

“Draft”

Republic of the Union of Myanmar

Ministry of Communications and Information Technology

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The Ministry of Communications and Information Technology, on the authority conferred under Section 88, Sub-section (b) of the Telecommunications Law (the Pyidaungsu Hluttaw Law No. 31, 2013) prescribes the following guidelines.

Chapter I

Title, Scope and Definition

Title

1. These guidelines shall be called **Guidelines on Provision of International Gateway Facility Services**.

Scope

2. These guidelines provide a regulatory framework for provision of international telecommunications services through construction, maintenance and operation of network facilities in the Republic of the Union of Myanmar.
3. These guidelines are not applicable to the resale of international gateway services or resale of international network capacity.
4. These Guidelines are supplementary to the provisions and requirements contained in the Licensing Rules, Notification No. 16/2014 of the Ministry of Communications and Information Technology and the information provided in “Instructions and Application Form – Network Facilities Service (Individual) License and Network Service License” as

published by the Posts and Telecommunications Department (“the Department”).

Definition

5. Terms and expressions contained in the Telecommunications Law and in related Rules shall have the same meanings as are therein assigned to them where such terms are utilized in these Guidelines. In addition, the following expressions shall have the meanings given hereunder:

- (a) **Application** means the form and procedure for obtaining or renewing a license issued under the Licensing Rules.
- (b) **Cross-border Transit Facility** means a network facility used for the provision of telecommunications services that enables international communications and connectivity between foreign points, transits the borders of the sovereign territory of Myanmar and may, but does not necessarily, enable international communications and connectivity between Myanmar and one or more foreign points.
- (c) **International Gateway Services** means the construction and operation of a network facility for the provision of Telecommunications Services that enables international communications and connectivity between the Republic of the Union of Myanmar and one or more foreign points.
- (d) **Public Switched Telecommunications Network** means a telecommunications network that provides communications services connected through circuit-switched exchanges or switching centers between public end users on a common carrier basis.
- (e) **Technical bypass** means the routing of international calls, SMS or other traffic originating outside of Myanmar for termination to numbers administered and regulated by the Department without the consent of or under agreement with licensed operators providing services to customers who utilize such numbers.
[GSMA]
- (f) **Telecommunications Law** means the Telecommunications Law (the Pyidaungsu Hluttaw Law No. 31, 2013).

Chapter II

Eligibility Criteria, Pre-authorization Requirements and

General Conditions

6. In order to prevent anti-competitive cross-ownership or control of licensees permitted to provide international gateway services, the following conditions shall apply:
- (a) A licensee that has received authorization to provide international gateway services shall not own more than a ten (10) percent share in another licensee that has received a license or authorization to provide international gateway services.
 - (b) Directors or officers of a licensee granted a license or authorization to provide international gateway services shall be ineligible to serve as directors or officers or to hold shares in another licensee granted a license or authorization to provide international gateway services.
7. International gateway services may only be provided when authorized by a license or license modification approved as specified in Rule 9 of the Licensing Rules. In keeping with Section 5 of the Telecommunications Law, provision of any international telecommunications services, including international gateway services, without a license or authorization granted by the Department is illegal.
[GSMA]
8. For the purposes of providing for international telecommunications services, the authorized Licensee may build, install, own, operate and maintain, on a non-exclusive basis:
- (a) international transmission capacity, using any kind of network and any form of transmission technology, between places outside Myanmar and the relevant cable landing station or cross-border transit facility or radio communications facility in Myanmar;
 - (b) cable landing stations;
 - (c) VSAT devices (subject to paragraph 9(c), below);

- (d) international gateway facilities; and
- (e) facilities ancillary to the facilities required for provision of the international gateway services, such as a customer support center, billing systems or an intelligent network platform.

[GSMA]

9. Authorization to provide international gateway services does not authorize the provision of the following services:

- (a) communications to or between aircraft;
- (b) communications between satellite mobile handsets in Myanmar and satellites; and
- (c) communications between satellites and any very small aperture satellite earth station (VSAT) device or satellites and any other earth station to which end users are directly connected, other than by means of public telecommunications networks.

[GSMA]

10. When applying for authorization to provide international gateway services, the applicant shall provide technical details including:

- (a) location in Myanmar of the proposed facility or facilities;
- (b) design plans of the proposed facility and a network diagram of the related international connectivity;
- (c) proposed launch date for provision of the international gateway services;
- (d) initial total international bandwidth/capacity;
- (e) technical arrangements for data collection and storage as related to Paragraph 29, below and network security as related to Paragraph 30, below;
- (f) a disaster recovery plan;
- (g) a redundancy plan; and

- (h) a Quality of Service(QoS) minimum commitment.

Connection of Other Systems and Apparatus

11. No direct connectivity shall be established without being duly authorized by the Department between any telecommunications system outside Myanmar and a telecommunications facility or equipment inside Myanmar for the purpose of providing international telecommunications services.

12. Subject to condition set out in article 13 below, no direct connectivity shall be established without approval of the Department between the licensee's international gateway and a private network facility owned or operated by a non-licensed end user.

13. If a direct connection is established between an end user's site or telecommunications equipment controlled by an end user and the licensee's international gateway by means such as a leased circuit provided by any licensee, then:

- (a) that connection may only be used to provide international private telecommunications services to that end user; and
- (b) traffic originating from that end user may not be terminated on any public network within Myanmar.

[GSMA]

Performance Bond

14. At the time the Department grants the authorization for IGWF service, the licensee shall obtain a performance bond of one (1) year's duration in the amount of one million United States dollars (USD 1 million) from a bank or financial institution approved by the Department and shall have such performance bond issued in favor of the Department.

16. The licensee will renew the performance bond at its anniversary date for the each of the subsequent two (2) years.

17. No licensee that has posted a performance bond regarding its network build out obligations will be required to obtain an additional performance bond for construction and operation of international gateway facilities.

18. The following procedure will be used in order to determine whether the Department will have the right to exercise the performance bond due to failure of the licensee to fulfill the following conditions:

- (a) In the event that the Department determines the licensee fails to meet an approved launch date, a financial penalty of twenty-five (25) percent of the value of the performance bond may be exercised at every three-month period during the term of the commitment bond until such time as the licensee is deemed by the Department to have met the launch commitment.
- (b) In event that the Department determines that the licensee fails to meet its QoS minimum commitment as approved by the Department within a given year, a financial penalty of ten (25) percent of the value of the performance bond may be exercised.
- (c) If the licensee abandons its international gateway services authorization or such authorization is revoked or cancelled by the Department at any time during the three-year period for which the performance bonds are required, the Department may exercise up to fifty (50) percent of the value of the performance bond then in effect.

[based on Ooredoo/Telenor national licenses]

Chapter III

Responsibilities of Licensees

Compliance with Legal Obligations

19. A licensee authorized to provide international gateway services is obligated to comply with the terms and conditions of the license or authorization under which such facilities and services are provided and with such legal obligations as specified by any international agreements relating to telecommunications to which Myanmar is a party that are legally enforceable within the country, the Telecommunications Law and any other legislation to which the licensee is or may be subject.

20. The licensee is obligated to comply with the applicable regulatory framework as required by the Licensing Rules, including, but not limited to:

- (a) requirements set out in such rules and regulations as adopted by the Ministry with approval of the Union Government pursuant to Section 88(a) of the Telecommunications Law;
- (b) notifications, orders, directives, instructions and procedures issued by the Ministry pursuant to Section 88(b) of the Telecommunications Law;
- (c) orders, directives and guidelines issued by the Department pursuant to Section 88(b) of the Telecommunications Law; and
- (d) codes of practice issued by the Department pursuant to Section 83 of the Telecommunications Law.

Compliance with the Approved Network Plan

21. The licensee shall build, install, own, operate, and maintain the international gateway facility in line with the approved technical architecture based on its network plan provided with the licensee's application or as directed by the Department.

22. The licensee shall modify the approved technical architecture only with the approval of the Department.

Services Offered Under Tariff

23. The licensee shall:

- (a) file for tariff plan approval to the Department and provide services according to the approved tariff plan
- (b) must publish a tariff for the international gateway services offered to end-users in a manner approved by the Department and that supplies details of the services to be provided.

Interconnection and Access

24. The licensee shall prepare an interconnection and/or access agreement in line with the Interconnection and Access Rules to be used as a template for such agreement with any other licensee. The agreement template shall be submitted to the Department for review and approval.

25. As provided in Rule 4 of the Interconnection and Access Rules, all licensees authorized to provide international gateway services are hereby given notice to negotiate an interconnection and/or access agreement with any other licensee holding a NFS(I) License; such agreements to be based on the template as required in Paragraph 24, above. In the event of failure of licensees to conclude such agreements, the Department may determine applicable terms and conditions.

26. In the event the licensee proposes to modify the approved agreement, the proposed revised agreement shall be submitted to the Department for review and approval thirty (30) days before such modification is intended to become effective.

27. The licensee must provide, on request and to the extent technically feasible, facility space, utility services and access to landing stations, cable stations, satellite earth stations or any means for provision of international gateway services operated under the licensee's authorization that is requested by another international gateway service provider or licensee. The terms and conditions under which such space, utility services and access are provided will be subject to review by the Department for potential anti-competitive effects.

Redundant Network Capacity

28. The licensee shall maintain at all times redundant network capacity equal to a forty-five (45) percent minimum of the total capacity necessary to ensure connectivity for international services transiting through the licensee's international gateway. Such redundancy may be achieved through the use of network facilities or services obtained as a consequence of interconnection or access arrangements.

Storage and Preservation of Traffic Records

29. The licensee shall develop and implement a plan for data storage capacity sufficient to ensure capture and preservation of traffic records; such data storage plan to be filed with and reviewed by the Department.

Security of Facilities

30. The licensee shall develop and implement a plan to maintain appropriate and adequate security arrangements at its international gateway;

such security plan to be filed with and reviewed by the Department. A security plan should include control of entry and access to premises and provisions for identification and clearance of such persons to whom permission to enter is granted by the licensee or any authorized party.

Technical Bypass

31. The licensee may not knowingly facilitate technical bypass on his or her International Gateway by any party or offer services that constitute technical bypass.

32. The licensee shall not engage in any conduct which:

- (a) has the purpose or effect of concealing or misrepresenting the origin or nature of any traffic including, but not limited to, termination of calls employing masked Caller Line Identification (CLI);
- (b) is inconsistent with any rule, regulation, directive, code or guideline on traffic handover or bypass control measures that may from time to time be adopted by the Department and notified to the licensee; or
- (c) has the purpose or has or is likely to have the effect of avoiding or minimizing the licensee's liability to pay any charge owing and payable to another licensed operator.

[GSMA, Sri Lanka]

33. In the case of a voice call transmitted utilizing internet protocol format, the licensee shall not hand the call over to another network for termination on the public switched telecommunications network without having first translated it from internet protocol format to switched minute format.

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34. The licensee shall monitor international traffic to determine if technical bypass is occurring. When conducting such monitoring, the licensee shall utilize appropriate traffic monitoring software. The licensee will provide information to the Department concerning traffic handled through:

- (a) the licensee's international gateway; and
- (b) the licensee's interconnection arrangements with other parties

as may be specified by rules, regulations, directives, codes and guidelines notified to the licensee or as may be requested by the Department.
[GSMA, Sri Lanka, Bangladesh]

35. The licensee shall file quarterly reports with the Department, documenting the results of such monitoring.

36. Upon identification of technical bypass activities taking place over its network, the licensee shall propose to the Department actions to eliminate or ameliorate such bypass and may undertake such actions only upon approval by the Department.

37. The licensee shall collaborate with the Department to support enforcement actions against technical bypass, including, but not limited to, proposing actions to be taken against abuse of SIM cards of the type commonly known as “SIM boxes” or “GSM gateways” and such other similar bypass activities as may be identified.

Lawful Interception

38. The licensee shall make necessary technical arrangements in line with ETSI standard ES 201158 v1.2.1 for lawful interception requirements.

Registration of Customers

39. The Licensee shall maintain a register containing records of all customers and their individual particular information; such register shall be made available for inspection by the Department. The individual particular information should include the customer’s name, address, registration number, and details of the services provided, such as, but not limited to, international leased circuit speeds and destinations.

40. The register shall be kept for a period of not less than six (6) months from the date of termination of the services to the customer.

Compliance with Technical Specifications

41. The Licensee shall comply with any technical specifications prescribed by the Department for the purposes of ensuring technical compatibility or avoiding technical harm to the existing telecommunications network and/or systems.

Chapter IV

Enforcement Functions of the Department Regarding the Guidelines

42. The Department may cancel the authorization to provide international gateway services in the event that the licensee fails to meet the launch commitment at the end of the third year.

43. If, after investigation, the Department determines, on the basis of monitoring reports filed by the licensee and/or such other information the Department has determined to be pertinent and accurate, that technical bypass has occurred or is occurring, or any violation of the Law, Rules or the guideline on the licensee has occurred, the Department will develop an enforcement plan designed to address the specifically identified bypass, or the violation, giving due consideration to related proposals submitted by the licensee pursuant to Paragraphs 36 and 37, above.

44. As part of any enforcement plan, the Department will provide guidance to the licensee regarding such actions the Department and the licensee may be authorized to take to counter identified technical bypass and will, where appropriate, confer with law enforcement officials concerning related actions such officials may be requested to take.

45. If, after investigation, the Department determines that any licensee has knowingly engaged in or assisted conduct that constitutes technical bypass, the Department, acting under Rule 21 of the Licensing Rules, may:

- (a) modify the licensee's authorization to provide international gateway services in such manner as the Department considers appropriate in order to prevent such technical bypass in future; or
- (b) order the licensee to pay compensation to any other licensee equal to the net revenue which, but for the conduct of the licensee, the other licensee would have earned, plus a reasonable amount of interest as determined by the Department.

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