

LAW Nr.8288, date 18.2.1998

ON TELECOMMUNICATIONS REGULATORY AUTHORITY

CHAPTER I GENERAL

Article 1

Scope of the Law

The object of this law is the establishment of the Telecommunications Regulatory Authority (ERT). It defines the functions, procedures and competencies of this body.

It is an important objective of this law to guaranty and safeguard public interests and create a transparent legal and regulatory environment, which will promote private investments in this sector.

Article 2

Definitions

- 1.The Telecommunications Regulatory Authority (ERT) is the institution in charge of regulation of the telecommunications sector.
- 2.The Board of Directors of ERT is referred to as "the Board".
- 3."The Ministry" is the ministry responsible for telecommunications in the Republic of Albania.
- 4.Telecommunications services are commercial activities, which involve the transfer of information from one source to one or more destinations.
- 5.Interconnection are the link between networks of various operators.
- 6.Operator is any legal or real person who offers telecommunications services to the public.
- 7.Public telecommunications operator is any commercial company, which has been granted a license to operate a public telecommunications network and/or offer telecommunications services to the public.
- 8.Independent telecommunications operator is any commercial company, which has been granted a license to set up and/or operate an independent telecommunications network.
- 9.Telecommunications network is the part of network, which can transmit any kind of signal and is only composed of the main multi-connected transmission links and nodes. It is not directly connected to subscribers. It could be of optic fibre, cable or radio wave.

CHAPTER II ESTABLISHMENT OF ERT

Article 3

Establishment and composition of ERT

1.ERT is a public legal selffinanced authority and is subject to all rights and duties provided by the legislation in place .ERT is managed from a board of directors.

2.The Board is composed of five members who are in charge of different sectors of the regulatory body. They are nominated for a 5 year term and could not be re-elected for more than two terms.

The President of the Republic appoints one of the Board members, the Parliament appoint two members and the Council of Ministers also appoint two members. The Chairman of the Board is appointed from the Council of Ministers.

The Board members should be graduated and qualified experts, with a minimum 10 years experience in the telecommunications sectors and conversant with public administration procedures.

Before taking the office, every Board member should notify his resignation from other posts, functions or consultancy services and should sell and/or liquidate his financial interests in companies,firms or other organizations whose activity comes under ERT's jurisdiction.

3.An individual can not be member of the Board if:

- a) is a Member of Parliament or holds another post at any local authority institutions;
- b) is related to any member of the Council of Ministers whose position could lead to conflict of interests for the ERT's Board member concerned;
- c) have any criminal records;
- d) has a financial interest in any corporation or company, which is subject to the regulatory framework of ERT;
- e) does not qualify to be nominated in any civil service post in state administration or judiciary.

Article 4

Dismissal of Board members

1.The authority that has appointed a Board member could dismiss him/her if:

- a) is physically or mentally unable to carry out the assigned tasks;
- b) has been put on trial and convicted for penal offence during his office term;

- c) gets elected as Member of Parliament or appointed in any local authority or public administration post;
- d) refuses to or does not carry out the assigned tasks without any reasonable excuse, or is unable to work for 6 months or more.
- e) is subject to the provisions of Article 3 of this law.

2. When a Board member has been dismissed according to item 1 of this Article, a new member is appointed by the respective authority as stated in Article 3 of this law.

3. Dismissed Board members can not be re-appointed.

Article 5

ERT's function

- 1. ERT's headquarters is in Tirana.
- 2. ERT issue its rules and regulations and working procedures in compliance with the provisions of this law. They will be published in the "Official Gazette".
- 3. ERT's Board takes its decisions by majority of votes. Each Board member, including the chairman, has one voting right. Any absence in a Board meeting does not affect the right of the Board to exercise its powers.
- 4. The chairman of the Board is also the CEO (chief executive officer) of ERT.
- 5. Salary of Board's Chairman and members are set by the Council of Ministers.

Article 6

Organizational structure

- 1. ERT's Board defines the structure of the organization, number and salary of its employees.
- 2. The Board sets ERT's employment rules and criteria in line with the legislation in force.

Article 7

ERT's budget and source of financing

- 1. Sources of financing is as follows:

- a) Start up funds granted from the Council of Ministers upon appointment of ERT Board members;
 - b) Income from fees charged on processing of applications and requests pursuant to the provisions of this law;
 - c) Income from licenses granted from ERT
- 2.ERT prepare and request the approval of its operating budget from the Council of Ministers not later than three months before the beginning of each FY.
 - 3.ERT keeps complete and accurate records of expenses incurred, in line with the accountancy legislation in force.
 - 4.In cases of income exceeding expenses, ERT transfers the surplus amount to the state budget.

CHAPTER III

REGULATION OF TELECOMMUNICATIONS

Article 8

Rights and responsibilities of ERT

ERT's activity is based on the telecommunications development policy and strategy applied in the Republic of Albania.ERT has the following rights and responsibilities:

- 1.Promotes the development of telecommunications by means of selective licensing procedures.
- 2.Encourages competition among telecoms operators, based on principles like: transparency, undiscrimination and fair competition.
- 3.Defines terms and conditions of licensing of telecoms operators.
- 4.Grants licenses to individuals or legal entities which comply with defined terms and conditions.
- 5.Creates a suitable environment for new operators to enter the telecommunications market.
- 6.Co-ordinates operators' activity to ensure that the national telecommunications network is unique, as well as an open and internationally compatible one.
- 7.Provides assistance to operators in reaching interconnection agreements and intervenes in cases of disputes.

8. Guarantees the security and quality of services offered by operators.
9. Increases the effectiveness of services offered by operators in line with terms and conditions set forth by the license.
10. Supervises the enforcement of law "On telecommunications in the Republic of Albania" and other relevant legal acts and by-laws, and reports violations of such laws to appropriate institutions.
11. Prepares the national telephonic numbering plan and ensures the implementation of this plan from operators.
12. Safeguards interests of users of telecommunications network and services.
13. Verifies standardization of imported telecommunications equipment and provides for the standardization of those produced in Albania.
14. Establishes telecommunications standards in line with international recommendations and cooperates with Quality & Standards Department on the matter.
15. Supervises the electromagnetic compatibility of all terminal equipment connected to the public network.
16. Establishes and supervises the implementation of tariff setting procedures for the limited competition services offered from public operators.
17. Approves telecommunications tariffs and the respective procedures, in accordance with the provisions of this law.
18. Prepares the radio frequency plan for civil purpose and allocates frequencies to each civil user by granting them the appropriate licence. Identifies infringements and takes measures to avoid illegal use of frequency bands.
19. Submits its annual activity report to the Council of Ministers.
20. Publishes information on the general development of telecommunications sector in Albania.
21. Harmonises interests of the users, state, public operators, investors and stockholders in the telecommunications sector.
22. Arbitrates dispute between public operators and takes decisions to settle them in accordance with competencies given by this law.
23. Takes independent decisions which are not affected from outside interference, including government's one.

Article 9

Types of licenses

The licenses in the telecommunications sector are classified as follows:

- 1.Licences for services for which there is limited competition.
- 2.Licences for services for which there is free competition.

Article 10

Licensing conditions

1.Depending on the type of licence, each legal or real person may apply and be considered capable for obtaining a licence, if the Board decides that the applicant complies with the following conditions:

- a) is professionally capable;
- b) has sufficient financial means necessary to comply with functions and conditions established in the type of license he has applied for;
- c) has sufficient experience in the telecommunications sector to fulfil the obligations set forth by the license;
- d) has personal merits,such as integrity and seriousness;
- e) has a resident mission in the Republic of Albania as well as a representative who is responsible for communicating with the Board and other state bodies for matters concerning the licensed activities.

2.Separate licenses for limited competition services are granted for each service to any local or foreign legal persons, winners of the international open bid, who comply with the conditions set forth and who are considered of interest to the country.

3.Licenses for free competition services are granted to each legal or real person, local or foreign, who meets the conditions set forth by the license.

4.The Board may ask for data and certificates on support to the applicant's request and can refuse to grant the license if the conditions presented by the applicant are not conform sections a,b,c and d of paragraph 1 of this Article as well as against the national security.

Article 11

Issuance of licenses

- 1.Issuance of licenses is made from the Board.

2. Once a legal or real person submits the application for license and payment of the licensing fee, the Board grants him the required license which authorizes the licensee to offer the public a telecommunications network, service or equipment, according to the conditions set forth in the license and the legal provisions regulating the sector.

3. The Board has the right to modify or amend the license, always giving the licensee the opportunity to express his/her views on such changes.

4. A telecommunications license is granted for a period not over 30 years.

5. ERT assigns the frequency, power, site and coverage area to the operators, within two weeks after they are licensed by National Council of Radio-Television to broadcast radio and TV programs.

Article 12

License amendments and revocations

1. The Board has the right to amend or revoke a license in case of failure by the licensee to fulfil the license's conditions or in other reasonable and justified cases.

2. The Board shall define the procedures following the amendments or revocations, which include informing the licensee in time and allowing him/her to comment before the Board takes any action.

Article 13

Limitations, licenses and the licensees

1. No licensee has the right, without prior approval from the Board, to purchase or take possession in any other way the license of another licensee.

2. The licensee has no rights whatsoever, to transfer the license or its business in the form of sale, mortgage, lease, exchange or any other form, without prior written approval from the Board. Such approval must not be refused or delayed by the Board without a strong reason.

3. The holder of the license can, except in cases when it is forbidden in the license's condition, reach an agreement to offer the telecommunications network, services or equipment with:

- a) another licensed telecommunications operator;
- b) a real person licensed to offer a specific service (service provider);
- c) a holder of a license to offer value added telecommunications services.

4. Each agreement that deals with the type of transactions mentioned in sections 1 and 2 of this Article, is not valid without Board's approval.

CHAPTER IV **TARIFFS**

Article 14

Procedures and tariffs

1. ERT will define, through a complete legal framework to be approved after 6 months from the effect of this law, the procedures of establishing the tariffs that will apply to the users of the public operators' telecommunications services.

2. Through principles defined in section 1 of this article. ERT will:

- a) protect the users from monopolist prices;
- b) enable the licensee to recover in a reasonable manner expenses incurred during an effective service;
- c) promote efficacy, thus increasing profits through the reduction of non-technical losses or service cost, provided the licensee meets all license requirements;
- d) promote sector's economic efficiency by providing accurate information on prices reflecting the demand and supply for different operators;
- e) provides clear and accurate information on government subsidies;
- f) reflects differences in cost and other aspects for different categories of consumers and types of services, depending on the subsidies that will apply;
- g) enables licensees to observe environmental protection laws.

Article 15

Tariff setting procedures

1. ERT defines the methodology for determining the tariffs, based on this law's provisions

2. Within 30 days from the date the licence holder has provided all the information on tariffs requested by ERT, the later should inform the license holder in case it does not agree with the calculations presented and give the necessary explanations.

3. No tariffs or part of it can be modified more than once during a financial year, except in cases when this is required by ERT. The license holder should not change the tariffs for the users against the principles, methods and procedures defined by ERT.

CHAPTER V
APPLICATION OF THE LAW FROM ERT AND THE LICENSE

Article 16

Requirements for the application of the law

1.ERT has the right to issue an order, when the licensee infringes any of the conditions or requirements of the license or any of these provisions, to ensure the application of this law.

2.In case the Board decides to issue an order it should inform the licensee as follows:

- a) inform the licensee that an order is to be issued;
- b) inform the licensee on the request according to which the order aims at guaranteeing that the law is respected, any infringement that has been noted and other necessary justification.
- c) determine the time period, which should be not less than 10 days from the date the licensee has been informed,during which the licensee can appeal against the proposed order

3.After all the above procedures are respected, the Board has, at any time, the right to issue the order if:

- a) The Board judges that the licensee,whom the order has been issued for,has infringed a certain condition or requirement;
- b) The issuing of the order is useful for avoiding a possible infringement of a condition or requirement from the licensee.

4.After the issuing of the order, the Board should:

- a) send the licensee copy of the order;
- b) publish the order in a way it thinks appropriate to have the attention of persons whom may be affected from it.
- c) apply enforcement of the order.

5.ERT is obliged to inform the licensee when there are complaints that he/she has infringed this law or the legal acts pursuant to it and ask him/her to reply in written form.

Article 17

Appealing against the order

The licensee has the right to appeal against the order at the Court of Appeal, within 30 days from receiving the order.

Article 18

Technical Standards and Conditions

1.ERT should draft, approve and ask for the application of technical standards and conditions of the telecommunication services and networks, based on the international rules and standards.

**CHAPTER VI
ADMINISTRATION**

Article 19

Regulatory Framework

1. Following the application of this Law, the ERT should draft necessary regulations and find the proper way to make them public. The application of these regulations is compulsory.
2. At the end of each year, ERT should present to the Government a report on the work for preparation of its regulatory framework, as well as on the performance of other duties assigned by the Law.

Article 20

Verification

ERT has the right to verify facts or matters which it considers necessary to determine if a person has infringed any of the provisions of this law, or to assist in a better implementation of the regulatory framework.

Article 21

Issuing of legal acts

All legal acts issued by ERT on the basis of and pursuant to this law and the law "On the telecommunication in the Republic of Albania", should:

a) be in written form;

b) be approved to the appropriate proceduers, defining the ERT's Board members (including the Chairman) who have voted in the favor of this legal act as well as the vote of each member.

Article 22

Information

1. At the end of each financial year, ERT should present the Parliament and the Government an annual report of the economic and financial situation as well as the forecast for the following year.

2. Pursuant to this law and other legal acts issued by ERT, each licensee should present ERT any kind of reports, financial statements and information that the Board considers necessary to assure the economic management and operative utilization of telecommunications network as well as the effective functioning of ERT.

Article 23

Publications of the acts

The filed documents of the ERT are opened to be inspected by the public during a determined period of the working days. These files include the relating documents, which are indexed and safeguarded in conformity with rules, procedures and standards of ERT, provided that all the procedures and standards relating the safeguard of the secret that ERT may determines, are observed.