

**ST HELENA**



**TELECOMMUNICATIONS ORDINANCE, CAP 106**

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LICENCE TO PROVIDE PUBLIC TELECOMMUNICATIONS SERVICES  
(TELECOMMUNICATIONS LICENCE)

1. I, the Governor, acting in accordance with sections 3(2) and 3(3)(b) of the Telecommunications Ordinance, Cap. 106, after receiving the advice of the Executive Council, license Cable and Wireless South Atlantic Limited ("the Licensee") to provide internal and external public telecommunications services upon the terms and conditions set out in the Schedule to this licence, with effect from 1 January 2013.
2. This licence is granted to the Licensee conditional upon payment of [REDACTED] to the Government of St Helena to be received within 30 days of grant.
3. This licence shall have a term ending 31 December 2022 but will be subject to a review during 2019 to ensure the continued future provision of a telecommunications service in St Helena after the expiration of this licence.

Dated this 20<sup>th</sup> day of July, 2012

A handwritten signature in black ink, appearing to read 'Mark Capes'.

Mark Capes  
Governor

## SCHEDULE

### TERMS AND CONDITIONS OF TELECOMMUNICATIONS LICENCE

#### Part I – Preliminary

##### 1. Interpretation

(1) Words and expressions used in this licence and defined in the Telecommunications Ordinance, Cap. 106, have the same meaning in this licence as they have in that Ordinance except as amended in sub-clause (2) below.

(2) In this licence—

“**Call centre**” means a manned telephone number during normal business hours made public by the Licensee that enables subscribers and prospective subscribers to place orders, track shipments, obtain help and advice in relation to products and services offered by the licensee under the terms of its licence;

“**Internet**” means a system of interconnected computer networks that use Internet Protocol or similar;

“**Internet service**” is a telecommunications service that involves access to the Internet.

(3) The Licensee notes that the terms and conditions in this licence shall not in any way affect or preclude the right of the Crown to establish, extend, maintain or work any telecommunications apparatus or station or authorise any other person to establish, extend, maintain or work any telecommunications apparatus or substation on behalf of the Crown—

- (a) for any Crown purpose of a non-commercial nature;
- (b) for experimental purposes;
- (c) for broadcasting;
- (d) for aeronautical services;
- (e) for purposes associated with the navigation of ships or the safety of shipping; or
- (f) for scientific purposes.

(4) For the purposes of sub-clause (3), the operation of any telecommunications apparatus or station—

- (a) by Her Majesty’s armed forces; or

(b) by a contractor (or his subcontractor) operating under the contract dated 3<sup>rd</sup> November 2011 for the Design, Construction and Operation of an airport entered into under section 3 of the Airport Development Ordinance, is deemed to be Crown purposes of a non-commercial nature provided that such services are not offered for use by the general public on St Helena and in any event they are precluded from the exclusivity provisions of this licence.

(5) For the avoidance of doubt, the exemption granted under sub-clause (4)(b) should not extend to any other party or for any other purpose than as set out in sub-clause (4)(b).

(6) For the avoidance of doubt, the Licensee shall have exclusive rights to be the landing party on St Helena for any submarine cable link.

## **Part II – General Terms and Conditions**

### **2. General Conditions: rights and obligations**

The Licensee:

- (a) shall operate on an exclusive basis, subject to clauses 1(3) and 1(4)(a) and (b), a public system for the supply of public telecommunications services internally and externally;
- (b) must not apply undue discrimination in the supply of public telecommunications services;
- (c) shall supply public telecommunications services throughout St Helena applying a uniform national tariff for each category of customer (categories of customer may include residential, business, government and any other category defined by objective criteria) unless permitted to apply different tariffs to certain customers in accordance with clause 7(2);
- (d) must supply subscribers to telephone services access to emergency services without charge via a telephone number 999 or 911; and
- (e) must not unreasonably restrict access to the public internet except where it is in the public interest or where it is compliant with other legislation.

### **3. Supply of Services**

(1) The Licensee shall provide an internet service over the public system as set out in Schedule 2 of this Licence.

(2) The Licensee shall, in addition to the current telecommunications service, provide mobile telecommunication service as set out in Schedule 3 of this licence. For the avoidance of doubt, mobile telecommunication services fall within the definition of telecommunication services within the Telecommunications Ordinance and so are also to be provided by the Licensee on an exclusive basis.

#### **4. National Telephone Numbering Plan**

(1) In collaboration with the Governor in Council, the Licensee shall endeavour to publish a document (to be known as “the National Telephone Numbering Plan”) within 12 months of the licence grant setting out—

- (a) the numbers to be available for allocation as telephone numbers;
- (b) such restrictions as considered appropriate on the adoption of numbers available for allocation; and
- (c) such restrictions as considered appropriate on the other uses to which numbers available for allocation may be put.

(2) For the avoidance of doubt, whereas the Licensee must in good faith take account of comments from the Governor in Council, the Licensee shall be responsible for drafting and publishing the National Telephone Numbering Plan.

### **Part III – Specific Terms and Conditions**

#### **5. Operation of a public system**

(1) The Licensee must—

- (a) operate and maintain its public system in accordance with internationally recognised standards; and
- (b) as soon as reasonably practicable and consistent with the obligations set out in this licence, implement technological improvements that would provide benefits to St Helena.

(2) The Licensee must ensure that the public system is operational 24 hours each day throughout St Helena, unless this is not possible because of reasons of force majeure or due to planned outages for maintenance and other work on the telecommunications system:

Provided that—

- (a) where any interference to the service is due in any instance(s) to physical obstructions or electrical or radio systems or devices, the Licensee shall

remedy the same unless it would be unreasonable or impracticable to do so having regard to any significant costs or outlays which may be required to remedy any such instance(s); and

- (b) in respect of planned outages, at least 48 hours notice is given to subscribers detailing the planned period of outage.

(3) The Licensee must—

- (a) comply with electrical, fire and safety codes as set out in the law on health and safety in England and Wales; and
- (b) obtain all necessary permissions, consents and authorities to erect, construct, operate and maintain its public system and all equipment associated with the public system.

(4) Where wireless telegraphy systems are used to provide telecommunications services the Licensee must—

- (a) only use radio frequency channels or frequencies approved by the Governor in Council; and
- (b) provide to the Governor in Council upon written request information about the use of radio frequencies.

(5) The Licensee has a right to submit to the Governor in Council written requests for use of additional radio frequency channels or additional specified frequencies bands—

- (a) indicating what use shall be made of the requested radio frequency channels or specified frequencies bands;
- (b) the Governor in Council shall not unreasonably refuse a request and shall make public all decisions; and
- (c) where the Licensee does not make use of radio frequency channels and is not able to provide in writing to the Governor in Council objective reasons for failing to use radio frequency channels, such radio frequency channels shall revert to the Government.

## **6. Service fees**

(1) The Licensee shall make public its service fees (or prices) in the form of a national tariff for all public telecommunications services applicable to each category of user as described in clause 2(c).

(2) The Licensee agrees that the tariffs that apply to the published fixed monthly broadband fees shall reduce by ten per cent from January 2013 and five per cent per annum thereafter for a period of five years. For the avoidance of doubt, the final reduction of five per cent will take place in January 2018 and thereafter any further broadband tariff changes will be determined as per the price review set out in sub-clause (5).

(3) The Licensee agrees that it will make a one-off reduction of ten per cent to the international voice tariffs that apply at January 2013, and thereafter any review of such tariffs will be subject to the provisions of sub-clause (5).

(4) The Licensee agrees that the Service fees that apply to the remainder of the published national tariffs (that is, excluding fixed monthly broadband fees and international voice tariffs) at the commencement date of the Licence:

- (a) shall not rise by more than the published annual rate of inflation in St Helena, or six per cent, whichever is the lower, for the first five years, ending December 2017, of the Licence term;
- (b) any requests by the company to increase service fees over and above what is allowed for under paragraph (a) shall require the Licensee to make an application to the Governor in Council.

(5) The Service fees for all services with a published national tariff, including broadband services, will be subject to a review in January 2018, being the fifth anniversary of the Licence commencement date.

(6) The nature and scope of the review will be discussed and agreed no sooner than twelve months prior to the fifth anniversary of the Licence but will ensure that the Licensee recovers its costs and earns a reasonable return.

(7) Service fees in all of the published national tariffs agreed in the review as set out in sub-clause (5) and set by the Licensee following that review must in aggregate meet a fair and reasonable test set out in sub-clause (9).

(8) The Licensee must notify in writing the Governor in Council and make public—

- (a) proposed prices for every national tariff by 1st October 2012; and
- (b) proposed changes to prices in any national tariff at least 28 days in advance,

and take into account any representations made by the Governor in Council before they are implemented.

(9) When considering the price review as foreseen in January 2018 and any subsequent price review, the Governor in Council shall consider fees as fair and reasonable where—

- (a) these are shown by the Licensee in writing to allow for the recovery of all expected recoverable costs associated with the telecommunications services;
- (b) the Licensee provides an explanation in sufficient detail showing that over the remaining term of the licence it expects to enjoy a reasonable return taking into account the expected cost of capital;
- (c) the expected cost of capital shall be evaluated by the Licensee taking account of the remaining term of this Licence and any assumptions used in the computation of the expected cost of capital should be made clear and substantiated in writing.

(10) In the event of there being disagreement between the Governor in Council and the Licensee, the fair and reasonable fees calculations will be subject to an independent assessment.

## **7. Contractual terms with subscribers**

(1) The Licensee shall meet all reasonable requests for the supply of telecommunications services.

(2) Where the supply of telecommunications services to a subscriber requires the installation of a new exchange line between the individual subscriber's premises and the Licensee's public system, the Licensee shall be entitled to propose a price that allows for cost recovery. If a new exchange line involves costs that would not be recovered through the application of the installation charge and monthly rental fee set out in the relevant national tariff scheme specified in clause 6(1), the Licensee is entitled to apply in writing to the Governor in Council for permission to vary charges for the subscriber concerned, and—

- (a) the Governor in Council shall respond to any such request within 28 days;
- (b) the Governor in Council may approve, propose a variation, or not approve a request to vary the tariff for a new exchange line. Where the Governor in Council proposes a variation it must allow the Licensee to recover its efficiently incurred attributable costs associated with the service and earn a reasonable return;
- (c) where the Governor in Council proposes a variation or does not approve a request made under this sub-clause, he must provide in writing objective reasons and make this public, unless the Licensee is able to confirm that such information should not be publicised because of legitimate confidentiality reasons.

(3) The Licensee must provide each residential subscriber with a statement specifying the terms and conditions on which it renders telecommunications services. The subscriber statement should be in a form approved by the Governor in Council, whose approval is not to be unreasonably withheld. The Licensee's form of statement shall be deemed approved if the Governor in Council does not reject the form of statement in writing with reasons within one month of submission by the Licensee.

(4) The terms and conditions must make clear a process for resolving disputes between a residential subscriber and the Licensee and allow for appeal to an independent party.

(5) Any change to the terms and conditions should be notified in writing to residential subscribers in advance by at least 28 days, unless a shorter period is agreed by the Governor in Council.

## **8. Service level agreements**

(1) The Licensee must provide business and government subscribers with a service level agreement which is to be submitted to the Governor in Council for approval prior to issuing.

(2) The Licensee may negotiate with such subscribers the terms of a service level agreement.

(3) The terms of a service level agreement shall include a common understanding about services, priorities, responsibilities, guarantees, and warranties. Each area of service scope should have the "level of service" defined.

(4) A service level agreement may specify the levels of availability, serviceability, performance, operation, or other attributes of the service, such as billing. The "level of service" can also be specified as "target" and "minimum", which may allow a subscriber to be informed what to expect (the minimum), whilst providing a measurable (average) target value that shows the level of organization performance.

(5) A service level agreement shall include compensation in the case of non-compliance covering direct costs.

(6) The Licensee shall provide a template of a generic service level agreement to any business or government subscriber or prospective subscriber seeking a new service.



## **9. Social Obligations**

- (1) The Government of St Helena may apply social obligations on the Licensee only after the conclusion of a public consultation.
- (2) A public consultation on social obligations shall last for at least 28 days and comprise of one or more documents made public by the Government of St Helena.
- (3) In the public consultation the Government of St Helena shall specify the terms and conditions it proposes to apply or vary for the purposes of meeting social obligations.
- (4) The Licensee shall be entitled to vary the terms and conditions of services not subject to a direct social obligation, subject to the provisions of this Licence, including the requirement to meet a fair and reasonable test when the price review is conducted
- (5) If the Government of St Helena applies a social obligation upon the Licensee following consultation as elaborated in sub-clauses (1) and (2), and a variation in terms and conditions arises as specified in sub-clauses (3) and (4), the Licensee will be entitled to recover the net costs of meeting that social obligation in one of the following ways:
  - (a) directly from the recipient/beneficiary of the service;
  - (b) through cross-subsidising that service from other services (which may require the Government of St Helena to agree to a price increase on those other services); or
  - (c) from direct funding provided by the Government of St Helena.

## **10. Call Centre**

- (1) The Licensee must operate a 24 hour call centre, subject to not being able to operate a call centre due to force majeure or planned outages.
- (2) Where a subscriber or prospective subscriber makes contact with the call centre, the Licensee must attempt to provide an initial response, within the next eight normal working hours, containing a unique tracking system.
- (3) For the purpose of this Licence, normal working hours are deemed to be 8am to 4pm on Mondays to Fridays, excluding statutory holidays.

## **11. Electronic Communications Consultative Committee**

(1) A committee known as the 'Electronic Communications Consultative Committee' (ECCC) shall meet two times a year to review telecommunications services as provided under the terms of this Licence. The duty of the ECCC will be to report on compliance by the Licensee with the terms of this Licence, and to advise Government on matters of policy, including pricing, in telecommunications.

(2) The ECCC shall comprise five members: a chairperson, secretary and three other members. The Chairperson cannot be an employee of the Licensee. The Licensee is entitled to appoint up to two members of the ECCC. Members of the ECCC who are not employees of the Licensee shall be appointed by the Governor in Council.

(3) The ECCC members will receive remuneration from the Government as determined by the Governor in Council and will be eligible to claim for expenses incurred as a result of participating in the ECCC.

(4) The Secretary of the ECCC shall make accessible to the public reports of ECCC meetings and produce an annual report detailing activities in the preceding calendar year within 120 days of the end of the relevant calendar year. A draft of the annual report shall be submitted to the Licensee and the Governor in Council for comment. The annual report of the ECCC shall be published on the Government's website and made available in the Public Library.

(5) The costs of the ECCC shall be made public in its annual report and shall be recovered via the prices set in the national tariff. The Government shall invoice the Licensee twice a year in arrears for costs incurred as set out in sub-clause (3).

(6) The Licensee is entitled to dispute an invoice submitted under sub-clause (5) where it can provide objective reasons in writing to the Governor in Council. Any such appeal must be made within 28 days of receipt of an invoice. The Governor in Council shall adjudicate an appeal within 28 days and write to the Licensee setting out his reasons.

## **12. Information provision**

(1) The Licensee must provide the Governor in Council all such information that is necessary for the Governor in Council to carry out his functions under the Ordinance as amended and other relevant laws.

(2) The information that may be required by the Governor in Council under sub-clause (1) includes, in particular, information that the Governor in Council requires for any one or more of the following purposes—

- (a) ascertaining whether a contravention of a condition or other requirement set or imposed by or under this Licence has occurred or is occurring;
- (b) statistical purposes connected with the carrying out of any of the Governor in Council's functions under the Telecommunications Ordinance or other legislation.

(3) The Licensee must provide information required under this clause in such manner and within such reasonable period as may be specified by Governor in Council and in any event, within 28 days of notification of the requirement.

(4) The powers in this clause are subject to the limitations in clause 15.

(5) The ECCC may act on behalf of the Governor in Council for the purposes of information as described in this clause.

### **13. Information required for related purposes**

(1) The Licensee shall provide to the Governor in Council all such information as he considers necessary for the purpose of carrying out—

- (a) with a view to publication, and
- (b) in the interest of the subscribers of public telecommunications services,

comparative overviews of the quality and prices of such services provided by the Licensee over the licence period.

(2) The Licensee shall provide to the Governor in Council, for use for such statistical purposes as the Governor in Council thinks fit, information relating to the telecommunications services and the public system.

(3) The Licensee must provide information under this clause in such manner and within such reasonable period as may be specified by the Governor in Council and in any event, within 28 days of notification of the requirement.

(4) The powers in this clause are subject to the limitations in clause 15.

#### **14. Financial accounts and disclosure**

- (1) The Licensee must keep complete and accurate financial accounts in respect of all public telecommunications services authorised under this Licence in accordance with the UK generally accepted accounting principles.
- (2) The Licensee must make the accounts referred to in sub-clause (1) available at all reasonable times for inspection, review and audit by or on behalf of the Governor in Council.
- (3) The Licensee must provide to the Governor in Council at least once in each period of 12 months, or within any extension of any such period the Governor in Council may allow, a consolidated statement, audited by independent auditors, of its accounts in respect of its telecommunications activities authorised under this Licence.
- (4) The Licensee shall include in its accounts referred to in sub-clause (1) details of—
  - (a) the wholesale costs of satellite services on the understanding that these are disclosed on a confidential basis subject to the consent of the Licensee's satellite service provider, which consent the Licensee will use its best endeavours to obtain;
  - (b) revenues for each of the telecommunications services offered in the national tariff, or where impractical, such aggregate data as deemed reasonable;
  - (c) any other information it considers may be helpful to enable the Governor in Council to conduct the fair and reasonable test referred to in clause 6.

#### **15. Restrictions on imposing information requirements**

- (1) This clause limits the purposes for which, and manner in which, information may be required under clauses 12 and 13.
- (2) The Governor in Council is not to require the provision of information for the purpose of ascertaining whether a contravention of a general condition under clause 2 has occurred, or is occurring, unless—
  - (a) the requirement is imposed for the purpose of investigating a matter about which the Governor in Council has received a complaint;
  - (b) the requirement is imposed for the purposes of an investigation that the Governor in Council has decided to carry out into whether or not the general condition in question has been complied with;

- (c) the condition in question is one which the Governor in Council has reason to suspect is one that has been or is being contravened.
- (3) The Governor in Council is not to require the provision of information under clauses 12 and 13, except—
- (a) by a demand for the information that describes the required information and sets out the Governor in Council's reasons for requiring it; and
  - (b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of the Governor in Council's duties in accordance with the Ordinance as amended, and other relevant laws.
- (4) The reasons for requiring information for statistical purposes under clauses 12 and 13 must set out the statistical purposes for which the information is required.
- (5) Information that is viewed as commercially confidential and marked as such by the Licensee may not be made public by the Governor in Council, unless authorised to do so under an Order of the Magistrates or Supreme Courts of St Helena or in writing by the Licensee.

## **16. Office to be maintained**

The Licensee must maintain an office in St Helena open during the working hours set out in clause 10(3) with a listed telephone number so that correspondence, complaints and requests for repairs or service may be received and promptly dealt with. The office may be co-located with the call centre.

## **17. Restriction on assignment, etc.**

- (1) The Licensee must not—
- (a) assign, transfer, grant any sub-licence or otherwise dispose of this licence or any part of it; or
  - (b) agree to do so,
- without the prior written approval of the Governor in Council which may be given subject to conditions.
- (2) In the case of a proposed assignment of this licence to a company within the Cable and Wireless Communications group of companies, approval to the assignment will not be unreasonably withheld.

## **18. Licensee to comply with International Conventions, etc.**

The Licensee must observe and comply with any International Agreement or Convention relating to telecommunications in general which may from time to time apply to St Helena.

## **19. Indemnity**

(1) Subject to the provisions of sub-clause (2) the Licensee agrees to indemnify, and keep indemnified, the St Helena Government from and against any third party claim finally determined by a competent court of law or by settlement agreed with the prior consent of the Licensee, and reasonable legal fees and costs incurred in respect of such third party claim, to the extent the claim arises directly in respect of the services provided or operations undertaken by the Licensee under the provisions of this Licence, except to the extent the same is due to the negligence of, or breach of licence terms or breach of applicable law or regulation by the St Helena Government.

(2) In the event the St Helena Government wishes to invoke the indemnity set out in sub-clause (1) it must—

- (a) provide prompt written notice to the Licensee upon becoming aware of the relevant claim;
- (b) at the request of the Licensee, allow the Licensee to take sole control of such actions as the Licensee may deem appropriate in connection with such claim;
- (c) provide or cause to be given to the Licensee all such assistance and information as it may reasonably require in avoiding, disputing, resisting, settling, compromising, defending or appealing any such claim;
- (d) instruct such solicitors or other advisers as the Licensee may nominate, acting reasonably, to act on behalf of the Government or any relevant instrumentality of the Government, but acting solely in accordance with the Licensee's instructions;
- (e) make no admission of liability, agreement, settlement or compromise with any third party in relation to any such claim or adjudication without the prior written consent of the Licensee, such consent not to be unreasonably withheld or delayed; and
- (f) take all reasonable action to mitigate any loss suffered by the Licensee, including, without limitation, enforcing against any person other than the Licensee any rights of the Government or any instrumentality of the Government may have in respect of the fact, matter or circumstance giving rise to the claim.

## SCHEDULE 2

### INTERNET SERVICES

1. The Licensee agrees that it will invest in internet service provision to enable the delivery of the following internet/broadband services with effect from January 2013:

<b>Package</b>	<b>Data allowance</b>	<b>Speed</b>	<b>Overage</b>	<b>Cost <sup>(1)</sup></b>
Gold	5,500 MB	1024/256 Kbps	£0.09p	£108.00
Silver	2,000 MB	512/256 Kbps	£0.09p	£54.00
Bronze	1,000 MB	256/128 Kbps	£0.09p	£27.00
Lite	500 MB	256/128 Kbps	£0.09p	£18.00

<sup>(1)</sup> Prices include the 10% reduction as per clause 6(2) of this Licence

2. The Licensee agrees that the above prices will be the prices applying in January 2013 and will only be reviewed in accordance with the relevant provisions of this Licence and the Telecommunications Ordinance.

3. The Licensee agrees that it will investigate the possibility of introducing a free or discounted night time internet service/usage within the first five years of the Licence as well as prioritising VoIP's to enhance customer experience.

## SCHEDULE 3

### MOBILE TELECOMMUNICATION SERVICES

1. The Licensee shall invest to enable the delivery of mobile telecommunication services during the calendar year 2014 by which time the Licensee will have also considered the feasibility of bundling television, broadband and mobile.
  
2. The service shall use appropriate and available frequency bands in compliance with the 2.75G EDGE standard and shall provide the following functionalities:
  - (a) local mobile service including voice, SMS and GPRS/EDGE mobile data with maximum speed of 128 kbps, plus voicemail;
  - (b) prepaid and post paid capability;
  - (c) inbound roaming for voice, SMS and mobile data;
  - (d) outbound roaming by local mobile customers.
  
3. The Licensee shall ensure an island wide coverage for this service from eight sites covering residential and business areas with at least 95 per cent population coverage. Subject to factors outside the Licensee's control, including obtaining third party permissions, the cell sites shall be co-located in most cases with existing television transmitter location sites to minimise environmental impact.