

Licensing and authorization

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Agenda

- ❑ Introduction
 - ❑ History of licensing
 - ❑ Methods of licensing
 - ❑ Licensing frameworks
 - ❑ Licensing certainty of developing markets
 - ❑ Licensing policies
 - ❑ General authorizations
 - ❑ Common licensing classifications
 - ❑ License process and approaches
 - ❑ License fee
 - ❑ Contents of standard license
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Introduction

- Traditionally in many parts of world licenses were issued to authorize a person to
 - provide telecommunications services or
 - operate telecommunications facilities

 - Such licenses generally described
 - key rights and obligations of licensees
 - conditions relating to provision of services

 - A wide range of different licensing approaches has been adopted around the world
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Telecom regulation – Handbook to Toolkit

Telecommunications Regulation Handbook

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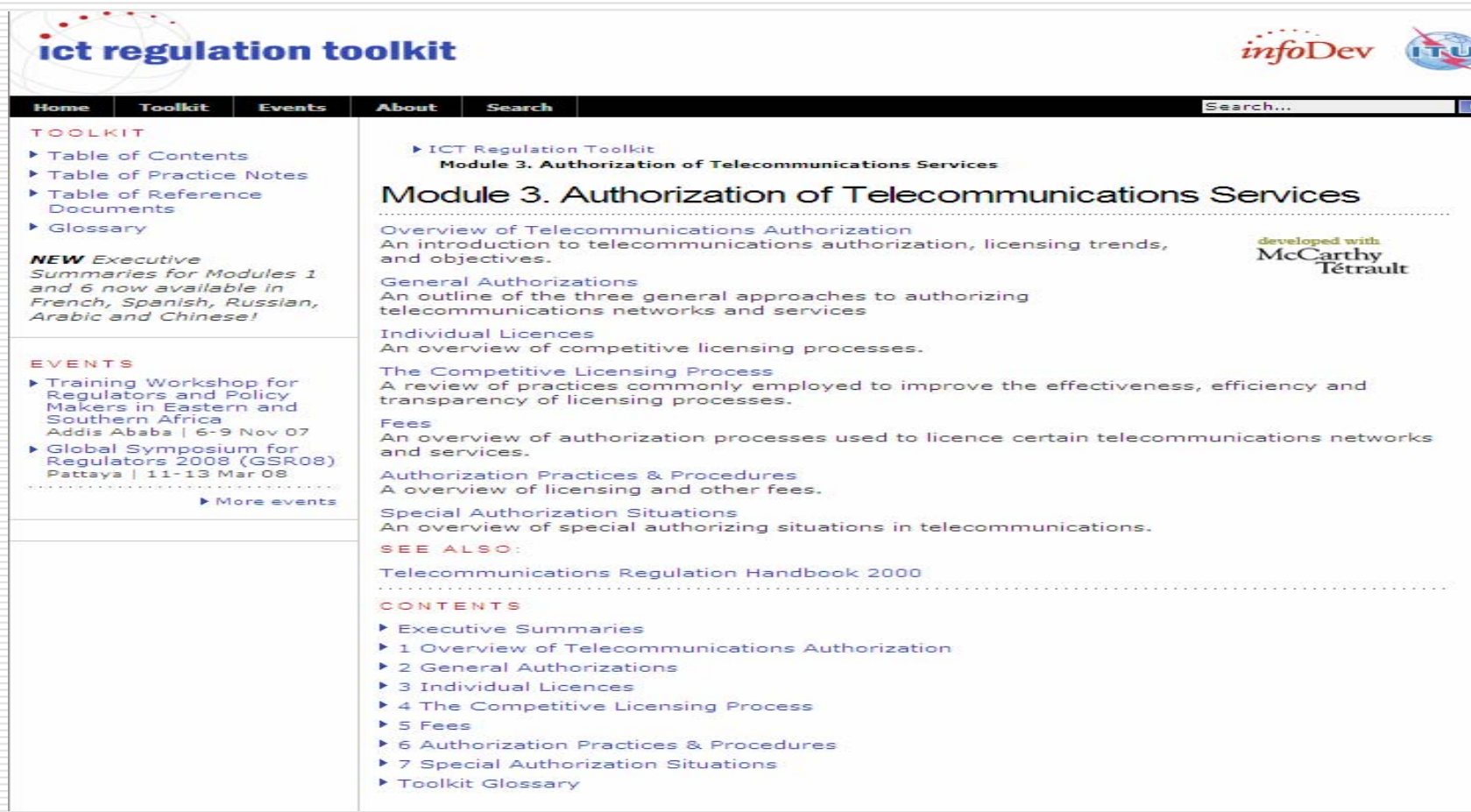
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The modules of this Handbook are available electronically at
www.infodev.org/projects/314regulationhandbook

The screenshot shows the 'ict regulation toolkit' website. At the top, there are logos for 'infoDev' and 'ITU'. Below the header is a navigation menu with 'Home', 'Toolkit', 'Events', 'About', and 'Search'. A search bar is on the right. The main content area is divided into two columns. The left column contains sections for 'TOOLKIT' (with links to Table of Contents, Practice Notes, Reference Documents, and Glossary), 'NEW Executive Summaries for Modules 1 and 6 now available in French, Spanish, Russian, Arabic and Chinese!', and 'EVENTS' (with links to a Training Workshop for Regulators and Policy Makers in Eastern and Southern Africa, and a Global Symposium for Regulators 2008 (GSR08) in Pattaya). The right column lists seven modules: 'Module 1: Regulating the Telecommunications Sector: Overview', 'Module 2: Competition and Price Regulation', 'Module 3: Authorization of Telecommunications Services', 'Module 4: Universal Access', 'Module 5: Radio Spectrum Management', 'Module 6: Legal and Institutional Framework', and 'Module 7: New Technologies and Impact on Regulation'. Each module includes a brief description and links to executive summaries and tables of contents in various languages. At the bottom, there is a 'Last updated 23 May 2008' notice and a footer with logos for 'infoDev' and 'ITU'.

Authorization & Toolkit



The screenshot displays the 'ict regulation toolkit' website. The top navigation bar includes 'Home', 'Toolkit', 'Events', 'About', and 'Search'. The main content area is titled 'Module 3. Authorization of Telecommunications Services' and includes an overview, general authorizations, individual licenses, competitive licensing process, fees, and special authorization situations. A sidebar on the left lists 'TOOLKIT' and 'EVENTS' sections. The right sidebar mentions 'developed with McCarthy Tétraut'.

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TOOLKIT

- ▶ Table of Contents
- ▶ Table of Practice Notes
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- ▶ Glossary

NEW Executive Summaries for Modules 1 and 6 now available in French, Spanish, Russian, Arabic and Chinese!

EVENTS

- ▶ Training Workshop for Regulators and Policy Makers in Eastern and Southern Africa Addis Ababa | 6-9 Nov 07
- ▶ Global Symposium for Regulators 2008 (GSR08) Pattaya | 11-13 Mar 08

▶ More events

▶ ICT Regulation Toolkit
Module 3. Authorization of Telecommunications Services

Module 3. Authorization of Telecommunications Services

Overview of Telecommunications Authorization
An introduction to telecommunications authorization, licensing trends, and objectives.

General Authorizations
An outline of the three general approaches to authorizing telecommunications networks and services

Individual Licences
An overview of competitive licensing processes.

The Competitive Licensing Process
A review of practices commonly employed to improve the effectiveness, efficiency and transparency of licensing processes.

Fees
An overview of authorization processes used to licence certain telecommunications networks and services.

Authorization Practices & Procedures
A overview of licensing and other fees.

Special Authorization Situations
An overview of special authorizing situations in telecommunications.

SEE ALSO:

Telecommunications Regulation Handbook 2000

CONTENTS

- ▶ Executive Summaries
- ▶ 1 Overview of Telecommunications Authorization
- ▶ 2 General Authorizations
- ▶ 3 Individual Licences
- ▶ 4 The Competitive Licensing Process
- ▶ 5 Fees
- ▶ 6 Authorization Practices & Procedures
- ▶ 7 Special Authorization Situations
- ▶ Toolkit Glossary

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History of licensing

- In 1970s and early 1980s, there were relatively few private sector telecom service providers outside of North America
 - When many North American operators became monopolies early in 20th Century, regulators were established to protect public interest
 - Many countries had private sector operators during early years of telephone era, but subsequently nationalized them, sometimes during period following independence from colonial rule
 - Global wave of telecom liberalization began in mid-1980's,
 - In recent years there has been a trend away from granting individual licences, due to number of factors
 - development of increased competition
 - proliferation of service providers
 - dynamic nature of telecom technologies and markets
 - resulting deregulation and reform movements
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Methods of licensing

- In some countries
 - License to provide telecom services is provided in laws or regulations
 - it is provided in documents as “licences”, “authorizations”, “permits”, “concessions”, “franchises”, or “simply regulatory decisions”
 - these terms generally all refer to a legal document issued by regulator

 - Process of licensing is sometimes handled by independent telecom regulators and sometimes directly by governments, Ministers or other authorization authorities
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Who grants license?

Region	Countries Reporting	NRA	NRA & Ministry ¹	Ministry Alone	Other Authority ²
Africa	24	17	5	1	2
Americas	17	9	2	4	2
Asia Pacific	15	7	3	3	2
Arab States	12	4	2	4	2
Europe & CIS	29	24	2	3	1
Total World	97	61	14	15	9

Notes:

- 1. There is some duplication due to overlapping responsibilities.**
- 2. Includes general authorization agencies, President, Congress, etc.**

Licensing framework

- Form of license depends on national legal regime
 - In most countries, license comprise only one element of regulatory framework
 - In others, rules that govern service providers are included in telecom sector policies, laws, regulations, decrees, orders, decisions, guidelines, directions and other regulatory documents
 - Two factors generally determine whether service provider's rights and obligations are set out in license or in other regulatory documents:
 - requirements of local law
 - level of development of local regulatory framework
 - Act of granting authorization is treated in some countries
 - As unilateral administrative act of an authority
 - In other countries as form of mutually-negotiated agreement, concession or public-private partnership
-

Licensing certainty in developing markets

- Regulatory certainty
 - Where privatization and licensing transactions are implemented before a clear regulatory framework has been developed, rights and obligations of service providers should be clearly defined in licensing such as interconnection, price regulation and competitive safeguards
 - Defining exclusivity rights
 - Sector policy may call for licensing of multiple service providers. It may also grant exclusive monopoly (or duopoly) rights for specified periods of time. Grant of exclusivity rights generally increases government revenues from privatization and licensing transactions
 - Hungary, Uganda, Morocco, and Jordan are successful cases as they achieved certainty without clear regulatory framework in their early authorization initiatives through use of detailed individual authorizations
-

Licensing policies

- ❑ Development and implementation of licensing policies is one of most important steps in reforming telecom sector
 - ❑ Authorization policies determine structure and level of competition in telecom markets and efficiency of supply of telecom services
 - ❑ Historically, many countries developed licensing policies on an *ad hoc* basis. However, as global regulatory experience evolved, an increasing number of countries adopted explicit policies
 - ❑ In developing and transitional markets, authorization policies often provide for
 - immediate opening of peripheral telecom markets to competition
 - phased opening of voice telephony and related 'core' markets
 - ❑ Clearly stated telecom policies remove uncertainty and regulatory risk for service providers and their investors
-

Defining service areas

- ❑ One important issue that is normally considered in designing a market-entry policy relates to definition of geographic service areas to be covered by new authorizations
 - ❑ A variety of approaches have been taken in defining service area for new authorization:
 - national authorizations
 - separate authorizations in different regions or for rural and urban markets
 - national authorizations issued in parallel with competing regional authorizations for same service
 - ❑ There is no one right approach to designating service areas, but some approaches are likely to be less successful
 - ❑ National authorizations and large service areas are consistent with consumer interests in obtaining seamless “one stop shopping” service from single service provider
-

Divergence

- There are significant differences in licensing practices in force in different countries
 - One extreme
 - Wide-open authorization regimes, where no form of prior approval is required to start a telecom service or operate network facilities
 - Other extreme
 - Individual licensing regimes with lengthy licence documents
 - In between
 - Many forms of general authorization or “class licences” that authorize and provide generally applicable regulatory conditions for classes of telecom service providers
-

New approach

- Now practice of issuing detailed individual licences to specific telecom service providers is gradually being replaced by more general authorization approaches
 - Under these approaches
 - few conditions are included in a licence document
 - regulatory conditions are generally established in rules or regulations
 - that apply equally to all service providers of same class or across whole telecom industry
 - With increased liberalization, some regulators are also removing all authorization requirements for some telecom services
 - These service markets are then open to entry by any new service providers, without restriction
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Issuing general authorizations

- A general authorization normally prescribes any eligibility conditions and ongoing regulatory conditions for provision of service
 - It might approve operations of all VSAT service providers that meet certain conditions, such as:
 - registration with regulator
 - use of ITU-co-ordinated satellite service providers authorized in an ITU member country
 - approval of earth station equipment under national spectrum regulations
 - compliance with any consumer protection or spectrum management regulations
 - In this example, any entity that meets these four conditions would be entitled to start providing VSAT services, without need to obtain a specific license or to go through any other authorization procedure
-

General authorization-advantages

- Regulators have increasingly adopted practice of using general authorizations for number of good reasons
 - General authorizations:
 - eliminate individual differences in treatment of service providers and create a level playing field
 - are more consistent with technological neutrality principles
 - are more consistent with open market entry policies
 - simplify regulatory process
 - reduce regulatory and administrative costs
 - facilitate introduction of industry-wide regulatory changes to reflect changing technologies and sector conditions
 - No need to amend individual authorizations
-

Services subject to general authorizations

- Some services are frequently subject to general authorization or open entry policies in many countries:
 - ISP services
 - Value-added services
 - information content services, intelligent digital network features (e.g. voice-mail, call-forwarding, call-waiting, audio-conferencing, etc.)
 - Internet content and transmission services, including e-mail
 - Resale-based services
 - Calling card services, call-back services, pay phone and PCO services and, sometimes resale-based IP voice services
 - Fax services
 - Private networks
 - Private virtual networks and private facilities-based networks (except for radio spectrum authorizations, which are usually granted on individual basis, except for shared bands)
 - Customer terminal equipment
 - VSAT terminals, PBXs, routers and all data processing equipment
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Common licensing classifications

Fixed local services

Fixed domestic long distance services

Fixed international long distance

Mobile local services

Mobile domestic long distance

Mobile international long distance

Public voice telephony

Mobile cellular network

Cable TV network

Cable TV service

Wireless Local Loop

Value added services (e.g. email, database access, electronic data interchange, etc)

Digital Subscriber Line (DSL)

Cable Data

Leased lines

Very Small Aperture Terminal (VSAT)

Fixed Satellite Service (FSS)

Mobile Satellite Service (MSS)

Global Mobile Personal Communications Service

Third Generation Mobile (IMT2000)

Paging

Public Mobile Radio Trunked Services (PMRTS)

Internet service provision

Data

Source: ITU Trends Report 2004. Adapted from ITU World Telecommunication Regulatory Database

License process and approaches

- ❑ Competitive licensing processes
 - ❑ Comparative evaluation approach
 - ❑ Auctions
 - ❑ Hybrid approaches
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Competitive licensing processes

- Competitive Licensing Processes include:
 - Competitive licensing processes
 - Phases of a competitive licensing process
 - Scheduling licensing process
 - Guide to licensing process
 - Request for applications
 - Pre-qualification phase
 - Qualification criteria and selection criteria
 - Selection Phase
-

Comparative evaluation approach

- In comparative evaluation, or “beauty contest” award of licence is determined on basis of merit-based assessment
 - Each application is evaluated on basis of pre-set list of selection criteria or on basis of applicant’s ability to fulfil certain requirements
 - This approach allows regulators to award licence to service provider that is best placed to meet specific objectives of licensing process
 - There are many forms of comparative evaluation schemes
 - In some cases, licences are awarded to applicants expected to make best use of limited resources associated with licence
 - In other cases, evaluation is based on criteria related to technical competence, experience, and cost efficiency
 - Some comparative evaluations rely in part on quantitative measures, such as number of years of operational experience
 - Others rely on more qualitative (and thus subjective) criteria, such as quality of management
-

Auctions

- ❑ While comparative evaluation approach involves selection of applicant based on merit, auctions involve little or no qualitative analysis of merits of applicant
 - ❑ Selection is based on a single evaluative criterion, namely amount bid by qualified applicants
 - ❑ Many different types of auctions are possible
 - Most common involves selection of qualified applicant who submits highest bid for the right to hold a licence
 - In least-cost subsidy auctions. Auctions can also be based on any other measurable indicator that is financial or based on financial considerations. These might include lowest consumer tariff to be charged, highest quality of service or greatest level of service to non-economic areas
 - ❑ Regulators have frequently relied on auctions to issue spectrum authorizations
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Hybrid approaches

- There are many variations of two main selection approaches
 - In some cases, hybrid approaches blend elements of a comparative evaluation with elements of an auction
 - For example, applicants may be scored on a number of quality-based criteria and market-based criteria, such as amount of their bid for licence, financial security, technical competence, and operational experience
 - In this case, applicant with highest combined score may be awarded licence
-

License fee

- In telecom industry, term “licence fee” is used to describe different things. It may include one or more of following:
 - **Administrative fees** that compensate regulator for its costs of regulation
 - **Spectrum management fees**, which are based on similar cost-based principles to foregoing administrative fees
 - **Discretionary administrative or spectrum fees** established on a one time or periodic basis (e.g. annually), but not cost-based
 - **Royalties, premium or “rent”** to government or regulator for right to operate a network, provide a service or use a limited resource, such as radio spectrum or numbers
 - in some cases, other special-purpose fees have been bundled with authorization fees; such as **ADC**
-

License fees

Country	Annual non Spectrum Related Fees	Fee Type	Licence Types
Austria	0.1 – 0.2 % of gross turnover	Revenue sharing	All licences
Bahrain	1% of gross revenues	Revenue sharing	Mobile
Bhutan	Pre-determined fixed amount	Annual licensing fee	All licences
Chile	Variable fixed fees	Annual licensing fee	All licences
Croatia	USD 6.6M	Annual licensing fee	3G Mobile
France	1% of 3G revenues	Revenue sharing	3G Mobile
Greece	.025 – 0.5% of gross turnover	Revenue sharing	All licences
Hong Kong, China	15% of gross revenues with escalating annual minimum payment	Revenue sharing	3G Mobile
India	6% - 10% of gross revenues	Revenue sharing	Fixed and mobile
Ireland	0.2% of gross turnover	Revenue sharing	Fixed and Mobile

License fees

Country	Annual non-Spectrum Related Fees	Fee Type	Licence Types
Italy	EUR 38 million	Annual licensing fee	3G Mobile
Jordan	10% of gross revenues USD 100,000 5% gross revenues	Revenue sharing Annual licensing fee Revenue sharing	Mobile Mobile Fixed monopoly
Kenya	0.5% of gross turnover	Revenue sharing	All licences except paging
Luxembourg	0.2% of gross turnover	Revenue sharing	Mobile
Maldives	5% of gross turnover	Revenue sharing	Mobile, Fixed and ISP's
Oman	12% gross revenues	Revenue sharing	Mobile
Korea (Rep.)	Approximately 1- 3.0% of gross revenues (annual adj.)	Revenue sharing	All licensed operators
Spain	0.2% of gross turnover	Revenue sharing	Fixed and Mobile
Tanzania	1.0% of annual turnover 1.5% of annual turnover	Revenue sharing	Fixed, long distance Mobile
Venezuela	5.3% of gross revenues	Revenue sharing	Mobile

Additional contributions

- Some governments levy further fees and taxes on licensees
 - In some cases, these are levied by other government ministries, not telecom ministry or regulator
 - incremental telecom tax
 - One popular approach, particularly in Latin America and Europe, is to apply an incremental telecom tax, which may be passed on to subscribers in their monthly bills
 - Universal Service Fund
 - In countries with USF, operators are often required to pay a small annual contribution based on a percentage of gross billed revenues
 - Research and Development Fund
 - In countries such as Canada and Republic of Korea, all telecom operators are required to set aside a small percentage of gross billed revenues for a national research and development fund
 - All local exchange, long distance and mobile carriers in Canada must contribute 2% of adjusted gross billed revenues, and in Republic of Korea, operators must contribute 1% of gross billed revenues
 - In Venezuela, a portion of revenue sharing is allocated to support a universal service fund (1%) and a telecom training and development fund (0.5%)
-

Contents of standard license

- Part 1 – Background and Identification of Parties
 - Provides background, governing law, authorization circumstances, etc.
 - Important for posterity, and for courts and governments interpreting license
 - Ensure authorized entity has legal and financial substance
 - Key to clarity of authorization conditions
 - May repeat relevant definitions from laws, regulations, etc., and deal with what happens if these definitions change
-

Contents of standard license

- Part 2 – Grant of Authorization
 - Approaches may differ like authorization of services or operation of facilities
 - Radio Spectrum usually authorized separately
 - Defines exceptions – list what licensee is not entitled to do
 - Define scope (i.e. services covered) and timing of any exclusivity rights precisely, including time limits, possible extensions and any pre-conditions for extensions
 - Establish effective date of authorization
 - An authorization may be issued several months (or even years) before service provider is entitled to commence services.
 - Specify duration of authorization term, and conditions and duration of any renewal terms
-

Contents of standard license

- Part 3 – Authorization Fees
 - Usually based on competitive bid process (auction) or fixed in advance
 - Any one-time fee should be clearly differentiated from other fees (e.g. royalties, taxes, annual authorization fees, etc.)
 - May be payable in installments, with penalty
 - Annual fee (may be paid quarterly or on another periodic basis)
 - Usually provided for separately in spectrum authorization
 - Higher fees may be warranted to auction scarce spectrum and generate government revenues (should not duplicate authorization acquisition fees)
-

Contents of standard license

- Part 4 – General Conditions of Authorization
 - Cite requirements to retain eligibility to hold authorization
 - Cite any restrictions on ownership and control of licensee (e.g. cross-ownership with major competitors, foreign ownership restrictions, etc.)
 - Rules on equipment that may be used
 - Specify reporting requirements and rules on provision of information to regulator
 - Specific obligations to provide access by regulator to information or premises, and to co-operate with regulator for specific regulatory purposes
 - Specify obligations to co-operate with other authorities (e.g. police and national security forces regarding interception, environmental protection, health & safety rules)
 - Rights of service provider to access streets, sidewalks, road and other public property and rights of way for purpose of constructing, operating and maintaining facilities
-

Contents of standard license

- Part 5 – Specific Conditions of Authorization
 - Normally dealt with in separate spectrum authorization
 - Assignment of numbers
 - Refer to national numbering plan, if applicable
 - Rights and obligations regarding implementation of number portability arrangements
 - Obligations to provide such services, and co-operate with other service providers in providing them jointly
 - Specific obligations
 - Usually set out in Appendix, including maps, number of access lines, specific indicators, standards to be met by specified dates, reporting procedures, etc.
 - Reference details of performance bond or other method used to secure performance of authorization obligations
-

Contents of standard license

- Part 6 – Relations with Customers
 - Terms and conditions usually set out in other regulatory documents, but may initially be included in authorization
 - May include mandatory contents of customer contracts
 - May include consumer “code of rights”
 - Rules on handling and recording complaints
 - Include protection of privacy
 - Telephone directories
 - Price regulation (tariff) regime usually specified (e.g. price caps)
 - Specify services to which price regulation regime applies
 - Review period and rules for review often specified
 - Key to financial viability of authorization
 - Method to resolve disputes over application of authorization conditions
-

Contents of standard license

- Part 7 – Relations with Other Service providers
 - May include rights and obligations to interconnect, if these are not yet set out in the general regulatory framework
 - May include collocation obligations
 - Include remedies and sanctions, if not specified elsewhere
 - Rights and obligations regarding collocation and access to poles, towers, conduit, etc.
 - Rights and obligations regarding resale by licensee and by other service providers
 - e.g. for payphones, Internet services, value added and simple resale)
 - Method to resolve disputes with other service providers and network operators
 - e.g. regarding interconnection
-

Contents of standard license

- Part 8 – Amendment, Renewal and Termination
 - Unilateral modifications should only apply to certain regulatory matters, not key commercial terms of authorization
 - Procedural safeguards
 - To provide investor certainty, key commercial terms may only be subject to amendment by agreement between licensee and regulator
 - Specify sanctions and penalties for failure to comply with various terms of authorization (e.g. fines, forfeiture of performance bonds, revocation)
 - Include renewal rights (e.g. if certain performance targets met)
 - Termination, revocation and/or suspension may be included
 - Grounds (usually certain major, unresolved breaches only)
 - Procedure (include due process)
 - Include lesser penalties (e.g. fines) which will not disrupt service
 - Clarify surviving rights of licensee, property rights, treatment of assets, and other effects of non-renewal
-

Contents of standard license

- Part 9 – General
 - Excuses performance in case of specified events beyond control of licensee
 - Assignment may require consent of regulator, particularly in early days of PSTN authorization. Later, restrictions on assignment are generally removed or made subject to general regulatory framework
 - Cite any rules and restrictions on assignment of authorization
 - Rules and timetable for coming into full compliance with authorization (important in authorization of PTT or other incumbent service provider)
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Some selected references

- ICT Regulation Toolkit by InfoDev & ITU
 - Available on-line: <http://www.ictregulationtoolkit.org//en/Index.html>
 - Telecommunications Regulation Handbook
 - Available on-line: <http://www.infodev.org/en/Publication.22.html>
 - Licensing in an Era of Convergence (Geneva: ITU, 2004)
 - Available on-line: <http://www.itu.int/publ/D-REG-TTR.7-2004/en>
 - ITU World Telecommunication Regulatory Database
 - Available on-line: <http://www.itu.int/ITU-D/ICTEYE/Default.aspx>
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