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Independent Communications Authority of South Africa

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Per Email: PMailula@icasa.org.za
Chairperson@icasa.org.za

Dear Mr. Mailula

Re: Draft Amendment Regulations on the Processes and Procedures in respect of Applications, Amendments, Renewals, Surrender and Transfer of Individual Licences and applications for Special Temporary Authorisations in terms of the Electronic Communications Act, 2005, as amended.

1. The draft amendment regulations regarding Processes and Procedures regulations in respect of Applications, Amendments, Renewals, Surrender and Transfer of Individual Licences and applications for Special Temporary Authorisations in terms of the Electronic Communications Act, 2005, as amended. ("**the Regulations**") under 5(7) of the Electronic Communications Act, 2005 (no. 36 of 2005) as amended, ("**the ECA**") published for consultation in *Government Gazette 46084* on 24 March 2022 refers.
2. Cell C welcomes the Authority's invitation to comment on these Regulations. Cell C confirms that it would be participating in the oral hearings when they are convened.
3. It is Cell C's understanding from the Regulations that the purpose of this exercise is to consult on amendments which are related to providing clarity, include matters related to transfer of control of in an individual licence and definition amendments, enhancing compliance through the updating of various application be prescribed within the framework of the ECA.

4. Cell C will set out its submission below with general, legislative and specific comments with recommendations.

Yours sincerely

A handwritten signature in black ink, appearing to be "TP", written above a horizontal line.

Mr Themba Phiri

Executive Head: Regulatory

CELL C WRITTEN COMMENTS ON THE PROPOSED DRAFT AMENDMENT REGULATIONS ON THE PROCESSES AND PROCEDURES IN RESPECT OF APPLICATIONS, AMENDMENTS, RENEWALS, SURRENDER AND TRANSFER OF INDIVIDUAL LICENCES AND APPLICATIONS FOR SPECIAL TEMPORARY AUTHORISATIONS IN TERMS OF THE ELECTRONIC COMMUNICATIONS ACT, 2005, AS AMENDED.

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1. GENERAL COMMENTS

- 1.1. Cell C would like to thank the Authority for the opportunity to present these written comments and requests the opportunity to both elaborate on the points below as well as to raise further points via oral submission when public hearings are convened on the Regulations.
- 1.2. Cell C recommend that all the proposed amendments contained in the Regulations are done in alignment with Section 5(7), "*LICENSING FRAMEWORK*" of the ECA.
- 1.3. Certainty and robust regulatory processes are vital for licensees with respect to any issued individual electronic communications network service ("IECNS") licence and individual electronic communications service ("IECS") licence. Over time, the Authority has published various regulations in terms of the ECA that relate to the issued IECNS and IECS licences. The regulations referred to are the Standard Terms and Conditions for Individual Licences, Process and Procedure Regulations, as well as Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDG). Cell C supports an approach where it is prescriptive with timelines what actions are required by a licensee, and in certain instances from the Authority.
- 1.4. These required actions are related when there is a a) Notification of change in a licence; b) Notification for change of shareholding; c) Applying for or registering, amending, transferring and renewing one or more of the licences, and d) Change in empowerment requirements to promote broad-based black economic empowerment. There should be no duplication of effort by a licensee and the regulatory process must be efficient.
- 1.5. Cell C is supportive of this initiative as the intentions are to provide for better understanding of the Regulations within an efficient regulatory framework.

2. LEGAL FRAMEWORK

- 2.1. The Authority has issued the Regulations in terms of section 5(7) of the ECA which mandates the Authority to prescribe process and procedures regulations as follows:
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“Licensing

5(7) *The Authority must prescribe regulations -*

(a) *setting out -*

(i) *the process and procedures for applying for or registering, amending, transferring and renewing one or more of the licences specified in subsections (2) and (4);*

(ii) *the documentation that applicants or registrants in the case of class licences, must include with their applications or registrations;*

(iii) *the licence fees applicable to the licences specified in subsections (2) and (4), taking into account any policy or policy directions issued by the Minister in terms of section 3; and*

(iv) *the terms and conditions for granting special temporary authorisations for testing purposes, demonstrations and research and development; and*

(b) *on any matter relating to the licensing process.”*

2.2 Cell C believes that these amendment regulations are legally prescribed in terms Electronic Communications Act, as described above.

3. SPECIFIC COMMENTS

3.1 Definitions:

3.1.1 s2. Amendment of regulation 1 of the Regulations:

“2.1. Regulation 1 of the Regulations is hereby amended by the substitution of paragraph (d) of the definition for “application” of the following paragraph:

“(d) *to transfer or to transfer control of an Individual Licence; “*

Cell C notes that the Authority has expanded the definition to include “**to transfer of control**”. Cell C is in support of the insertion, however Cell C recommends that in addition to these Regulations, the inclusion of section 9(13) of the ECA to support such change and which states:

“13. Transfer of individual licences or change of ownership

(1) An individual licence may not be let, sub-let, assigned, ceded or in any way transferred, and the control of an individual licence may not be assigned, ceded or in any way transferred, to any other person without the prior written permission of the Authority.”

3.1.2 s2.2. Regulation 1 of the Regulations is hereby amended by the substitution of the definition for ‘historically disadvantaged persons’ with the following definition:

“Historically Disadvantaged Persons (“HDP”) – means women, persons with disabilities and youth, who before the Constitution of the Republic of South Africa, 1996 came into operation, were disadvantaged by unfair discrimination on the basis of race, gender, disability, sexual orientation or religion”

Cell C recommends in addition to the above, that the Authority ensures the harmonisation of the various definitions and concepts from existing legislation

such as BBBEE Act, the ECA, Limitations of Control and ~~Equity Ownership~~ by Historically Disadvantaged Groups (“HDG”) and the application of the ICT Sector Code regulations. Thus ensuring that the identified regulatory interventions meet the broader B- BBEE intended outcomes.

3.2 s1.5. Amendment of regulation 5: Submission of applications and other documents

“1.5.2. Furthermore, sub-regulation 5(1)(A) is substituted by the following subregulation:

“5(1)(A) Applicants must submit either one (1) soft copy of the application electronically (e.g., email) or two (2) hard copies (including an original) of the application as well as a soft copy of the application on a USB or a disc.”

Cell C is in support of the proposed change where licensees have an option to submit an application either electronically or physically.

3.3 s9. Amendment of regulation 14A: Notice of change of information in respect of an individual licence

9.1 Regulation 14A of the Regulations is hereby amended by the substitution of subregulation (2) and (3) for the following sub-regulation:

3.3.1 *“(2) A licensee must submit the notice within fourteen (14) working days of the change occurring where:*

- (a) name, and/or trading name or contact details of the licensee changes;*
- (b) Type of the service/s provided in terms of the licence (only applicable to ECS and ECNS);*
- (c) shareholding (Refer to 14 (C) below;*
- (d) Principal place of business; and*
- (e) Postal address.*

Cell C recommends that the Regulations be aligned with the change of licence details and information notification requirements as contained in the Standard Terms and Conditions for Individual licences regulations. The reason we say this is to avoid any duplication of effort when a licensee notifies the Authority of a change in information of a licensee. For example, only “2(c) shareholding (Refer to 14 (C)) should remain in the Regulations.

3.3.2 *“(3) A notice submitted to the Authority in terms of sub-section (2), outside the prescribed 14 days, must be accompanied by a fee as may be determined by the Authority from time to time.”*

Cell C recommends that the required timeline to submit a notice of change in shareholding of a licence be extended to twenty (20) business days from the proposed 14 business days. The reasons we recommend the increase in the number of days is that it would provide sufficient time for the licensee 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 14 business day window period. Cell C also notes that Section 5(7) of the ECA does not prescribe the contemplation of fees for late notification of shareholding change in the licence after the occurrence thereof.

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