
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
NOTICE 158 OF 2016**



**REGULATIONS ON STANDARD TERMS AND CONDITIONS FOR INDIVIDUAL LICENCES
IN TERMS OF THE ELECTRONIC COMMUNICATIONS ACT, 2005 (NO. 36 OF 2005)**

The Independent Communications Authority of South Africa hereby amends the Standard Terms and Conditions Regulations for Individual Licences, 2010 (Notice No. 523 of 2010) to the extent reflected in the schedule.

A handwritten signature in black ink, appearing to read 'Nomvuyiso Batyi', written on a light-colored background.

**NOMVUYISO BATYI
COUNCILLOR: ICASA**

**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 of sub regulation (1) for the following sub regulation:

“(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 insertion of the following sub regulation after sub regulation (1):

(1A) Notwithstanding the provisions of subregulation 1, a licensee may not change shareholding which results in a reduction of ownership and/or control by Historically Disadvantaged Groups (HDGs) in the licence below the 30% threshold or where the 30% threshold is not yet held, without the prior written approval of the Authority.

2.3 Regulation 2 of the Regulations is hereby amended by the repeal of sub regulation (2).

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 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 date of issue in respect of free to air sound BS;
 - (b) twenty-four (24) months from the date of issue in respect of free to air television BS; or
 - (c) twenty-four (24) months from the date of issue in respect of subscription BS;
- (2) A request for an extension of the commencement period, in terms of sub regulation (1), must be brought to the Authority six (6) months prior to the expiry of the commencement of operations.
- (3) An extension for the commencement of operations shall only be granted once for a period that does not exceed the period stipulated in sub regulation (1)
- (4) Where a licensee has not commenced operations, it must provide the Authority with a letter from external auditors confirming that it has not generated any revenue from the licensed service.

- (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:

“9. 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 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 sub regulation (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 relevant guidelines 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 sub regulation (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 sub regulation (2) of the following sub regulation:

"(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 PENALTIES

- (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 – whichever is the greater - for every day or part thereof during which the offence is continued.
- (2) Any person that contravenes any other regulation, not specified in sub regulation (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 a contravention in terms 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 a licence”

7. Short Title and Commencement

These regulations are called the Amendment Standard Terms and Conditions for Individual Broadcasting Services, 2016 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

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

“(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 insertion of the following sub regulation after sub regulation (1):

(1A) Notwithstanding the provisions of subregulation 1, a licensee may not change shareholding which results in a reduction of ownership and/or control by Historically Disadvantaged Groups (HDGs) in the licence below the 30% threshold or where the 30% threshold is not yet held, without the prior written approval of the Authority.

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 twenty-four (24) months from the date of issue, 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 sub regulation (1), must be brought to the Authority twelve (12) months prior to the expiry of the commencement of operations.
- (3) An extension for the commencement of operations shall only be granted once for a period that does not exceed the period stipulated in sub regulation (1)
- (4) Where a licensee fails to adhere to the extension, this will constitute non-compliance and will be referred to the CCC to take a decision on cancelling the licence in terms of section 14 of the Act and section 17 D of the ICASA Act.
- (5) Where a licensee has not commenced operations, it must provide the Authority with a letter from external auditors confirming that it did not generate any revenue from the licensed service.
- (6) 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 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 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 sub regulation (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 sub regulation (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 12 of the Regulations:

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

“12. CONTRAVENTIONS AND PENALTIES

- (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 – whichever is the greater - for every day or part thereof during which the offence is continued.
- (2) Any person that contravenes any other regulation not specified in sub regulation (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 a contravention in terms 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 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

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

“(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 insertion of the following sub regulation after sub regulation (1):

(1A) Notwithstanding the provisions of subregulation 1, a licensee may not change shareholding which results in a reduction of ownership and/or control by Historically Disadvantaged Groups (HDGs) in the licence below the 30% threshold or where the 30% threshold is not yet held, without the prior written approval of the Authority.

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 OPERATIONS

- (1) A Licensee must commence operation of the ECS specified in the Licence within twelve (12) months from the date of issue, 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 sub regulation (1), must be brought to the Authority twelve (12) months prior to the expiry of the commencement of operations.
- (3) An extension for the commencement of operations shall only be granted once for a period that does not exceed the period stipulated in sub regulation (1)
- (4) Where a licensee fails to adhere to the extension, this will constitute non-compliance and will be referred to the CCC to take a decision on cancelling the licence in terms of section 14 of the Act and section 17 D of the ICASA Act.
- (5) Where a licensee has not commenced operations, it must provide the Authority with a letter from external auditors confirming that it did not generate any revenue from the licensed service.

- (6) 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 sub regulation (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 that the Licensee or its representative refuse or fail to provide the Authority with requested information in terms of sub regulation (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 PENALTIES

- (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 – whichever is the greater - for every day or part thereof during which the offence is continued.
- (2) Any person that contravenes any other regulation not specified in sub regulation (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 a contravention in terms 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.