
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**NOTICE 1717 OF 2023****AMENDMENT OF THE STANDARD TERMS AND CONDITIONS FOR
INDIVIDUAL LICENCES, 2010**

The Independent Communications Authority of South Africa hereby publishes the third amendment to the Standard Terms and Conditions Regulations for Individual Licences, 2010 (Government Gazette No 33294, Notice No R. 523 of 2010), to the extent reflected in the schedule.

A copy of the Amendment Regulations will be made available on the Authority's website at <http://www.icasa.org.za> and in the Authority's library situated at Eco Point Office Park, 350 Witch-Hazel Avenue, Centurion, between 09h00 and 16h00, Monday to Friday.

A handwritten signature in black ink, appearing to read 'Charles Lewis', written over a horizontal line.

DR CHARLES LEWIS**ACTING CHAIRPERSON****DATE: 26 / 03 / 2023**

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), and section 17E (2)(b) of the Independent Communications Authority of South Africa Act, 2000 (Act No 13 of 2000), made the regulations in the Schedule.

SCHEDULE 1

INDIVIDUAL BROADCASTING SERVICES

1. Definitions

In these regulations "the Regulations" means the regulations published by Government Notice No R. 523 of 14 June 2010 (Government Gazette No 33294), as amended by Government Notices No R. 158 of 30 March 2016 (Government Gazette No 39875) and No R. 699 of 26 October 2016 (Government Gazette No 40372).

2. Amendment of regulation 1 of the Regulations

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

"**days**" means as defined in the Act;"

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

"**Effective Date**" means the date on which the licence comes or came into effect which may be different from the date on which the licence is issued or signed by the Authority;"

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

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

- 2.4. 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;"

3. Substitution 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 a 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, cell number and email);
 - (c) Shareholding;
 - (d) Principal place of business; and
 - (e) Postal address."

4. Amendment of regulation 6 of the Regulations

- 4.1. 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 of being aware of such an occurrence.”

- 4.2. 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 an exemption to comply with the licence terms and conditions and applicable regulations should be submitted to the Authority within forty-eight (48) hours of being aware of such an occurrence.”

5. Amendment of regulation 9 of the Regulations

Regulation 9 of the Regulations is hereby amended by the substitution for sub-regulation (5) of the following sub-regulation:

- “(5) In the event that the Licensee or its representative refuses or fails to provide the Authority with the requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts, refer the matter to the CCC.”

6. Amendment of regulation 11 of the Regulations

Regulation 11 of the Regulations is hereby amended by the deletion of sub-regulation (2).

7. Short Title and Commencement

These regulations are called the Third Amendment to the Standard Terms and Conditions for Individual Broadcasting Services, 2023, and will come into operation by publication in the Government Gazette.

8. Substitution of Annexure A the Regulations

The following Annexure is hereby substituted for Annexure A of the Regulations:

"ANNEXURE A
INDIVIDUAL BROADCASTING SERVICES



INDIVIDUAL BROADCASTING SERVICE LICENCE

No.

GRANTED AND ISSUED

TO

.....

FOR THE PROVISION OF

.....

Effective from [Year:Month:Day]

**SIGNED FOR AND ON BEHALF OF THE INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA**

AT _____ ON THIS XX DAY OF MONTH 20XX

CHAIRPERSON

PART 1**1. LICENSEE**

The Licence is issued to:

1.1 Name of the Entity:

1.2 Shareholders: (where applicable):

1.3 Ownership held by persons from historically disadvantage groups:

.....

2. LICENCE PERIOD

2.1 The Effective Date of the licence is XX XXX 20XX.

2.2 The licence shall expire on XX XXX 20XX.

3. GENERAL LICENCE TERMS

(May vary, this is dependent on the Licence)

PART 2

4. TRADING NAME OF LICENSEE

The Trading Name of the Licensee is:

5. CONTACT DETAILS

5.1 The contact person for the Licensee shall be:

5.1.1 Name :

5.1.2 Tel :

5.1.3 Cell :

5.1.4 Email :

6. NOTICES AND ADDRESSES

6.1 The Licensee chooses the following as its principal addresses:

6.1.1 Principal place of business :

6.1.2 Postal address :"

SCHEDULE 2

INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICES

1. Definitions

In these regulations "the Regulations" means the regulations published by Government Notice No R. 523 of 14 June 2010 (Government Gazette No 33294), as amended by Government Notices No R. 158 of 30 March 2016 (Government Gazette No 39875) and No R. 699 of 26 October 2016 (Government Gazette No 40372).

2. Amendment of regulation 1 of the Regulations

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

"**days**" means as defined in the Act;"

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

"**Effective Date**" means the date on which the licence comes or came into effect which may be different from the date on which the licence is issued or signed by the Authority;"

3. Substitution 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 a 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, cell number and email);
- (c) shareholding;
- (d) Principal place of business; and
- (e) Postal address."

4. Amendment of regulation 8 of the Regulations

Regulation 8 of the Regulations is hereby amended by the substitution for sub-regulation (4) of the following sub-regulation:

- "(4) In the event that the Licensee or its representative refuses or fails to provide the Authority with the requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts, refer the matter to the CCC."

5. Short Title and Commencement

These regulations are called the Third Amendment to the Standard Terms and Conditions for Individual Electronic Communications Network Services, 2023, and will come into operation by publication in the Government Gazette.

6. Substitution of Annexure B the Regulations

The following Annexure is hereby substituted for Annexure B of the Regulations:

"ANNEXURE B

INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICES



**INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICE
LICENCE**

No.

GRANTED AND ISSUED

TO

.....

FOR THE PROVISION OF

.....

Effective from [Year:Month:Day]

**SIGNED FOR AND ON BEHALF OF THE INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA**

AT _____ ON THIS XX DAY OF MONTH 20XX

CHAIRPERSON

PART 1

1. LICENSEE

The Licence is issued to:

- 1.1 Name of the Entity:
- 1.2 Shareholders: (where applicable):
- 1.3 Ownership held by persons from historically disadvantage groups:
.....

2. LICENCE PERIOD

- 2.1 The Effective Date of the licence is XX XXX 20XX.
- 2.2 The licence shall expire on XX XXX 20XX.

3. GENERAL LICENCE TERMS

(May vary, this is dependent on the Licence)

PART 2**4. TRADING NAME OF LICENSEE**

The Trading Name of the Licensee is:

5. CONTACT DETAILS

5.1 The contact person for the Licensee shall be:

5.1.1 Name :

5.1.2 Tel :

5.1.3 Cell :

5.1.4 Email :

6. NOTICES AND ADDRESSES

6.1 The Licensee chooses the following as its principal addresses:

6.1.1 Principal place of business :

6.1.2 Postal address :"

SCHEDULE 3

INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICES

1. Definitions

In these regulations "the Regulations" means the regulations published by Government Notice No R. 523 of 14 June 2010 (Government Gazette No 33294), as amended by Government Notices No R. 158 of 30 March 2016 (Government Gazette No 39875) and No R. 699 of 26 October 2016 (Government Gazette No 40372).

2. Amendment of regulation 1 of the Regulations

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

"**days**" means as defined in the Act;"

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

"**Effective Date**" means the date on which the licence comes or came into effect which may be different from the date on which the licence is issued or signed by the Authority;"

3. Substitution 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 a 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, cell number and email);
- (c) shareholding;
- (d) Principal place of business; and
- (e) Postal address."

4. Amendment of regulation 5 of the Regulations

Regulation 5 of the Regulation is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

"(1) A Licensee must commence operation of the service 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."

5. Amendment of regulation 8 of the Regulations

Regulation 8 of the Regulations is hereby amended by the substitution for sub-regulation (4) of the following sub-regulation:

"(4) In the event that the Licensee or its representative refuses or fails to provide the Authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts, refer the matter to the CCC."

6. Amendment of regulation 9 of the Regulations

6.1. Regulation 9 of the Regulations is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

“(1) A Licensee may not provide any service for a charge, fee or other compensation unless the price(s) and terms and conditions, which must include all fees (non-recurring, recurring, OOB rates and billing increments):

(a) have been made known to the end-user by:

- (i) making such prices and terms and conditions available for inspection at the Licensee’s principal place of business during business hours and on the website; and
- (ii) providing such details to anyone who requests same at no charge;

(b) have been filed with the Authority at least five (5) days prior to the provision of the said service in a format prescribed by the Authority and must include, amongst others:

- (i) The name of the new product/service, amendment or termination being notified to the Authority;
- (ii) The objective and reason(s) of launching a new product/service, amendment or termination of a product/service;
- (iii) The effective date of the new product/service, amendment or termination of a product/service; and
- (iv) The price(s), and all other fees applicable to the product/service.

6.2. Regulation 9 of the Regulations is hereby amended by the insertion of the of the following sub-regulation after sub-regulation 1:

“(1A) A Licensee must notify the Authority of the termination of an existing service(s) at least five (5) days prior to the termination of the said service in a format prescribed by the Authority and must include, amongst others:

- (i) The name of the product/service being terminated;
- (ii) The objective and reason(s) of termination of a product/service;
and
- (iii) The effective date of termination of a product/service.”

7. Short Title and Commencement

These regulations are called the Third Amendment to the Standard Terms and Conditions for Individual Electronic Communications Services, 2023, and will come into operation by publication in the Government Gazette.

8. Substitution of Annexure C the Regulations

The following Annexure is hereby substituted for Annexure C of the Regulations:

"ANNEXURE C
INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICES



INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICE LICENCE

No.

GRANTED AND ISSUED

TO

.....

FOR THE PROVISION OF

.....

Effective from [Year:Month:Day]

**SIGNED FOR AND ON BEHALF OF THE INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA**

AT _____ ON THIS XX DAY OF MONTH 20XX

CHAIRPERSON

PART 1**1. LICENSEE**

The Licence is issued to:

1.1 Name of the Entity:

1.2 Shareholders: (where applicable):

1.3 Ownership held by persons from historically disadvantage groups:
.....

2. LICENCE PERIOD

2.1 The Effective Date of the licence is XX XXX 20XX.

2.2 The licence shall expire on XX XXX 20XX.

3. GENERAL LICENCE TERMS

(May vary, this is dependent on the Licence)

PART 2

4. TRADING NAME OF LICENSEE

The Trading Name of the Licensee is:

5. CONTACT DETAILS

5.1 The contact person for the Licensee shall be:

5.1.1 Name :

5.1.2 Tel :

5.1.3 Cell :

5.1.4 Email :

6. NOTICES AND ADDRESSES

6.1 The Licensee chooses the following as its principal addresses:

6.1.1 Principal place of business :

6.1.2 Postal address :"

**REASONS DOCUMENT
AMENDMENT STANDARD TERMS AND CONDITIONS REGULATIONS
FOR INDIVIDUAL LICENCES, 2023**

MARCH 2023

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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 Individual Licences.

The following stakeholders have submitted written representations to the draft amendment Regulations:

1. African Media Entertainment ("AME");
2. Rain Pty (Ltd) ("RAIN");
3. Community Investment Ventures Holdings (Pty) Ltd ("CIVH");
4. MTN Group Ltd ("MTN");
5. MetroFibre;
6. Cell C Limited ("Cell C");
7. Telkom SA SOC Limited ("Telkom");
8. Vodacom Pty Ltd ("Vodacom");
9. ISPA; and
10. 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 Individual Licences, 2010, published on 14 June 2010 in Government Gazette Number: 33294 of 2010 ("2010 Regulations") and the Standard Terms and

Conditions Regulations for Individual Licences, 2016 as amended, published on 30 March 2016 and 26 October 2016, in Government Gazette Number: 39875 of 2016 and 40372 of 2016, respectively ("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 Services and Electronic Communications Network Services for Individual Licences; to enhance compliance and streamline submission of documents to the Authority thus providing an effective service to Licensees and Applicants.
- 2.3. On 16 March 2022 the Authority published the draft Amendment Regulations for public input.
- 2.4. In developing the Reasons Document, the Authority has considered the written submissions which were put before it as well as oral submissions made during the public hearings held on 25 August 2022. Nevertheless, when making decisions, it is not possible for the Authority to incorporate all views. The Authority is charged with the obligation to formulate regulatory policy independently, in terms of what it judges to be in the broader public interest. The principles underpinning this public interest are laid out in section 2 (a) and (b) of the ICASA Act, (Act No.13 of 2000), as amended.
- 2.5. The positions (**in bold**) form the basis for finalising the Regulations.

DEFINITIONS

3. Amendment of Regulation 1 of the Regulations

3.1. "Days"

AME was of the view that the insertion of the definition of "days" in the regulations is not necessary as the definition is already provided in the ECA as well as the ICASA Act.

3.1.1. Decision by the Authority:

The proposed amendment of the definition is aligned with the definition of days as found in the ECA. There has been some misinterpretation of the term "days" as included in the Regulations. Therefore, the Authority has decided to retain the definition as it will provide certainty to stakeholders.

3.2. "Effective date"

There were numerous suggestions of a more appropriate definition for effective date from the following stakeholders: AME, Rain, CIVH, and Telkom. SACF highlighted that the proposed definition as it stands is unclear as licences are amended over the 20-year period of validity, while ISPA highlighted that the word should be capitalised throughout the regulations for the sake of consistency.

3.2.1. Decision by the Authority

The Authority has chosen the definition suggested by Rain as it encompasses past, present, and future dates.

The definition of "Effective Date" is substituted with the following definition:

“Effective Date’ means the date on which the licence comes or came into effect which may be different from the date on which the licence is issued or signed by the Authority”

The word ‘Effective Date’ will also be capitalised throughout the document to maintain consistency.

3.3. **“News”**

AME provided that it is of the opinion that the definition of news should be recrafted to include “current affairs”.

3.3.1. **Decision by the Authority**

The Authority maintains that there is a difference between news and current affairs. As such the definition remains unchanged.

3.4. **“Public Service Announcement”**

AME suggests that there is no need to include “disasters” and “grave danger” in the definition of “public service announcement”.

3.4.1. **Decision by the Authority**

The Authority maintains that the definition as provided captures the meaning of a public service announcement as it is the duty of licensees to warn the public in instances of disasters and grave danger.

SCHEDULE 1: INDIVIDUAL BROADCASTING SERVICES**4. Substitution of Regulation 2 of the Regulations**

- 4.1. AME proposes that the number of days in which Licensees should notify the Authority of changes in Licensee details and information should be increased from the proposed fourteen (14) to twenty (20) days. The reason being that the proposed increase would provide sufficient time for the licensees to provide the written notice from the occurrence of the change to the Authority and would also prevent the need for the introduction of a payment fee for missing the stipulated fourteen (14) day window period. Further, AME proposes that fax numbers should be deleted as they are an outdated means of communication.
- 4.2. Furthermore, AME suggests that the penalty fee for submitting the notification late should be specified and not be determined from time to time as indicated on sub-regulation (2).
- 4.3. AME is of the view that changes of shareholding should be done through the notification process.
- 4.4. Rain submits that instead of requiring licensees to seek approval for changes in shareholding however minute, the Authority should clarify what types of transactions constitute changes in control that require its approval. It suggests that the Authority should initiate an inquiry to get inputs on what transactions would constitute a change in control towards the development of clear guidelines for the industry. Rain further suggests that if there is a failure to comply with the transfer of control requirements, the Authority must impose sanctions similar to those imposed by the Competition Tribunal where there is prior implementation of a merger. The Authority can impose a fine and require a licensee to apply for approval. Only if approval is not granted will the transaction be unwound.

- 4.5. CIVH submits that if approval is required for direct shareholding, licensees will circumvent this requirement by creating a Special Purpose Vehicle which will hold 100% of the shares in the licensee, and in which shareholders will hold shares.
- 4.6. CIVH further submits that if an approval is also required for indirect shareholding, it will be impractical to impose – seeing as licensees will need to constantly monitor all their shareholders and their indirect shareholders (especially e.g., with respect to shareholders listed on the JSE) - licensees would therefore inadvertently not comply with this requirement.
- 4.7. CIVH further submits that the proposed amendment goes against section 2(y) of the ECA which requires the Authority to refrain from undue interference in the commercial activities of licensees while considering the electronic communication needs of the public. It submits that the proposed amendment will unduly interfere with all sales of shares regardless of size; and furthermore, it will impede the ability of licensees to attract investors.
- 4.8. CIVH recommends that the Authority must clarify when section 13(1) of the ECA will be triggered, and it must do this through a public consultative process. It submits that although the current HDI regulations attempt to define control, there is still lack of clarity about when section 13(1) of the ECA will be triggered. CIVH also recommends that the Authority must impose appropriate sanctions and penalties, where there is prior implementation of transfers before approval.
- 4.9. MTN raises issue with the introduction of an Administrative Penalty and the process thereof for late filing without prior hearing – it states that R100 000 is still excessive for this kind of transgression. Further in its view, MTN states

that licensees should be granted an opportunity to provide an explanation for the late notification.

- 4.10. MetroFibre is of the view that the repeal of regulation 2(1)(c), read with regulation 14C of the Draft Processes and Procedures Regulations, must not be implemented because the means used to achieve the purpose of sufficiently monitoring changes in shareholding are not reasonable or just; and the amendment is ultra vires as it effectively widens the scope of content that the Authority is empowered to regulate under applicable legislation.
- 4.11. Cell C proposes an increase in the number of days in which Licensees should notify (of change in Licensee details and information) the Authority from the fourteen (14) to twenty (20) days. It also notes that Section 8 of the ECA does not prescribe the contemplation of fees for late notification of change of licence information after the occurrence thereof.
- 4.12. Telkom argues that it is a publicly listed company that trades its free-floating stock on a daily basis, and it would therefore be impractical to notify the Authority of any and all changes to the shareholding on a daily basis.
- 4.13. ISPA provides that the Authority's position that "any change in shareholding will be subject to approval by the Authority" is in direct conflict with section 13 of the ECA. ISPA calls on the Authority to undertake a process to develop clear guidance for licensees on the factors which it will take into account in determining whether a change of ownership amounts to a transfer of control. ISPA provides further that the proposal that the Authority may determine a "fee" for late notifications is not supported as this is not a fee but a penalty. Lastly ISPA does not support the proposed sub-regulation 2(3), which seeks to prohibit licensee from changing their name or trading name "to the extent that it may be in conflict or be confused with the name and/or trade name of another licensee". Change of name is more properly a matter for the Companies and Intellectual Property Commission (CIPC), the competition

authorities and the courts. As regards a change of name CIPC will have already undertaken its own vetting process.

- 4.14. Primedia notes that the proposed change in section 2(1)(a) but is of the view that it is important to clarify that the name and/or so-called trading name of a Licensee) has nothing to do with the name of the broadcasting service which is operated by the Licensee. Primedia suggests that proposed section 2(1)(a) is amended to read as follows:

“the name and/or trading name of the Licensee (note that this is not the name of the broadcasting service/station name, a change to which requires a licence amendment application);”

Decision by the Authority:

- 4.15. **The Authority is in agreement with the proposal to delete ‘fax’ as a form of communication.**
- 4.16. **The Authority considered the proposals made by stakeholders of an alternative twenty (20) days, however the stakeholders did not substantiate nor provide reasons as to why the fourteen (14) days would not suffice. As such the authority could not be persuaded to accept the twenty (20)-day proposal. The Authority will retain the fourteen (14) days as the increase from seven (7) to fourteen (14) days is sufficient for licensees to comply with the requirement.**
- 4.17. **The Authority has decided to delete the provision relating to trading name (i.e. the reference to trading name in Regulation 2(1) (a)). Changes relating to trading name (i.e. the station name) of a licensee must be processed by way of an amendment application in accordance with Section 10 of the ECA read with Regulation 9 of the Individual**

Processes and Procedures Regulations. This position has been affirmed by the judgment handed down in the High Court in the matter between Hot 1027 FM Pty Ltd and ICASA and others wherein the court held that the licence terms and conditions, which include the name station must be amended in accordance with the procedure prescribed in section 10(2) read with section 9(2) to (6) of the ECA.

- 4.18. **The Authority further deleted the imposition of a fee for late filing in sub-regulation 2(2) having taken into consideration the submission received from stakeholders.**
- 4.19. **The Authority has further decided to maintain the current notification regime in respect of shareholding after taking into consideration the submissions by stakeholders as well as further legal advice received on the process that should be followed.**

5. Amendment of Regulation 5 of the Regulations

- 5.1. AME submitted that the CCC should not be given powers that sit with the Authority. It states that if a licensee fails to commence its operations a complaint should be lodged with CCC, and that the cancellation of the licence should be a recommendation by CCC not by the Authority. AME is further of the view that the time given to allow commencement of operations is extremely long vs the penalty of cancellation of the licence. This according to AME will cause the inefficient use of spectrum. AME proposes a maximum of 6 months for the commencement of operations.

Decision by the Authority

- 5.2. **After considering the written submissions from stakeholders, the Authority opted not to amend Regulation 5 with the addition of sub-regulation 3A. The Authority is of the view that the sentiments of the**

proposed sub-regulation 3A are adequately encompassed in the current regulations, i.e., Regulation 14(4).

- 5.3. **In lieu of the proposed commencement time the Authority will retain the commencement period of twelve (12) months. The experiences from previous ITA processes, which include the business plans, financial projections, and high cost of infrastructure roll-out from applicants, has revealed that most licensees, after receiving their licences do not immediately start with their services, let alone within the first 6 months of obtaining their licence, as proposed by AME. It ordinarily takes a year to commence with services. As such we believe that the twelve (12) month period is sufficient for prospective licensees to commence their services.**

6. Amendment of Regulation 6 of the Regulations

- 6.1. AME is of the view that regulation 6(2) will clash with regulation 6(3) in that if a licensee cannot provide its services for a period of more than seven (7) days, they will already have been unable to provide services for six (6) hours, the licensee needs to give notice to the authority with twenty-four (24) hours.

MTN proposes that the notice period should remain unchanged considering the current electricity loadshedding challenges and the continuous battery theft in our cell towers. The implication of six (6) hours notification is that in a day, two (2) notifications may need to be sent to the Authority if Eskom loadshedding is extended beyond the normal times. MTN supports the second notice period delineated in the Draft Regulations, wherein licensees are mandated to notify the Authority within forty-eight hours of service disruptions that will last for more than seven (7) days. The notice requirement of forty-eight hours is sufficient.

Decision by the Authority:

- 6.2. **The Authority will retain its proposed Amendment of sub-regulation 6(2). The proposed amendment is aimed at shortening the period within which licensees notify the Authority after being unable to provide services which has an implication on their daily programming compliance obligations.**
- 6.3. **The Authority will retain the insertion of sub-regulation (3) as proposed. This insertion is intended to complement the proposed substitution of sub-regulation (2). Whereas sub regulation (2) addresses a licensee's break in broadcast within a twenty- four (24) hour cycle, sub-regulation (3) addresses the instance where the break in broadcast persists for a much longer period. This in turn may affect the said licensee's fulfilment of its requirements in terms of the Compliance Manual Regulations¹. The proposed insertion thus provides a leeway for licensees to then request for an exemption in such instances.**

7. Amendment of Regulation 9 of the Regulations

- 7.1. In terms of regulation 9(1) which requires licensees to submit "documents or books not ordinarily required" AME is asking why the Authority would request for these documents, and AME suggests that the Authority should not give itself powers it does not have.
- 7.2. AME is of the view that Regulation 9(3) should be omitted as it is already the case in law and other regulation.
- 7.3. AME submits that "syndication/network of programmes and programme syndication" is not defined and that it fails to understand the basis on which the clause is continued to be required. AME is of the view that the Authority is interfering with the operations of the licensee, that there is no need to

¹ Government Gazette No. 34863, published on 15 December 2011.

restrict licensees to share programming if the licensees comply with the format they are licensed to provide.

- 7.4. With respect to Regulation 9 (5), SACF suggests that it would be useful to include a timeframe for the requests.

Decision by the Authority:

- 7.5. **The Authority notes AME's comments regarding regulation 9 (1), the provisions relating the requests for information. The Authority will retain the provision as is. The Authority did not see a need to amend this regulation as this information would enable the Authority to execute its mandate.**
- 7.6. **Regulation 9 (3): the Authority notes AME's comments regarding the submission of information for the annual compliance report. The Authority will retain this provision as is. References or the requirements relating to the annual compliance report found in other regulations are based on this provision.**
- 7.7. **Regulation 9 (4): The Authority notes AME's comments regarding syndication/network of programmes and programme syndication. The Authority will retain this provision as it ensures the diversity of programming and that the programming reflects the needs of people within the coverage area.**
- 7.8. **Regulation 9 (5): the Authority has intentionally drafted this provision without set timelines to cater for special circumstances where**

different timelines would be necessary to comply with the request. The timelines applicable to a request for information by the Authority will be on case-by-case basis and subject to factors such as the nature of the information requested. The Authority will thus retain the amended provision providing for three attempts by the Authority to obtain the information as proposed.

- 7.9. **Regulation 9 (5) of the Amendment Regulations, as it is currently worded, refers to "reasonable attempts". The phrase "reasonable attempt" is open to interpretation and does not provide clarity nor certainty on the duration or number of attempts that could or should be made to solicit the requested information that could amount to "reasonable attempt". The amendment seeks to assist the process by providing clarity on what is considered as "reasonable" while requesting for information from Licensees.**
- 7.10. **Furthermore, the Authority is of the view that subjecting the same timelines to individual cases would be difficult as some requests may require a longer time to obtain information.**

8. Amendment of regulation 11 of the Regulations

- 8.1. The Authority received no comments in respect of this amendment.

9. Regulation 14: Contraventions and Penalties

- 9.1. AME accepts the amendment of regulation 14, however explanation should be done by the Authority as to where it derives all its penalties and why violations of other regulations merit high fines and others are less.

Decision by the Authority:

- 9.2. **In terms of Section 4 (3) of the ECA, the Authority is empowered to declare a contravention of any regulation made in terms of Section 4 to be an offence, provided that any such regulation must specify the penalty that may be imposed in respect of such contravention taking into account section 17H of the ICASA Act.**
- 9.3. **Considering that the Authority deleted the imposition of a fee for late filing in sub-regulation 2(2) having taken into consideration the submission received from stakeholders, sub-regulation 14(4) will thus not be amended.**

SCHEDULE 2: INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICES**10. Substitution of Regulation 2 of the Regulations**

Please refer to paragraph 4.1 and 4.2 with regards to stakeholder submissions and the Authority's position.

11. Amendment of Regulation 5 of the Regulations

Please refer to paragraph 5.1 and 5.2. with regards to stakeholder submissions and the Authority's position.

12. Amendment of Regulation 8 of the Regulations

- 12.1. MTN suggests stipulation of the number of days within which the licensee should respond at first, second and third attempt. The current proposal is wide

and subject to interpretation of what is regarded as reasonable. Specifying a time period for responding would provide a greater clarity and certainty.

- 12.2. Telkom proposes that this provision be amended as follows: "(4) In the event that the Licensee or its representative refuses or fails to provide requisite the authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts and failing any substantive explanation by the Licensee or its representative for such refusal or failure, refer the matter to the CCC." Telkom is of the view that it is difficult to provide detailed information within the timelines proposed by the Authority due to resource and other constraints, and a failure to provide information does not necessarily reflect an unwillingness to provide same.
- 12.3. Similarly, Vodacom proposed that this provision be amended as follows: "In the event that the Licensee or its representative refuses or fails to provide the Authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts and the Authority did not receive justifiable reasons why the information could not be provided, refer the matter to the CCC." Vodacom is of the view that a referral to the CCC should only follow three (3) attempts and if a Licensee has not provided justifiable and plausible reasons why it could not provide the requested information or part thereof. It avers that whilst in most cases Licensees would be able to provide requested information to the Authority within reasonable time, there have been instances where information was not available or captured in the required format, and therefore not available. The regulations should make provision for such instances.
- 12.4. Cell C recommends that provision be made to cater for instances where the information requested by the Authority cannot be made available by the licensee as the licensee may not be in possession of such information.

Decision by the Authority:

- 12.5. **The Authority notes MTN's submissions in relation to providing set timelines within which the three attempts would occur. Please refer to paragraph 7.3.4 regarding the Authority's position.**
- 12.6. **As regards to submissions relating to justifiable reasons for not being able to provide the information on request, the Authority does not believe it necessary to amend the proposed provision to allow for or anticipate reasons for non-compliance with the three attempts. It is anticipated that licensees will provide the requested information after the three attempts, any reasons provided for non-compliance may be provided at CCC.**

13. Amendment of Regulation 12 of the Regulations

- 13.1. According to MTN, this proposed amendment excludes failures to comply with regulation 2 (Notification of change in Licensee details and information) and regulation 5 (Commencement of operations) from the application of the penalty clause.
- 13.2. MTN does not support the proposed amendment insofar as the penalty for the late notification of changes is concerned, as this results in the exclusion of a hearing prior to the imposition of a penalty.
- 13.3. MTN supports the deletion of 12(4) on a basis that a licensee will be given an opportunity to be heard before a penalty is imposed.

The Authority's decision

- 13.4. **After considering the written submissions from stakeholders, the Authority opted not to amend Regulation 5 with the addition of sub-regulation 3A. The Authority is of the view that the sentiments of the proposed sub-regulation 3A are adequately encompassed in the current regulations, i.e.. Regulation 12(4). Therefore, the Authority will retain regulation 12(4). with the retention of regulation 12(4), the licensees will still be granted a hearing before the CCC before the decision to revoke a licence is taken by the Authority.**

SCHEDULE 3: INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICES**14. Substitution of Regulation 2 of the Regulation**

Please refer to paragraph 4.1 and 4.2 with regards to stakeholder submissions and the Authority's position.

15. Amendment of Regulation 5 of the Regulations

No submissions were received in relation to Regulation 5 (1). Please refer to paragraph 5.1 and 5.2 above with regards to stakeholder submissions and the Authority's position in relation Regulation 5 (4).

16. Amendment of Regulation 8 of the Regulations

Please refer to paragraph 4.1 and 4.2 above as well as paragraph 7.3.4 with regards to stakeholder submissions and the Authority's position.

17. Amendment of Regulation 9 of the Regulations

- 17.1. MTN supports the reduced tariff notification period from seven (7) days to five (5) days. However, given the dynamic and competitive nature of the electronic communications sector, they are of the opinion that the Authority could reduce it further, MTN proposes a reduction to three (3) working days. A shorter notice period will assist licences in the rapidly changing market by allowing the licensees the opportunity to respond quickly to competitive offers, which ultimately benefits the consumer as the products and services will be available or go to market sooner. A longer notice period stifles competition and unnecessarily prolongs the benefits, to the consumer, of competitive offers – usually cheaper and affordable pricing, and innovative products.
- 17.2. Cell C recommends that the filing of fees for services and associated Terms and Conditions must have been filed at least one (1) business day prior to the provision of the said service as opposed to the five (5) business days proposed by the Authority. It argues that the longer the duration for filing of such fees prior to launch of service, the more negatively a licensee and subscribers are impacted in terms of its go to market timeline.
- 17.3. Vodacom requests that the Authority confirms that the information proposed pursuant to the proposed regulation 9(1)(b)(ii) will be treated as confidential information envisaged in section 4D of the ICASA Act, and that operators, including Vodacom will not be required to disclose confidential information in any manner which may prejudice operators, including their competitive position. Further, Vodacom proposes the amended wording in dealing with the disclosure of non-standard offers as follows:
- “(1) A Licensee may not provide any service for a charge, fee or other compensation unless the price(s) and terms and conditions, which must include all standard offers including fees (non-recurring, recurring, OOB rates and billing increments). Standard offers exclude personalised, customer-specific and Corporate APN-offers.”* Vodacom considers that pricing for

commercially sensitive portfolios such as Corporate APN services should not be published as these offers are confidential and are provided to corporate customers on request. These Corporate APN offers also differ from customer to customer taking into account the specific requirements of customers. None of the operators currently disclose their personalised- and Corporate APN-offers for the reasons mentioned above. *None of the operators currently disclose their personalised- and Corporate APN- offers for the reasons mentioned above.*

- 17.4. Telkom notes sub-regulation 9(1) which introduces the inclusion of all fees (non-recurring, recurring, OOB rates and billing increments) to be made known to the end-users and to be made available for inspection at the Licensee's principal place of business and on the website. Telkom submits that it does not have any difficulties with the proposed amendment. Telkom further welcomes the amendments to notification periods in sub-regulation 9(1)(a) and 9(1A). Sub-regulation 9(1)(a) requires that a licensee file notice of new products, services or termination, prices and other details regarding same, at least 5 days before provision of the said service as opposed to the previous 7 days. Sub-regulation 9(1A) requires that a licensee provides the Authority with at least 5 days' notice of the termination of an existing service.
- 17.5. MTN welcomes the proposed insertion of sub-regulation 9(1A) which introduces a notice requirement for termination of existing services at least 5 days prior to termination. MTN is already notifying the Authority of termination services in this regard and appreciates the certainty the proposed amendment seeks to provide.

The Authority's decision

- 17.6. **The Authority notes stakeholder inputs on further shortening the timelines for the filing of tariffs. The Authority has proposed five (5) days with a view to accommodate licensees' commercial**

considerations as well as ensure that the Authority's administrative process is not compromised. The Authority will accordingly maintain the 5-day period as proposed in the amended regulations.

17.7. With regards to Vodacom's comments relating to Corporate APN-offers, the Authority is of the view that there should be no exclusions on what standard tariff plans gets filed, the Authority currently does not publish Corporate APNs in its reports. There have been instances where other licensees file them and request confidentiality which was duly granted. Therefore, these should still be filed. The Authority should always aim to have such information at its disposal for its planning, analysis and internal record purposes to limit information asymmetries on market/industry it is responsible for. On this basis, the proposed rewording to exclude standard Corporate APN and personalised customer specific tariff plans cannot be supported.

17.8. The Authority notes Vodacom's concerns around confidentiality of the information provided in compliance with this provision. Currently, the Authority grants confidentiality on filed tariffs up until the products/service are launched in the market.

18. Amendment of Regulation 12 of the Regulations

With regards to Regulation 12 (1) and Regulation 12 (4) Please refer to paragraph 13 above in relation to stakeholder submissions and the Authority's position.

19. ISSUES FOR THE AUTHORITY'S CONSIDERATION

19.1. In ISPA's submission, it indicated that it may be that the Authority intends "General Licence Terms" to refer to the terms and conditions currently found in the schedule to individual ECNS and ECS licences issued by the Authority.

19.2. These terms and conditions relate to:

- The licensee's trading name;
- Geographic coverage of services;
- Rights and obligations;
- Licence Fees; and
- Force majeure.

19.3. ISPA submits that it is a significant oversight and omission that these terms and conditions are not being reviewed as part of this process.

19.4. The origins of these terms and conditions are not clear and ISPA is unaware of the regulatory process which resulted in their drafting and finalisation. In ISPA's view certain of these terms and conditions are inconsistent with the ECA. For example, paragraph 3.1 of the terms and conditions for an IECNS licence purports to authorise the holder of the licence to "construct, maintain and operate an electronic communications network, as well as provide electronic communications network services". This is not correct in law and with reference to the definition of "electronic communications network services" in section 1 of the ECA: an ECNS licence is not required to construct or maintain an electronic communications network. ISPA requests that the Authority:

- Clarify what terms will be included under "General Licence Terms".

- Confirm that it will review the terms and conditions which currently form part of the IECNS and IECS licence documents.

The Authority's decision

19.5. **The Authority has not encountered difficulties, nor have any other stakeholders raised issues relating to the terms outlined in ISPA's submissions. ISPA also does not go further to provide reasons as to why it believes these terms ought to be revised. Accordingly, the Authority does not deem it necessary to review these terms.**