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**Mr. Godfree Maulana
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**Per Email: ecsecns.compliance
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chairperson@icasa.org.za**

Dear Mr. Maulana

RE: DRAFT GENERAL LICENCE FEES

We wish to thank the Authority for the opportunity to provide written comments on the proposed draft General Licence Fees regulation as published in Government Gazette 35819 on 24 October 2012 which comments follow below.

Cell C wishes to make an oral submission when the public hearings are convened.

Yours sincerely

**Mothibi Ramusi
Executive Head: Regulatory Affairs**



DRAFT GENERAL LICENCE FEES REGULATION

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1. INTRODUCTION

- 1.1 Cell C Proprietary Limited ("Cell C") hereby furnishes its written submissions on the Draft General Licence Fee Regulations ("**the Regulations**")
- 1.2 Cell C commends the Authority on its intention to review the Regulations in an attempt to ensure that the applicable general licence fees is identified and timeously paid by Electronic Communications Network (ECNS) and Electronic Communication Service (ECS) licensees. Cell C is in agreement with the Authority that there is an immediate need to clearly state the service costs that are associated with licenced activities
- 1.3 Cell C would like to thank the Independent Communications Authority ("**the Authority**") for the opportunity to present this written submission, and requests the opportunity to both elaborate on the points below as well as to raise further points via oral submission when a public hearing is convened on the matter.
- 1.4 Cell C supports the requirement for the payment of licence fees by licensees to the Authority within the framework of the Electronic Communications Act, No. 36 of 2005 ("**ECA**"). Cell C encourages the Authority to use this process to consult with the Minister on policy with respect to the guidelines for the determination by the Authority on licence fees. Cell C is unaware if these guidelines were finalised.
- 1.5 It must be noted that these draft regulations come at a time when the Portfolio Committee on Communications has conducted hearings on the Cost to Communicate between 29 and 30 November 2012. At these hearings, it was noted that the Cost to Communicate in South Africa is high. Notwithstanding the findings of the Portfolio Committee to date Cell C has demonstrated that the reduction of the mobile termination rate together with asymmetry, continue to enable Cell C to offer low cost national and international products to consumers.

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2. ISSUES OF CONCERN AND RECOMMENDATIONS

2.1 *Objects of the ECA*

It is essential that a change in the general licence fee implemented by the Authority is one which promotes the objects of the ECA, namely:

- A promotes the universal provision of electronic communications networks and electronic communications services and connectivity to all;
- B encourages investment, including strategic infrastructure investment and innovation in communications sector;
- C promotes competition within the ICT sector;
- D ensures the provision of a variety of quality electronic communications services at reasonable prices; and
- E promotes the interests of consumers with regard to the price, quality and the variety of electronic communications services.

Cell C notes that the Regulations in their current form do not seem to consider the objects of the ECA. Therefore Cell C recommends in finalising the Regulations, the objects of the ECA must be satisfied where the general licence fees are reasonable and justified.

2.2 *Regulatory Certainty*

Cell C is at a critical stage of its life cycle, and in particular of its network roll out, with upgrades to its current network have taken place to accommodate HSPA+ technology at significant cost. Further upgrades are planned in order to provide data services at greater speeds whilst ensuring stringent Quality of Service parameters in terms of the End User Subscriber Charter regulations. It is Cell C's plan to be competitive in the ICT sector. This plan is supported by long term financial plans and budgeting measures adopted by Cell C. Any change to an input variable will directly affect these plans. It is therefore prudent that input costs like general licence fees remain stable over a long period of time. The Regulations arrive only three years after promulgation of the existing regulation. It is sensible that general licence fees remain stable over a period of time and changed less frequently. This is captured in Government Gazette 31455, under the section "Licence Fee Framework" which states:

"The Authority thereafter adopted the following framework for the formulation of the licence fees regulations attached hereto:



vi. The licence fee should facilitate the establishment of an environment conducive to network investments”

2.3 Competition in the ICT sector

Cell C was awarded a licence in 2001 with the view of increasing competition in the mobile cellular telecommunications service market. It is the Authority's mandate to ensure that there are no barriers to Cell C and new entrants that will hinder competition. The Regulations will have the effect of Cell C paying higher general licence fees irrespective of the costs associated with licenced activities. Therefore Cell C believes the proposed regulations will make its ability to compete much more difficult and may contribute to high Costs to Communicate. Cell C recommends that the general licence fees be an amount that continues to create an environment where late and new entrants are able to compete effectively. This is captured in Government Gazette 31455, under the section "Licence Fee Framework" which states:

“The Authority thereafter adopted the following framework for the formulation of the licence fees regulations attached hereto:

v. The licence fee should be structured in a manner that promotes a competitive ICT sector, and not constitute a barrier to market entry.”

2.4 Purpose of the Regulation

Cell C understands that the Authority is challenged with the direct costs associated with licenced activities as provided by licensees and has produced the Regulations to overcome this challenge. However, Cell C believes that the impact of these Regulations will lead to unintended consequences. One such consequence is that non-profitable licensees will now pay general licence fees irrespective of the costs associated with licenced activities. It is further unclear from the draft regulations, what formula the Authority used to arrive at the Regulation . Therefore Cell C recommends that the following should be considered when determining general licence fees:

- a) The general licence fee should be fair where all profitable ECNS and ECS licensees contribute;
- b) The general licence fees should be cost reflective of the administrative costs associated with regulating the ICT market;
- c) The general licence fee needs to be stable over time and not prone to erratic movements. Fees should not change from year to year.
- d) The process in calculating the general licence fees should be simple and transparent. Where practical, the data used by

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- licensees should be used as this is anyway gathered by licensees for their own consumption;
- e) The data must be in a format that is easily verified to ensure industry wide compliance;
 - f) The general licence fees should be consistent with policy directions;
 - g) The general licence fees should cover the licensees activities less the costs associated with those activities;
 - h) The general licence fees should support the sustainability of new entrants and SMMEs;
 - i) The general licence fee should be structured in a manner that promotes a competitive ICT sector, and not constitute a barrier to market entry.
 - j) The licence fee should facilitate the establishment of an environment conducive to network investments;
 - k) The general licence fee should encourage network expansion in rural and under-serviced areas.

2.5 *Effective Date*

The Authority has indicated that the effective date of the regulation is 1 April 2013. Cell C recommends that the effective date of the regulation forms part of the body of the regulation. Further, for financial planning purposes, the Authority must give a clear indication from which financial year of the licensee is the new general licence fees applicable. It must be noted that financial plans for the new financial year is completed well in advance of the new financial year, in some cases the beginning of the last quarter of the preceding year.

3. **CONCLUSION**

- 3.1 Cell C recognizes that the general licence fees change is complex and therefore needs to be in line with the objects of the ECA, abide by a set of principles as set out in 2.4 above, and cost reflective of the Authority's administration costs, justifiable and reasonable.
- 3.2 Prior to finalising the draft regulations, the Authority must conduct a regulatory impact assessment to determine the effect of the general licence fees on all categories of licensees. The outcome of the assessment should at least satisfy the principles referred to in section 3.1
- 3.2 Cell C understands that the Authority faces challenges with respect to calculating general licence fees, specifically the costs that are associated with licenced activities. Cell C therefore recommends the formula to be as follows:



Pa = Payable Annual Licence fee
T = Turnover due to licensed activities
Pp= applicable percentage (eg. 0.75% for ECNS)
Tc = Total costs of licensed activities

$$Pa = Pp \times (T - Tc)$$

- 3.3 Prior to finalisation of the draft regulations the Authority urgently convene a workshop with all ECNS and ECS licensees. The objective of the workshop should be to standardise the lists of costs that are related to licenced activities. Upon completion of the list, the Authority must publish this list together with the new regulations.
- 3.4 In ensuring that the Authority is correctly funded to perform its fiduciary duties, Cell C recommends that the Authority, DoC, ECNS licensees engage National Treasury. The objective of this engagement should determine a suitable funding methodology for the Authority.
- 3.5 The Authority should recognise the consequence of high general licence fees. High general licence fees could translate in a barrier to reducing cost to communicate.

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