

MINISTERIAL ORDER N° 3/DC/04 OF 07/06/2004 ON TELECOMMUNICATIONS NETWORKS AND SERVICES NOT REQUIRING A TELECOMMUNICATIONS LICENSE

The Minister of Infrastructure,

Given the Constitution of the Republic of Rwanda of 4 June 2003, as amended to date, especially in its Articles 120 paragraph one and 121 paragraph one-2°;

Given Law n° 44/2001 of 30 November 2001 governing Telecommunications, especially in its Article 10 ;

Given Law n° 39/2001 of 13 September 2001 establishing an Agency for the Regulation of certain public utilities, especially in its Article one ;

After consideration and approval by Cabinet, meeting in its session of 28 January 2004;

ORDERS :

CHAPTER ONE : GENERAL PROVISIONS

Article one : Definitions

In this Order, the terms referred to below shall have the following meanings :

Board	The Board of Directors of the Rwanda Utilities Regulatory Agency established by Law n° 39/2001
Law n° 39/2001	Law n° 39/2001 of 13 September 2001 establishing an Agency for the Regulation of certain public utilities
Law n° 44/2001	Law n° 44/2001 of 30 November 2001 governing Telecommunications
Minister	Minister responsible for telecommunications
Republic	The Republic of Rwanda
Non-Public Network	A telecommunications network not accessible to the public
Internal Non-Public Network	A Non-Public Network: installed within the user's premises neither installed on a public property – including the radio electric spectrum, nor on third party's premises
Value-Added Services	Services appearing on the list of value-added services prepared by the Board

For all other terms, except as provided otherwise by this Order, the definitions set forth in the Agency Law 2001 and Law n° 44/2001 shall, where applicable, apply to this Order.

Article 2 : Scope

In application of Article 10 of Law n° 44/2001, this Order sets forth the circumstances in which a telecommunications license, issued under Article 5 of Law n° 44/2001, is not required for the installation and/or operation of a telecommunications network and for the provision of telecommunications services.

The circumstances referred to in the paragraph above shall in no way exempt the natural person or organisation undertaking such installation, operation and/or provision from any other requirements applicable to it under Law n° 44/2001 or any other legislative or regulatory text, including in particular :

- (i) the obligation of obtaining any applicable radiocommunications license under Article 33 of Law n° 44/2001;
- (ii) the requirement, under Article 5 of Law n° 44/2001, that any person or organisation wishing to install and/or operate a telecommunications network and/or provide a telecommunications service within, to or from Rwanda, must fulfill the legal requirements for doing business within the Republic.

CHAPTER II : CIRCUMSTANCES REQUIRING PRIOR DECLARATIONS

SECTION 1: NETWORKS AND SERVICES SUBJECT TO PRIOR DECLARATION

Article 3 : Networks subject to prior declaration

Subject to decisions made pursuant to Article 10 ("List Modification") below, a natural person or organisation who has made a prior declaration to the Board (a "Network Declaration"), in compliance with the provisions of this Order, may install and/or operate, without a telecommunications license but in accordance with the applicable law, Non-Public Networks the termination points of which are less than a certain distance apart, as defined from time to time by the Board and published in the Official Gazette after consultation with the Minister.

Article 4 : Services subject to prior declaration

Subject to decisions made pursuant to Article 10 ("List Modification") below, a natural person or organisation who has made a prior declaration to the Board (a "Service Declaration"), in compliance with the provisions of this Order, may provide, in accordance with the applicable law, the following telecommunications services without a telecommunications license :

- any Value-Added Service, where such Value-Added Service is provided via a network the installation and/or operation of which requires :
- (a) a telecommunications license pursuant to Article 5 of Law n° 44/2001;
 - (b) a radiocommunications license pursuant to Article 34 of Law n° 44/2001 ; or
 - (c) a Network Declaration.

SECTION 2: DECLARATION PROCEDURE

Article 5 : Declarations to be made to the board

Network Declarations and Service Declarations (collectively, "Declarations") shall be made to the Board at least two (2) months prior to the commencement of the activities of the natural person or organisation making the Declaration (the "Declarant").

Article 6 : Contents of declaration

A Declaration shall set forth, at least :

- (i) the identity of the Declarant including its name and address, and where it is an organisation, its registered address and registration number ; its shareholding ; its annual accounts for the previous two (2) financial years ; its articles of association ; current commercial and industrial activities ; industrial or commercial cooperative agreements ;
- (ii) technical details of the network or service to which the Declaration relates ;
- (iii) the purpose for which the Declarant intends to use the network or service ;
- (iv) the precise manner and geographical area in which the Declarant intends to use the network or service ;
- (v) details of any frequency range sought and the purpose, precise manner and geographical area in which the Declarant proposes to use the frequency spectrum ;
- (vi) any telecommunications or radiocommunications licenses which the Declarant holds, and any other Declarations which the Declarant has made, under the Telecommunications Act 2001.

Where the information contained in the Declaration is considered inadequate by the Board, it may, within one (1) month of receipt of the Declaration, send a request for supplementary information to the Declarant.

Article 7 : Right to oppose

Without prejudice to any other rights it may enjoy, under any applicable legislative or regulatory text, to prevent, suspend, halt or otherwise interrupt the installation, operation and/or provision in question, the Board shall have the right, within a one (1) month period following the date on which a complete Declaration is received, to inform the Declarant that it refuses to allow the installation and/or operation of the network or the provision of the service referred to in the Declaration. The Board may issue such a refusal only where it reasonably considers that the installation and/or operation of the network, or the provision of the service, require a telecommunications license under Article 5 of the Telecommunications Law 2001.

In such a case, the Declarant shall refrain from pursuing its intended activities, as described in the Declaration, until such time as he/she has obtained the appropriate telecommunications license.

However, the Declarant shall have the right to appeal against a decision of the Board made pursuant to this Article. Such appeal shall not suspend the effectiveness or enforcement of the Board's refusal.

CHAPTER III : CIRCUMSTANCES NOT INVOLVING PRIOR DECLARATIONS

Article 8 : Networks not subject to declaration

Subject to decisions made pursuant to Article 10 ("List Modification") below, any natural person or organisation may install and/or operate, in accordance with the applicable law, the following telecommunications networks without a telecommunications license, regardless of whether or not it has made any declaration to the Board :

- (i) Internal Non-Public Networks ;
- (ii) low-power, short-range radiocommunications networks whose categories are determined from time to time by the Board, in consultation with the Minister and with the Minister responsible for defense.

Article 9 : Services not subject to declaration

Subject to decisions made pursuant to Article 10 ("List Modification") below, any natural person or organisation may provide, without a telecommunications license and regardless of whether or not he/she has made any declaration to the Board, but in accordance with the applicable law, any services provided via a network listed in Article 8 ("Networks Not Subject to Declaration") above.

CHAPTER IV : MISCELLANEOUS PROVISIONS

Article 10 : List modification

Upon proposition by the Board, the Minister shall add or remove networks or services to or from the lists of networks and services the installation, operation or provision of which does not require a telecommunications license, as set forth in this Order.

In that event, the Minister shall publish the decision in the Official Gazette at least two (2) months prior to the introduction of the modifications concerned.

Article 11 : Duty to inform

Any natural person or organisation undertaking telecommunications activities pursuant to the provisions of this Order shall be obliged to respond promptly to any reasonable request for information concerning such activities, made by the Board.

Article 12 : Assignment of networks and services

The owner of any network or service the installation, operation and/or provision of which does not require a telecommunications license, may freely assign, pledge, mortgage or otherwise encumber such network or service, provided however that where such network or service has been declared to the Board, the owner informs the Board of the intended assignment, pledge, mortgage or other operation, at least two (2) months prior to its realization.

Article 13 : Cessation of activities

The owner of any network or service the installation, operation and/or provision of which does not require a telecommunications license, may at any time cease installation, operation and/or provision of such network or service, provided however that where such network or service has been declared to the Board, the owner informs the Board of the intended cessation, at least two (2) months prior to its realization.

Article 14 : Form of communications

Unless the context requires otherwise, all notifications and communications required or possible under this Order shall be :

- (i) sent to the recipient by registered post with return receipt requested ; or
- (ii) hand delivered to the recipient, and a duly signed delivery receipt obtained. Where the recipient is an organisation, the delivery receipt shall also be duly stamped.

Article 15 : Previous and contrary provisions

All prior provisions contrary to this Order are hereby repealed.

Article 16 : Entry into force

This Order shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 07/06/2004

The Minister of Infrastructure
Dr NTAWUKULIRYAYO Jean Damascène
(sé)

Seen and sealed with the Seal of the Republic:

The Minister of Justice
MUKABAGWIZA Edda
(sé)