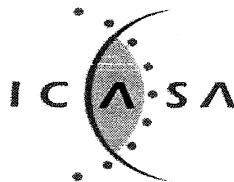


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## GENERAL NOTICE

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### NOTICE 659 OF 2015



#### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

#### ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005), AS AMENDED: REGULATIONS

The Independent Communications Authority of South Africa ("the Authority") hereby intends to amend the regulations in the schedule as follows:

Standard Terms and Conditions Regulations – Individual Licences, Government Gazette No. 33294 of 14 June 2010.

A copy of the proposed regulations is available on the Authority's website ([www.icasa.org.za](http://www.icasa.org.za)) and in the ICASA Library at 164 Katherine Street, Pin Mill Farm, Sandton, Block D, Ground floor during the Authority's business day office hours.

Interested persons are hereby invited to submit written representations with regard to the proposed regulations. Written representations must be submitted to the Authority within thirty (30) working days from the date of the publication of this notice by post or hand delivery or email or facsimile transmission as follows:

Independent Communications Authority of South Africa

**FOR ATTENTION:** Peter Mailula

Private Bag X10002

SANDTON

2146

OR

Block C, PinMill Farm

164 Katherine Street

SANDTON

2146

Fax: (011) 566-3658

E-mail: [pmailula@icasa.org.za](mailto:pmailula@icasa.org.za)

A handwritten signature in black ink, appearing to be 'M S' with a stylized flourish at the end, positioned above a horizontal line.

**DR SS MNCUBE**

**CHAIRPERSON**

**ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)**  
**REGULATIONS**

The Independent Communications Authority of South Africa has, under section 8 read with section 4 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended, and section 17E(2)(b) of the ICASA Act, 2000 (Act No. 13 of 2000) made the regulations in the schedule.

**SCHEDULE 1**

**1. Definitions**

In these regulations "the Regulations" means the regulations published by Government Notice No. 523 of 2010.

**2. Amendment of regulation 2 of the Regulations**

2.1 Regulation 2 of the Regulations is hereby amended by the substitution for subregulation (1) of the following subregulation:

"(1) A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes:

- (a) the name of the Licensee;
- (b) contact details including the contact person;
- (c) shareholding;
- (d) Physical address; and
- (e) Financial year end."

2.2 Regulation 2 of the Regulations is hereby amended by the repeal of subregulation (2).

### **3. Amendment of regulation 5 of the Regulations**

The following regulation is hereby substituted for regulation 5 of the Regulations:

#### **“5. COMMENCEMENT OF OPERATIONS**

- (1) A Licensee must commence operation of the BS specified in the Licence, within the periods mentioned in the paragraphs below, unless the Authority grants, on good cause shown, an extended commencement period:
  - (a) twelve (12) months from the effective date in respect of free to air sound BS;
  - (b) twenty four (24) months from the effective date in respect of free to air television BS; or
  - (c) twenty four (24) months from the effective date in respect of subscription BS;
- (2) A request for an extension of the commencement period, in terms of subregulation (1), must be brought to the Authority six (6) months prior to the expiry of the commencement of operations.
- (3) Where an extension for commencement of operations has been granted, it shall be final and not granted for a period longer than the period in terms of subregulation (1)
- (4) Where a licensee has not commenced operations, it must provide the Authority with a letter from external auditors confirming nil licensed service revenue.
- (5) Where a Licensee is not legally required to have audited financial statements (“AFS”), it must submit a letter from an Independent Accounting Officer and must submit a clearance certificate from South African Revenue Services (“SARS”) as proof that it did not generate any revenue from the licensed service”

### **4. Substitution of regulation 9 of the Regulations**

The following regulation is hereby substituted for regulation 9 of the Regulations:

- “(1) The Authority may, in the course of carrying out its obligations under the Act, require a Licensee to provide any information including documents or books not ordinarily required, so as to enable it to:
- (a) monitor and enforce consumer protection, quality of service, competition, compliance with licence conditions and other requirements of the Act and related legislation;
  - (b) allow for the assessment and allocation of applicable fees and related requirements;
  - (c) facilitate the efficient use of radio frequency spectrum; and
  - (d) collect and compile information to be used for research purposes, planning, reporting and conducting inquiries.”
- (2) In respect of each information request referred to in subregulation (1), except where otherwise addressed in applicable regulations, the Authority will provide, among other things, detailed specifications of its information request, applicable response times and a contact person to whom queries may be addressed.
- (3) Submission of information for the annual compliance report must be in line with the Compliance Procedure Manual Regulations 34863 of 15 December 2011 and Licence Terms and Conditions.
- (4) Further to the above, the Licensee must provide information or report on to their syndication/network of programmes. Programme syndication must not exceed 20% of the licensee's programming.
- (5) In the event where the Licensee or its representative refuse or fail to provide the Authority with requested information in terms of subregulation (1), the Authority may, after reasonable attempts, refer the matter to the Complaints and Compliance Committee.”

#### **5. Amendment of regulation 13 of the Regulations:**

Regulation 13 of the Regulations is hereby amended by the substitution for subregulation (2) of the following subregulation:

“(2) A subscription BS Licensee must submit to the Authority:

- (a) details of the price(s), including any temporary or permanent adjustment to existing prices, for its service and related terms and conditions of the provision of such service at least seven (7) days prior to the provision of the said services; and
- (b) On bi-annual basis, a record of the actual services provided and related tariffs charged during the previous six months by 31 July.”

**6. Substitution of regulation 14 of the Regulations:**

The following regulation is hereby substituted for regulation 14 of the Regulations:

**“14. CONTRAVENTIONS AND FINES**

- (1) Any person that contravenes regulations 6, 7, 9, 10 and 12 is liable to a fine not less than R100 000, 00 (One hundred thousand Rand) but not exceeding R5 000 000, 00 (Five million Rand) or 10% of the Licensee’s annual turnover for every day or part thereof during which the offence is continued.
- (2) Any person that contravenes any other regulation, not specified in subregulation (1), except regulation 5, is liable to a fine not less than R10 000, 00 (Ten thousand Rand) but not exceeding R100 000, 00 (One hundred thousand Rand).
- (3) A person found guilty of sub regulations (1) and (2) is liable for an additional fine of R100 000, 00 for every repeated contravention of a regulation in these Regulations.
- (4) Failure to commence with operations in terms of regulation 5 will result in the revocation of the licence”

## **7. Short Title and Commencement**

These regulations are called the Amendment Standard Terms and Conditions for Individual Broad casting Services, 2015 and will come into operation by publication in the Government Gazette.

## **SCHEDULE 2**

### **1. Definitions**

In these regulations "the Regulations" means the regulations published by Government Notice No. 523 of 2010.

### **2. Amendment of regulation 2 of the Regulations**

Regulation 2 of the Regulations is hereby amended by the substitution for subregulation (1) of the following subregulation:

"(1) A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes:

- (a) the name of the Licensee;
- (b) contact details including the contact person;
- (c) shareholding;
- (d) Physical address; and
- (e) Financial year end."

### **3. Substitution of regulation 5 of the Regulations**

The following regulation is hereby substituted for regulation 5 of the Regulations:

#### **"5. COMMENCEMENT OF OPERATIONS**

- (1) A Licensee must commence operation of the ECNS specified in the Licence within twelve (12) months from the effective date, unless the Authority grants,

on good cause shown, an extended commencement period on written application

- (2) A request for an extension of the commencement period, in terms of subregulation (1), must be brought to the Authority twelve (12) months prior to the expiry of the commencement of operations.
- (3) Where an extension for commencement of operations has been granted, it shall be final and not granted for a period longer than the period within which a licensee was required to commence its operations in terms of subregulation (1).
- (4) Where a licensee has not commenced operations, it must provide the Authority with a letter from external auditors confirming nil licensed service revenue.
- (5) Where a Licensee is not legally required to have audited financial statements ("AFS"), it must submit a letter from an Independent Accounting Officer and must submit a clearance certificate from South African Revenue Services ("SARS") as proof that it did not generate any revenue from the licensed service."

#### **4. Substitution of regulation 8 of the Regulations**

The following regulation is hereby substituted for regulation 9 of the Regulations:

- "(1) The Authority may, in the course of carrying out its obligations under the Act, require a Licensee to provide any information including documents or books not ordinarily required, so as to enable it to:
- (a) monitor and enforce consumer protection, quality of service, competition, compliance with licence conditions and other requirements of the Act and related legislation;



- (b) allow for the assessment and allocation of applicable fees and related requirements;
  - (c) facilitate the efficient use of radio frequency spectrum; and
  - (d) collect and compile information to be used for research purposes, planning, reporting and conducting inquiries.”
- (2) In respect of each information request referred to in subregulation (1), except where otherwise addressed in applicable regulations, the Authority will provide, among other things, detailed specifications of its information request, applicable response times and a contact person to whom queries may be addressed.
- (3) A licensee must submit all the required information as required by the Authority in terms of subsection (1).
- (4) In the event where the Licensee or its representative refuse or fail to provide the Authority with requested information in terms of subregulation (1), the Authority may, after reasonable attempts, refer the matter to the Complaints and Compliance Committee.”

#### **5. Repeal of regulation 9 of the Regulations**

Regulation 9 of the Regulations is hereby repealed.

#### **6. Substitution of regulation 10 of the Regulations**

The following regulation is hereby substituted for regulation 10 of the Regulations:

#### **“10. METERING AND BILLING ARRANGEMENTS**

- (1) A Licensee shall install and operate metering and billing systems and require the same from service providers which accurately record the extent of the service(s) provided to any end-user.

- (2) A Licensee must provide an accurate invoice with a detailed statement of services rendered to any end-user at no charge.
- (3) The invoice must include information for the entire period covered by such invoice as follows:
  - (a) exact period covered by such invoice;
  - (b) details of services rendered to the end-user;
  - (b) breakdown of charges associated with services, and
  - (c) such other relevant information associated with the end-user's account.
- (4) Upon request by an end-user, the Licensee must provide an itemised bill, which contains a sufficient level of detail to allow verification of charges incurred in using the services provided by the licensee.
- (5) An itemised bill in terms of subregulation (4) must contain at least the following information in relation to each individual transaction (voice or data call) charge incurred by the subscriber during the relevant billing period:
  - (a) destination or session;
  - (b) dialed number or SMS number;
  - (c) date;
  - (d) time;
  - (e) duration, of the voice call or session; and
  - (f) unit charge and total charge per call or session.
- (6) The detailed itemised bill must be provided:
  - (a) via post or in an electronic format; and
  - (b) at such a price that takes into account the [difference] underlying cost of the mode of delivery."

## **7. Substitution of regulation 12 of the Regulations:**

The following regulation is hereby substituted for regulation 12 of the Regulations:

### **"12. CONTRAVENTIONS AND FINES**

- (1) Any person that contravenes regulations 7, 8, 9 and 10 is liable to a fine not less than R100 000, 00 (One hundred thousand Rand) but not exceeding R5 000 000, 00 (Five million Rand) or 10% of the Licensee's annual turnover for every day or part thereof during which the offence is continued.
- (2) Any person that contravenes any other regulation not specified in subregulation (1) is liable to a fine not less than R10 000, 00 (Ten thousand Rand) but not exceeding R100 000, 00 (One hundred thousand Rand).
- (3) A person found guilty of sub regulations (1) and (2) is liable for an additional fine of R100 000, 00 for every repeated contravention of a regulation in these Regulations.
- (4) Failure to commence with operations in terms of regulation 5 will result in the revocation of the licence."

## **8. Short Title and Commencement**

These regulations are called the Amendment Standard Terms and Conditions for Individual Electronic Communications Network Service 2015, and will come into operation by publication in the Government Gazette.

### **SCHEDULE 3**

#### **1. Definitions**

In these regulations “the Regulations” means the regulations published by Government Notice No. 523 of 2010.

#### **2. Amendment of regulation 2 of the Regulations**

Regulation 2 of the Regulations is hereby amended by the substitution for subregulation (1) of the following subregulation:

“(1) A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes:

- (a) the name of the Licensee;
- (b) contact details including the contact person;
- (c) shareholding;
- (d) Physical address; and
- (e) Financial year end.”

#### **3. Substitution of regulation 4 of the Regulations**

The following regulation is hereby substituted for regulation 4 of the Regulations:

##### **“4. Duration of the Licence**

The Licence is valid for twenty (20) years from the effective date.”

#### **4. Substitution of regulation 5 of the Regulations**

The following regulation is hereby substituted for regulation 5 of the Regulations:

#### **“5. COMMENCEMENT OF OPERARIONS**

- (1) A Licensee must commence operation of the ECS specified in the Licence within twelve (12) months from the effective date, unless the Authority grants, on good cause shown, an extended commencement period on written application.
- (2) A request for an extension of the commencement period, in terms of subregulation (1), must be brought to the Authority twelve (12) months prior to the expiry of the commencement of operations.
- (3) Where an extension for commencement of operations has been granted, it shall be final and not granted for a period longer than the period within which a licensee was required to commence its operations in terms of subregulation (1).
- (4) Where a licensee has not commenced operations, it must provide the Authority with a letter from external auditors confirming nil licensed service revenue
- (5) Where a Licensee is not legally required to have audited financial statements (“AFS”), it must submit a letter from an Independent Accounting Officer and must submit a clearance certificate from South African Revenue Services (“SARS”) as proof that it did not generate any revenue from the licensed service”

#### **5. Substitution of regulation 8 of the Regulations**

The following regulation is hereby substituted for regulation 8 of the Regulations:

#### **“8. Provision of Information**

- (1) The Authority may, in the course of carrying out its obligations under the Act, require a Licensee to provide any information including documents not ordinarily required, so as to enable it to:
  - (a) monitor and enforce consumer protection, quality of service, competition, compliance with licence conditions and other requirements of the Act and related legislation;
  - (b) allow for the assessment and allocation of applicable fees and related requirements;
  - (c) facilitate the efficient use of radio frequency spectrum; and
  - (d) collect and compile information to be used for research purposes, planning, reporting and conducting inquiries.”
- (2) In respect of each information request referred to in subregulation (1), except where otherwise addressed in applicable regulations, the Authority will provide, among other things, detailed specifications of its information request, applicable response times and a contact person to whom queries may be addressed.
- (3) A licensee must submit all the required information as required by the Authority in terms of subsection (1).
- (4) In the event where the Licensee or its representative refuse or fail to provide the Authority with requested information in terms of subregulation (1), the Authority may, after reasonable attempts, refer the matter to the Complaints and Compliance Committee”

#### **6. Substitution of regulation 12 of the Regulations:**

The following regulation is hereby substituted for regulation 12 of the Regulations:

**"12. CONTRAVENTIONS AND FINES**

- (1) Any person that contravenes regulations 7, 8, 9 and 10 is liable to a fine not less than R100 000, 00 (One hundred thousand Rand) but not exceeding R5 000 000, 00 (Five million Rand) or 10% of the Licensee's annual turnover for every day or part thereof during which the offence is continued.
- (2) Any person that contravenes any other regulation not specified in subregulation (1) is liable to a fine not less than R10 000, 00 (Ten thousand Rand) but not exceeding R100 000, 00 (One hundred thousand Rand).
- (3) A person found guilty of sub regulations (1) and (2) is liable for an additional fine of R100 000, 00 for every repeated contravention of a regulation in these Regulations.
- (4) Failure to commence with operations in terms of regulation 5 will result in the revocation of the licence"

**7. Short Title and Commencement**

These regulations are called the Amendment Standard Terms and Conditions for Individual Electronic Communications Service 2015, and will come into operation by publication in the Government Gazette.

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