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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**NOTICE 131 OF 2021**

AMENDMENT STANDARD TERMS AND CONDITIONS REGULATIONS FOR
CLASS LICENCES UNDER CHAPTER 3 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 Class Licences, 2010 (Notice No. 523 of 2010) to the extent reflected in the schedule.

DR. KEABETSWE MODI MOENG
CHAIRPERSON
DATE: 24/03/2021

CLASS BROADCASTING SERVICES

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, made the regulations in the schedule.

SCHEDULE 1

1. Definitions

In these regulations "the Regulations" means the regulations published by Government Notice No. R525 of 2010, as amended by Government Notices 155 of 30 March 2016.

2. Amendment of regulation 1 of the Regulations

2.1. Regulation 1 of the Regulations is hereby amended by insertion of the following definitions after the definition of "BS":

" "Commercial Low Power Sound Broadcasting Service" means a commercial low power sound broadcasting service whose coverage area is, for instance, shopping malls/centres, sports grounds, show grounds and drive-in movie theatres, or any other like service the Authority may deem appropriate; "

" "Community Low Power Sound Broadcasting Service" means a community low power sound broadcasting service operating from and broadcasting to, for instance, old age homes, and links between old age homes and places of worship, or between places of worship, or any other like service the Authority may deem appropriate; "

2.2. Regulation 1 of the Regulations is hereby amended by the substitution for the definition of "Effective Date" with the following definition:

" "Effective Date" means the date specified in the licence which may be a past, present or future date from the date of signature; "

2.3. Regulation 1 of the Regulations is hereby amended by the substitution for the definition of "Public Service Announcement" with the following definition:

" "Public Service Announcement" means an announcement broadcast by a broadcasting service licensee aimed at providing information concerning a disaster or immediate grave danger to the public or in the interests of public welfare; "

2.4. Regulation 1 of the Regulations is hereby amended by insertion of the following definitions after the definition of "Licensee":

" "Low Power Sound Broadcasting Service" means a community, private or public sound broadcasting service which radiates power not exceeding one watt; "

" "News" means programming that is not current affairs by a broadcaster in which it reports on events of immediate social, political or economic relevance and on matters of international, national and local significance; "

" "Special Event" means an event of a cultural, religious, political, sporting, commercial or of a similar nature taking place within the applicant's community or coverage area, which must take place irrespective of whether a licence has been granted or refused. "

3. Amendment of regulation 2 of the Regulations

The following regulation is hereby substituted for regulation 2 of the Regulations:

"2. NOTIFICATION OF CHANGE IN LICENSEE DETAILS AND INFORMATION

(1) A Licensee must submit written notice to the Authority within fourteen (14) days of occurrence of the following changes:

- (a) the name of the Licensee;
- (b) contact details including the contact persons (e.g. telephone, fax, cell number and email);
- (c) Board of Directors or Trustees;
- (d) Principal place of business; and
- (e) Postal address."

4. Amendment of regulation 3 of the Regulations

4.1. Regulation 3 of the Regulations is hereby amended by the substitution for sub-regulations (1) and (2) of the following sub-regulations:

"(1) The Licence area for a Community Sound Broadcasting Service is the maximum possible area in terms of the Radio Frequency Spectrum licence, which may not exceed a District Municipality as defined in the Local Government Municipal Structures Act, No. 117 of 1998."

"(2) The Licence area for a community Television Broadcasting Service is the maximum possible area in terms of the Radio Frequency Spectrum licence, which may not exceed a Province as defined in the Constitution of the Republic of South Africa, 1996."

5. Amendment of regulation 4 of the Regulations

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

"4. DURATION OF THE LICENCE

- (1) The following Licences are valid for seven (7) years from the effective date:
 - (a) Community Sound Broadcasting Service;
 - (b) Community Television Broadcasting Service
 - (c) Community Low Power Sound Broadcasting Service; and (d) Commercial Low Power Sound Broadcasting Service.
- (2) Special Event Community Sound Broadcasting Service licences are valid for a maximum period not exceeding forty-five (45) days for Community Sound Broadcasting and Low Power Services.
- (3) Temporary Community Television Broadcasting Service licences are valid for a maximum period not exceeding twelve (12) months."

6. 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 service specified in the Licence, within Twelve (12) months from the effective date unless, the Authority grants, on good cause shown, an extended commencement period.
- (2) Subject to sub-regulation (1), a request for an extension of the commencement period must be brought to the Authority six (6) months prior to the expiry of the twelve months.
- (3) An extension for the commencement period must only be granted once, for a period not exceeding the period granted by the Authority in terms of sub-regulation (1).
- (4) Subject to sub-regulations (1) and (2), failure to commence operations shall result in the Authority revoking the service licence and the radio frequency spectrum licence associated with the service licence"

7. Amendment of regulation 6 of the Regulations

7.1. Regulation 6 of the Regulations is hereby amended by the substitution for sub-regulation (2) of the following sub-regulation:

“(2) Where a Licensee cannot provide the licensed service due to circumstances beyond its control, for a continuous period of six (6) hours or longer, the Licensee must notify the Authority in writing of such circumstances within twenty-four (24) hours.”

7.2. Regulation 6 of the Regulations is hereby amended by the addition of the following sub-regulation:

“(3) Wherein the Licensee cannot provide licensed services for a continuous period of more than seven (7) days, a request for exemptions to comply with the licence terms and condition and applicable regulations should be submitted to the Authority within forty-eight (48) hours of being aware of such an occurrence.”

8. Amendment of regulation 7 of the Regulations

Regulation 7 of the Regulations is hereby amended by the substitution for paragraph (f) of the following regulation:

“(f) Temporary Television BS.”

9. Amendment of regulation 10A of the Regulations

9.1. Regulation 10A of the Regulations is hereby amended by the substitution for sub-regulation (3) of the following sub-regulation:

“(3) A station must clearly identify itself at intervals of not more than fifteen (15) minutes.”

9.2. Regulation 10A of the Regulations is hereby amended by the substitution for sub-regulation (10) of the following sub-regulation:

“(10) The broadcast of pre-recorded material must not exceed 20% of the Licensee’s live programming.”

9.3. Regulation 10A of the Regulations is hereby amended by the addition, after sub-regulation (13), of the following sub-regulations:

“(14 A) The Board of Directors/Trustees and Station Management must not occupy a dual role with regard to being members of the Board, Trustees, Managers and simultaneously being presenters at the radio station.”

(15) No person may occupy the role of Management, Director or Trustee in more than one station unless the person concerned is from the same Licensee.”

10. Insertion of regulation 10B in the Regulations

“ 10B. PROVISIONS FOR LOW POWER SOUND BROADCASTING SERVICE PROGRAMMING

- (1) A Low Power Sound Broadcasting Service licensee must not provide news and current affairs programming.
- (2) A Low Power Sound Broadcasting Service licensee must provide programmes intended for the specific coverage area, for example, shopping malls, sports grounds, show grounds, drive-in movie theatres, old age homes, places of worship, or any other like service.

Ownership and Control

- (3) No foreign person or entity must directly or indirectly exercise control over a Low Power Sound Broadcasting Service licensee in any way whatsoever.
- (4) No person or entity that has an interest in an existing broadcasting licensee must directly or indirectly exercise control

or have an attributable interest in a Low Power Sound Broadcasting Service licensee.

Advertising and Sponsorship

- (5) A Low Power Sound Broadcasting Service Licensee must source advertising and sponsorship from within the coverage area.
- (6) Advertising must be limited to a minimum of eight (8) minutes and a maximum of fourteen minutes (14) per hour.
- (7) The provisions of 5 and 6 must not apply to specific services related to the delivery of audio attached to a specific presentation, performance or event, for instance, at drive-in movie theatres or any other like service the Authority may deem appropriate.
- (8) All broadcasters must adhere to the Advertising Standards Authority's Code as specified in section 55 of the Electronic Communication Acts as amended.
- (9) All broadcasters must adhere to the Authority's Advertising, Infomercials and Programme Sponsorship Regulations, 1999, or any amendment or replacement thereto.

Technical Standards and Specifications

- (10) A Low Power Sound Broadcasting Service licensee must adhere to the Authority's regulations relating to the technical standards and specifications applicable to sound broadcasting services.
- (11) A Low Power Sound Broadcasting Services licensee must ensure that the antenna height is ten (10) metres above average surrounding terrain."

11. Insertion of regulation 10C in the Regulations

" 10C. Provisions for Special Event Licences

At least 60% of the programming of a Special Event Community Sound Broadcasting Service licensee should relate to the Special Event."

12. Amendment of regulation 11 of the Regulations

The following regulation is hereby substituted for regulation 11 of the Regulations:

" 11. OFFENCES AND PENALTIES

Any person that contravenes these regulations, except for regulations 4, 5 and 10B (10) is liable to a fine not exceeding 10% of its annual turnover of licensed services"

13. Short Title and Commencement

These regulations are called the Amendment Standard Terms and Conditions for Class Licences, 2021 and will come into operation by publication in the Government Gazette.

14. Repealed Regulations

Regulations	Extent of Repeal
Low Power Sound Broadcasting Regulations, 2003 (Government Notice No. 3162 of 24 October 2003).	Entirety
Regulations relating to Application for Special Events Community Sound Broadcasting Licence or Temporary Television Broadcasting Licences, 2005 (Government Notice No. 1642 of 26 August 2005)	Entirety
Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999 (Government Notice No. 426 of 1 April 1999)	Repeal of regulation 1.18 (definition of "public service announcement")

SCHEDULE 2

CLASS ELECTRONIC COMMUNICATIONS NETWORK SERVICES

1. Definitions

In these regulations "the Regulations" means the regulations published by General Notice No. R525 of 2010 as amended by General Notices 155 of 30 March 2016.

2. Amendment of regulation 1 of the Regulations

Regulation 1 of the Regulations is hereby amended by the substitution for the definition of "Effective Date" with the following definition:

"Effective date" means the date specified in the licence which may be a past, present or future date from the date of signature;"

3. Amendment of regulation 2 of the Regulations

The following regulation is hereby substituted for regulation 2 of the Regulations:

"2. NOTIFICATION OF CHANGE IN LICENSEE DETAILS AND INFORMATION

(1) A Licensee must submit written notice to the Authority within fourteen (14) days of occurrence of the following changes:

- (a) the name of the Licensee;
- (b) contact details including the contact person (e.g. telephone, fax, cell number and email); (c) principal place of business; and (d) postal address.

4. 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 network services specified in the Licence within twenty-four (24) 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) An extension for the commencement of operations may only be granted once, for a period not exceeding the period granted by the Authority in terms of 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 did not generate 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."

5. Amendment of regulation 6 of the Regulations

Regulation 6 of the Regulations is hereby amended by the substitution for subregulation (1) of the following sub-regulations:

- "(1) A licensee must provide electronic communication network services for twenty-four (24) hours per day."

6. Amendment of regulation 11 of the Regulations

The following Regulation is hereby substituted for Regulation 11 of the Regulations

"11. METERING AND BILLING ARRANGEMENTS

- (1) A Licensee must install and operate metering and billing systems which accurately record the extent of the service(s) provided to any enduser.
- (2) A Licensee must provide an accurate invoice with a detailed statement of services rendered to any end-user at no charge, except where the end-user obtains services exclusively on a prepaid basis and the prices and terms of such prepaid service have been disclosed at the time of purchase.
- (3) The invoice must include information for the entire period covered by such invoice as follows:
 - (a) details of services rendered to the end-use; and
 - (b) breakdown of charges associated with such services.
- (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) 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 in the mode of delivery."

7. Amendment of regulation 12 of the Regulations

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

"12. OFFENCES AND PENALTIES

Any person that contravenes these Regulations, except for regulations 4 and 5 is liable to a fine not exceeding 10% of its annual turnover of its licensed services.

8. Short Title and Commencement

These regulations are called the Amendment Standard Terms and Conditions for Class Licences, 2021 and will come into operation by publication in the Government Gazette.

SCHEDULE 3

CLASS ELECTRONIC COMMUNICATIONS SERVICE LICENCES

1. Definitions

In these regulations "the Regulations" means the regulations published by General Notice No. R525 of 2010 as amended by General Notices 155 of 30 March 2016.

2. Amendment of regulation 1 of the Regulations

Regulation 1 of the Regulations is hereby amended by the substitution for the definition of "Effective Date" with the following definition:

"Effective date" means the date specified in the licence which may be a past, present or future date from the date of signature;"

3. Amendment of regulation 2 of the Regulations

The following regulation is hereby substituted for regulation 2 of the Regulations:

"2. NOTIFICATION OF CHANGE IN LICENSEE DETAILS AND INFORMATION

(1) A Licensee must submit written notice to the Authority within fourteen (14) days of occurrence of the following changes:

- (a) the name of the Licensee;
- (b) contact details including the contact person; (e.g. telephone, fax, cell number and email)
- (c) Principal place of business;
- and (d) Postal address.

4. 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 service 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 sub-regulation (1), must be brought to the Authority six (6) months prior to the expiry of the commencement of operations as prescribed by sub-regulation (1).
- (3) An extension for the commencement of operations must only be granted once, for a period not exceeding the period granted by the Authority in terms of 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 did not generate 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”.

5. Amendment of regulation 6 of the Regulations

Regulation 6 of the regulations is hereby amended by the substitution for subregulation (1) of the following sub-regulation:

- “(1) A licensee must provide electronic communication services for twenty-four

(24) hours per day.”

6. Amendment of regulation 12 of the Regulations

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

“12. OFFENCES AND PENALTIES

Any person that contravenes these regulations, except regulation 4 and 5, is liable to a fine not exceeding 10% of its annual turnover of its licensed services.”

7. Short Title and Commencement

These regulations are called the Amendment Standard Terms and Conditions for Class Licences, 2021 and will come into operation by publication in the Government Gazette.



REASONS DOCUMENT ON THE AMENDMENT STANDARD TERMS AND
CONDITIONS REGULATIONS FOR CLASS LICENCES, 2021

MARCH 2021

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1. ACKNOWLEDGEMENTS

The Independent Communications Authority of South Africa ("the Authority") hereby acknowledges and thanks all stakeholders who have participated in the process aimed at amending the Standard Terms and Conditions Regulations for Class Licences.

The following stakeholders have submitted written representations to the draft Amendment Standard Terms and Conditions Regulations for Class Licences, 2020 ("the draft Regulations"):

- 1) Internet Service Providers' Association (ISPA);
- 2) Wireless Access Providers' Association of South Africa (WAPA); and
- 3) South African Communications Forum (SACF).

2. INTRODUCTION

2.1. The Reasons Document sets out the reasons for decisions of the Authority on the amendment of the Standard Terms and Conditions Regulations for Class Licences, 2010, published on 14 June 2010 in Government Gazette Number: 33296 of 2010 ("the Regulations") as amended by Government Gazette Number: 39872 (Notice No. 155) of 30 March 2016. ("Regulations")

2.2. The Authority's reason for amending the Regulations was to provide clarity on the Authority's processes with respect to the licensing of Broadcasting, Electronic Communications and Electronic Communications Network Services for Class Licences; to enhance the Regulations and to streamline submission of documents to the Authority thus providing an effective service to the Licensees and Applicants.

- 2.3. On 5 March 2020 the Authority published the draft amendment Regulations for public input¹. The public hearing was subsequently held on 6 November 2020.
- 2.4. In developing this Reasons Document, the Authority has considered the written submissions which were put before it as well as oral submissions made during the public hearing. The Authority is charged with the obligation to formulate regulations independently and in the public interest.
- 2.5. The positions (in bold) form the basis for finalising the regulations.

3. AMENDMENT OF REGULATION 1

DEFINITIONS

3.1. "Effective Date"

3.1.1. ISPA proposes that in addition to the definition of "Effective Date", the Authority should consider inserting clear references on the licence document to:

3.1.1.1. The date on which a licence was first issued; and

3.1.1.2. The date on which a licence was renewed (if applicable).

3.1.2. ISPA also brings to the Authority's attention the typographical error in the proposed definition: "Effective Date" means [is] the date specified in the licence which ..."

3.1.3. WAPA submits that the definition be further expanded to include reference to the date of first issue of a given licence.

¹ Draft Amendment Regulations Regarding Standard Terms and Conditions, Government Gazette No. 43077 of 5 March 2020

3.1.4. WAPA further proposes that a definition be inserted for “Renewal Date”, which definition should be distinguished from “Effective Date” as being the past, present or future date on which a given licence has been renewed.

3.2. Decision by the Authority:

3.2.1. The Authority has considered the submissions made by WAPA and ISPA respectively. The Authority, however, is of the view that incorporating more dates on the licence such as when the licence was issued, and the date when the licence was renewed will create complexities if not confusion for licensees.

3.2.2. In consideration of the submissions for better clarity, the Authority will, going forward, refine all new licences, renewals, and transfers to include the effective and expiry dates on page 2 of each licence.

4. AMENDMENT OF REGULATION 2 (NOTIFICATION OF CHANGE IN LICENSEE DETAILS AND INFORMATION)

4.1. The SACF welcomes the increased period provided in the draft Regulations which now allows a licensee 14 days to submit notifications of changes to Licensee Details and Information, rather than 7 days. They argue that this is a reasonable time frame for licensees to submit change of details information. However, SACF states that the regulation is not clear on when the clock begins and is subject to interpretation. For example, is the licensee required to make the change on the day that the change is affected or is the licensee to notify the Authority of approval of the change. These two milestones in the process would be different.

4.2. SACF submits that clarity would eliminate the ambiguity and improve compliance. SACF is of the view that the 14 days should be upon conclusion of all the governance processes giving effect to the change of details. They propose the amendment as follows:

"2(1) A Licensee must submit written notice to the Authority within fourteen (14) days...."

4.3. Decision by the Authority:

4.3.1. The Authority has considered SACF's submission and has amended this section to read as follows:

"A Licensee must submit written notice to the Authority within fourteen (14) days of occurrence of the following changes: "

5. AMENDMENT OF REGULATION 2- SCHEDULES 2 AND 3 (NOTIFICATION OF CHANGE IN LICENSEE DETAILS AND INFORMATION)

5.1. WAPA and ISPA welcome the proposal to remove the obligation to notify the Authority of changes to shareholding of a Class licensee. ISPA states that in terms of regulation 2(2), any change or transfer of shares undertaken must comply with the Licensing Processes and Procedures Regulations (as amended). In ISPA's view, the Electronic Communications Act No. 36 of 2005 ("ECA") does not oblige holders of class licences to seek the prior approval of the Authority for changes in control and ownership.

5.2. WAPA further indicates that although they do not have a difficulty with the inclusion of draft regulation 2(2) in its current form, WAPA notes that the ECA does not currently oblige Class licensees to seek the Authority's prior written permission for changes in shareholding/ownership and control in Class licences. To this end WAPA questions how this obligation contemplated in regulation 2(2) would look like in practice.

5.3. Decision by the Authority:

5.3.1. The Authority notes WAPA and ISPA's submission and has deleted these provisions in the Amended Regulations.

6. AMENDMENT OF REGULATION 5- SCHEDULES 2 AND 3 (COMMENCEMENT OF OPERATIONS)

6.1. ISPA submits that in terms of the commencement of operations (regulation 5) the Authority should consider amending the period in which an application for an extension is to be submitted. In addition, ISPA argues that it may be difficult for a licensee to know halfway through the period allowed for commencement of services whether it will be able to commence. As a result, ISPA proposed as follows:

- i. ECNS: 6 months prior to expiry; and
- ii. ECS: 3 months prior to expiry.

6.2. According to SACF, Regulation 5 poses a challenge because it "is limited" as it adopts a blanket approach for different scenarios on extension of commencement. SACF states that there could be 3 distinct reasons at play for the delay in commencement which can be surmised as follows:

- i. Licensee with no scarce resources - has resources;
- ii. Licensees with scarce resources; and
- iii. Licensees with no access to scarce resources and was thus unable to commence operations due to a lack of access to spectrum.

6.3. In SACF's view each of these categories of non-operational class licences should attract a different approach. Thus, the proposed blanket approach should be reconsidered because market concentration is an important factor to be considered when deciding on the necessity to extend the commencement of a licence.

6.4. WAPA accepts the need for an independent confirmation that a given licensee has not derived an unlawful benefit from the unannounced

commencement of licensed service provision. Though WAPA questions what the Authority hopes to determine through the review of a given licensee's tax clearance certificate.

6.5. WAPA submits that an affidavit, prepared by a director or member of the Class licensee in question, providing confirmation that the licensee has not commenced with licensed services may serve to provide sufficient confirmation for the purposes of the Authority.

6.6. Decision by the Authority:

6.6.1. The commencement period has been standardised for administrative purpose with the other dates. The Authority is of the view that the current regulations do not limit the number of requests for an extension, and therefore are subject to misuse, wherein licensees apply for extensions indefinitely.

6.6.2. The Authority has also extended the commencement of operations period to a 24-month period, to align this period with the Frequency Spectrum Regulations, which provide that a frequency spectrum licence must be used within 24 months of the effective date. Accordingly, the Authority has maintained Amendment of regulation 5- Schedules 2 and 3 in the Regulations.

6.6.3. Furthermore, in the Authority's considered view, tax clearance will serve to validate the fact that the Licensee is not able to generate income over and above the letter from the Licensee's Auditors. In this regard, this requirement has been maintained in the Regulations.

7. AMENDMENT OF REGULATION 11 SCHEDULE 2 (METERING AND BILLING)

- 7.1. WAPA is of the view that the Authority has erred in seeking to expand the provision of sub regulation 11(4)(a) of schedule 2 in the manner contemplated by the draft Regulations. WAPA states that the services detailed in sub-regulation 11(4)(a)(1)-(6) would almost exclusively apply to licensees utilising the numbers from the national numbering plan and that the said licensees in terms of the numbering plan regulations are limited to individual electronic communication service licensees.
- 7.2. WAPA submits that CECNS licensees may not resell the voice services of upstream IECNS Licensees. Further to that, they would not be permitted to provide these services directly. WAPA also argues that there are no circumstances in which CECNS Licensees would be able to provide the services detailed in regulations 11(4)(a)(1)-(6). According to WAPA, the proposed amendment to sub-regulation 11(4) will result in a scenario where CECNS Licensees are obliged, under threat of significant penalty, to provide subscribers with information which they themselves are prohibited from processing. In this regard, WAPA encourages the Authority to use the current amendment process to regularise the issues which have arisen in both regulation (11)(4) to schedule 3 and in regulation 4 to schedule 2 of the proposed Amendment.
- 7.3. ISPA submits that the contents of metering and billing are irrelevant to class ECNS licensees, who by definition do not provide retail services / services to the public. Further, it is not relevant to class ECS licensees, which are not permitted to obtain numbers directly from the National Numbering Plan.
- 7.4. Decision by the Authority:
- 7.4.1. The Authority concurs with WAPA's views and this subregulation has been deleted from the Regulations.

8. AMENDMENT OF REGULATION 12, SCHEDULES 2 AND 3 (CONTRAVENTIONS AND PENALTIES)

- 8.1. Whilst WAPA accepts the need for relevant sanctions where non-compliance is found to have taken place, it is of the view that a penalty amounting to 10% of annual turnover is excessive, disproportionate and/or unreasonable. In circumstances where considerable uncertainty exists within the Regulations, it is incumbent upon the Authority not to impose sanctions which would, in the case of most SMMs, result in the immediate failure of a business. Further, should the Authority persist in its desire to amend regulation 12 as contemplated by the draft Regulations, WAPA will ask the Authority to disclose its rationale for settling on the chosen sanction.
- 8.2. Concurring with WAPA's views, SACF submits that the draft Regulations amend the penalties for non-compliance from a maximum fixed amount to a percentage which is intended to introduce a proportionate approach. They support the Authority's intention of introducing a proportionate approach to penalties. They understand that the fines would be imposed after due process including subsequent to an appearance before the Complaints and Compliance Committee (CCC) in which case the CCC may not implement the maximum penalty of 10% and could elect to impose a lower fine. They are still of the view that the penalty regime introduced in the draft Regulations is extraordinarily high and tends to be punitive rather than encouraging compliance.
- 8.3. SACF avers that licensees should have regulatory certainty with a single regulatory framework for contraventions and penalties. Section 17H of the ICASA Act sets out a framework for offences and penalties. SACF submits that the Authority's powers to issue a fine of up to 10% of annual turnover

is constrained by 17H(3)(i) and may only apply such a fine in very specific circumstances. Therefore, the proposed penalties are ultra vires.

- 8.4. According to SACF the misalignment in the draft Regulations and the ICASA Act is undesirable. To this end, SACF proposes that the section on the penalties should be aligned to section 17H of the ICASA Act and would be adequately addressed by the following provision:

"A contravention of these regulations will trigger sanctions in accordance with 17H of the ICASA Act."

- 8.5. ISPA submits that the proposed sanction is unduly harsh, and no rationale has been provided for the variation from the more nuanced position in the existing Regulations. They aver that the Authority has no power to impose a fine based on anything other than revenue from licensed services.

- 8.6. ISPA and WAPA further propose that the percentage should be reduced considerably and should be accompanied with a maximum Rand value, with an example of such an approach being:

"Any person that contravenes these Regulations, except Regulation 4 and 5, is liable to a fine not exceeding R100 000 or 2.5% of its annual turnover, whichever amount is higher".

- 8.7. Decision by the Authority:

8.7.1. The Authority has considered the submissions by ISPA, WAPA and SACF and is of the view that a fine of not more than 10% of annual turnover of licensed services is the correct percentage which is intended to deter non-compliance. The CCC, having considered the merits of the case, has the prerogative to impose an appropriate sanction between 1-10 %, with 10% being the maximum. The severity of the fine will be determined by the nature of the transgression

9. AMENDMENT OF REGULATION 13, SCHEDULES 2 AND 3 (SHORT TITLE AND COMMENCEMENT)

9.1. WAPA is of the view that the proposed amendment of regulation 13 as a whole was likely made in error (as the wording presumably relates to the draft Regulations itself rather than the Regulations once amended) and should be removed prior to publication of the final amendment regulations.

9.2. Decision by the Authority:

9.2.1. The Authority notes the submission and the final Amendment Regulations does not have the word "draft" under Short Title and Commencement.

10. ISSUES FOR AUTHORITY'S CONSIDERATION

10.1. Tariff Notifications

10.1.1. SACF submits that tariff notifications were not included in the draft Regulations and this in their view is a key element of the standard terms and conditions that impacts all licensees. Licensees are required to submit tariff notifications 7 business days prior to implementation of a tariff. Thus, it is necessary for the Authority to have sight of tariffs to ensure transparency linked to consumer protection. Consumer protection is key. However, so is agility and competition.

10.1.2. As tariffs are submitted to the Authority for notification and not approval, SACF is of the view that tariffs need not be submitted 7 days in advance. A shorter period would still give the Authority sight of the tariffs. As a result, one day before implementation of the tariff should be adequate. For example, competitors are not able to respond quickly to competitive offers, therefore consumers

are prejudiced by having to wait 7 business days for a cheaper and more competitive offer to be launched.

10.1.3. According to SACF, a competitive response after 7 business days is too late in an agile and competitive market. Furthermore, consumers are not prejudiced by a shorter tariff notification period since it is not an approval process. In any event operators are required to submit detailed tariff submissions twice annually and SACF understands this to be used in the Authority's biannual tariff analysis report.

10.1.4. Their recommendation on shortening the period for the notification of tariffs will give licensees greater agility and may even enable licensees to respond to new and more competitive tariffs introduced by competitors sooner. Consumers are unlikely to move away from a lower tariff plan in favour of a new higher tariff which should allay potential concerns in respect of consumers being exploited.

10.2. Decision by the Authority:

10.2.1. The Authority notes the submission and further notes that regulation 9 of the Regulations empowers the Authority to request any information from licensees to carry out its duties.

10.3. Repeal of the Compliance Procedure Manual Regulation (CPMR)

10.3.1. SACF submits that the forms included in the Compliance Procedure Manual are based on obligations arising from Regulations. As a result, when regulations are amended, the impact on the reporting obligation may require that the templates are updated in the Compliance Manual to reflect the amended regulations. They argue that should this not happen in tandem; the consequence is that there could be two sets of reporting requirements that would create uncertainty. The manual has not kept up with changes in

regulations in the past and is already considerably out of date. SACF is of the view that this process creates a double consultation obligation, which is an unnecessary duplication.

10.3.2. Notwithstanding this, the standardisation of reporting is important and can be achieved by changing the status of the Compliance Manual from a Regulation to a guideline or reporting template. Accordingly, the SACF proposes the repeal of the Compliance Manual Regulations and instead publishing the Compliance Manual as a reporting template or reporting guideline. In SACF's view this will reduce the obligation on the Authority to consult on amendments to principal regulations and then again on the Compliance Manual Regulations which according to them is merely a reporting template.

10.4. Decision by the Authority:

10.4.1. The Authority notes SACF's submission and argument however, this amendment relates to the Standard Terms and Conditions Regulations for class licences. A separate process should be undertaken as this is a separate and standalone regulation.



DR KEABETSWE MODI MOENG

CHAIRPERSON

DATE: 24/03/2021