

Notification of the National Telecommunications Commission

Re: Criteria for Frequency Assignment Application

Whereas, it is deemed expedient to prescribe criteria for the assignment or permission to use frequencies to certain telecommunications businesses which are deemed necessary and appropriate before a supplementary permanent framework shall be implemented;

By virtue of Section 25, Section 50, Section 51 (1), (3) and (5), Section 52, Section 53 and Section 54 of the Act on Organization to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunication Services, B.E. 2543 (2000) which contains certain provisions that place certain limitations on individual rights and liberties that Section 29 in conjunction with Section 34, Section 37, Section 39, Section 40, Section 41, Section 45, Section 50 and Section 57 of the Constitution of the Kingdom of Thailand so permit by virtue of law; and by virtue of Section 10 of the Telecommunication Business Act B.E. 2544 (2001) which contains certain provisions that place certain limitations on individual rights and liberties that Section 29 in conjunction with Section 34, Section 37, Section 39, Section 48 and Section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law, the National Telecommunications Commission hereby issues a Notification on Criteria for Frequency Assignment Application to be effective during the drafting period of the long-term measures as follows:

Clause 1 The National Radio Frequency Assignment and Management Coordination Commission Notification on Criteria for Radio Frequency Assignment, dated 4th November 1997, shall be revoked and superseded by the criteria prescribed herein.

Clause 2 In this notification,

“Non-Commercial Use” means non-profit or non-commercial public service operations, such as public administration operations, specific telecommunications network for charity or for matters related to national security or disaster relief or other free public services.

“Commercial use” means operations carried out for commercial benefits, both direct or indirect profits, including operations carried out to facilitate internal management of an organization with the purposes of management-cost reduction or any other operation that may generate income or profit for such organization.

Clause 3 Frequencies shall be assigned when at least one of the following objectives is met:

3.1 To maximize economic and social benefits for society at large.

3.2 To implement efficient, fair and transparent frequency assignment process for maximum benefits to the general public on both national and local levels.

3.3 To provide a means for extensive distribution of frequency benefits and to promote fair competition.

3.4 To promote maximum economical and efficient utilization of frequency.

3.5 To comply with the National Economic and Social Development Plan directives and all economic sectors.

3.6 To promote development of technology and radiocommunication business.

3.7 To lay the foundations for access to frequencies for new businesses and government agencies.

Clause 4 The National Telecommunications Commission shall assign or grant permission to use frequencies to certain telecommunications businesses that it deems necessary and appropriate under the following circumstances:

4.1 New government agencies established by the government policy that fall into one of the following categories:

4.1.1 Newly established government agencies whose new missions justify frequency assignment.

4.1.2 An agency whose missions are an outgrowth of the missions of the original agency whose existing frequencies have to be set aside or split to serve the new missions, or

4.1.3 An existing agency with newly assigned missions yet inadequate number of frequencies, thus, deserves new frequency assignment.

4.2 Circumstances involving the granting of a licence or a renewal of licence to licensees who are already assigned frequency for commercial or non-commercial use. Such licensing period shall not exceed one year for each licence issuance or renewal or shall be valid until the new criteria on frequency assignment come into effect, whichever comes first.

4.3 Circumstances involving frequency assignment request for urgent non-commercial use, whereby a failure to receive frequency assignment may result in negative impact on the public. Licence applicants shall have to provide proof of such exigencies.

4.4 Circumstances involving request for frequency change due to interference, whereby a failure to receive frequency assignment may intensify the interference and adversely affect end users in the service areas.

4.5 The Commission may assign frequency under any other circumstances in addition to 4.1 through 4.4, on a-case-by-case basis, provided that their purposes are consistent with the objectives and criteria prescribed herein.

Clause 5 The National Telecommunications Commission shall assign frequencies under five suitability criteria.

5.1 Frequency assignment applicants' suitability

The National Telecommunications Commission shall take into consideration applicants' suitability with regards to their qualifications, financial status, and past frequency usage.

5.1.1 Frequency assignment applicants shall be a corporate registered under the Thai law or whose corporate status is certified under the Thai law.

5.1.2 Frequency assignment applicants shall disclose information on their financial status and performance with details on past and projected performance, revenue earning capability, profitability, leverage and coverage ratios, investment capabilities investment potentials, and implementation of the operational plan for the project requesting frequency assignment.

5.1.3 Frequency assignment applicants shall submit a report showing that their operation performance has been consistent with the objectives and that they have strictly observed the conditions of frequency usage regarding transmission capacity, standards of radio telecommunications equipment and bandwidth (if applicable). The Commission may appoint a group of persons, a juristic person, or a third party to inspect, review, or prepare a report on the applicants' operational performance.

5.2 Technical suitability

With respect to technical suitability, the National Telecommunications Commission shall take into consideration consistency with the National Frequency Assignment Table and the use of scarce frequency resources with maximum economy and efficiency, the details of which are as follows:

5.2.1 Consistency with the National Frequency Assignment Table. The frequency under request shall be consistent with the National Frequency Assignment Table and justifiable for the radiocommunication business, and shall not create interference to other telecommunications stations or those in the neighbouring countries.

5.2.2 Frequency assignment applicants shall have to demonstrate how the frequency under request shall be used in the most economical and efficient way through a selection of suitable radiocommunication technology that employs minimum bandwidth. Other factors such as cost efficiency,

frequency reuse plan, frequency sharing, and reduction of frequency interference risk resulting from unsuitable locations or unwanted emission of the proposed technology shall be taken into consideration.

5.3 Social and environmental impact

With respect to frequency assignment request in order to provide services to the public, for commercial use in particular, the National Telecommunications Commission shall take into consideration measures and guidelines that the applicants shall employ to prevent probable social and environmental impact, both directly and indirectly. Examples of these unwanted impacts are: misuse of frequencies, crime committed through telecommunications system, junk e-mail messages, including measures and solutions to misuse of frequencies that deviate from or are inconsistent with the end users' service objectives.

5.4 Project's financial and economic suitability

With respect to frequency assignment for commercial use, the National Telecommunications Commission shall decide whether the investment is suitable or cost effective based on its parameters, calculation method, and analysis of the investment's financial and economic suitability.

Criteria for frequency assignment prescribed in Paragraph One shall be based on such indicators as Net Present Value (NPV), Benefit Cost (B/C) Ratio, cost effectiveness, Financial Internal Rate of Return (FIRR), Economic Internal Rate of Return (EIRR), and sensitivity and risk analysis.

5.5 Consistency with the Master Plan for Telecommunications Services, the Frequency Plan, and the Master Plan for Spectrum Management.

The National Telecommunications Commission shall take into consideration whether the project's objectives, goals and expected outcome are consistent with the Master Plan for Telecommunications Services, the Frequency Plan, and the Master Plan for Spectrum Management.

Clause 6 Individuals wishing to apply for frequency assignment shall have to submit to the Commission for consideration the minimum of the following:

6.1 Frequency assignment applicant suitability

6.1.1 Qualifications

Frequency assignment applicants for commercial use shall have to submit to the National Telecommunications Commission documents confirming their corporate status as established under the Thai law or as certified under the Thai law in conjunction with a corporate profile consisting of the following information:

(a) Subsidiary company profile

Frequency assignment applicants shall supply detailed information on any subsidiary company that has previously been assigned frequency or is applying for frequency assignment or has engaged in related business with the frequency assignment applicants, in the case that the said applicants holds over fifty percent of the paid shares of the subsidiary, either directly or indirectly.

(b) Major shareholders and cross-shareholders profiles

Frequency assignment applicants shall disclose the shareholding structure of both major and minor shareholders who hold between five to ten percent of the shares, and shall submit the business structure of their operations that are related to telecommunications services. Crossed shareholding structure shall also be submitted, if possible.

“Major shareholder” means a shareholder who directly or indirectly hold combined shares in the company applying for frequency assignment over ten percent of the said company’s paid shares, including shares held by the major shareholder’s related persons.

“Cross-shareholding” refers to an act whereby two or more companies, partnerships or corporate mutually hold each other’s shares for the purpose of forming a business alliance or establishing a specific consortium, partnership, or corporate, particularly in the form of a holding company, or a business network in which the companies, partnerships or corporate are responsible for the control of administrative, financial, or management policies, in such a way that it is difficult to determine the ownership or relations among subsidiaries.

(c) Affiliate profile

Frequency assignment applicants shall disclose their financial relationship with the following individual or juristic persons:

(1) General partnership or a juristic partnership with whom the frequency assignment applicant company has formed partnership.

(2) Limited partnership with whom the frequency assignment applicant company has formed limited or unlimited partnership holds combined shares exceeding thirty percent of the total shares in the limited partnership.

(3) Corporation or public company in which the frequency assignment applicant company or the partnership in (1) or (2) holds combined shares exceeding thirty percent of the total amount of paid shares of such corporation or public company.

(4) Corporation or public company in which the frequency assignment applicant company or the partnership in (1) or (2) or a company in (3) hold combined shares exceeding thirty percent of the total amount of paid shares of such company.

(5) Juristic person that the frequency assignment applicant company has the authority to act on its behalf.

(d) Related persons profile

The frequency assignment applicants shall provide a list of names and information on individuals or groups of related persons, namely:

(1) Executives, and executives with kinship relations to major shareholders, major shareholders who have administrative authority in the company, prospective nominees for executive positions or positions of administrative authority in the applicant company, or its subsidiary as well as other related persons and their close relatives.

(2) Any juristic person whose major shareholders or persons with management authority hold the following positions in the applicant company or its subsidiaries:

(2.1) Executives

(2.2) Major shareholders

(2.3) Persons with management or supervision authority or proxies.

(2.4) Prospective nominees for executive positions or positions of administrative or supervisory authority or proxies.

(2.5) Related persons and close relatives of persons in (a) to (d).

(3) Any person whose actions indicate his or her status as a proxy or being under the influence of persons in (1) and (2) in making decisions, setting policies, and managing business operations, or any other individuals in similar circumstances such as consultants, coordinators or proxies.

6.1.2 Frequency assignment applicant's financial status and performance report

Frequency assignment applicant for commercial use shall submit for consideration annual reports of past and projected performance which contain:

(a) Past performance: Submission of annual reports for the entire period of frequency assignment within the past five years. The reports shall contain the following financial information: balance sheets, profit and loss statements, cash flow statements, and important financial ratios such as Return

on Asset (ROA), Return on Equity (ROE), Return on Invested Capital (ROIC), current ratio, Funds from Operation (FFO)/total debt, FFO investment coverage, and EBIT interest coverage.

(b) Projected performance: Submission of business plan for the duration consistent with the proposed projects for the next five years. The plan shall include information on nature and categories of services, management structure, investment plan and the aforementioned financial data and important financial ratios.

6.2 Technical suitability

Frequency assignment applicants shall provide proof of consistency with the National Frequency Assignment Table and the use of scarce frequency resources with maximum economy and efficiency, with details prescribed by the National Telecommunications Commission notification.

6.3 Social and environmental impact

For a project requesting frequency assignment, especially one with commercial purpose, that may have social or environmental impact, applicants shall prepare a report detailing proposed project's impact in terms of impact quantity and values (if any), for example, the project's impact on education, public safety, information, public utility services, transportation and security. It shall include social and environmental impacts, such as misuse of frequencies, crime committed through telecommunications system, junk e-mail messages, etc. In this regard, the applicants shall specify clear and concrete measures for the correction and alleviation of such impacts, including any expenses that may arise from the implementation of the said measures.

6.4 Project's financial and economic suitability

Frequency assignment applicants for commercial purpose shall have to attach the following supporting documents on project's financial and economic standings to the National Telecommunications Commission for the consideration.

6.4.1 Estimate parameters

(a) Macro-economic parameters which consist of economic variables to be included in the calculation, such as economic growth rates, inflation rates, interest rates, foreign exchange rates, etc.

(b) Revenue parameters which consist of variables to be included in calculating project returns or revenues, such as demand forecast, service or sales targets, service charges, etc. Other parameters to be taken into consideration are technical parameters, service capabilities, types of users, user behaviours, and nature of business or service.

(c) Expenditures parameters which consist of variables to be

included in calculating project expenditures, such as investment costs, operating and maintenance costs, Weighted Average Cost of Capital (WACC), repayment of capital and interest, and cost of prevention or correction of environmental impact (if any), etc. In this regard, applicants shall have to use important project operating parameters as bases for calculations, such as nature of investment, investment sources (capital, domestic and foreign loans), funding source conditions, and capital and interest repayment period.

(d) Operating risks parameters consist of 3 aspects:

1) Business risk, such as free trade and competition, technological risk, and operating risk; 2) Financial risk, such as exchange rate risks, credit and liquidity risks, interest rate risks, and non-performing loans; and 3) Risk from criteria and regulation changes, for example, connections between provisions of law and association with the enforcement of other laws.

6.4.2 Cash flow estimate and calculated project returns

Frequency assignment applicants shall submit the following supporting documents to the National Telecommunications Commission for consideration:

(a) Estimate of incoming and outgoing cash flows for the entire period of the project, from the time of project planning through to construction and implementation.

(b) Estimate of incoming and outgoing cash flows for the project, including social and environmental benefits or impacts arising from the project implementation which can be expressed in monetary values (if any).

(c) Sensitivity and risk analysis in at least three cases: base case, best case and worst case.

(d) Calculation of project's financial and economic returns, such as Net Present Value (NPV), Benefit Cost Ratio (B/C ratio), cost effectiveness, Financial Internal Rate of Return (FIRR), and Economic Internal Rate of Return (EIRR).

6.5 Consistency with the Master Plan for Telecommunications Services, the Frequency Plan, and the Master Plan for Spectrum Management.

Frequency assignment applicants shall indicate the consistency of its application with the development directions and frameworks of the Master Plan for Telecommunications Services, the Frequency Plan, and the Master Plan for Spectrum Management.

6.6 Self-assessment and justification for frequency assignment

Frequency assignment applicants shall prepare a brief self-assessment report giving reasoning, needs, and benefits from project implementation, in accordance with the rules for considering frequency assignment in Clause 6.1-6.5 above.

Clause 7 Licence fees and frequency usage fees shall comply with the following criteria:

7.1 Licence and licence renewal fees are in accordance with the rates prescribed by the National Telecommunications Commission.

7.2 Frequency usage fees are consistent with the Ministry of Information and Communication Technology Notification on Frequency Usage Compensation, dated 10 March 2004, which stipulates that frequency users shall have to pay usage fees until such time as the National Telecommunications Commission shall decide otherwise, or they shall comply with a National Telecommunication Commission resolution deeming it appropriate to set fees on a case-by-case basis.

Clause 8 The National Telecommunications Commission may issue an exemption to any or all Clause contained in this notification to comply with and respond to the policies, types and consideration procedures appropriate to each type of business or to the nature of the frequency assignment applicant's business, or to the intended use of frequencies, or to the nature and categories of service, the extent of benefits and impact on users, and size of investment.

Clause 9 This Notification shall take effect from the day after the date of its promulgation in the Government Gazette.

Clause 10 This notification shall supersede all rules, regulations and notifications that appear herein or that contravene or conflict with this notification.

Issued on the 26th day of April 2005

General Choochart Promphasid

Chairman of the National Telecommunications Commission