

Telecommunications Carriers' Forum

Code for the Control of Unauthorised Use of Mobile Phones in Prisons

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A. PURPOSE

1. The purpose of this Code is to describe the conditions and process under which holders of spectrum that is subject to a management right and that is potentially suitable for the provision of mobile voice and data services will authorise the transmission by the Department of Corrections of interfering signals in such spectrum for the purposes of controlling the unauthorised use of mobile phones in prisons.
2. This Code will take effect on the date that it is endorsed by the Telecommunications Carriers' Forum.

B. DEFINED TERMS

In this Code, unless the context otherwise requires:

“**AQMPO**” means a Party holding spectrum management rights for spectrum referred to in section 6.2 of this Code which rights are nearby the spectrum held by QMPOs.

“**Clause**” refers to a clause in this Code.

“**Confidential Information**” has the meaning ascribed in clause 24.

“**Code**” means this document including any annexures.

“**Department of Corrections**” means the New Zealand Government Department of Corrections.

“**Dispute**” has the meaning ascribed in clause 32.

“**Group**” means, in relation to a Party, each and all of that Party's holding company or subsidiaries now or from time to time (within the meaning of sections 5 and 6 of the Companies Act 1993).

“**Licensee**” means a party whom a Spectrum Holder has licenced to use their spectrum management right for the transmission of radio waves.

“**Party**” means a Person bound by this Code under the Telecommunications Act or a Person signed up to this Code, including for the avoidance of any doubt, the Department of Corrections.

“**Person**” means a legal person and includes a company and any other legal entity.

“**QMPO**” or “**Qualifying Mobile Phone Operator**” means a Party holding a spectrum management right suitable for providing to an end user a mobile phone Telecommunication Service.

“**Spectrum Licence**” means a licence granted by a Spectrum Holder to the Department of Corrections pursuant to Part 6 of the Radiocommunications Act 1989 substantially set out in the form set out at Annexure 2.

“**Spectrum Holder**” means an AQMPO and/or QMPO, as the case requires.

“**Telecommunications Act**” means the Telecommunications Act 2001 as amended from time to time.

“**Telecommunications Carriers Forum**” or “**TCF**” means the Telecommunications Carriers'

Forum Incorporated Society of New Zealand.

“Telecommunication” is the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not; but excluding any conveyance that constitutes broadcasting.

“Telecommunication(s) Service” means any good, service, equipment and/or facility that enables or facilitates Telecommunication.

C. OBJECTIVES AND SCOPE

3. This Code governs the process, terms and conditions under which spectrum management right holders will grant Spectrum Licences to the Department of Corrections for the purposes of controlling mobile phone calls to or from mobile phones and/or electronic radio communication devices (operating in the spectrum referred to in clause 6.1) located within prisons and prison boundaries.

4. Objectives

The Code’s high-level objective is to provide a known and agreed basis upon which the unauthorised use of mobile phones in prisons can be controlled through the use of interference generating transmitters or “jammers”. This objective will be achieved by:

- 4.1. defining the terms and conditions under which jamming will be authorised;
- 4.2. defining the way in which the Department of Corrections will work with the other Parties;
- 4.3. defining the obligations of each Party; and
- 4.4. providing an agreed baseline upon which jammer investment decisions by the Department of Corrections can be based.

5. Exclusions from Scope

- 5.1. This Code does not apply to any wireless services provided using spectrum outside a spectrum management right suitable for providing a mobile phone Telecommunication Service to an end user.

D. COMPLIANCE

6. This Code is applicable to all Spectrum Holders and covers:

- 6.1. in regard to QMPOs, spectrum management rights that are suitable and commonly used for the provision of mobile phone Telecommunication Services:

- 6.1.1 825-845, 870-890MHz
- 6.1.2 890-915MHz, 939-960MHz
- 6.1.3 1710-1785MHz, 1805-1880MHz
- 6.1.4 1920-1980MHz, 2110-2170MHz
- 6.1.5 2010-2025MHz

and

- 6.2. in regard to AQMPOs, the following nearby spectrum management rights:
 - 6.2.1 1785-1805MHz

- 6.2.2 2025- 2053MHz
- 6.2.3 2053- 2082 MHz
- 6.2.4 2082-2110MHz

- 7. Spectrum Holders shall grant Spectrum Licences to the Department of Corrections in accordance with this Code and any relevant legislation or Commerce Commission determinations.
- 8. If a Party defaults in the performance of any of its obligations under this Code, the defaulting Party will use its best endeavours to remedy the default as soon as possible and to prevent a recurrence of the default.
- 9. In the event of any inconsistency between this Code, any relevant legislation and any Commerce Commission determinations, this inconsistency will be resolved in the following (descending) order of precedence:
 - 9.1. Any legislation;
 - 9.2. Any Commerce Commission determinations; and
 - 9.3. This Code.

E. PURPOSE

- 10. Spectrum Holders will grant Spectrum Licences to the Department of Corrections to allow the Department of Corrections to detect, monitor, disrupt, interfere and disable wireless transmissions relating to mobile phones and/or electronic radio communication devices (operating in the spectrum referred to in clause 6.1) within prison boundaries, using Spectrum Holders' management rights, and subject to the terms, conditions and process outlined in this Code.

F. PROCEDURE FOR LICENCING

- 11. Before granting a Spectrum Licence, the Spectrum Holder may request, and the Department of Corrections shall provide, the following information:
 - 11.1. detailed technical specifications of the transmitting equipment to be used at the relevant facilities;
 - 11.2. the exact geographic location of each facility;
 - 11.3. a detailed building and floor plan of relevant areas of each facility, together with detailed installation plans of the equipment; and
 - 11.4. any other information relevant to the installation and operation of the relevant transmitting equipment which the Spectrum Holder may reasonably request.
- 12. Upon receipt and after consideration of the information set out in clause 11, the Spectrum Holder shall notify the Department of Corrections in writing whether it:
 - 12.1. requires any further information from the Department of Corrections (and in doing so may request that it, or its qualified agents or sub-contractors, visit the relevant facility). The Department of Corrections shall arrange all necessary access permits for such personnel to enable them to conduct such activities subject to the operational requirements of each site including security checks of personnel to go on site.
 - 12.2. agrees that the Department of Corrections may proceed with an application to

the Registrar of Radio Frequencies for a Spectrum Licence from that particular Spectrum Holder, in accordance with the relevant statutory procedures. Unless the Spectrum Holder and the Department of Corrections agree otherwise, the Department of Corrections shall provide the Spectrum Holder with an application for a Spectrum Licence in the form of Licence set out in Annexure 2 and the Spectrum Holder shall sign and return to Department of Corrections for approved radio engineer certification and submission to the Registrar of Radio Frequencies; or

12.3. will not provide a Spectrum Licence on the basis that the Spectrum Holder believes that the proposed installation:

12.3.1 will cause, or is likely to cause, degradation to the services operated by the relevant Spectrum Holder (or by its Licensee) outside the property boundaries of the relevant prison facility; and/or

12.3.2 will have, or is likely to have, a negative effect on the operation of the network(s) operated by the relevant Spectrum Holder (or by its Licensee).

in which case it shall advise the Department of Corrections what aspects of the proposed installation give rise to this belief and, if possible, what changes could be made to the proposal that would allow a Spectrum Licence to be granted.

13. In addition to the information specified in clause 11, the Department of Corrections shall provide the Spectrum Holder with any further information relevant to the operation and installation of the relevant transmitting equipment that the Spectrum Holder may reasonably require on an on-going basis, to enable the Spectrum Holder to assess the performance and characteristics of the transmitting equipment being (or to be) used.

G. LICENCE CONDITIONS

Any Spectrum Licence granted by Spectrum Holders will be subject to the conditions set out in clauses 14 to 19 (inclusive):

14. The Department of Corrections will maintain all transmitting equipment installed at the relevant facility, and ensure that it complies at all times with:

14.1. the terms of the Spectrum Licence and this Code; and

14.2. all information provided pursuant to clause 11, including the technical specifications and detailed installation plans of the equipment.

15. In the event that a Spectrum Holder or the Department of Corrections becomes aware that the transmitting equipment that is the subject of a Spectrum Licence is not operating in accordance with clause 14 (including that it falls within clauses 12.3.1 and/or 12.3.2), then that party shall notify the other party, and the Department of Corrections shall implement as soon as possible, changes required to the installation and/or operation of the transmitting equipment to avoid such negative effect (and shall notify the relevant Spectrum Holder when it has done so).

16. In the event that the Department of Corrections wishes to change in any way the installation or operation of the transmitting equipment (including, but not limited to the technical specifications, location or configuration of the transmitting equipment),

then it shall first notify the relevant Spectrum Holder and advise the extent that such change represents a deviation from the original information provided to the Spectrum Holder pursuant to clauses 11 to 11.4. The Spectrum Holder shall then advise the Department of Corrections whether the proposed change requires a variation to the existing Spectrum Licence, or whether a new Spectrum Licence is required under the relevant statutory procedures and in accordance with the process for seeking a new Spectrum Licence as detailed in this Code. The Department of Corrections will not proceed with the proposed change without the Spectrum Holder's agreement, which shall only be withheld on the grounds specified in clauses 12.3.1 or 12.3.2.

17. The Spectrum Holder (including its qualified agents and sub-contractors) shall be entitled to attend the facilities to conduct any measurements it deems necessary to determine compliance or otherwise with this Code, including the extent of interference or adverse implications to the Spectrum Holder's or its Licensee's network or services generally. The Department of Corrections shall arrange all necessary access permits for such personnel to enable them to conduct such activities, subject to the operational requirements of each site including security checks of personnel to go on site.
18. The Department of Corrections shall reimburse to the Spectrum Holder all reasonable costs and fees associated with the application, certification, registration, review and renewal of a Spectrum Licence granted by the Spectrum Holder to the Department of Corrections pursuant to this Code.
19. Subject to clause 27, no Party shall use or permit to be used the name of any of the Parties or of the Department of Corrections in any advertisement, press release, publicity campaign or other disclosure without the prior written consent of the relevant Party or Parties or of the Department of Corrections.

H. ASSIGNMENT

20. No Party (excluding the Department of Corrections) may assign, transfer, sub-licence and/or novate its rights and obligations under this Code to any person without the prior written consent of the Department of Corrections (such consent not to be unreasonably withheld or delayed).
21. The Department of Corrections may not assign, transfer, sub-licence and/or novate its rights and obligations under Code to any person without the prior written consent of all Parties.

I. LIABILITY

22. Provisions describing the liability of the Parties are described in Annexure 1. This Annexure is confidential and is available to the Department of Corrections and TCF members who are Spectrum Holders and either current or potential Parties to this Code only.

J. CONFIDENTIALITY

23. Each Party shall only use the Confidential Information disclosed to it by any other Party for the purposes of this Code and shall not disclose to any third party any Confidential Information disclosed to it by any other Party (except to that Party's subcontractors to the extent such Party needs to disclose such information to implement the Code) or to

that Party's officers, employees or professional advisers (provided that, in each case, each of these persons complies with such Party's confidentiality obligations).

24. For the purposes of clause 23, "Confidential Information" means all information which relates to the operations, plans, know-how, trade secrets and business affairs of each Party. It does not include information which is publicly known (other than as a result of any breach of this Code); information which a Party can show it already knew (other than under a subsisting obligation of confidentiality or restricted use) prior to disclosure; or was made available to a Party by a third party having a right to do so and without any subsisting obligation of confidentiality.
25. Nothing in this Code shall be construed as inhibiting or prohibiting the Department of Corrections from:
 - 25.1. fulfilling its responsibilities under the Ombudsmen Act 1975, the Official Information Act 1982, the Privacy Act 1993, the Corrections Act 2004, and other relevant legislation; and
 - 25.2. meeting its responsibilities in terms of providing information to the Minister of Corrections and for the purposes of answers to Parliamentary Questions, select committee examinations, annual reporting requirements and the like.
26. Each Spectrum Holder shall take all reasonable steps to ensure that its employees and any agents, or subcontractors, who for the purposes of this Code obtain any information relating to the physical layout and security features of any prison (whether through access to any prison or otherwise) do not use or disclose such information other than for the purposes of this Code.
27. Nothing in this Code prevents a Party from disclosing to any party who is not a Party to this Code the existence of and general subject matter of or relating to this Code. Nothing in this Code prevents a Party from disclosing Confidential Information to a member of that Party's Group.

K. TERMINATION

28. Subject to clause 31, a Party (excluding the Department of Corrections) may terminate a Spectrum Licence and/or withdraw from this Code at any time by providing no less than three (3) month's written notice to the other Parties, in the event that the Department of Corrections is in material breach of its obligations under the Spectrum Licence conditions, and provided that the Party seeking to terminate has allowed the Department of Correction a reasonable period of time to remedy such breach.
29. Subject to clause 31, the Department of Corrections may terminate a Spectrum Licence and/or withdraw from this Code at any time by providing no less than three (3) month's written notice to the other Parties.
30. Subject to clause 31, a Party (excluding the Department of Corrections) may terminate a Spectrum Licence in the event that that Party intends to dispose of the relevant spectrum management right or otherwise ceases to own the spectrum management right. A Party (excluding the Department of Corrections) may withdraw from this Code in the event that that Party intends to dispose of all of its relevant spectrum management rights, or otherwise ceases to own all of its spectrum management rights relevant to any of the licences granted to the Department of Corrections. In both cases the Party shall provide as much notice as practical to the Department of Corrections.

31. In the event that a Party (including the Department of Corrections) withdraws from this Code, then that Party shall have the automatic right to terminate any and all Spectrum Licences to which it is party. In the event that the Department of Corrections withdraws from this Code, any Party that has provided a Spectrum Licence to the Department of Corrections may terminate such Spectrum Licence(s). Clauses 22, 23, 24, 25, 26, 27, 31, 32 and Annexure 1 shall survive the expiry or termination of, or a Party's withdrawal from, this Code for whatever reason. A Party's withdrawal from this Code, or termination of this Code or any Spectrum Licence, shall be without prejudice to any rights, obligations and liabilities which have accrued on the date of such withdrawal or termination.

L. DISPUTE RESOLUTION

32. This Code is governed by the laws of New Zealand. All disputes arising out of or in connection with a Spectrum Licence or this Code including, without limitation, disputes concerning the validity, enforceability or interpretation hereof and claims sounding in tort, shall be referred to and finally resolved by arbitration by a sole arbitrator, in accordance with the Arbitration Act 1996 (excluding clauses 1, 4 and 5 of the Second Schedule of that Act). The arbitrator shall be appointed by the Parties, but if the Parties are unable to agree on the selection of the arbitrator within 5 Working Days after the dispute was referred to arbitration, then and in that event, the arbitrator shall be selected by the President or other most senior officer of LEADR New Zealand Inc. or his or her designee or successor. The arbitration shall commence not later than 25 Working Days from the date the dispute was referred to arbitration unless otherwise agreed by the parties. The Parties shall use every reasonable and available means to maintain and preserve the confidentiality of the arbitral proceedings, and of any collateral or court proceedings, except as disclosure is required by law or regulatory authority, or as may be agreed in writing by the Parties. In the event that this Code, or any portion hereof, shall be deemed to be non-binding or unenforceable, this clause 32 shall survive. Nothing in this clause 32 shall prevent any Party from seeking urgent interlocutory or injunctive relief from the Court.

M. EXPIRY, REVOCATION AND AMENDMENT OF THE CODE

33. Each Party shall remain subject to the terms of this Code until this Code is revoked or a Party withdraws in accordance with clauses 28 to 30.

The expiry, revocation or amendment of this Code is subject to Clauses 11-15 of Schedule 2 of the Telecommunications Act. For the avoidance of doubt, and in accordance with the Telecommunications Carriers' Forum's Operating Procedures Manual, any Forum Member may put a Project Proposal to the Forum Board (at any time) for the amendment or revocation of the Code. It is the expectation of the Parties that any proposed amendments or revocation of the Code would be agreed to by the Parties to the Code. The Department of Corrections shall be consulted in relation to any proposed amendments or revocation of this Code.

Annexure 1: Liability provisions (Confidential)

[This Annexure is to be treated as confidential information]

Annexure 2

SPECTRUM LICENCE

Section 48 Radiocommunications Act 1989

I, **[Spectrum Holder]**, being the **Manager** for the range of frequencies specified in record of management rights number **MR [Management Right number]**, give notice that I intend to grant to **[The Crown acting by and through the Chief Executive of The Department of Corrections, with its Head Office at Mayfair House, 44 - 52 The Terrace, Wellington]** (the “**Rightholder**”), the right to transmit radio waves on the frequencies specified in clause 3 of the Schedule.

The terms and conditions of the licence are set out in the Schedule.

Signed for and on behalf of **[Spectrum Holder]**, the **Manager** by:

[Name]

.....

in the presence of:

.....

Witness: **[Witness Name]**

Occupation:

Address:

Date

Schedule Details of spectrum licence

- 1 The commencement date of this licence is [DD Mmmmm CCYY]
- 2 The expiry date of this licence is [DD Mmmmm CCYY].
- 3 The frequencies that apply to this licence are as follows:
 - (a) the characteristic frequency is [xxx] MHz.
 - (b) the frequency band is [xxxx] to [xxx] kHz.
- 4 Unwanted emission limits applying to emissions from the transmitter (expressed as the maximum e.i.r.p. (in dBW) of those emissions):
 - (a) limits applying to frequencies below the lower boundary frequency:

[XXXX] dBW at [XXXX] MHz to [XXXX] dBW at [XXXX] MHz
[XXXX] dBW at [XXXX] MHz to [XXXX] dBW at [XXXX] MHz
[XXXX] dBW at [XXXX] MHz to [XXXX] dBW at [XXXX] MHz
 - (b) limits applying to frequencies above the upper boundary frequency:

[XXXX] dBW at [XXXX] MHz to [XXXX] dBW at [XXXX] MHz
[XXXX] dBW at [XXXX] MHz to [XXXX] dBW at [XXXX] MHz
[XXXX] dBW at [XXXX] MHz to [XXXX] dBW at [XXXX] MHz
- 5 The maximum power, designation of emissions, and horizontal radiation pattern permitted under this licence are as follows:
 - (a) maximum power of emissions: [xx] dBW (e.i.r.p.)
 - (b) designation of emissions: [xx]
 - (c) horizontal radiation pattern of antenna (maximum e.i.r.p. (in dBW) per sector in degrees relative to true North):

0 degrees up to 360 degrees: [xx] dBW

6 The location of the transmitter, the antenna polarisation, and the antenna height are as follows:

(a) Altitude [xx]m (amsl) Site Name: [Site Name]

The location of the [site name] area within which the transmitter or transmitters may transmit under this licence, being the area bounded by a series of straight lines between the following points:

Easting	Northing
[xxxxxxx]	[xxxxxxx]
[xxxxxxx]	[xxxxxxx]
[xxxxxxx]	[xxxxxxx]
[xxxxxxx]	[xxxxxxx]

(b) the antenna polarisation is [xxx].

(c) the antenna height is [xx] metres above ground level.

7 The protection location or locations or protection area that apply under this licence are described as follows:

No protection (type B licence)

8 The authorities that apply to this licence are as follows:

(a) this licence may be transferred by agreement between the **Manager** and the **Rightholder**.

(b) this licence may be cancelled by either the **Manager** or the **Rightholder**.

(c) this licence may be modified by agreement between the **Manager** and the **Rightholder**.

9 The conditions applying to the exercise of the **Rightholder's** rights under this licence are:

(1) The **Rightholder** will observe the TCF Code for the Control of Unauthorised Use of Mobile Phones in Prisons.