

Myanmar Centre for Responsible Business response to the [Public Consultation Issued by the Ministry of Communications and Information Technology of the Republic of the Union of Myanmar Proposed Rules for the Telecommunications Sector Relating to Licensing, Access and Interconnection, Spectrum, Numbering and Competition.](#)

November 4<sup>th</sup> 2013

The [Myanmar Centre for Responsible Business](#) (MCRB) would like to thank the Myanmar Ministry of Communications and Information Technology (MCIT) for issuing this public consultation and providing the opportunity to provide comments on the Proposed Rules for the Telecommunications Sector. We hope that other Ministries will follow the same process.

MCRB is pleased that this public consultation is the first of many and look forward to the opportunity to view and comment on these important future rules and procedures. We have included selected provisions from the rules in *italics* below, followed by our comments. We would be happy to provide any clarifications on our comments as needed.

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### **(I) 1. Proposed Rules for Telecommunications Sector Relating to Licensing, Access and Interconnection, Spectrum, Numbering, and Competition**

#### **Section II. Draft Licensing Rules**

##### **A. Objectives of the draft licensing rules, section 10, p6**

*“10. The proposed Licensing Rules are intended to encourage technological innovation and convergence, with a focus on providing an effective licensing framework...This is to be accomplished through a variety of mechanisms based on transparency and non-discrimination principles, including treating similarly situated licensees in the same manner, subjecting changes to policies and rules to public consultation processes, and ensuring that licensees have access to objective dispute resolution and appeals processes.”*

MCRB commends MCIT for this approach to transparency and non-discrimination

procedures.

## **B. Summary of regulatory approach**

### **2. Technology- and service-neutral, section 20, p10:**

*“20. A licensing framework based on technology and service neutrality is viewed as an important factor in promoting technological convergence and the development of new and innovative services and applications.”*

MCRB commends MCIT for referencing the importance of neutrality in delivering telecommunications services. This “network (or net) neutrality”, is an issue that is attracting growing international debate. Network neutrality is the guiding principle that preserves the very essence of the internet, its openness and free accessibility: the qualities that have made the internet a promoter of freedom of expression, and the generator of innovative ideas and effective competition. More specifically, network neutrality prescribes that all internet traffic shall be treated equally, without discrimination, restriction, or interference regardless of its sender, recipient, type, or content.<sup>1</sup> We strongly recommend that MCIT consider drafting rules on net neutrality to ensure technological innovation in Myanmar’s does indeed thrive and preferential treatment is not given to one service over another. Further information regarding the current debate on net neutrality in Europe can be found here:

Access Now (2013) [Net Neutrality- Ending Network Discrimination in Europe](#)

## **(II) [Annex A: Proposed Licensing Rules](#)**

### **PART V. SPECIFIC RIGHTS AND OBLIGATIONS OF TELECOMMUNICATIONS SERVICE LICENSEES**

#### **36. Consumer protection obligations, p21**

*“Subject to Chapter IX of the Telecommunications Law and relevant rules, Licensees shall*

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<sup>1</sup> Description of net neutrality taken from: <https://www.accessnow.org/blog/2013/10/23/access-releases-net-neutrality-paper-amid-growing-international-debate>

1. a) *Establish standardized contracts with subscribers;*
2. b) *Provide subscribers detailed and accurate billing;*
3. c) *Make available to subscribers a fair and transparent a dispute resolution procedure;*
4. d) *Publish service access conditions, including tariffs and quality of service; and*
5. e) *Provide specific, written protections to subscribers relating to personal data and information privacy.”*

MCRB commends MCIT for the inclusion of this paragraph. We assume that there will be further, more detailed data protection regulations forthcoming so have not provided comments on the suggested details that should be covered here. We note that with respect to personal data and information privacy, the following points will be important to include in any forthcoming legislation or regulations:

- Licensees seek user consent before information is collected, used or disclosed
- Users are notified of the purposes for which data is collected, used or disclosed
- Users are given appropriate ‘opt out’ mechanisms to prevent certain data from being collected, used or disclosed
- Licensees ensure security arrangements are made to protect user’s personal data from unauthorised access

## **PART VII. MONITORING AND ENFORCEMENT**

### **40. Provision of information and 42. Permission to inspect**

#### **40. Provision of information, p23**

*“a) Subject to Chapter XII of the Telecommunications Law and Applicable Regulatory Framework, the Department may:*

- i. *Establish regular, reasonable reporting requirements on the activities of all or certain categories of Licensees and*
- ii. *Issue a written request to specific Licensees for any information, data, document, agreement, operating log, papers or other information required by the Department to discharge its functions under the Telecommunications Law, provided that such request is reasonable and not unduly burdensome.*

*b) All licensees must comply with information requests or reporting requirements from the Department or Ministry.”*

#### **42. Permission to inspect, p24**

*“Subject to Chapter XII of the Telecommunications Law, the Department shall have the authority to inspect the facilities and documents of any Licensee, subject to a reasonable notice period prior to inspection.”*

We are assuming that clauses 40 and 42 in the Proposed Licensing Rules here and Chapter XII of the Telecommunication Law (2013) regarding Inspection and Supervision applies only to information requests regarding the Licensee’s compliance with Licensing Rules. It will be important to ensure that there is no conflict between this set of Licensing Rules and any forthcoming legal procedures regarding lawful interception, the process for any suspension of networks, or procuring user data for law enforcement purposes. MCRB would be interested in providing comments on any such rules.

If these clauses cover a subscriber’s details or data, then further details should be added to the Licensing Rules, or forthcoming rules on lawful interception, concerning requests for such disclosure. The following points would be important to cover in any such rules:

- The kind of information that can be requested
- Requiring that any such request is made in writing and refers to the relevant legal basis for making the request
- Specifies any time frame for the request
- The contact point from the Ministry authorised to make such requests and the contact point for resolving any issues concerning the request
- Detail the process by which requests for information would be made
- Detail the process for the Licensee to question or challenge the request

Further guidance is available here:

- Council of Europe (2008) [Guidelines for the Co-operation Between Law Enforcement and Internet Service Providers](#)
- The Global Network Initiative ([GNI Implementation Guidelines](#))

- European Commission, [ICT Sector Guide on Implementing the Guiding Principles on Business and Human Rights](#) (p44-45)

#### **46. Right to appeal, p25**

*“In the event that a Licensee disputes any decision issued by the Ministry or Department of the Licensing the aggrieved Licensee may:*

- a) Request reconsideration within thirty (30) days of the issuance of the decision;*
- b) Appeal the decision to the Ministry within thirty (30) days of the issuance of the decision if the matter involves:
 
  - i. An administrative action under Section 57 of the Telecommunications Law or*
  - ii. A dispute relating to telecommunications technology pursuant to Section 52 of the Telecommunications Law;**
- c) Appeal to a judiciary court within thirty (30) days of the issuance of the decision if the matter involves a dispute not relating to telecommunications technology pursuant to Section 52 of the Telecommunications Law;*
- d) Appeal to the Appeal Tribunal within forty-five (45) days of the issuance of the decision if dissatisfied with the Ministry’s decision regarding dispute resolution; or*
- e) Take any other action authorized by law.”*

MCRB is pleased to see that in principle, there is an opportunity for judicial review of administrative decisions as this is an important principle. However, we do not find the provisions above as clear as they could be. It seems that there is no opportunity to appeal decisions related to telecommunications technology. In addition, it is not clear under what circumstances a ministerial decision can be challenged under Section c) compared to Section d) above.

It is also not clear whether under Section 51 of the Telecommunication Law (2013) the process for service license holders to resolve disputes, other than relying on the regulator.

### (III) [ANNEX B: Proposed Interconnection and Access Rules](#)

MCRB has no initial comments on this annex.

### (IV) [Annex C: Proposed Spectrum Rules](#)

#### 19. Compliance, (no page numbers)

##### k) Right of Inspection.

*“The Licensee, upon receiving a written request from the Department pursuant to the Section 40 of the Telecommunications Law and the Applicable Regulatory Framework, shall*

- i. permit the Department, or any Person designated by the Department, to enter upon the Licensee’s premises to conduct an inspection, examination, investigation or audit of the Licensee to the extent reasonably required by the Department to discharge its functions under the Telecommunications Law.*
- ii. provide any assistance reasonably requested by the Department or by its designee;*
- iii. except in emergency or other exigent circumstances, be provided reasonable advanced notice of any inspection by the Department, which will take reasonable measures to avoid causing injury or damage to Persons or property.”*

We make the same point here as with respect to Section 40 and Section 42 of Annex

A regarding Permission to Inspect above. We assume that this relates only to

inspecting information regarding the Licensee’s compliance with spectrum rules, and

not regarding any information pertaining to a subscriber’s details or data.

#### 39. Wholesale Access Agreements (no page number)

*“a) The Licensee may enter into a Spectrum Wholesale Access Agreement with an Other Licensee pursuant to Section 33 of the Telecommunications Law and the Applicable Regulatory Framework, at the written request of one of the Licensees.*

*b) If the Department, after providing notice and a reasonable opportunity for comment, issues a directive pursuant to **Section 88(c)** of the Telecommunications Law and the Applicable Regulatory Framework, the Licensee shall seek to negotiate an agreement with any Other Licensee designated by the Department. In such case, the Licensee shall provide Spectrum Wholesale Access to Radio Spectrum assigned pursuant to this License on an equitable and non- discriminatory basis, which shall not be of a lower technical standard and quality than provided in the Licensee’s own network.*

*c) Any Spectrum Wholesale Access Agreement adopted pursuant to provision a) or b) above shall be submitted to the Department and pursuant to **Section 88 (c)** of the Telecommunications Law, shall not become effective until the Department has granted approval...”*

The Telecommunications Law does not include Section 88 (c), only Section 88 (a) and (b). We assume this is an error that will be corrected in the final version.

**(V) ANNEX C1- C8**

MCRB has no initial comments on this annex.

**(VI) [ANNEX D- Proposed Numbering Rules](#)**

MCRB has no initial comments on this annex.

**(VII) [ANNEX E- Proposed Competition Rules](#)**

MCRB has no initial comments on this annex.