
Submission to the Independent Communications Authority of South Africa

**DRAFT REGULATIONS REGARDING STANDARD TERMS AND CONDITIONS FOR
INDIVIDUAL LICENCES UNDER CHAPTER 3 OF THE ELECTRONIC
COMMUNICATIONS ACT, 2005 (NO. 36 OF 2005)**

EXECUTIVE SUMMARY

1. The Authority published draft regulations regarding the Standard Terms and Conditions for Individual Licences (“**draft STC Regulations**”) on 16 March 2022 in Government Gazette 46050, Notice No. 885 of 2022. Telkom commends the efforts by the Authority to provide clarity on its standard terms with respect to Electronic Communications and Electronic Communications Network Services for Individual Licences and to enhance compliance and streamline the submission of documents to the Authority.
2. Telkom welcomes the majority of the amendments, in particular amendments to increase in the number of days within which licensees should notify the Authority of change in details, as well as the decrease in notification periods pertaining to tariff filings and the termination of existing services.
3. However, we propose some amendments where the headings of relevant schedules refer to class licenses instead of individual licenses. We also have some concerns relating to the proposal by the Authority that no change in shareholding may be effected without its approval and its the reasoning for the removal of the requirement to notify the Authority of changes in Telkom’s shareholding in the Draft STC Regulations and inclusion of the process dealing with this issue in its draft Regulations regarding the Processes and Procedures for Individual Licenses, dated 24 March 2022. We further propose some amendments to sub-regulations dealing with referral of issues to the CCC.

Comments in respect of Schedules 2 and 3

4. Telkom's comments in this section are limited to Schedule 2 and 3 of the Draft STC Regulations which appear to deal with Individual Electronic Communications Network Services and Individual Electronic Communications Services respectively.
5. Telkom notes that the heading of Schedule 2 refers to Class Electronic Communications Network Services, while regulation 7 refers, correctly in our view, to the short title as the Third Amendment to the Standard Terms and Conditions for Individual Electronic Communications Network Services, 2022. Annexure B to Schedule 2 also contains a pro forma Individual Electronic Communications Network Services Licence.
6. The heading of Schedule refers to Class Electronic Communications Services, while regulation 8 states that the short title of the regulations is the Third Amendment to the Standard Terms and Conditions for Individual Electronic Communications Services. Annexure C to these regulations also contains a pro forma Individual Electronic Communications Services licence.
7. We therefore propose that the Authority amends the headings of the Schedules 2 and 3 to refer to Individual Electronic Communications Network Services and Individual Electronic Communications Services respectively.

Definitions

8. As the same changes were proposed to definitions in schedule 2 and 3, Telkom's comments in this section are applicable to both schedule 2 and 3.
9. Telkom is in agreement with the proposal to align the definition of "days" to refer to the definition in the Electronic Communications Act ("ECA").
10. We note the intention of the amendment of "effective date" of an individual licence to create a distinction between the effective date and the date of issue, which may be two different dates. The current amendment proposes as a definition of effective date as "the date specified in the licence which may be a present or future date from the date of signature."
11. Telkom suggests an amendment to the definition of Effective Date for clarity, as set out below:

“Effective Date means the date specified in the Licence, notwithstanding the date of signature of the Licence.”

Notification of Licensee Details and Information

12. Telkom welcomes the amendment of Regulation 2(1) which increases the number of days for Licensees to notify the Authority of changes pertaining to certain details and information relating to a licensee, from 7 to 14 days.
13. We note that the Authority intends to introduce a fee should a licensee not adhere to the 14-day period. The Authority states that will in due course publish the applicable fee. Telkom requests that in determining the fee, the Authority determines a maximum fee which allows it to take into account any mitigating circumstances relating to the failure of a licensee to provide the relevant information.
14. Telkom notes the amendment requiring that a licensee also informs the Authority of changes to its trading name where applicable, as well as to its principal place of business and postal address. We do not have any difficulty with these amendments.
15. However, we note that the Authority deleted the requirement that a licensee has to inform it of changes to its shareholding, as in the Authority’s view this process is “susceptible to abuse or being incorrectly applied to the extent that it alters or changes ownership.”¹ We further note the Authority’s reasoning that it is unable to sufficiently monitor and manage the changes in shareholding specifically to the extent that a company changes ownership and control over time, and that any shareholding changes have the effect of changing the shareholding structure of an entity and may conflict with the objectives and mandate of the Authority as found in the ECA.
16. As the process of any changes in shareholding is now prescribed in the Authority’s draft Regulations regarding the Processes and Procedures for Individual Licenses dated 24 March 2022, we request that the Authority has regard to our comments in our submission to the latter draft regulations, which will be submitted by the due date of 15 May 2022.

¹ Explanatory memorandum on the Amendment of the Processes and Procedures Regulations for Individual Licences, 2010, as amended, para 2.2.3.

17. In the abovementioned submissions, we have set out various concerns relating to the Authority's proposal that any changes in shareholding acquires approval by the Authority. Telkom as a publicly listed company trades its free-floating stock on a daily basis and it would therefore be impractical to notify ICASA of any and all changes to the shareholding on a daily basis.

Commencement and Operation of Service

18. Telkom notes that where a licensee fails to commence with operations with the prescribed period as set out in the regulations, it will constitute non-compliance and will be referred to the Complaints and Compliance Committee ("CCC") to make a recommendation to the Authority for cancellation of the licence.

19. While we generally have no difficulty with this clause, we propose an amendment as set out below. Proposed amendments to the clause are underlined.

"Where a Licensee fails to commence with operations with operations in line with sub-regulation (1), or the extended period in line with sub-regulation (2) and (3) this will constitute non-compliance and will be referred to the CCC, which may make a recommendation to the Authority for cancellation of the licence."

Provision of Information

20. The Authority proposes sub-regulation 8(4) in terms of which it may refer licensees who refuse or fail to provide requisite information after three attempts by the Authority to gather such information, to the CCC.

21. Whilst we understand the difficulties the Authority wishes to address, we propose an amendment to the clause as below. This is because in many instances, 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. Proposed amendments are underlined.

"(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."

22. We further note the amendment of regulation 12 to exclude the penalty of R10 000 for contraventions of regulations 2 and 5, as remedies for contravention of these regulations are addressed separately in the relevant amendments.

Comments in respect of Schedule 3 only

Publication of Tariffs and Fees

23. Subregulation 9(1) 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 does not have a difficulty with this amendment.

24. 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.

Conclusion

Telkom appreciates the efforts by the Authority to clarify terms and conditions regarding individual licenses, and trusts that the Authority will consider the amendments proposed to certain sub-regulations. Telkom would like to make oral submissions should hearings be held regarding the Draft STC Regulations.

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