



## FIJI COMMERCE COMMISSION

**HEAD OFFICE & CENTRAL EASTERN  
DIVISION**

Level 1 Garden City Complex, Raiwai,  
Suva.

P O Box 5031, Raiwaqa, Suva.

Phone: (679) 337 2178

Fax: (679) 337 2389

Email : [helpdesk@commcomm.gov.fj](mailto:helpdesk@commcomm.gov.fj)

Website: [www.commcomm.gov.fj](http://www.commcomm.gov.fj)

**WESTERN DIVISION**

1st Floor, Downtown Holdings Bldgs,  
155 Vitogo Parade,

P O Box 594, Lautoka

Telephone/Fax: (679) 666 1853

**NORTHERN DIVISION**

Lot 3, Silas Ramzaan Street,

P O Box 262, Labasa

Telephone/Fax: (679) 881 1155

### Final Authorisation

### Control of Prices of Interconnection Services Rates

of

Telecom (Fiji) Limited

Date Issue: 13 November 2014

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*"To promote Competition in the Fijian Markets"*

## 1.0 Introduction

- 1.1** The world is rapidly moving towards an economic system based on the continuous and ever present availability of information. Recent advances in telecommunications technology have been an important vehicle for information exchange and knowledge to develop as valuable commodities. Countries and institutions equipped with the requisite telecommunications systems are rapidly moving into post-industrial and information-based expansion.
- 1.2** It has been established fact that the economic development of a nation can be accelerated by improvements in the country's ICT (Information Communication Technologies) infrastructure, because ICT if well harnessed provides a proper platform for development across all sectors of the economy. Results of recent studies had shown that economic development depends on the overall progress of a country's ICT sector and that without such progress, both economic and private enterprises suffer.
- 1.3** Imagine a world without telephones where, people have to physically meet to communicate is difficult to conceive of. Yet this is the stark reality for people in parts of the developing world, although the recent advent and spread of mobile phones works to mitigate the situation.
- 1.4** Daily activities such as shopping, entertainment, banking, manufacturing, office work, education, medical care, governance and even commuting have become increasingly dependent on information and communication networks. Indeed ICT networks are now making it possible for developing countries around the globe to participate in the global economy in ways that simply were not possible in the past. This reality is reflected in the rapid growth telecommunication has been experiencing around the world.
- 1.5** The telecommunication sector across the globe has been identified as one with generic effect on almost all other sectors of the economy. Its function in any economy is described as a strategic one aimed at promoting economic growth and as one that has linkages with other sectors. For the developing world, a modern telecommunications infrastructure is not only essential for domestic economic growth, but a prerequisite for participation in increasingly competitive world markets and for attracting new investments.
- 1.6** The role of telecommunication infrastructure in enhancing economic growth has generated a lot of interesting discussions and debates. Arguments are that the development of a modern nation to its full potential in the contemporary world can never be attained without adequate telecommunications infrastructure; this implies that the development of telecommunication infrastructure will significantly boost economic growth and development.

**1.7** As telecommunication markets have opened to competition, the number of networks and services in any parts of the world has grown. If the users of these different networks are to take full advantage of the resultant diversity and enjoy unhindered, transparent communication, the networks must be interconnected. Where there is more than one operator, interconnection is currently the only way to connect the different telecommunication networks so that all users can freely communicate amongst each other.

**1.8** Interconnection plays a crucial role in the creation of a competitive telecommunication services market. Interconnection is the component that will allow new entrants to provide telecommunication services using the incumbent operator's network and infrastructure, while avoiding the need for massive capital investment. It creates incentives for the incumbent to become more competitive by providing a broader range of services (leased lines, wholesale, etc.).

**1.9** Interconnection contributes to meeting the objectives of universal service by making basic telecommunication services accessible to a larger number of users. It also leads to a range of new, innovative communication services being introduced and made available. Interconnection and competition are thus closely linked, as the one presupposes the other. The role of interconnection is to stimulate and facilitate competition between telecommunication networks while ensuring their universality.

**1.10** Interconnection also has an important influence on any country's capital expenditure policy. Many countries have realized that one of the best ways of stimulating development of the national telecommunication infrastructure and diversifying the range of services available is to encourage the entry of new operators. Their investments provide important benefits, not only in terms of the development of the telecommunication market, but also for development of the economy in general. For such a development policy to become reality, it is indispensable to have an effective interconnection policy. This is why interconnection in many countries is part of the national strategy for promoting competition and attracting foreign investment.

**1.11** Interconnection plays an important role for operators and consumers. For operators, it is crucial for capturing market share. For incumbents, faced with new competition after many years of monopoly, the temptation to restrict access to their network and protect the monopoly status quo is very strong. This can take the form of certain anti-competitive practices affecting interconnection, practices that are intended to inhibit or delay the entry of new operators on the market.

**1.12** Based on the submissions made and through the Commission's independent research, analysis and computation, the Commission has made this authorisation.

## 2.0 Background

- 2.1** On 28 May 2009, the Commission launched a detailed study to examine the Substantial Market Power (SMP) in Fiji's Telecommunication market and fulfil its obligation as per the then Commerce (Amendment) Promulgation 2008. Those operators holding SMP could, by virtue of having this power, abuse that power and thus not only engage in anti-competitive behaviour, but also create impediment to the growth and development of the economy and cause hardship to the consumers as well.
- 2.2** Following extensive consultation with industry stakeholders and detailed research, the Commission made a submission to the Minister for Commerce for a Price Control Order. The Minister, based on the recommendation of the Commission, signed off a Price Control Order on 19 November 2009 for Interconnection Services that became effect for the next three years.
- 2.3** Since then, the Commission has been setting the Interconnection Rates of the Telecom Operators in Fiji. In doing so, the Commission notes that interconnection is a critical feature of telecommunications networks, as it enables subscribers on one network to call and to be called by, subscribers on another network.
- 2.4** In the absence of interconnection, a small network operator is unlikely to be attractive to potential customers as they would be unable to communicate with a significant proportion of other subscribers.
- 2.5** The determination released on 07 November 2011 was delivered, as required by the Commerce Commission Decree 2010, had the following objectives:
- a) To direct a reduction in wholesale and thus retail call rates to convergence with market rates;
  - b) Support Government's plan to accelerate ICT penetration in Fiji by outsourcing that charge to callers from outside Fiji;
  - c) To reduce ICT costs components of Business, Government and the Household sector in Fiji; and
  - d) To ensure that network operators, who have made substantial investment into their network are able to receive a stable and predictable source of revenue *vis a vis* the light infrastructure operators.
- 2.6** By the Commission's final determinations made in November 2011, the Commission approved the interconnection prices using the glide path approach that operators may charge from the period 17 November 2012 to 16 November 2013.
- 2.7** The Price Control Order 2009 expired on 19 November 2012. Before the expiry of the Order, the Commission undertook a detailed study and consultation with the industry to examine if there was

a need to extend the current Order for another three years or make amendments to the current Order and extend it for another three years. Based on the findings of the study carried out by the Commission, the Commission recommended to the Minister that the Price Control Order be extended for the next three years.

**2.8** In light of the changes in the market structure and noting the concern from the Commission, the Commerce (Control of Prices of Interconnection Services Rates) Order 2012 was extended for further three years that expires on 24 October 2015.

**2.9** On 14 November 2013, the Commission released the Final Determination on Interconnection Services Rates whereby the existing rates were maintained. The interconnection service rates based on the glide path approach has been approved by the Commission for the period up to 16 November 2014.

**2.10** In recognition of the above, on 8 October 2014, the Commission pursuant to Section 119 of the Commerce Commission Decree called for submissions from stakeholders on the review leading up to a new authorization by the Commission including applications for the approval of prices for interconnection service and relevant information by 22 October 2014.

**2.11** Based on the submissions made and through the Commission's independent research, analysis and computation, the Commission has made this authorization.

### **3.0 Legal Framework**

**3.1** Under Section 4(1) of CCD2010, "**regulated industry**" means-

- (a) an industry engaged in the supply of electricity, water, sewerage, post, broadcasting, telecommunications, ports or civil aviation services; or
- (b) Any other industry that is declared under Section 5 to be a regulated industry.

Thus, telecommunications is a regulated industry under the Commerce Commission Decree 2010 ("CCD2010").

**3.2** The Commerce (Control of Prices of Interconnection Services Rates) Order 2012 empowers the Commission to control the prices or rates for the supply of Interconnection Services in all quantities and qualities, grades or classes for three (3) years until 24 October 2015.

**3.3** The Commission is fully committed to fulfilling its functions and duties under the CCD2010 and the Telecommunications Promulgation 2008.

### 3.4 Furthermore, Section 3 of the Telecommunications Promulgation 2008 states:

*“3. The objectives of this Promulgation are to provide a regulatory framework for telecommunications that promotes the long term interests of end users of telecommunications services, or of services provided by means of telecommunications services, and the efficiency and international competitiveness of the telecommunications industry in Fiji and, as consistently with that objective as is practicable*

- (a) to provide rapid expansion of reliable and as affordable as possible telecommunications services on an equitable basis, with particular improvement in rural areas;*
- (b) to promote efficient investment and innovation in telecommunications networks and services;*
- (c) to provide fair competition among service providers and allowing market forces to operate; and*
- (d) to provide and promote appropriate consumer protection and other safeguards in relation to telecommunications services where market forces are insufficient”.*

## 4.0 Interconnection Rates and the Deepening of Telecommunications Market

### 4.1 This Authorisation takes into account the prevailing market structure and conditions, including:

- a. the liberalization of the mobile telecommunications sector in Fiji from 1 October 2008, the benefits of continuing significant investments in telecommunications infrastructure in Fiji, the significant social and economic benefits that arise from increasing mobile penetration in Fiji, the high subscriber acquisition costs of mobile network operators and the existence of network externalities, as well as the infancy of such services as mobile data telecommunications services;
- b. the Calling Party Pays Principle which is the prevailing charging system for the exchange of voice calls between network operators in Fiji, whereby the calling party pays entirely for the call and the wholesale termination rate paid by the originating operator is normally passed on to its end customer;
- c. the technologies used by network operators in Fiji, including 2.5G GPRS, 2.75G EDGE and 3G WCDMA, 4G technologies, as well as public service telephone network technologies, such as CDMA2000 technology;
- d. the interconnection charges determined by the Commission between Telecom Fiji Limited (“TFL”) and other telecommunications network operators in Fiji;
- e. the existing interconnection rates charged by Digicel, Vodafone, TFL, FINTEL and other operators in Fiji;
- f. That the retail prices for on-net services have generally been significantly lower than for off-net services between networks. Such differences are usually used by operators to form

closed user groups, i.e. to force subscribers to follow friends or family to the network operator they use since on-net calls tariffs are much cheaper; and

- g. That the provision of Mobile Termination Rates (MTR's) and Fixed Termination Rates (FTR's) at prices above cost represents a barrier to efficient entry and expansion in the retail telecommunications market.

4.2 The authorization also notes that any regulation which will promote competition in the downstream retail market, end-users are likely to benefit from reduced prices and greater efficiencies in the supply of retail services. The Commission's intention is also to foster accessible and affordable data services across Fiji and net connectivity in various modes is an important factor in this process.

## 5.0 Methodology

5.1 The Commission has used benchmarking methodology as used by majority of countries around the globe. In the process of selecting benchmarking data, the Commission took into account a number of factors including:

- a. reviewing prices of services substantially similar to those services being assessed, derived from jurisdictions in which a reasonable level of competition exists; and
- b. taking into account adjustments to reflect, amongst other things, the relative economic and social development, demographics, geography, extent of urbanization, scale economies, state of the development of the telecommunications sector of Fiji and differences in the direct and indirect costs, including subscriber acquisition costs, of providing telecommunications services in Fiji.

5.2 The Commission also notes that it took into account international practices and benchmarks in relation to charges for the termination of incoming international calls.

5.3 The Commission has taken into account the need to avoid a disproportionate disturbance to the business plans of stakeholders that have committed significant investments in telecommunications infrastructure in Fiji, as well as the need to give legal and commercial certainty to investors on long- term interconnection rates so as to manage effectively their respective businesses.

## 6.0 Obligation relating to Price Control

The Commission hereby authorizes Telecom Fiji Limited to supply from the Effective Date the following interconnection services in Fiji at the following rates:

Type of Chargeable Network Interconnection Service		Chargeable Network Interconnection Service Rate
(a)	<p><i>Interconnection Agreement between TFL and Vodafone</i></p> <p>All Chargeable Calls terminating on TFL network other than those Calls which have originated outside of Fiji</p> <p>Charges for termination of calls on TFL's network which have originated outside of Fiji (see b-(ii))</p>	<ul style="list-style-type: none"> <li>• For the period commencing 17 November 2014 to 16 November 2015: FJ\$0.05</li> <li>• For the period commencing 17 November 2014 to 16 November 2015: FJ\$0.10 plus a special international call handling levy of FJ\$0.09 applicable to Incoming International Calls handed over by Vodafone to TFL for termination on the TFL Fiji network.</li> </ul>
(b)	<p><i>Inbound International Chargeable Calls</i></p> <p>(i) All categories of inbound international voice traffic destined into Fiji and terminating on a Fiji licensed operator's network terminal or platform, shall attract a minimum Termination Rate of</p>	<ul style="list-style-type: none"> <li>• For the period commencing 17 November 2014 to 16 November 2015: Minimum of US\$0.22. Of this inbound rate charge, a FJ\$0.06 per minute shall be levied under the Industry Reform Objective to facilitate the Government's ICT Development programme.</li> </ul>
(ii)	<p>All inbound international voice traffic, terminating on a Fiji licensed operators network terminal or platform, destined for (or handed over to) TFL's network, shall attract a local interconnection rate of</p>	<ul style="list-style-type: none"> <li>• For the period commencing 17 November 2014 to 16 November 2015: FJ\$0.10 plus a special international call handling levy of FJ\$0.09 applicable to Incoming International Calls only</li> </ul>
(c)	<p><i>Interconnection Agreement between TFL and Digicel</i></p> <p>Charges for termination of calls on the TFL network other than those calls which have originated outside of Fiji</p> <p>All Chargeable SMS Messages</p>	<ul style="list-style-type: none"> <li>• For the period commencing 17 November 2014 to 16 November 2015: FJ\$0.05</li> <li>• FJ\$0.060 per SMS message</li> </ul>
(d)	<p><i>Interconnection Agreement between TFL and FINTEL</i></p> <p>Charges for termination of calls on the TFL network which have originated outside of Fiji</p>	<ul style="list-style-type: none"> <li>• For the period commencing 17 November 2014 to 16 November 2015: FJ\$0.10 plus a special international call handling levy of FJ\$0.09 applicable to Incoming International Calls only</li> </ul>

Type of Chargeable Network Interconnection Service		Chargeable Network Interconnection Service Rate
(e)	<p><i>Interconnection Agreement between TFL and VoiceNetIP</i></p> <p>Charges for termination of calls on the TFL network which have originated outside of Fiji</p>	<ul style="list-style-type: none"> <li>For the period commencing 17 November 2014 to 16 November 2015: FJ\$0.10 plus a special international call handling levy of FJ\$0.09 applicable to Incoming International Calls only</li> </ul>
<p><b>Notes</b></p> <ol style="list-style-type: none"> <li>All charges are in Fiji currency.</li> <li>All charges are exclusive of Value Added Tax.</li> <li>The terms "Chargeable Mobile Calls", "Chargeable Network Interconnection Service" and "International inbound calls to Mobile" have the same meanings given to them in the respective interconnection agreements between TFL and other operators.</li> <li>Unless otherwise specified, the chargeable mobile call rate is an amount in cents per minute.</li> <li>The chargeable mobile call rate applies on a per second basis.</li> <li>In the case of chargeable mobile calls, the charge for each chargeable call is rounded up to the next whole cent.</li> <li>For the avoidance of doubt, chargeable mobile calls do not include calls terminating on CDMA-based technologies.</li> <li>The charges authorized in this authorization are the maximum amount that TFL is authorized to charge for the services specified above.</li> </ol>		

## 7.0 Prohibition in relation to Calls Originating from Outside of Fiji

No party handing over calls to another network operator shall be permitted to disguise or attempt to disguise the origin of those calls either through the manipulation of A numbers or otherwise with the intent that the call definition or charge which was intended to apply to that call does not apply. In circumstances where an operator has reasonable grounds to believe that a call or calls which are handed over to it have originated outside of Fiji it is authorized to charge for such calls at the rate which is applicable to calls which have originated outside of Fiji.

## 8.0 Authorisation not to be Challenged

Section 38A of the Commerce Commission Decree 2010 states as follows:

**38A.-** (1) No Court, tribunal, commission or any other adjudicating body shall have the jurisdiction, to accept, hear, determine or in any other way entertain, any challenges whatsoever (including any application for judicial review) by any person or body, or to award any compensation or grant any other remedy to any person or body, in relation to the validity or legality or propriety or any action or decision of the Minister or the Commerce Commission in making a Price Control Order

under either section 39, 40, 44, 45 and Part 5A of the Decree or any action or decision resulting from making such an Order.

(2) Any legal proceeding, appeal or application of any form whatsoever, seeking to challenge the validity or legality of a Price Control Order made under either section 39, 40, 44, 45 and Parts 5A of the Decree or any action or decision resulting from making such an Order shall wholly terminate immediately upon the commencement of this Decree, and a Certificate to that effect shall be issued by the Chief Registrar, tribunal, commission or other relevant adjudicating body to all parties to the proceeding or application.

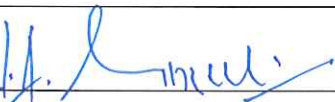
## 9.0 Market Monitoring

The Commission will closely monitor the market to ensure that the retail sector provides a symmetric response to the changes and movements in the wholesale sector. Failure of the operators to make corresponding changes in the retail sector will be a clear indication that market is not working as expected, justifying the need for an intervention, in order to achieve all necessary conditions for a competitive market.

## 10.0 Effective Date

This Authorisation shall be effective from 17 November 2014 ("the Effective Date").

### Commissioners:


<b>Mr. Firoz Ghazali</b>
<b>Acting Chair</b>
<b>13 November 2014</b>

Date Issue: 13 November 2014

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