

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

**DECREE-LAW No. 11/2003
Of 29 July**

ESTABLISHING THE BASES FOR THE TELECOMMUNICATIONS SECTOR

The 1st Constitutional Government of Timor-Leste has undertaken, among its goals, to organize and regulate the telecommunications and postal services sector.

From among the structuring measures for attaining this goal five are pointed out: the drafting of a Law on Postal Services; the establishment of a Public Postal Company; the drafting of a Law on the Telecommunications Sector; the concession of the public telecommunications service to a private operator for a limited period of time, under the BOT regime; and, in order to ensure adequate regulation and supervision of this sector, the establishment of a Communications Regulatory Authority (ARCOM).

The present Decree-Law is precisely meant to realise the third of the aforementioned actions.

The telecommunications sector contributes, in a fundamental fashion, to the promotion and growth of a country's economy and to the development of its social fabric, by ensuring the citizens access to communications and information through a multiplicity of means, correcting regional asymmetries and alleviating the geographic isolation of the populations.

The legislation applicable to this sector should be adapted by promoting a legislative reform in tandem with the present reality of Timor-Leste, whose main objective is, on the one hand, to build and develop infrastructure in the country and, on the other, to provide a range of telecommunications services to the population at large, with quality and at affordable prices; and specific conditions shall be prescribed in order to allow for the feasibility of this operation.

The communications sector shall be expanded to new technologically ever-more advanced services, and it shall be incumbent upon the Government to promote the conditions of access to an ever-increasing number of users and, concurrently, intervene in the telecommunications sector at the co-ordination and supervision level, and to ensure respect for the principles proclaimed herein.

Thus, pursuant to section 116(d) of the Constitution, the Government enacts the following:

CHAPTER I
General Provisions

Section 1
Purpose

The purpose of the present Decree-Law is to establish the general bases for establishing, managing and operating telecommunications infrastructure and the provision of telecommunications services.

Section 2
General Principles

1. The present Decree-Law and the legal regime arising therefrom shall ensure the satisfaction of the basic requirements for providing telecommunications services to the populations and public and private entities from the various activity sectors, through the creation of conditions conducive to the development and diversification of services of this nature.

2. The objective defined in subsection 2.1 shall conform to the following basic principles:

- (a) Ensure the existence and availability of a universal service, consisting of a minimum range of telecommunications services provided within the national territory, on a permanent basis, with adequate quality conditions and at prices that can be afforded by all users;
- (b) Ensure the financial and economic feasibility of the universal service through the granting of exclusivity in the provision of certain telecommunications services and the establishment of a compensation fund;
- (c) Ensure that providers of competitive services are granted equal access to the market, while observing the rules for protecting competition;
- (d) Ensure that users, under similar circumstances, are given equal treatment in the access to and use of telecommunications services.

Section 3
Classification

1- Telecommunications means the transmission, reception or emission of a signal, representing symbols, writing, images, sounds or information of any nature by way of wires, optical systems, by electronic means or by other electromagnetic systems.

2- Depending on the nature of a user, telecommunications are classified as public or private.

3. Public telecommunications are deemed to be those which aim to meet the generic collective need to transmit and receive messages and information.

4. Private telecommunications are deemed to be:
- (a) private telecommunications owned by the State or other public entities and used for their own communication or for meteorological purposes, aid and assistance to sea or air navigation, or for similar purposes of public interest;
 - (b) those established by the defence and security forces or services, for their own use;
 - (c) Those established by competent entities in the area of civil safety;
 - (d) Those established by companies dedicated to the production, transmission and distribution of electricity, whenever such companies use the electricity distribution network itself and those telecommunications are exclusively meant to be used in the very activity being carried out by such companies;
 - (e) Those provided within the same estate or condominium, provided those telecommunications do not use the public electromagnetic domain and their only connection with the exterior system is through an interface with public telecommunications;
 - (f) Other communications reserved for certain public and private entities, following authorisation from the Government, under the terms of international treaties or agreements or special legislation.

Section 4 **Telecommunications supervision**

1. It is incumbent upon the State to establish the strategic guidelines for the development of the telecommunications sector, and also to monitor telecommunications and the activity carried out by telecommunications operating companies, under the terms of applicable laws and regulations.
2. Other responsibilities of the State on matters of regulation, supervision and monitoring of telecommunications include:
 - (a) Managing the electromagnetic spectrum and orbital positions;
 - (b) Representing the country in international and intergovernmental organisations in the area of telecommunications;
 - (c) Defining general policies and planning for the telecommunications sector, and approving applicable laws;
 - (d) Ensuring the existence, availability and quality of a basic telecommunications network that will satisfy the communications needs of the citizens and of economic and social activities throughout the country, and also ensuring international connections, taking into account the requirements for harmonic and balanced socio-economic development;
 - (e) Normalising and endorsing telecommunications materials and equipment, and defining the conditions for their connection to the telecommunications network;
 - (f) Ensuring a universal telecommunications service;
 - (g) Approving the fee and tariff regime for telecommunications services;
 - (h) Licensing the establishment and operation of public telecommunications infrastructure and services, as well as granting other titles that will allow for the provision of services in the telecommunications sector;

- (i) Monitoring compliance with the legal and regulatory provisions applicable to the telecommunications sector, as well as imposing penalties;
- (j) Declaring the public utility of expropriations and establishing servitudes required for building telecommunications infrastructure, and monitoring the public electromagnetic domain.

3. The State's responsibilities shall be fulfilled by the Communications Regulatory Authority.

4. The Government shall define, by decree-law, the organic structure, the operating rules and the responsibilities of the Regulatory Authority referred to in the preceding subsection.

Section 5 Public electromagnetic domain

The space through which electromagnetic waves can propagate constitutes the public electromagnetic domain, the management, administration and monitoring of which are the competency of the State, in compliance with the provisions of the applicable law, and international treaties and agreements.

Section 6 Telecommunications co-ordination in emergency situations

It shall be incumbent upon the State to ensure, under the terms as established by law, adequate co-ordination of telecommunications networks and services in emergency, crisis or war situations.

Section 7 Consultative committee

Law may provide for the establishment of a consultative committee comprised of representatives from the State, operators and users with the task of monitoring and advising the regulatory entity on specific matters.

Section 8 Public use of telecommunications

1. Everyone has the right to use public telecommunications services through payment of the corresponding tariffs and fees, insofar as the applicable regulations are complied with.
2. Law may define the priority use of services and establish preferences to the benefit of entities pursuing public interests worthy of special protection.
3. Communications intended for public security, both internal and external, and the protection of human lives, enjoy absolute priority.

Section 9
Pre-installation of telecommunications infrastructure

1. Urbanisation schemes and the construction of buildings and urban roads shall include the pre-installation of telecommunications infrastructure.
2. The installations referred to in the preceding subsection shall be made in accordance with the norms established by the regulatory entity and approved by the Cabinet members responsible for urbanism, telecommunications and internal administration.
3. The installations referred to in the preceding subsections shall be subject to monitoring by the universal service operator.

CHAPTER II
On public telecommunications

Section 10
Universal service

- 1- It is incumbent upon the State to ensure the existence and availability of the universal telecommunications service that will satisfy the communication needs of the population and of economic and social activities within the country as a whole, and to ensure international connections in terms of equality and continuity and through conditions of adequate remuneration, taking into account the requirements for harmonic and balanced socio-economic development.
- 2- The universal service shall be operated under an exclusivity regime by the State, by a public corporate person or by a private corporate person, through a concession contract, hereinafter referred to as the universal service operator, which shall be obligated to establish, manage and operate infrastructure that comprise the basic telecommunications network and to provide fixed telephone service.

Section 11
Basic network

1. The basic telecommunications network is comprised of the fixed subscriber access system, the transmission network and by the concentration, commutation or processing knots that are essentially used to provide the fixed telephone service referred to in the previous section.
2. For the purposes of the provisions of the preceding subsection:
 - (a) Fixed subscriber access system is deemed to be the set of transmission means located between a fixed point, at the level of the physical connection to the terminal

equipment of a subscriber and another point, situated at the level of the physical connection in the first concentration, commutation or processing knot;

- (b) Transmission network is deemed to be the set of physical or electromagnetic means establishing connections for the transport of information between concentration, commutation or processing knots;
- (c) Concentration, commutation or processing knots are deemed to be every device or system that either directs or processes information originating from or heading toward the subscriber's system.

3. The basic telecommunications network is exclusive to the universal service operator and shall function as an open network, serving as a support for the transmission of telecommunications services, and the use thereof shall be ensured by the respective providers under equal conditions.

4. The basic telecommunications network is an asset belonging to the state public domain, and is assigned, under the terms established by law, to the universal service operator.

5. The basic telecommunications network shall be developed and modernised in line with the regional planning scheme and the citizens' needs in terms of civil security and safety.

6. The expropriation of immovable property, as well as the establishment of administrative servitudes indispensable to the installation, protection and preservation of the basic network, shall be permitted under the terms as established by law.

Section 12

Public telecommunications service

1. Every public telecommunication service is provided under an exclusivity regime by the universal service operator, being governed by a concession contract to be entered into with the State.

2. Public telecommunication services are considered to be, notably:

- (a) the mobile telecommunications service;
- (b) the commuted data transmission service;
- (c) the circuit hire service.

3. Excepted from subsection 12.1 are the provision of Internet services and the provision of value added services, with strict regard for the provisions of section 23, such services being deemed to be those which, having the fixed telephone service or the commuted data transmission service as their only support, do not require telecommunications infrastructure of their own and can be distinguished from the very services that serve as their support.

4. The telecommunications service provider referred to in the subsection above may be any natural or corporate person authorised by the regulatory entity to that effect, under the terms established by the applicable regulations.

Section 13
Public telecommunications infrastructure

1. The establishment, management and operation of each and every public telecommunications infrastructure is the exclusive competency of the universal service operator, being governed by a concession contract to be entered into with the State.
2. Excepted from the provision of the preceding subsection are:
 - (a) Infrastructure used for private telecommunications, as defined in subsection 3.4;
 - (b) Infrastructure exclusively used for emitting, receiving and transmitting broadcasting services, such services being deemed to be public telecommunications in which communication is done in just one way to various reception points and without pre-set addressing.
3. The universal service operator shall make available, under the terms as established by law and in fully equal conditions, hired circuits, namely circuits required for providing radio and television broadcasting services, where the provision of those services involves the use of the basic network or of public telecommunications infrastructure, as well as circuits meant to establish private telecommunications.
4. The expropriation of immovable property, as well as the establishment of administrative servitudes indispensable to the establishment, protection and preservation of public telecommunications infrastructure, shall be permitted, under the terms established by law.
5. The universal service operator shall be exempt from paying fees or any other charges for the implantation of telecommunications infrastructure or for the passage of the different parts of the installation or equipment required for operating the public telecommunications service.

Section 14
Interconnection

1. Interconnection shall be ensured through the basic telecommunications network and public telecommunications infrastructure.
2. Interconnection agreements between the universal service operator and operators or providers of telecommunications services shall not be subject to any rules and shall be entered into in accordance with the principles of transparency and non-discrimination.
3. Interconnection quality shall be equal to that provided by the universal service operator to itself, to companies where it holds stakes or to any entity to which interconnection is ensured.

4. Interconnection shall not be subject to unjustified interruptions or unavailability of services.

5. Any dispute relating to interconnection shall be submitted to the regulatory entity for arbitration, without prejudice to recourse to ordinary jurisdiction.

CHAPTER III Common provisions

Section 15 Obligations of operators and providers of telecommunications services

Operators and providers of public telecommunications services shall furnish adequate and updated information on the terms and conditions for providing services that are part of the contracts to be entered into with clients, under the terms established by the regulations to be approved as a follow-up to the present Decree-Law.

Section 16 Rates

The rates of telecommunications services provided on a competitive basis are fixed by the respective providers, and the various components thereof shall be announced and disclosed to the general public, in a detailed, clear and unequivocal fashion, under the terms to be defined in the respective operating regulations.

Section 17 Terminal equipment

1. The acquisition, installation and preservation of duly approved equipment shall not be subject to any rules, and its connection to the public telecommunications networks shall be in compliance with the conditions established by law, with a view to safeguarding the wholeness of those telecommunications networks and adequate interoperability of services.

2. Manufacturers, importers, vendors or other occasional holders of terminal equipment designed to be connected to the public telecommunications network shall apply for its endorsement with the regulatory entity, with a view to safeguarding the smooth functioning of the network.

3. The provision of installation and maintenance services for terminal equipment of clients of the public telecommunications network may only be conducted by natural or corporate persons with the required technical qualification and duly authorised by the regulatory entity.

4. The universal service operator shall ensure adequate connections to the terminal points of its network, regardless of whether or not the terminal equipment of the subscriber is the property of the users.

Section 18
Communications secrecy

The secrecy of communications transmitted through the public telecommunications networks is guaranteed, except in cases contemplated by law on matters of criminal investigation and national security.

Section 19
Protecting competition

1. The universal service operator shall ensure the use of its network by operators and providers of telecommunications and broadcasting services in equal conditions of competition.

2. The use of circuits hired from the universal service operator shall be restricted to the user or to the provision of the telecommunications services for which the user is authorised.

Section 20
Consumer rights

1. Consumers have the right to use public telecommunications services with the service quality as required by the applicable legal and regulatory provisions.

2. In drafting applicable regulations, the Government shall promote consultation with representative consumer organisations, as a way of protecting user rights.

Section 21
Prohibited telecommunications

1. Telecommunications that involve disregard for the laws or undermine the state security, public order or social mores are prohibited.

2. Included in the preceding subsection is the use of the national access code.

3. In addition to the provisions of the preceding subsections and in order to safeguard state security and national defence interests, the import, supply and use of cryptologic devices are barred.

CHAPTER IV
Monitoring and penalties

Section 22
Monitoring

1. It incumbent upon ARCOM to monitor compliance with the provisions of the present Decree-Law through its employees mandated to do so or other agents duly credentialed by the ARCOM Board of Directors.
2. The employees and agents referred to in the preceding subsection are bound to not disclose information or data that may come to their knowledge in the exercise of their functions and that constitute either commercial or industrial secret.

Section 23
Offences and penalties

1. Any natural or corporate person who violates the provisions of this Decree-Law or regulations published as a follow-up hereto shall be subject to the applicable penalties provided by law and in the respective concession contract or licence, namely where such person:
 - (a) wilfully causes any prejudicial interference with the transmission of a service provided under the corresponding contract or licence;
 - (b) offers a telecommunications service subject to a concession contract or licence, knowing that the same service is not covered by a proper concession contract or licence;
 - (c) refuses to furnish information or to produce documents to the regulatory entity without good reason or obstructs any investigation into an alleged infringement;
 - (d) wilfully modifies or interferes with the tenor of any communication sent through the public telecommunications network.
2. The offences provided in this Decree-Law shall be punishable with a fine of US\$ 500 to US\$ 5,000 or of US\$ 5,000 to US\$ 50,000, depending on whether such offences have been committed by a natural or corporate person, respectively.
3. Attempt to commit, or negligence in connection with, the offences provided in the present Decree-Law shall be punishable.
4. The regulatory entity may confiscate and alienate any unauthorised radio sets or other telecommunications equipment or if used to commit any offences within the scope of application of the present Decree-Law.

Section 24
Processing and imposition of fines

1. The imposition of the fines provided in the present Decree-Law shall be the competency of the President of the ARCOM Board of Directors.
2. The initiation and prosecution of offence proceedings shall be the competency of ARCOM.
3. The amount of fines shall accrue to the State by 60% and to ARCOM by 40%.

CHAPTER V
Provisional and final provisions

Section 25
Telecommunications under a special regime

Conditions for establishing and using private telecommunications networks, as well as infrastructure meant exclusively for the emission, reception and transmission of broadcasting services and the provision of the respective radio or television service shall be subject to specific legislation.

Section 26
Revocatory clause

1. The laws and regulations, in the field covered by this Decree-Law, which have been brought into the domestic legal order under the terms of section 165 of the Constitution, except the provision of the subsection below, are hereby repealed.
2. UNTAET Regulation No. 2001/15 is hereby repealed insofar as it is inconsistent with any provision of this Decree-Law.

Section 27
Entry into force

This Decree-Law shall enter into force on the day subsequent to its publication date.

Approved by the Council of Ministers, under the provision of section 116(d) of the Constitution, on 12 March 2003.

The Prime Minister

[Signed]
(Mari Bim Amude Alkatiri)

The Minister of Transport, Communications and Public Works

[Signed]
(Ovídio de Jesus Amaral)

Promulgated on 22 May 2003.

To be published.

The President of the Republic

[Signed]
(Kay Rala Xanana Gusmão)