Mr Godfree Maulana
Independent Communications Authority of South Africa
Private Bag X10002
Sandton
2146

30 November 2012

Dear Mr Maulana,

DRAFT LICENCE FEE REGULATIONS SUBMISSION - NOTICE 867 IN GG NO. 35819

Broadband Infraco SOC Limited ("Broadband Infraco") would like to thank the Authority for this opportunity to submit comments to the draft General Licence Fee Regulations published in Notice 867 of Government Gazette 35819.

We have reviewed the draft Licence Fee regulations and we have the following comments. Our comments focus on the following three specific areas:

1. Proposed Change to Basis of Licence Fee Calculation
2. Regulatory Holiday for Deferment of Annual Licence Fee Payment
3. Alternative Methods to Reduce Prospects of Future Qualified Audits

Firstly, in terms Schedule 1 of the draft General Licence Fee regulations, no Administrative Fee is mentioned for a Licence Exempt Application. Does the Authority charge a fee for Licence Exempt applications? If so, how much is it?

1. **Proposed Change to Basis of Licence Fee Calculation**

Broadband Infraco understands the Authority's rationale for wanting to change the basis of the percentage calculation of the Annual General Licence Fee calculation from Gross Profit to Turnover in an effort to reduce licensees' ability to pay less licence fees. However, Broadband Infraco believes that certain policy considerations merit the Authority extending the regulatory holiday that defers Broadband Infraco's Annual General Licence Fee payment; or that the Authority consider phasing in the revised Annual General

Licence Fee in such a way as to minimise its negative effect on Broadband Infraco's cashflow. This is because a three year period for a new entrant, such as Broadband Infraco, is not sufficient for that entity to attain profitability, although it may already be generating income.

The proposed change in the percentage licence fee calculation will wipe-out R3 000 000 from Broadband Infraco's balance sheet as that is the amount in licence fees Broadband Infraco would have to pay in the event that the licence fee calculation formula is now changed from a percentage of gross profit to a percentage of gross revenue.

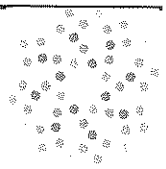
Broadband Infraco also notes the Authority's previous disfavour of using gross revenue as a basis for the percentage calculation of the licence fee. The Authority's General Notice – Position Paper on General Licence Fees published in March 2009, point out that *Licence fees levied on gross revenue are counter the objectives of the Act as they reduce the incentive for firms to enter the ICT sector, harm small players in a disproportionate manner and may increase rather than decrease the administrative burden of regulation.*[1]

The Position Paper on General Licence Fees goes on to say that *...However, on further analysis (particularly when having to declare an Adjusted Gross Revenue approach) levying fees on gross revenue generated from licensed activities actually increases the administrative burden as the Authority will have more closely audit the fees payable. Levying fees based on gross revenue is anti-competitive and harmful towards smaller players in relation to levying fees based on gross profit.*[2]

The Authority ultimately concluded that *Given that the objectives of the Act include promoting competition as well as supporting small businesses, the optimal financial measure on which to base licence fees appears to be gross profit (of licensed activities).*[3]

Broadband Infraco is in complete agreement with the Authority's observations and conclusions as enunciated in the Position Paper on General Licence Fees, namely that *[l]evying fees based on gross revenue is anti-competitive and harmful towards smaller players in relation to levying fees based on gross profit.*

[1] Paragraph 16, page 8 of General Notice – *Position Paper on General Licence Fees*, Government Gazette No. 31993 of 6 March 2009.
[2] Paragraph 17, page 9 of General Notice – *Position Paper on General Licence Fees*, Government Gazette No. 31993 of 6 March 2009.
[3] Paragraph 19, page 9 of General Notice – *Position Paper on General Licence Fees*, Government Gazette No. 31993 of 6 March 2009.



2. **Alternative Methods to Reduce Prospects of Future Qualified Audits**

Broadband Infraco also believes that the Authority can achieve the same objective of reducing the probability of it receiving qualified audits by lobbying both the Treasury and the Department of Communications for additional funds needed to sufficiently capacitate the Authority to effectively regulate the ICT sector. Rather than seeking to divert funds from industry players who are trying to expand the availability of ICT technology and services for many under-served South Africans by imposing onerous licence fee regulations, the Authority should continue to press government for its proper allocation of monies from the licence fees it already collects.

The twin effect of the Authority's efforts in the above regard will be it both receiving its share of funds it desperately needs and it being able to attract and retain talented ICT professionals to help it better regulate the sector. The type of skills the Authority should focus on bringing in include accountants and economists who can help the Authority define and calculate what elements constitute direct costs of licensing services; and determining the appropriate annual licence fees due to it.

In the alternative, the Authority should prescribe the elements that comprise direct costs of licensed services. This prescription should apply across the board for all operators. The newly prescribed elements should give licensees sufficient clarity to adequately guide them through the licence calculation process.

3. **Regulatory Holiday for Deferment of Annual Licence Fee Payment**

In the event that the Authority does not favour a new approach to determine the basis of the percentage calculation, Broadband Infraco would like the Authority to consider extending the period of the Regulatory Holiday for the deferment of the payment of the Annual Licence Fee. An extension to five (5) years from the date of licensing, should be considered. Besides operational challenges and issues facing Broadband Infraco, there are specific policy considerations which the Authority should be cognisant of in relation to Broadband Infraco's statutory mandate and its ability to operate as a profitable entity.

As a State Owned Company with significant fixed costs and possessed with a mandate to extend the availability and accessibility of electronic communications network services in under-serviced areas, Broadband Infraco is unlikely to be cashflow positive for some time. To date, our business has not broken even.

Secondly, our statutory mandate also compels us to charge a utility based rate of return on our tariffs for long-distance national backhaul as opposed to a market based rate of return as levied by its competitors. Our tariffing methodology is intended to stimulate the rapid take up of national long-distance backhaul and to break the bottlenecks of the lack of the capacity in the critical aspect of the ICT infrastructure value chain.

The combination of the lapsing of the Regulatory Holiday and the change in the Annual Licence Fee calculation from gross profit to gross turnover, would severely hamper Broadband Infraco's efforts to meet its mandate. For example, the current integrity of Broadband Infraco's balance sheet is needed to support the five-year capital programme drive. The capital programme is needed to extend large fibre capacity to rural communities, state oriented initiatives, such as the Square Kilometre Array ("SKA") project and the South African National Research Network ("SANREN").

Conclusion

Broadband Infraco urges the Authority not to take the easier of two options by seeking to siphon much needed capital investment rand from the industry but instead to continue its arduous but critical effort to secure appropriate allocations of funds from Treasury to capacitate itself properly.

Yours sincerely,

Phatang Nkhereanye
Manager, Government Relations and Regulatory Affairs