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Regulation concerning the establishment, operation and use of satellite earth stations on Svalbard

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Dept/Dir	Department of Civil Aviation, Postal Services and Telecommunications
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Statutory authority: Issued by Royal Decree 21 April 2017 pursuant to the Act of 17 July 1925 no. 11 concerning Svalbard, Section 3 and Section 4, the Act of 13 June 1969 no. 38 on the launch of objects from Norwegian territory, etc. into space, Section 2, the Act of 4 July 2003 no. 83 relating to electronic communications (the Electronic Communications Act), Section 2-10, Section 6-2, Section 10-1, Section 10-3, Section 10-7 and Section 12-1, and the Act of 19 May 2006 no. 16 relating to the right of access to documents held by public authorities and public undertakings (Freedom of Information Act) Section 29, second paragraph. Submitted by the Ministry of Transport and Communications.

Section 1. *Purpose*

The regulation will ensure that earth stations on Svalbard are established, operated and used in accordance with the Act of 4 July 2003 no. 83 concerning electronic communications, the Act of 17 February 1925 no. 11 concerning Svalbard, and within the framework of international law.

Section 2. *Scope*

The regulation concerns the establishment, operation and use of earth stations on Svalbard. The regulation also applies to the logging of activities at earth stations. The regulation does not apply to earth stations that solely receive broadcast programmes. The regulation also does not apply to earth stations operating in frequency bands regulated by the current regulation on general licences for the use of frequencies (General Authorisations Regulations), but does apply to earth stations that communicate by satellite using frequencies above 3000 GHz.

In any case of doubt, the Norwegian Communications Authority will determine whether an earth station is subject to the regulation.

Section 3. Definitions

In this regulation, the following definitions apply:

- a) *Earth station* : equipment for the transmission of data to or receipt of data from satellite or another space-based system; electronic communication equipment intended for general commercial use is not an earth station according to this regulation.
- b) *Satellite*: unmanned artificial object located at least 100 km above the Earth's surface.
- c) *Payload*: passive and active instruments on board a satellite; instrumentation related to the control and steering of the satellite is not included in the definition.
- d) *Launch phase*: as from and including launch and until the payload is applied.
- e) *Emergency situation*: Situation where a satellite has technical difficulties and the satellite operator has a need to communicate through the earth station on Svalbard; there is no emergency situation if there are solely technical problems with the payload.

Section 4. Licence requirements

The establishment, operation and use of an earth station that transmits data to or receives data from a satellite requires a licence from the Norwegian Communications Authority. If an earth station is to be operated by a party other than the licence applicant, the party responsible for operation must be stated in the application.

A separate communication licence from the Norwegian Communications Authority is required for each satellite that an earth station sends data to or receives data from.

The holder of a licence under the first paragraph does not need a separate communication licence to assist a satellite to be used for civil purposes and which is in launch phase. It is not permitted to provide equivalent assistance for a satellite that is to be used for functions specifically for military purposes, cf. Section 7. In an emergency situation, the holder of the licence may assist all satellites, cf. Section 7.

The Norwegian Communications Authority may lay down terms in the licence according to the first and second paragraphs.

An application for a licence is sent to the Norwegian Communications Authority.

Section 5. Ownership and transfer information

Changes in the earth station's ownership or significant changes in the owning company's organisation must be notified to the Norwegian Communications Authority without undue delay.

The transfer or leasing of a licence requires the consent of the Norwegian Communications Authority. This also applies to indirect transfer.

Section 6. Requirements for the operation and safeguarding of earth stations

An earth station must be maintained in technical operational condition so that all requirements pursuant to the regulation and the licence are complied with.

An earth station must be safeguarded to prevent unauthorised persons from gaining access to the station or from becoming aware of the content of data sent to or received from a satellite.

Section 7. Requirements for the use of earth stations

It is not permitted to use a earth station to send data to or download data from a satellite that is used for functions specifically for military purposes, with the exception of assistance to a satellite in an emergency situation as specified in Section 4, third paragraph.

It is not permitted to send data to or download data from a satellite if the downloaded data is solely made available for military purposes, or when the purpose is primarily to use the data for military purposes.

If an earth station is used to assist a satellite in an emergency situation, cf. Section 4, third paragraph, the requirements in Section 8 must be complied with, and data from the payload may not be downloaded.

If an earth station is used to assist a satellite that is in an emergency situation or in the launch phase, the licence holder must immediately notify the Norwegian Communications Authority of the assistance given.

Section 8. *Logging and storage obligation*

The holder of a licence to establish, operate and use an earth station with a movable antenna is obliged to continuously

- a) log all satellite passages whereby an earth station transmits data to or downloads data from a satellite; and to
- b) store all relevant data concerning the antenna control orders at the same level as the logging takes place.

The log and data must be stored at the earth station for a minimum of two years.

The Norwegian Communications Authority may order other logging and storage.

The Norwegian Communications Authority may require the holder of the licence to immediately send a copy of logged and stored data to the Norwegian Communications Authority.

Section 9. *Supervision, etc.*

The Norwegian Communications Authority will supervise compliance with the regulation and licences in accordance with Section 4.

Notwithstanding the statutory confidentiality obligation, the Norwegian Communications Authority may require the assistance of the Governor of Svalbard, as well as other authorities and administrative bodies, on the issue of licences and in conjunction with supervision.

The holder of the licence will be obliged, annually and upon request, to document to the Norwegian Communications Authority that the use of the earth station complies with the requirements in Section 7, first and second paragraphs, and the terms set out in the licence in accordance with Section 4.

On request, the holder of the licence must disclose the log and stored data pursuant to Section 8, first and second paragraphs, and other information necessary for the performance of supervision. Information may be required to be disclosed electronically.

The Norwegian Communications Authority may determine that the documentation is to be sent directly to the party that assists in accordance with the second paragraph. If a body which assists the Norwegian Communications Authority in accordance with the second paragraph has received information which could be exempt from public disclosure under the Act of 19 May 2006, no. 16 on the right of access to documents held by public authorities and public undertakings (the Freedom of Information Act), Section 14, Section 15, Section 20 to Section 24 or Section 26, all claims for access to the information will be considered by the Norwegian Communications Authority.

Section 10. *Cooperation on supervision*

The subject of the supervision is obliged to ensure that the Norwegian Communications Authority and whoever assists in the supervision has unimpeded access to the earth station. The necessary documentation, all data and logs must be made available to the supervisory authority. The licence holder or its representative, or the operations officer, may be required to attend the supervision.

Licences and documentation concerning the establishment, operation and use of an earth station must be available at the earth station.

Section 11. *Access for visits*

The Norwegian Communications Authority may give representatives of research institutions with the necessary professional qualifications the right to visit an earth station.

The holder of the licence under Section 4, first paragraph, must be given reasonable notice of the visit.

The party who is entitled to visit an earth station must be accompanied by the Norwegian Communications Authority or the Governor of Svalbard. The Governor of Svalbard may monitor a visit without the participation of the Norwegian Communications Authority.

Special terms may be set for the performance of the visit.

The licensee will be obliged to arrange the performance of approved visits.

Section 12. *Orders, sanctions and penalties*

The Norwegian Communications Authority may issue orders to correct or cease unlawful conditions that are in conflict with the requirements in this regulation, or terms in the licence under Section 4, cf. Section 10-6, of the Electronic Communications Act.

The Norwegian Communications Authority may, in the event of breach of the requirements in or pursuant to the regulation, take decisions concerning coercive fines in accordance with Section 10-7 of the Electronic Communications Act, revocation in accordance with Section 10-8 of the Electronic Communications Act, closure in accordance with Section 10-9 of the Electronic Communications Act, infringement fines in accordance with Section 10-13, first paragraph, no. 2. of the Electronic Communications Act, or confiscation in accordance with Section 10-14 of the Electronic Communications Act.

Breach of the requirements in the regulation, Section 4 to Section 6 and Section 8 is subject to penalties in accordance with Section 12-4, first paragraph, no. 2 of the Electronic Communications Act.

Breach of Section 7 is subject to penalties in accordance with Section 4, second paragraph, of the Svalbard Act.

Section 13. *Termination*

Licences under Section 4, first and second paragraphs, are subject to written notice of termination.

If the licence under Section 4, first paragraph, is terminated or revoked, the earth station will be taken out of operation. The antenna and power supply must be disconnected, if possible. Written notification must be given to the Norwegian Communications Authority that the requirements have been fulfilled and that the earth station will not be used unless a new licence is granted.

If the right to use an earth station ceases, the Norwegian Communications Authority may request the Governor to seal the earth station. This can be done without the participation of the Norwegian Communications Authority.

Section 14. *Sector fees and charges*

Annual sector fees and charges are to be paid to the Norwegian Communications Authority for licences under the current regulations concerning sector fees and administrative charges to the Norwegian Communications Authority.

Section 15. *Exemptions*

In particular cases and within the framework of international law, the Norwegian Communications Authority may make exemptions from the regulatory provisions.

Section 16. *Appeals instance*

The Ministry of Transport and Communications decides on appeals lodged against individual decisions issued by the Norwegian Communications Authority.

Section 17. *Entry into force*

The regulation will enter into force on 1 May 2017.

On the same date, the regulation of 11 June 1999 no. 664 concerning the establishment, operation and use of satellite earth stations will lapse.

Section 18. *Transitional provision*

A licence granted pursuant to the regulation of 11 June 1999 no. 664 on the establishment, operation and use of satellite earth stations will apply until the licence expires or is discontinued by other means.

The Norwegian Communications Authority may stipulate the supplementary terms for such licences as this regulation gives access to.