please also state the reasons for your view in detail.

Q3 If the answer to Q1 is 'no' because a term or condition has not been covered, or not covered to the extent that you consider it should be, please indicate the additional or different term or condition coverage and text that you would propose be included in the draft Regulations. Please keep in mind that some terms or conditions are likely to be included in separate Regulations or later versions of these Regulations by the TRR. Also please state the reasons for your view in detail.

Q4 Do you have any other issues/comment that you wish to offer to TRR and that it should consider and to take into account when addressing the wholesale services in Vanuatu (if any)?
