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FRIDAY 23RD OCTOBER, 2020

THE OFFICIAL GAZETTE 23RD OCTOBER, 2020
LEGAL SUPPLEMENT — B

GUYANA

No. 5 of 2020

REGULATIONS

Made Under

THE TELECOMMUNICATIONS ACT 2016

(Act No. 18 of 2016)

IN EXERCISE OF THE POWERS CONFERRED UPON ME BY SECTIONS 30(11), 44, 46, 80(2) and 85 OF THE TELECOMMUNICATIONS ACT 2016, I MAKE THE FOLLOWING REGULATIONS: -

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REGULATION

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**PART I
PRELIMINARY**

- Citation. **1.** These Regulations may be cited as the Telecommunications (Spectrum Management) Regulations 2020.
- Interpretation. **2.** In these Regulations -

 "channelling plan" means a plan for the division of the spectrum within a particular band among potential users.
- Scope of application. **3.** These Regulations apply to the management of the use of the spectrum in Guyana and to the use of the spectrum and radiocommunication equipment by any person.

**PART II
MANAGEMENT OF THE SPECTRUM**

- Functions of the Agency. **4.** (1) The Agency shall manage and allocate the spectrum in order to –

 (a) promote the economic and orderly utilisation of frequencies for the operation of telecommunications networks and the provision of telecommunications services, and for the operation of broadcasting networks and the provision of broadcasting services;

 (b) recover the cost incurred in the management of the spectrum; and

 (c) recognise that the spectrum is a valuable public resource.
- (2) In the exercise of its functions under sections 44 and 45 of the Act, the Agency shall, in addition to those factors set out in section 46 of the Act, take the following into account –

 (a) the overriding public interest in the efficient utilisation of the spectrum for the purpose of various public telecommunications services, broadcasting services, and private telecommunications services;

 (b) the impact of any allocation, reallocation, assignment or reassignment on the legitimate interests of potentially-affected authorisation holders with regard to use of the spectrum, and the public; and

 (c) the impact, if any, on competitive conditions in any market relevant to use of the spectrum.
- (3) In developing the spectrum plan and in coordinating the allocation and reallocation of frequency bands, the Agency shall consult bilaterally, regionally and internationally as it deems necessary and appropriate and shall take into account the

decisions of the World Radiocommunication Conference.

Procedure for the development, publication and periodic revision of the spectrum plan.

5. (1) The Agency shall, within the six months following the appointed day, develop a proposed spectrum plan mentioned in section 44 of the Act, and –

- (a) submit the proposed spectrum plan to the Minister for review;
- (b) make any revisions to the proposed spectrum plan required by the Minister; and
- (c) after approval of the proposed spectrum plan by the Minister, publish such proposed plan by notice in the *Gazette* and state the period during which operators, service providers and other interested persons may submit written comments to the Agency on the proposed spectrum plan, which period shall be not less than twenty-eight days from the date of the publication in the *Gazette*.

(2) Any operator or service provider likely to be affected by the proposed spectrum plan and other interested persons may submit written comments to the Agency on any matter related to the proposed spectrum plan within the time period specified in the notice in the *Gazette*.

(3) The Agency may request in writing from any operator or service provider or any other person likely to be affected by the proposed spectrum plan any information which it reasonably requires for the development or finalisation of the spectrum plan, and the operator, service provider, and other affected person shall provide such information within twenty-one days of its receipt of the Agency's written request to do so.

(4) Copies of written comments submitted to the Agency pursuant to subregulation (2) shall be available from the Agency to any operator, service provider, or other person likely to be affected by the proposed spectrum plan, upon written request and the payment, in cash or other immediately available funds, of the administrative costs for photocopying such comments.

(5) Within thirty days following the end of the comment period provided for under subregulation (2), the Agency shall hold a public hearing at which any operator and service provider subject, or likely to be subject, to the proposed spectrum plan, and any other person likely to be affected by it, may present their views on the proposed plan.

(6) The Agency shall take the written submissions made in accordance with subregulation (2) and any additional views presented under subregulation (5) into account in further developing and finalising the spectrum plan.

(7) The Agency shall finalise the spectrum plan within two months following the public hearing provided for in subregulation (5) and submit it to the Minister for approval.

(8) Within fourteen days following the approval of the spectrum plan by the Minister, the Agency shall –

- (a) publish the spectrum plan in the *Gazette*, and the spectrum plan shall take effect on the date of publication;
- (b) make the spectrum plan available for public scrutiny at its offices; and
- (c) post the spectrum plan on its website.

(9) The Agency shall monitor the trends and developments in the use of the spectrum in Guyana, regionally, and internationally and, in the same manner provided for in subregulations (1) through (8) *mutatis mutandis*, may amend the spectrum plan from time to time, including for the purpose of incorporating any new allocations and reallocations of frequency bands and the uses for them.

Content of
spectrum plans.

6. Every proposed and final spectrum plan shall include --

- (a) a table of frequency allocations indicating -
 - (i) the allocation of the frequency bands in the spectrum to the various radiocommunication services in Guyana, based on the International Table of Frequency Allocations approved from time to time by the World Radiocommunication Conference, and reflecting national requirements and priorities and consistent with any applicable international, regional and bilateral agreements, standards and arrangements, and other agreements or commitments to which Guyana is a party or has otherwise adopted as legally binding upon it;
 - (ii) the radiocommunication services for which each frequency band may be used and, where the band is allocated for use by more than one radiocommunication service, which radiocommunication services are designated as primary radiocommunication services and which are designated as secondary radiocommunication services;
 - (iii) where applicable, the conditions of use of a frequency band, to ensure efficient use of the spectrum and the prevention of interference among

radiocommunication services;

- (iv) whether the use of a frequency band for a radiocommunication service is subject to the condition that such radiocommunication service may not claim protection from harmful interference caused by another radiocommunication service;
- (b) pursuant to section 30(11) of the Act, the identification of radiocommunication services or purposes for which a frequency band may be used without the requirement of a frequency authorisation;
- (c) the identification of frequency bands that are available for shared use, and those that are, or will be, authorised on an exclusive basis;
- (d) the frequency bands that are reserved for Government use, including use by the Guyana Police Force, the Guyana Defence Force and civil aviation, harbour and maritime authorities;
- (e) where appropriate, a channelling plan for any given frequency band;
- (f) arrangements for visitors to Guyana to use radiocommunication equipment for demonstration, testing and other short-term purposes that have been authorised by the Minister;
- (g) policies on the length of the term for which frequency authorisations will be valid, subject to the term limitations in the Telecommunications (Licensing and Frequency Authorisation) Regulations 2020, and on the reassignment of frequency bands;
- (h) the procedures to be followed, and the criteria to be applied, by the Agency in making recommendations to the Minister on applications for frequency authorisations, not inconsistent with the Telecommunications (Licensing and Frequency Authorisation) Regulations 2020;
- (i) to the extent not otherwise provided for in or pursuant to the Telecommunications (Licensing and Frequency Authorisation) Regulations 2020, --
 - (i) authorisation for the use of frequency bands by requests for proposals, auction, tender, at fixed prices or on the basis of stated criteria;
 - (ii) the procedures that the Minister shall follow in deciding whether to grant or deny frequency authorisations; and

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- (iii) any charges to be paid to the Agency for the use of the spectrum on the award of frequency authorisations and on a periodic basis, in addition to any fees payable to the Agency.

Allocation,
reallocation,
assignment and
reassignment of
frequency bands.

7. (1) Subject to subregulation (2)(a) and the other provisions of these Regulations, and notwithstanding any frequency authorisation granted by the Minister under the Act or any authorisation to use the spectrum granted by any governmental authority (including the National Frequency Management Unit or the Agency) under any other written law, the Agency may, with the approval of the Minister and in accordance with any spectrum plan, allocate, reallocate, assign and reassign any frequency band.

(2) In the allocation, reallocation, assignment and reassignment of frequency bands, the Agency shall –

- (a) give priority to the needs of the Government in respect of matters of national security and public order; and
- (b) with regard to frequency bands for radiocommunication services that use satellite systems, ensure that access to space segment is made available on a non-discriminatory and equitable basis.

(3) The Agency, with the approval of the Minister, may limit the number of frequency authorisations for a given frequency band, or determine that any specified portion of the spectrum shall be assigned on an exclusive or a shared basis, to ensure the efficient use and management of the spectrum.

(4) (a) Where the Agency has determined in accordance with section 45 of the Act and these Regulations that frequency bands are to be allocated or reallocated, it shall publish a notice in the *Gazette* containing --

- (i) the details of the frequency bands proposed to be allocated or reallocated; and
- (ii) a statement that any person likely to be affected by the proposed allocation or reallocation may submit written comments to the Agency within a date that is no less than twenty-eight days from the date of the notice, including comments on the estimated cost to any such person of any reassignment that may result from a proposed allocation or reallocation,

and shall hold a public consultation within twenty-eight days following the end of the comment period provided for in

subparagraph (ii), at which interested persons may present their views on the proposed allocation or reallocation.

- (b) In finally determining an allocation or reallocation, the Agency and the Minister shall take into account any written comments submitted within the period provided for in the notice and any representations made at the public consultation under paragraph (a).

Specification of frequency bands in frequency authorisations. No. 4 of 2020

8. (1) The assignment of frequency bands shall be set out in frequency authorisations granted pursuant to the Act, except as provided in section 93(4)(b) of the Act, and the Telecommunications (Licensing and Frequency Authorisation) Regulations 2020.

(2) In connection with any allocation, reallocation, assignment or reassignment of a frequency band, the Minister, upon the recommendation of the Agency, may amend a frequency authorisation in accordance with section 35(1)(b)(ii) of the Act or terminate a frequency authorisation in accordance with section 34(1)(f) of the Act.

(3) No authorisation holder shall be entitled to compensation for any reassignment of a frequency band or amendment or termination of a frequency authorisation pursuant to the Act and this regulation.

Monitoring and harmful interference.

9. (1) The Agency shall routinely monitor uses of the spectrum in Guyana in order to ensure that -

- (a) authorisation holders use only the frequency bands assigned to them and operate only the radiocommunication equipment for which they are authorised, and comply with the Act, the regulations, and the terms and conditions of their frequency authorisations;
- (b) persons that have not been granted a frequency authorisation do not use the spectrum or operate radiocommunication equipment, except as may be permitted by the Minister by order under section 30(11) of the Act; and

(2) (a) The Agency may operate frequency monitoring stations for -

- (i) monitoring the use of the spectrum and the operation of radiocommunication equipment;
- (ii) ascertaining whether frequency bands and radiocommunication equipment are being used in accordance with the Act, the regulations, and the terms and conditions of a relevant frequency authorisation; and

- (iii) carrying out any technical function necessary for fulfilling its functions and the requirements of the Act, the regulations, any other applicable law, the Radio Regulations of the International Telecommunication Union for the time being in force, and any applicable international, regional and bilateral agreements to which Guyana is a party.
 - (b) A frequency monitoring station operated by the Agency shall be exempt from any of the provisions of the Act and these Regulations.
- (3) The Agency may -
 - (a) choose the time and location of its monitoring activities without necessarily notifying any person of any monitoring activity; and
 - (b) respond to specific complaints of unlawful use of the spectrum and of harmful interference or other problems resulting from actual or alleged use or misuse of the spectrum, by taking such measures as it deems necessary, including directly monitoring such actual or alleged use and misuse.
- (4) Where the Agency is of the opinion that -
 - (a) the use of any facility, radiocommunication equipment, terminal equipment or other equipment or apparatus is likely to cause, has caused or is causing harmful interference, whether or not all reasonable steps to minimise harmful interference have been taken; or
 - (b) any other illegal or unauthorised use or misuse of the spectrum, radiocommunication equipment or any other equipment or apparatus is likely to occur or has occurred,

the Agency may, in addition to and not in derogation of any of its powers under the Act, the regulations, or any frequency authorisation, -

- (i) serve notice on the person in possession of or with control over the facility, radiocommunication equipment, terminal equipment or other equipment or apparatus, requiring that person to cease such use within seven days from the date of service of the notice or an earlier time as may be required to avoid harm or other damage to the facilities, radiocommunication equipment, terminal equipment, other

equipment or apparatus, or the business, of any other person; and

- (ii) impose limits as to when and how the facility, radiocommunication equipment, terminal equipment or other equipment or apparatus may be used.

PART III ENFORCEMENT, OFFENCES AND PENALTIES

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| Prohibitions. | <p>10. No person shall --</p> <p>(a) except as provided for in section 30(11) of the Act, use the spectrum or install or operate any radiocommunication equipment other than in accordance with the frequency band assigned to that person and set out in a frequency authorisation granted by the Minister under the Act and the Telecommunications (Licensing and Frequency Authorisation) Regulations 2020; or</p> <p>(b) operate any facility, radiocommunication equipment, terminal equipment or any other equipment or apparatus in a manner likely to cause, or that causes, harmful interference.</p> |
| No. 4 of 2020 | |
| Issuance of directions. | <p>11. The Agency, with the approval of the Minister, may issue such written directions to any person as it deems necessary for the purpose of compelling compliance with these Regulations, and such person shall promptly comply with any such direction.</p> |
| Inspection. | <p>12. Without limitation to the powers of the Agency under the Act and these Regulations, the Agency may take such steps as it considers appropriate to verify any information provided pursuant to these Regulations, including exercising its entry, inspection and seizure powers under the Act.</p> |
| Penalty for violations of Regulations. | <p>13. Without prejudice to any other applicable remedies under the Act, a person that breaches or otherwise fails to comply with any provision of these Regulations, including any request or direction of the Minister or the Agency issued under these Regulations commits an offence and is liable on summary conviction to a fine of not less than five hundred thousand dollars and not more than two million dollars and to imprisonment for a term of one year.</p> |

Made this 23rd day of October 2020.



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Hon. Brigadier Mark Phillips, M.P.
Prime Minister