



AUTORIDADE NACIONAL DE COMUNICAÇÕES

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DRAFT ANC GUIDELINES ON THE PERMITTING OF CROSS-BORDER CABLE TELECOMMUNICATIONS NETWORKS

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TABLE OF CONTENTS

1.	Introduction	4
2.	Definitions	4
3.	Requirement for Permit.....	4
4.	Permit Term and Transfer	4
5.	Applications.....	5
6.	Application Fees	5
7.	Annual Regulatory Fee	6
8.	Approvals from other Government Institutions.....	6
9.	Award of Permit	6
10.	Interconnection Obligation.....	7
11.	Reference Offer	7
12.	Non-Discrimination	7
13.	Significant Market Power.....	7
14.	Commencement of Installation and Operation	7
15.	Amendment, Suspension and Revocation of Permit.....	7
16.	Transitional Provisions.....	8
17.	Effective Date.....	8

ANNEX A - APPLICATION STATEMENT

ANNEX B - FORM OF PERMIT

1. Introduction

- 1.1. In an increasingly interconnected and interdependent world, telecommunication services between Timor-Leste and the outside world have become a cornerstone of the nation's economic and social development. In many cases, however, the installation and operation of the cross-border cable telecommunications networks that make those services possible have to be balanced against other national interests. For example, the laying and placement of submarine cables requires extensive supervision and coordination in order not to have an adverse impact on cables already in place, as well as on fishing, maritime navigation, and the marine environment. As such, the installation and operation of cross-border cable telecommunications networks need to be regulated in a way to ensure reliability, efficiency and safety.
- 1.2. In order to ensure the safe, proper and efficient installation and operation of cross-border cable telecommunications networks the Autoridade Nacional de Comunicações (hereinafter referred to as "ANC") hereby establishes these guidelines on the permitting of cross-border cable telecommunications networks pursuant to Articles 5 and 19 of Decree-Law No. 15/2012 of 28 March 2012 on the Regulation of the Telecommunications Sector (hereinafter referred to as "the Telecommunications Decree-Law").

2. Definitions

- 2.1. For the purpose of these guidelines, the term cross-border cable telecommunications network means a cable telecommunications network connecting one or more points in Timor-Leste to one or more points outside Timor-Leste.

3. Requirement for Permit

- 3.1. A person shall not install or operate an cross-border cable telecommunications network unless that person is:
 - (a) permitted by ANC to install and operate a cross-border cable telecommunications network in accordance with these guidelines; and
 - (b) registered with ANC to supply telecommunications services and operate telecommunications networks in accordance with the Telecommunications Decree-Law.

4. Permit Term and Transfer

- 4.1. A permit to install and operate a terrestrial cross-border cable telecommunications network awarded by ANC shall have a term of up to 5 years subject to renewal.
- 4.2. A permit to install and operate a cross-border submarine cable telecommunications network awarded by ANC shall have a term of up to 15 years subject to renewal.
- 4.3. A permit to install and operate a cross-border cable telecommunications network may not be transferred to another person without the written approval of ANC.

- 4.4. A person permitted pursuant to these guidelines shall notify ANC upon ceasing the operation of its cross-border cable telecommunications network.

5. Applications

- 5.1. Applicants intending to install and operate cross-border cable telecommunications networks must apply first to ANC for a permit.
- 5.2. Only a person registered with ANC to supply telecommunications services and operate telecommunications networks in accordance with the Telecommunications Decree-Law may apply for a permit to install and operate a cross-border cable telecommunications network into Timor-Leste.
- 5.3. Applicants must file two hardcopies and one softcopy (in PDF or Microsoft Word format) of their application with ANC at the following address:

Autoridade Nacional de Comunicações (ANC)

Ground floor, Telecom Building
Avenida Xavier do Amaral
Dili, Timor-Leste

- 5.4. An application statement must contain the information set out at Annex A of these guidelines.
- 5.5. Applicants may request that the information provided to ANC in the application be treated as confidential and ANC will treat the information as if it were confidential if:
 - (a) the information is not already available to the public; and
 - (b) the applicant has demonstrated that disclosure of the information will cause harm because:
 - i. of the commercially confidential nature of the information;
 - ii. its confidentiality is necessary to ensure effective competition; or
 - iii. a risk exists of reprisals from third parties if the information or its source is disclosed;
or
 - iv. of the existence of a legal obligation to keep it secret.
- 5.6. ANC may request applicants for further information concerning their application.
- 5.7. ANC may require an applicant to conduct an environmental impact study and file the assessment with ANC if it considers that the installation of the cross-border cable telecommunications network may significantly affect the environment.

6. Application Fees

- 6.1. Applicants must pay to ANC a non-refundable application deposit of \$5,000.

- 6.2. In the case of applications involving the installation of submarine cable networks, the applicant must pay to ANC an application deposit of \$50,000 for the cost of external consultancy services associated with the evaluation of the application. ANC will only use the deposit if ANC considers it necessary to obtain independent expert advice concerning the application. Any unspent portion of the deposit will be refunded to the applicant. Further charges may be levied on the applicant if the costs of external consultancy services exceed the deposit amount.

7. Annual Regulatory Fee

- 7.1. The Permittee shall pay to ANC an annual regulatory fee set at a percentage of its Relevant Annual Gross Revenue (RAGR) in accordance with ANC Guidelines on Regulatory Fees with a minimum sum of \$200,000.
- 7.2. For the first year of operation, the minimum annual regulatory fee of \$200,000 shall be payable by the Permittee within 30 days of the grant of the Permit and shall be adjusted at the end of the Permittee's financial year based on the Permittee's audited accounts submitted to ANC in the following annual regulatory fee reporting period.

8. Approvals from other Government Institutions

- 8.1. Following receipt of an application, ANC will coordinate and consult with relevant Government institutions to ensure that all matters relevant to the application are appropriately identified and considered.
- 8.2. An applicant may be required to submit applications for approvals or permits to other relevant Government institutions as required by applicable laws and regulations. ANC will provide guidance to the applicant as to what other approvals and permits it must obtain before ANC can award it a permit for the installation and operation of its cross-border cable telecommunications network.

9. Award of Permit

- 9.1. Upon approval of an application, ANC will issue a permit (in the form set out at Annex B of these guidelines) for the installation and operation of the cross-border cable telecommunications network described in the permit.
- 9.2. Any subsequent changes to the cross-border cable telecommunications network described must be approved in writing by ANC.
- 9.3. For the avoidance of doubt, a permit to install and operate a cross-border cable telecommunications network does not authorize the permittee to use any radio-frequencies or to access any State-owned land and property in Timor-Leste.

10. Interconnection Obligation

- 10.1. Pursuant to Section 39 of the Telecommunications Decree-Law, the Permittee shall provide access and/or interconnection to any registered telecommunications operators and service providers.
- 10.2. The Permittee shall provide access and interconnection that is at least equal to the Service Level Agreement of 95%.
- 10.3. The Permittee shall provide the access and interconnection using common industrial interfaces compliant to international technical standards and regulations.

11. Reference Offer

- 11.1. Pursuant to Section 43 of the Telecommunications Decree-Law, the Permittee shall provide and maintain a reference offer for interconnection or access or any combination thereof, to be approved by ANC.

12. Non-Discrimination

- 12.1. In providing its services, the Permittee shall not discriminate as between similar types of customers in relation to the services provided and shall offer the services on the same terms and conditions to similar types of customers.

13. Significant Market Power

- 13.1. Pursuant to Section 36 of the Telecommunications Decree-Law and without prejudice to ANC's power to review relevant telecommunications markets and designate service providers having significant market power, the Permittee shall be designated at the grant of permit as having the significant market power in the telecommunications market of wholesale supply of international data transmission capacity

14. Commencement of Installation and Operation

- 14.1. Installation works for cross-border cable telecommunications network may commence only after all necessary approvals and authorisations are obtained and a permit is awarded by ANC.
- 14.2. The telecommunications network installed must be in conformity with the plans approved by ANC.

15. Amendment, Suspension and Revocation of Permit

- 15.1. ANC may, without compensation, suspend, revoke or amend the conditions for a permit to install and operate cross-border cable telecommunications networks if:

- (a) the permittee does not fulfil any material commitments it undertook in connection with the award of its permit;
- (b) the permittee misled ANC by making a false statement of a material fact or omitting to state a material fact of relevance to ANC in connection with the award to it of its permit; or
- (c) the permittee's registration to supply telecommunications services and operate telecommunications networks under the Telecommunications Decree-Law has been suspended, revoked or amended.

16. Transitional Provisions

- 16.1. The telecommunications service operator already registered with ANC to supply telecommunications services and/or operate telecommunications networks in accordance with the Telecommunications Decree-Law has a period of ninety (90) days from the day this regulatory measure comes into force to submit to ANC an application for permit of all its existing cross-border cable telecommunications networks which were already in operation on 1 July 2022.
- 16.2. If the operator fails to submit the application for any of its existing cross-border cable telecommunications networks, such networks should cease to operate within six (6) months from the day this regulatory measure comes into force.
- 16.3. If ANC does not approve the permit application of the operator's existing cross-border cable telecommunications networks, ANC will notify the relevant operator in writing of its decision including any reasons on which the decision is based and any procedures and deadlines for the operator to be in compliance with this regulatory measure.

17. Effective Date

This regulatory measure will come into force upon its publication on *the website of ANC*.

Dated 21 June 2022

Chairperson of the ANC Board of Directors

João Olívio Freitas

ANNEX A
APPLICATION STATEMENT
INFORMATION TO BE SUBMITTED FOR AN APPLICATION FOR A CROSS-BORDER
CABLE TELECOMMUNICATIONS NETWORK PERMIT

1. Applicant Details

The applicant must provide the following information and documents:

- 1) Name:
- 2) Company registration number:
- 3) Head office address:
- 4) Contact telephone number:
- 5) Contact fax number:
- 6) Contact email address:
- 7) Details of the applicant's registration pursuant to the Telecommunications Decree-Law (i.e., reference number and date of registration);
- 8) Date and jurisdiction of formation:
- 9) List of full names, positions and nationalities of all directors, managers and holders of corporate positions:
- 10) Disclosure of any criminal record or personal bankruptcy, in any country, of any persons listed in the preceding item:
- 11) Name and position of applicant's contact person for the service of notices:
- 12) Certified copy of the company's bylaws and respective amendments.
- 13) Details of the applicant's shares as at the date of submission of the application, including:
 - a) the number and associated classes of authorized securities;
 - b) the voting and dividend rights attached to each class; and
 - c) details of any rights to securities convertible into shares; and the identities of the holders thereof and amounts of securities held.
- 14) Information listed in items 1) to 3) above of the person that is the ultimate parent.
- 15) Details of any shareholder or holder of other agreement relating to the control over the applicant.

- 16) A chart showing the identity of the applicant's ultimate parent and all intermediate persons and the amounts of shares held and information about any other form of control enjoyed by any such person over the other.
- 17) If any of the applicant's affiliates are registered to supply telecommunications services or operate telecommunications networks in Timor-Leste, list the names of such affiliates and their company registration numbers:

In this application the terms:

“affiliate” and “control” have the same meaning as in the Telecommunications Decree-Law;

“intermediate person” out of two persons means a person that holds a majority interest in the capital of one of the other two persons and is controlled by the other person; and

“ultimate parent” means any person who is an affiliate of another person whether by ownership of shares, contract or otherwise but is not itself controlled by any other person.

2. Financial Statements

The applicant must provide, in respect of itself and its ultimate parent, its latest audited annual financial statements for the past [3] years, including balance sheet, income statement and cash flow statement, prepared in accordance with generally accepted accounting principles consistently applied and audited by a reputable firm of auditors (or if audited statements are not available for such period, such statements as are available).

3. Experience

The applicant must describe its experience in the telecommunications sector (locally and internationally), including:

- (a) a brief description and history of its activities;
- (b) the size and details of the market environment where it operates;
- (c) its market share;
- (d) the size and description of the network and services deployed, including the number of subscribers served, revenues from the relevant operations (with breakdown by service);
- (e) experience with relevant technologies;
- (f) range of services offered; and
- (g) any benefits delivered to customers as a result of the applicant's operations (e.g., price reductions, new services, etc.).

4. Planned Infrastructure, Network and Services

The applicant must provide the following:

- (a) description of the infrastructure, network and services to be provided, including projected customer profiles and numbers, technologies used, proposed pricing (wholesale and retail) and expected launch dates; and
- (b) details of any radio-spectrum frequencies and access to State-owned land and property (to be applied for under separate relevant procedures) intended to be used to install and operate the network.

5. Feasibility study

The applicant must prepare and submit a feasibility study setting out, among other things, the applicant's technical plan and business and financial plan (which are explained further below).

6. Technical Plan

The applicant must provide information on the following where applicable:

(a) Network Facilities

The planned locations and technical details of the planned network facilities such as international frontier stations and gateways, cable routes, satellite and radio base station sites and other equipment to be installed and frequency spectrum to be used. Details to be provided include, where applicable:

- (i) geographic co-ordinates and geodetic datum of the proposed facilities;
- (ii) desktop or hydrographic survey of proposed routes;
- (iii) proposed cable depth and burial of facilities (including any trenching);
- (iv) measures to protect the facilities;
- (v) compliance with international best practice recommendations (e.g., International Cable Protection Committee (ICPC) recommendations); and
- (vi) cable or pipeline crossing arrangements.

(b) Network Configuration

The configuration of the planned network such as network management capabilities, routing plans, transmission plans, signalling plans and diversity plans.

(c) Capacity and Improvement

The network capacity and capacity expansion plans for the first five years of operation; and commitments for improvements to infrastructure facilities for the next five years.

(d) Network Interconnection

Technical proposals for interconnection and cross-connect with other networks, including co-location, configuration, interface requirements, diversity arrangements and pricing.

- (e) Network Code of Practice, Security and Protection
 - (i) Network performance with an indication of the minimum standards.
 - (ii) Details of technical support, network security, IT/system security and physical network protection.
- (f) Network Technologies

Technologies to be employed with the rationale for the choice of technologies selected.

The applicant must also submit a broad network rollout plan and its strategy to implement the network rollout plan.

7. Business and Financial Plan

The applicant must provide its business, financial and funding plans of its proposed investment for the first five years of operation, including:

- (a) detailed business plans, including the profit and loss accounts, balance sheets and cash flow statements prepared in accordance with the relevant accounting standards;
- (b) financial ratios including return on assets, return on equity, operating profit margin, net profit margin and debt-equity ratio;
- (c) forecasts of the internal rate of return, net present value and payback period of the investment;
- (d) a detailed investment plan of all capital and non-capital expenditure and working capital requirements for the first 5 years of operation; and
- (e) details of the proposed financing plan, including:
 - (i) the proposed sources of funds and the amounts from each source;
 - (ii) timing of funding initiatives and injection of funds;
 - (iii) planned repayment terms and schedule for loans, loan stock and debentures;
 - (iv) credit facilities available; and
 - (v) provisions made for contingent sources of funds.

Where relevant, letters of intent, guarantor letters and other documents should be provided to substantiate the financing plan and loan/credit facilities.

8. Other Information

The applicant shall provide the following information where applicable:

- (a) details of other regulatory approvals given by any other relevant Government institution in relation to the proposed installation and operation of the network;
- (b) details of any construction or installation work and an assessment of its impact on the public and the environment;
- (c) the period between the award of the permit, the commencement of the installation of the network and the commencement of operations;
- (d) an executive summary summarising in a concise manner the significant points of the application; and
- (e) any other information not specified above which may be relevant to the application.

9. Declaration

The applicant is required to make the following declaration at the end of its application:

I/We declare that the information, particulars and documents submitted in this application are correct and complete. I/We understand that any incorrect and incomplete information in this application and the documents submitted may lead to refusal of the application or revocation of the permit.

Signature:

Company seal:

Signatory's name and position:

Date:

(For electronic submissions, attachments must be provided in MS Word or PDF format)

**ANNEX B:
FORM OF PERMIT**

[Logo]

[ANC Reference No.]

CROSS-BORDER CABLE TELECOMMUNICATIONS NETWORK PERMIT

In accordance with Article 5 and Article 19 of Decree-law 15/2012 dated 28 of March 2012 on the Regulation of the Telecommunications Sector, the Autoridade Nacional de Comunicações (ANC) hereby grants a cross-border [terrestrial/submarine] telecommunications network permit to [name of permittee] to install and operate the cross-border cable telecommunications network described in Schedule 1 of this permit, subject to the terms and conditions specified in Schedule 2 of this permit.

Granted on this day of 2022

Chairperson

Schedule 1: Description of the Cross-border Cable Telecommunications Network

Schedule 2: Terms and Conditions