

**TELKOM SA SOC LIMITED'S WRITTEN SUBMISSION ON THE
DRAFT GENERAL LICENCE FEES REGULATION AS PUBLISHED
IN GOVERNMENT GAZETTE No. 35819 OF 24 OCTOBER 2012**

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1 INTRODUCTION

Telkom SA SOC Limited ("Telkom") welcomes the opportunity to provide comments on the draft General Licence Fees Regulations ("**the draft GLFR**") as published by the Authority in Government Gazette No. 35819 (Notice 887 of 2012) of 24 October 2012, which are meant to replace the 2009 General License Fees Regulation ("**the 2009 GLFR**").

In the event that the Authority elects to convene public hearings in relation to the draft GLFR, Telkom would welcome the opportunity to make oral representations to the Authority.

Telkom's written representation is structured as follows:

- Section 2 presents the Executive Summary
- Section 3 presents general comments pertaining to the draft GLFR
- Section 4 sets out specific comments on the draft GLFR and
- Section 5 concludes the submission with proposed editorial amendments to the draft GLFR.

2 EXECUTIVE SUMMARY

Telkom accepts that regulations that have been found to be too difficult to implement, either by the Authority or by licensees, need to be reviewed and amended as appropriate. Telkom accepts that the rationale adduced by the Authority to amend the 2009 GLFR, i.e. that the methodology stipulated therein is difficult to administer, is a valid rationale.

Telkom, however, has serious concerns on the manner in which the Authority has sought to address the shortcomings of the 2009 GLFR.

The primary areas of concern with regard to the draft GLFR that Telkom will address in this submission are summarised as follows:

- **Absence of a guiding Policy framework:** regulations that establish an obligation that have material impact on licensees are being proposed in the absence of a policy framework; in particular the paramount criteria of cost causality and transparency are absent. In Telkom view this is the source of the several shortcomings in the draft GLFR that are discussed in this submission.
- **No rationale or clear basis for the formula:** the Authority states in the Explanatory Memorandum to the draft GLFR ("**the Explanatory Memorandum**") that it was the Authority's intention to levy annual licence fees only on profitable entities, yet it fails to provide the rationale and methodology used to determine that 0.75% is the portion of turnover to be used in calculating the proposed licence fees. In fact the Authority does not even attempt to demonstrate that the amount of 0.75% of turnover stipulated in the draft GLFR is indeed equal to or less than the 1.5% of Gross Profit provided for in the 2009 GLFR and that the change is thus justifiable and not a just means of collecting

additional taxes from licensed operators. Furthermore, with the proposed change in methodology, the Authority has clearly abandoned its earlier objective of not adversely impacting unprofitable or marginal profitable entities.

- **Lack of consistency between implied objectives and practical outcomes of the amendments:** In the Explanatory Memorandum, the Authority states that the draft GLFR only intend to substitute the formula used to calculate annual licence fees in the 2009 GLFR with a simpler method, while the rest of the 2009 GLFR remains unchanged apart from consequential changes brought about as a result of the change in the formula. However, the reality is quite different: the new formula may be a simpler method of calculation but it results in a material increase in licence fees that Telkom will have to pay. Other changes are also introduced that have no relationship with the formula and are therefore not consequential to the change but materially affect the impact that the regulations will have on Telkom. Since the Authority does not provide any justification for such changes, Telkom must reject them as unjustified.
- **Increased cost of Communication:** To the extent that the draft GLFR imposes additional costs on licensees it runs contrary to Government's objective of lowering the cost of telecommunications as such costs will unavoidably be passed on to consumers.
- **General lack of clarity:** There are numerous areas in the draft GLFR that lack clarity and are thus open to different interpretations. These need to be resolved before any new framework is put in place.
- **Lack of Regulatory Impact Assessment:** The Authority has previously committed to do Regulatory Impact Assessments (RIAs) as part of the process of promulgating regulations. The draft GLFR has not been accompanied by any form of RIA. In the absence of a RIA, it is not clear how this draft GLFR will impact on various licensees and hence the Authority will be making regulations without knowing the impact of such regulations on industry. Telkom submits that this goes against the spirit of evidence-based regulation making and could have far-reaching unintended consequences.
- **Inconsistency of licence fee regime and treatment of operators:** The Authority has previously allowed mobile cellular licensees to pay licence fees on Nett Operational Income which allowed the incumbent licensees to deduct significant costs associated with interconnection and bad debts. However, 8.ta as a new mobile cellular operator will not only have to compete against well established mobile competitors but also pay higher licence fees when compared to the incumbent operators at the time of their start up. This will significantly reduce 8.ta's ability to compete with these established operators to the detriment of consumers.

Telkom trusts that the Authority shall find its comments and proposals useful and will incorporate the same as part of this draft GLFR amendment process.

3 GENERAL COMMENTS

3.1 A general framework for licence fees

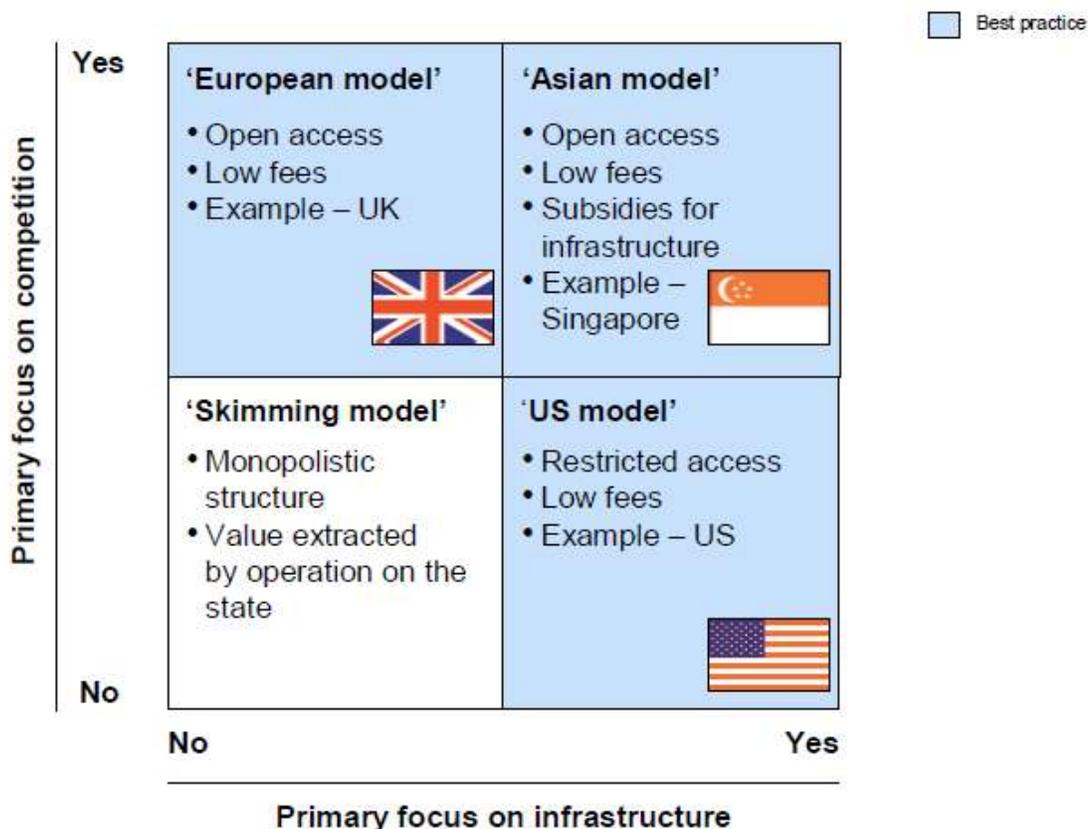
Telkom acknowledges that there is a need to develop an overarching regulatory structure, particularly relating to general licence and other fees, in terms of section 5(7)(a)(iii) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“the Act”). Since these fees impose a material financial burden on licensees, it is Telkom’s view that this requires an appropriate policy framework which is unfortunately lacking. Telkom, therefore, takes this opportunity to share some thoughts on international best practice and the resulting fee structure, which may assist the Authority in addressing the shortcomings of the 2009 GLFR.

There are two main considerations that determine the structure of a regulatory framework for the administration and collection of licence fees:

- the intention to promote competition, and
- the intention to promote investment in infrastructure.

Accordingly, there are four different "archetypical" models:

Exhibit 1: The regulatory intent determines the framework employed



Source: Telkom

- An "*European model*" that places the highest priority on competition (e.g. UK). In this model, far-reaching access to networks is granted to players to encourage market entry. At the same time, low licence fees are charged to players in order to let competition unfold freely.
- An "*US model*", where the primary focus is on infrastructure investments. Under this framework, access is restricted so that there is high regulatory certainty regarding the recovery of infrastructure investments. This effect, in addition to low licence fees, leads to the deployment of infrastructure as the key competitive asset.
- An "*Asian model*" that places equal importance on competition and high investments in infrastructure (e.g. Singapore). Here, access is liberally granted, and in order to provide the required incentives for infrastructure deployment the state either provides incentives for investments or invests itself. Licence fees are kept low to encourage competition.
- Finally, there is a "*Skimming model*" with low competition and low investment. Under this framework, there is either excess profitability for monopolistic players or the state appropriates some of these monopoly rents by charging high licence fees. Whatever the case, the telecommunications industry will not develop its full potential.

It is noteworthy and particularly instructive that the objectives of the American and European models resonate with some of the objectives set-out in section 2 of the Act. Furthermore, the orientation of both models appears to emphasise the adoption of a moderate fee structure that clearly differentiates between the purpose of various fees (see exhibit 2 below for details). Their main characteristics are described below.

- *Administrative fees* are meant to cover the costs associated with a regulatory authority's duties and functions in relation to administering the industry. These comprise mainly licence fees and are either calculated as a fixed amount or expressed as a percentage of profits or gross revenues. In the best practice examples surveyed the level of licence fees is between 0.1 and 0.5% of gross revenues. In the event that administrative fees are set to exceed the actual administrative costs of the regulatory authority, there is a propensity that the over-recovery of such fees would represent an additionally imposed administrative levy that would be unrelated, either directly or indirectly, to the regulatory authority's discharge of its duties and functions.
- *Technical/efficiency fees* are levied to ensure that scarce resources are used and allocated efficiently. Examples are numbering and spectrum licence fees, which are normally established as a fixed amount per unit of resource or allocated through an auctioning process. Higher licence fees in this category lead to more efficient industry operations but there is a limit where the additional costs may become a block to the sector's development. The level of spectrum fees varies, depending on the size of a country's population, the economic value attached to each band, and the expected revenues from spectrum use.

- *Development fees* are levied in some countries to create pools of funds to develop the ICT sector and promote its social benefits, e.g. through a Universal Service Fund (USF) or an R&D fund. The level of these fees tends to be in the area of 0.1 to 0.5 % of gross revenues. High sector development fees make more funds available for social projects in the ICT sector but the administration and effective allocation of these funds poses a great challenge. South Africa has such a regime in addition to licence fees as Electronic Communications Services / Electronic Network Communications Services (ECS/ECNS) licences pay into the USF a portion of their (adjusted) turnover, although the utilisation of this fund should be reviewed to apply it more effectively.

In addition, there are non-monetary obligations that constitute a cost to licensees and therefore have to be considered in this context. These can take the form of Universal Service Obligations, minimum service standards, number portability, and other regulatory imposed obligations. Furthermore, taxes and royalties levied on licensees serve the goal of generating income for the government to be spent outside the ICT sector. These are usually calculated as percentage of profits. It is important to keep in mind that even if they are not part of the specific regulatory framework for the ICT sector, they still place a burden on the industry. Clearly, too much value extraction from the industry leads to its decline and reduced investment activities.

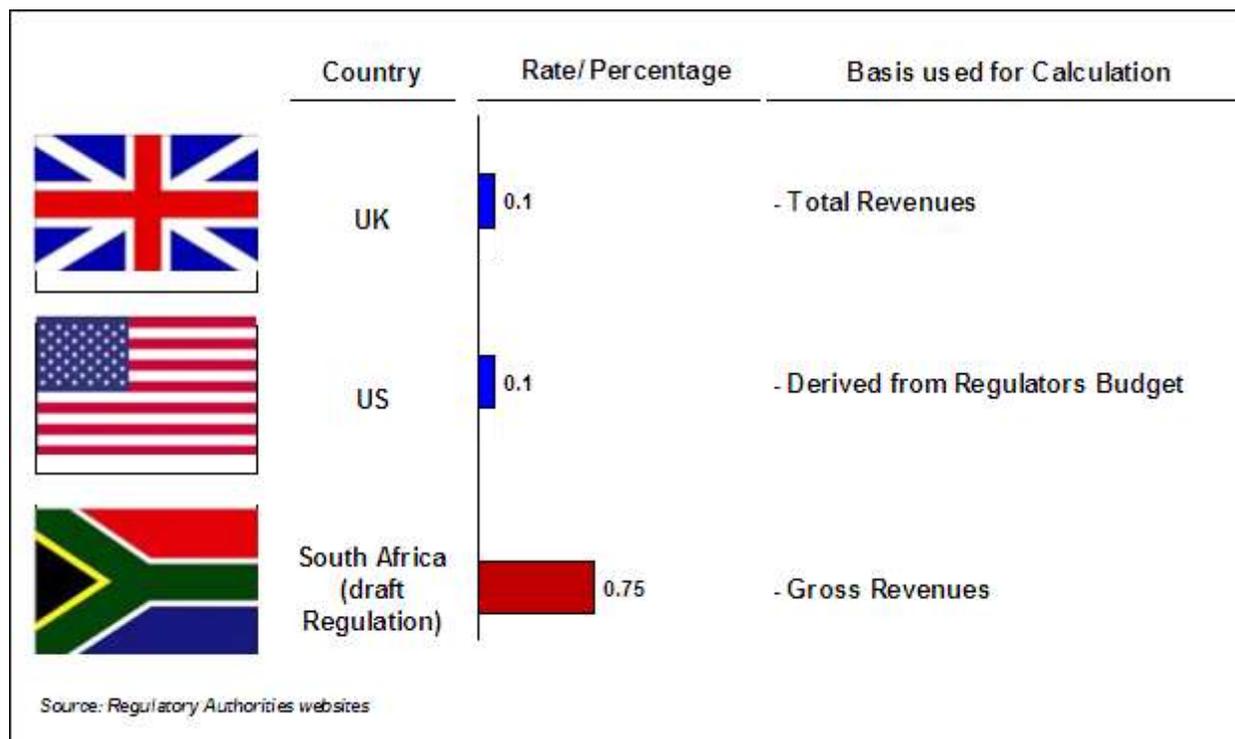
In summary, translating these best practices to the South African context, Telkom believes the following:

- it is important that the Authority, whenever considering a regulatory intervention that creates costs for licensees, considers the effect of the overall regulatory regime on the industry, including licence and other fees as well as non-monetary obligations. It is a Government's stated policy objective, supported by many statements from the Authority, to lower the cost of communications. However, the consistent theme from the Authority is to increase the regulatory burden on the industry through regulatory interventions such as license fees, spectrum Administrative Incentive Pricing (AIP), proposed spectrum auctions, roll-out obligations, review of historical obligations on ECS/ECNS licensees, numbering fees, Universal Service Fund (USF) contributions, etc.;
- fees that do not serve the purposes of recovering the regulator's costs, encouraging the efficient use of scarce resources or promoting ICT development are in fact additional taxes on the industry. In fact, since the Authority is financed from an appropriation from Parliament, licence fees should not be used at all to recover regulatory costs, other than on the basis of an explicit policy, which currently does not exist;
- given the paramount importance of ICT sector for economic development overall, excessive regulatory imposed costs will directly lead to higher telecommunications costs for consumers and will have negative socio-economic consequences even beyond the ICT sector itself;
- investment in infrastructure is badly needed in South Africa's ICT sector, and any regulatory framework should incentivise it.

As of now, Telkom strongly recommends that the above principles inform the new proposed GLFR. In its current version, the draft GLFR does not support the above mentioned principles. In fact, when compared to best practice regulatory regimes, the proposed licence fee in the draft

GLFR is extremely high and more than 600% higher than what licensees would pay in the UK and USA. Exhibit 2 below provides a comparison of the proposed licence fees with international bets practice.

Exhibit 2: Compared to best practice regulatory regimes, the licence fee in the draft Regulation is extremely high



3.2 No rationale or clear basis for the formula

The draft GLFR purports to change the base of calculation of the licence fee from Gross Profit, as defined in the 2009 GLFR, to the turnover of the licensee derived from licensed activities.

The formula given in the draft GLFR for calculating the Annual Licence Fees payable is:

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

Pa = Payable Annual Licence Fee

T = Turnover due to Licensed Activities

Pp = applicable percentage in accordance with schedule 2 in the draft regulation, i.e. 0.75%

This approach gives rise to several concerns, as detailed below.

In the Explanatory Memorandum the Authority states:

“The attached draft regulations propose an administratively simpler method of calculating annual licence fees than the current Regulations. [.....] The rest of the current Regulations remain unchanged apart from consequential changes brought about as a result of the change in the formula.”

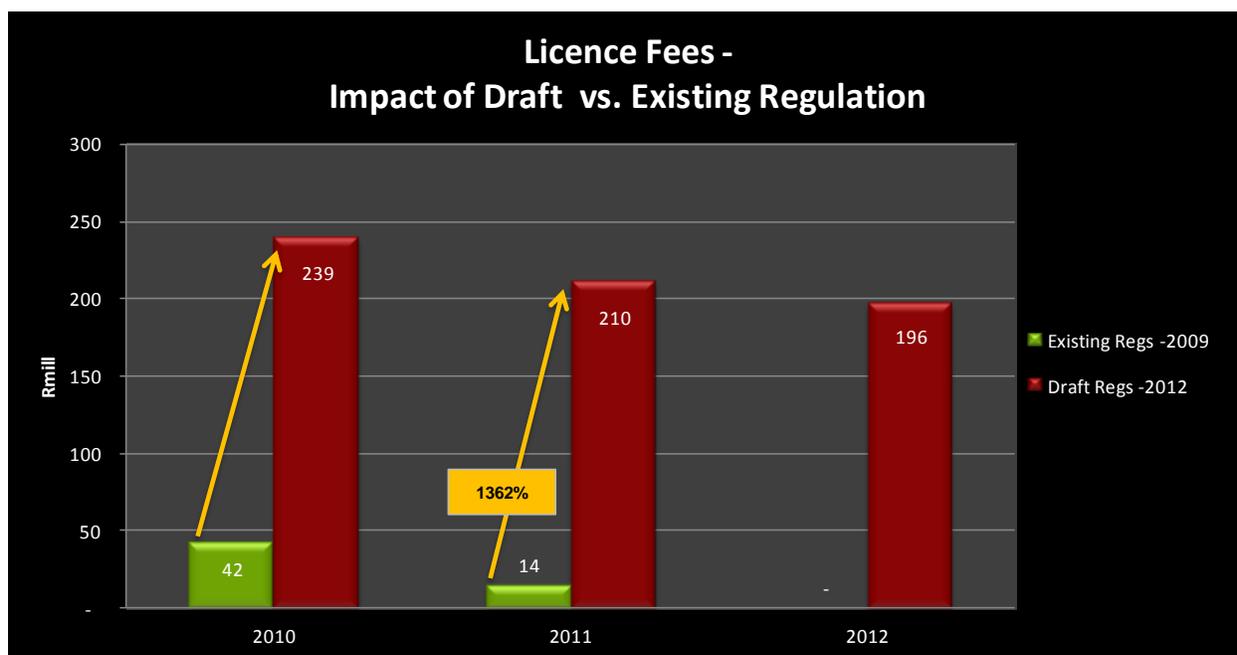
This statement gives a clear indication that the purported objective of the changes from the 2009 GLFR is simply the introduction of a simpler method of calculation, strongly confirmed by the statement:

"The rest of the current Regulations remain unchanged apart from consequential changes..."

In particular, no indication has been given by the Authority at any point in the Explanatory Memorandum that the intention of the change was to increase the amount that licensees will have to pay, individually or collectively, as licence fees. In fact the rationale offered by the Authority for the change would indicate that there was no such intention, i.e. there would be no material change in licence fees payable, and this is what Telkom, and presumably the entire industry, would have expected and supported.

However, certainly in the case of Telkom, this is definitely not the case. The proposed new regulation will result in a material increase in the licence fee payable by Telkom, as illustrated below

Exhibit 3: Impact of proposed draft Regulation on Telkom



	2010	2011	2012
Revenue From Licensed Operations	R 31,848,994,317	R 28,025,610,313	R 26,143,084,911
Opex from Licensed Operations	R 29,064,000,000	R 27,066,918,859	R 28,444,100,000
Gross profit	R 2,784,994,317	R 958,691,454	R -2,301,015,089
Licence fees Paid -Existing Regulation: 1.5% of Gross Profit	R 41,774,915	R 14,380,372	R -
Proposed Licence fees -Draft Regulation: 0.75% of Revenue from Licensed Operations	R 238,867,457	R 210,192,077	R 196,073,137
Variance: Proposed vs. Paid ↑	R 197,092,543	R 195,811,706	R 196,073,137
Percentage increase ↑	472%	1362%	infinite

Even more concerning is the fact that the Authority fails to provide the rationale and methodology used to determine that 0.75% is the appropriate percentage of turnover to be used to calculate licence fees.

Telkom would have expected that the Authority would have attempted to demonstrate that:

- (1) the 0.75% of Turnover is at least equal to or less than the 1.5% of Gross Profit as contemplated in the 2009 GLFR and the change is justifiable and not a means to collect additional taxes from the licensees; and
- (2) the proposed change in methodology will not adversely impact unprofitable or marginal profitable entities.

On the first point, it is clear that, there would be a significant over-recovery by the Authority of the administrative fees that would justify the adoption of a regulatory framework for the Authority's administrative function relating to the management of the industry. On the second point, there seems to be an attempt by the Authority to restore some of the protection of unprofitable licensees that existed in the 2009 GLFR by exempting new licensees from licence fees for the first three years, but the two provisions are hardly equivalent.

The above is unjustified, hence totally unacceptable to Telkom.

Furthermore, the Explanatory Memorandum does not provide an explanation of why certain "third party" costs cannot be deducted from Turnover before calculating the licence fee. For example: the revenue received by a licensee from other licensees for terminating calls from their network is included in Turnover, but the symmetrical payments to other licensees for terminating calls are not excluded. For example, the current Universal Services and Access Fund (USAF) contribution is also based on Turnover less certain expenses related to licensed activities. Telkom believes that the Authority should be consistent in defining certain key terms in regulations.

3.3 Lack of consistency between the implied objectives and the practical outcomes of the draft GLFR

In the Explanatory Memorandum the Authority states that the draft GLFR only intends to substitute the formula to calculate annual licence fees in the 2009 GLFR with a simpler method, while the rest of the 2009 GLFR remains unchanged apart from consequential changes brought about as a result of the change in the formula. Again referring to the statement in the Explanatory Memorandum that:

"The rest of the current Regulations remain unchanged apart from consequential changes..."

Telkom notes that the Explanatory Memorandum, referring to the 2009 GLFR, also states that:

"The Authority took a position that annual licence fees should be levied on gross profit due to the fact that, among other things:

- (1) Only profitable entities will pay fees, thus giving a regulatory holiday to unprofitable entities.***
- (2) Levying fees based on a percentage of gross profit is competition-neutral in the sense that it treats different entities differently.***
- (3) The methodology takes into account the impact of economic cycles on profitability.***
- (4) The methodology is easy to administer."***

Telkom does not agree that treating different entities differently is competition neutral; the correct approach is one that treats licensees in a non-discriminatory manner.

The Authority has not indicated that it intended to change the objectives of the regulation, but only the base on which licence fees were calculated: *from gross profit to turnover*.

However, the reality is quite different: the new formula may be a simpler method of calculation but it results in a material increase in the license fees that Telkom will have to pay. Other changes are also introduced that have no relationship with the formula and are therefore not consequential to the change but materially affect the impact that the regulations will have on Telkom. The draft GLFR is in direct conflict with the original goals the Authority chose to achieve and which should underpin any proposed amendment. Telkom believes that the Authority, in trying to overcome an "*administrative hurdle*", as it purports to be doing, is in fact deviating from its core goals and aspirations.

Since the Authority does not provide any justification for such changes, Telkom must reject them as unfair and unjustified.

It is therefore important that the Authority be clear in terms of its goals and consistent in the subsequent application of the appropriate methodology to achieve these goals to avoid that a defective regulation is again made. If this were to happen it would not only undermine the credibility of the Authority, but the uncertainty that it would create would also deter entry and investment in the ICT industry and would consequentially undermine the sustainability and stability of the entire industry.

3.4 General lack of clarity

There are many areas of the draft GLFR where there is a lack of clarity, or which are open to different interpretations. These need to be resolved before the new regulations are published. These will be further addressed in section 4 below.

3.5 Lack of Regulatory Impact Assessments

The Authority has previously committed to do Regulatory Impact Assessments (RIAs) as part of the process of promulgating regulations. The draft GLFR has not been accompanied by any form of RIA. In the absence of a RIA, it is not clear how this draft GLFR will impact on various licensees and hence the Authority will be making regulations without knowing the impact of such regulations on industry. Telkom submits that this goes against the spirit of evidence-based regulation making and could have far-reaching unintended consequences.

3.6 Inconsistency of licence fee regime and treatment of operators:

The Authority has previously allowed mobile cellular licensees to pay licence fees on Nett Operational Income which allowed the incumbent licensees to deduct significant costs associated with interconnection and bad debts. However, 8.ta as a new mobile cellular operator will not only have to compete against well established mobile competitors but also pay higher licence fees when compared to the incumbent operators at the time of their start up. This will significantly reduce 8.ta's ability to compete with these established operators to the detriment of consumers.

4 SPECIFIC COMMENTS ON THE DRAFT REGULATIONS

Telkom hereby submits its specific comments on the draft GLFR. For the sake of convenience, the actual text in the draft GLFR is highlighted, followed by Telkom's comments, where relevant.

[Schedule]

- *This section contains the regulations proper, not the schedules to the regulations, which follow after the regulations. It is proposed that the heading "Schedule" be deleted.*

1. DEFINITIONS

In these regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Electronic Communications Act, 2005 (Act No. 36 of 2005) has the meaning so assigned;

"**the Act**" means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

"**Accounting Officer**" **[as stated]** means the officer referred to in section 60 of the Close Corporation Act 69 of 1984;

- *Amendment proposed to clarify the definition*

"**Administrative fees**" means the fees payable in terms of regulation 3(2) and contained in Schedule 1;

"**Annual Licence fees**" means the fees payable in terms of regulation 3(1) and contained in Schedule 2;

"**Applicable Interest Rate**" means the uniform interest rate set by the Minister of Finance in terms of section 80(1**[X]**)(b) of the Public Finance Management Act 1 of 1999;

"**BS Licensee**" means broadcasting service licensee;

"**ECNS licensee**" means Electronic Communications Network Service Licensee;

"**ECS licensee**" means Electronic Communications Service Licensee;

"**Licensed Service**" **[as]** means the services defined in the Electronic Communications Act under "broadcasting service", "electronic communications service" and "electronic communications network service"; **[and]**

- *Amendment proposed to clarify the definition*

"Turnover" means income generated from the provision of:

- (i) Licensed services but excludes
- (ii) Payments to other licensees for interconnection, bad debt and the leasing of electronic communications facilities;
 - *It is proposed that expenses incurred in the provision of services that are clearly identifiable and for which objective proof can be provided be excluded from the calculation of the licence fee. It is suggested that at least payments to other licensees for interconnection, the leasing of electronic communications facilities and bad debts be excluded.*

2. PURPOSE OF THESE REGULATIONS

The purpose of these Regulations is to prescribe –

- (a) the administrative fees payable in respect of an application or registration for a licence, amendment, transfer or renewal as contemplated in sections 4(1Xc)(iv) and 4(1)(c)(v) of the Act; and
- (b) The annual licence fees payable by licensees as contemplated in section 5(7) (a) (iii) of the Act.

3. APPLICATION

(1) The annual licence fees prescribed in these regulations and as set out in schedule 2 apply to holders of individual and class ECS Licences, individual and class ECNS Licences and individual commercial BS Licences.

(2) The administrative fees are as set out in schedule 1 and:

- (a) The method of payment prescribed in the Process and Procedure regulations as published in the Government Gazette applies, and
- (b) Will be adjusted by a maximum of the year-on-year percentage change in the Consumer Price Index (CPI) as published by Statistics South Africa or such [other] lower percentage as determined by the Authority. The adjusted Administrative Fees will be published annually in the Government Gazette.
 - *The changes from the 2009 GLFR in regulation 3(2)(b) are not consequential to the change in the calculation formula and, in Telkom's opinion, not warranted. In particular the power of the Authority to change the administrative fees above inflation without any form of due process is not acceptable. Furthermore the obligation to publish any adjustments in the Gazette is good regulatory practice, valuable to ensure transparency and certainty, and should be retained.*
 - *Since the Authority is not using licence fees to fund its own operations and administration, there is no need for an inflation-linked adjustment to the licence fees. In fact, contrary to the Authority's own reasoning for amending the 2009 GLFR, any*

such proposed CPI adjustments would once again complicate the calculations of licence fees. Furthermore, as most licensees have different financial periods, it is possible that any proposed CPI adjustment could affect licensees in different financial periods which may be unfair. In line with Telkom's proposal of having a GLFR which is simple, easily understood, fair and gives certainty, Telkom believes that licence fees as a percentage should be set for a fixed period (e.g. 3 years) after which it is reviewed.

4. EXEMPTIONS

(1) The following **[Licensees] operations of a licensee** are exempt from the payment of annual licence fees:

(a) Licensees who hold a Class Licences for Community Broadcasting (Sound and Television);

(b) Public Broadcaster; and

(c) Licensees who are granted and issued a licence in terms of the Act where the License satisfies the turnover threshold as per the requirements for classification as a small enterprise in the Transport, Storage and Communication Sector as defined in the National Small Enterprise Act 102 of 1996, as amended.

(2) **[(d)] Licensees will be exempted from paying Annual Licence fees in the first three (3) years [of generation of revenue from licensed services] within a relevant market within which a licensee has not directly operated or derived revenues from**

(3) **Turnover generated by a licensee from the provision of electronic communications services and electronic communications network services that is subject to any form of regulation by the Authority in the form of price control or similar measure is exempted from being attributed as turnover for purposes of calculating a licensee's annual licence fee**

- *Amendments proposed to clarify the clauses*

5. PAYMENT OF ANNUAL LICENCE FEES

Payments in respect of annual licence fees are due as prescribed in schedule 2 and 3.

- *Refer to specific on schedule 2 and 3*

6. INTEREST

Interest on all late payments in respect of the annual licence fees is payable in accordance

with the PFMA, at the applicable interest rate as published by the Minister of Finance.

- *Refer to specific on schedule 2 and 3*

7. CONTRAVENTIONS AND PENALTIES

[(1)] Upon a determination of non-compliance by the Complaints and Compliance Committee

in terms of the ICASA Act, the Authority may impose a fine not exceeding:

(a) (5%) five percent of quarter (1) one turnover of licensee's preceding financial year from

date of non-compliance for contravention of regulation 5 and 6.

[(b) Two Million Rands (R2 000 000.00) for contravention of regulation 4].

- *The proposed imposition of penalties in the event that a licensee has not complied with the provisions of the draft GLFR are, in general, inconsistent with the provisions of the ICASA Act. In fact, the proposed penalty provisions appear to be intended to be more punitive than that set-out in the ICASA Act. The Authority would be well aware that its powers to prescribe penalties in regulations is inherently circumscribed by the empowering provisions in primary legislation and that it would be impermissible for the Authority to purport to delegate to itself substantive and more punitive powers than those initially delegated to it by the Parliament of the Republic of South Africa it.*
- *Further, Telkom considers it imprudent for the Authority to purport to pre-determine the extent to which a determination of non-compliance by the Complaints and Compliance Committee (“the CCC”) may attract the penalty as proposed, notwithstanding that the CCC possesses the discretion and latitude to recommend to the Authority a suitable penalty given the nature and extent of non-compliance. In essence, the proposed formulation of Regulation 7 of the draft GLFR purports to constrain the CCC’s powers as set-out in section 17D(2) of the ICASA Act as well as the Authority’s decision-making framework set-out in section 17E of the ICASA Act. In this regard, it is readily discernible that this provision envisages a ‘rule of reason’ approach in the Authority’s decision-making framework, and in particular in relation to the Authority’s consideration of the CCC’s recommendations. In the circumstances, Telkom respectfully proposes that the Authority reconsider the formulation of Regulation 7 of the draft GLFR in accordance with the underlying purport of the ICASA Act.*

8. SHORT TITLE AND COMMENCEMENT

(1) These regulations are called the ICASA General Licence Fees Regulations, 2012

- *Telkom notes that Regulation 8 of the draft GLFR purport to provide for the short title an commencement of same yet there exists no specified commencement date for the effective date of the contemplated regulations. Notwithstanding that the draft GLFR are silent on the commencement date of same, given that the substantive purport of Telkom’s comments and proposals are far-reaching and entail significant practical implications, that the Authority considers setting-out*

transitional provisions for the regulations aimed at ameliorating the administrative burden associated with licensees having to give effect to the regulations.

9. REPEAL AND AMENDMENT

[(1) In the event of any conflict between the provisions of this regulation and the licence

terms and conditions which purports to impose Annual and/or Licence Fees, the provisions of this regulation prevail.]

- *Telkom has understood the formulation of Regulation 9 of the draft GLFR to purport to repeal and amendment some subordinate legislative instrument that is currently in force and in effect. However, Telkom is of the view that the formulation of Regulation 9 in fact amounts to a conflict resolution provision and does not in any or form purport to repeal or amend at subordinate legislative instrument that is currently in force and in effect. In the event that the Authority intended to give effect to the repeal and amendment of some other subordinate legislative instrument, Telkom is of the view that that endeavour ought to be reflected accordingly in the reformulation of Regulation 9.*

9. REPEAL [AND AMENDMENT] OF EXISTING REGULATIONS

The General Licence Fees Regulations published in General notice 345, Gazette No. 32084 of 1 April 2009 are hereby repealed

- *Amendments proposed to clarify the clauses*

SCHEDULE 1**ADMINISTRATIVE FEES**

The fees payable by applicants and registrants, as the case may be, in respect of applications and registrations respectively are set out below.

INDIVIDUAL LICENCES

Initial applications for Licences:

Electronic communications network services:	As specified in ITA
Electronic communications services:	As specified in ITA
Broadcasting services:	As specified in ITA

Applications for amendment of Licences:

Electronic communications network services:	R 52 000.00
Electronic communications services:	R 52 000.00
Broadcasting services:	R 52 000.00

Applications for renewal of Licences:

Electronic communications network services:	R 5 200.00
Electronic communications services:	R 5 200.00
Broadcasting services:	R 5 200.00

- *No comment*

CLASS LICENCES:

Initial registrations:

Electronic communications network services:	R10 400.00
Electronic communications services:	R10 400.00
Community broadcasting services:	R 3 120.00
Low Power Commercial Sound Broadcasting:	R 5 200.00
Low Power Community Sound Broadcasting:	R 1 040.00
Special Event Broadcasting Licences:	R 520.00

Applications for amendment of Licences:

Electronic communications network services:	R10 400.00
Electronic communications services:	R10 400.00
Community broadcasting services:	R 1 040.00
Low Power Commercial Sound Broadcasting:	R 2 080.00
Low Power Community Sound Broadcasting:	R 1 040.00

Applications for renewal of Licences:

Electronic communications network services:	R 5 200.00
Electronic communications services:	R 5 200.00
Community broadcasting services:	R 1 040.00
Low Power Commercial Sound Broadcasting:	R 5 200.00
Low Power Community Sound Broadcasting:	R 3 120.00

Applications for transfer of Licences:

Electronic communications network services:	R10 400.00
Electronic communications services:	R10 400.00
Community broadcasting services:	R 3 120.00
Low Power Commercial Sound Broadcasting:	R 2 080.00
Low Power Community Sound Broadcasting:	R 1 040.00

- *No comment*

SCHEDULE 2**ANNUAL LICENCE FEES**

(1) *The Annual Licence Fees payable by Licensees in accordance with these regulations are to be calculated using the formula set out herein, read with the applicable percentages.*

Pa = Payable Annual licence Fee

T = Turnover due to licensed activities

Pp = applicable percentage in accordance with this schedule read with regulation 3(1).

$Pa = Pp \times (T)$

Where Pp for the various types of licenses is:

Individual Electronic Communications Network Services:	0.75%
Individual Electronic Communications Services:	0.75%
Individual Commercial Broadcasting Services:	0.75%
Class Electronic Communications Network Services:	0.75%
Class Electronic Communications Services:	0.75%

- *As discussed at length in section 3, the Authority has not offered any rationale to justify the choice of the 0.75% factor to be applied in the formula. Under the circumstances, Telkom has no option but to consider such value to be arbitrary and unjustified.*
- *Furthermore, in Telkom view it would be appropriate that certain costs, for example the out-payments to other operators, be subtracted from turnover before calculating the licence fee. Even for licensees not subject to the COA/CAM regulations such expenses would be documented, auditable and easy to ascertain, thus not creating the “administrative hurdles” that led the Authority to propose a change in the GLFR.*
- *Telkom strongly believes that the two issues above should be addressed in such a manner that the licence fees payable individually and collectively by licensee should not be materially different from the fees that would have been payable under the 2009 GLFR.*
- *Telkom, therefore, proposes the following values and formula:*
 1. *0.15% of Gross revenues*
 2. *3 year exemption to pay licence fees on revenues generated as a new entrant to a market*

SCHEDULE 3**PAYMENTS IN RESPECT OF
LICENCE FEES**

(1) FORMAT FOR SUBMISSION OF FINANCIAL STATEMENT FOR THE PURPOSE OF LICENCE FEES CALCULATION

Company Name		
Financial Year End		
Financial Year		
Auditing Firm /Partner		
Accounting Officer	Name:	Signature:
Company CFO/ Accounting Officer	Name:	Signature:

Total Revenue Generated	R '000	As per AFS
Total Non-Licensed Revenue	R '000	
Total Licensed Revenue	R '000	

Revenue from Licensed services (see examples below)	R '000	
1. Voice	x xxx	
2. Data	xx xxx	
3. Roaming	xx xxx	
4. Interconnection	xx xxx	
5. Other licensed services	x xxx	
Total Revenue from Licensed services		xxx xxx

(2) I,, in my capacity as..... hereby verify that the information provided is true and correct and have been reviewed by an Auditor/ Accounting Officer.

Signature.....Designation.....Date.....
...

- *No comment*

SUBMISSION OF FINANCIAL STATEMENTS

(3) All licence holders must:

- (a) submit audited Annual Financial Statements within six (6) months of their financial year end, or;
- (b) submit financial statements signed and sworn to by the accounting officer of the licensee where the licensee is not legally obliged to provide audited financial statements;

(4) Community Broadcasters must submit the following within six (6) months of their financial year end:

- (a) annual financial statements signed off by the accounting officer; and
- (b) provide a list of all donors and amounts donated and details of all financial and non-monetary donations.

PAYMENT OF ANNUAL LICENCE FEES

(5) Where a legal entity holds any combination of a BS Licence, ECS Licence and/or ECNS Licence, such entity must calculate the licence fee based:

- (a) on the firm's turnover based on the audited annual financial statements of that firm: or
- (b) Financial statements signed and sworn to by the accounting officer of the licensee where the licensee is not legally obliged to provide audited financial statements;

(6) Unless expressly authorized by the Authority, all payments in respect of licence fees are due annually.

(7) Annual Payments

- (a) are due annually based on the licensee's financial year;
- (b) are due and payable within 6 months from the end of the licensee's financial year;
- (c) may only be paid by way of an electronic transfer or via a direct deposit into the Authority's bank account; and.
- (d) must be based on the:
 - i. Audited annual financial statement of the licensee; or
 - ii. Financial statements signed and sworn to by the accounting officer of the licensee where the licensee is not legally obliged to provide audited financial statements;

[(e) are to be adjusted immediately on receipt of the applicable annual financial statement of the licensee which must be submitted within 6 (six) months from the financial year end;]

[(f)](e) must be submitted as in schedule 3 (1) of the regulations and must be submitted as an annexure to the annual financial statement and be subject to audit;

[(g)which are estimates must be submitted as in schedule 3(1), these must be used for the purposes of comparison to the final submission of the annual payments.]

- *Telkom notes that clause (7) above is to some extent a combination of clauses (4) and (5) of the 2009 GLFR. However, clause (5) of the GLFR dealt with “Quarterly Payments”, a facility that is not contemplated in the draft GLFR. Consequently, clauses (7)(e) and (7)(g) above are meaningless. Telkom proposes that they be deleted.*

The Explanatory Memorandum states that:

“In order to encourage entry or to lower entry barriers into the market, the Authority is proposing a regulatory holiday for new entrants to a specific market, in terms of which they are only required to pay annual licence fees after 3 years of starting operations and generating an income.”

- *From the above statement, it is unclear how this will apply to Telkom in respect of its mobile “start-up” business 8ta. Since the regulation states that “where a legal entity holds any combination of a ECS and ECNS Licence, such entity must calculate the licence fee based: on the firm's turnover based on the audited annual financial statements of that firm”. Telkom's mobile enterprise 8ta is a new entrant in the mobile market and should be granted the same relief as any new entrant, albeit it is not a separate legal entity from Telkom.*

5 CONCLUSION

Telkom accepts that regulations that have been found to be too difficult to implement, either by the Authority or by licensees, need to be reviewed and amended as appropriate. Telkom accepts that the rationale adduced by the Authority to amend the 2009 GLFR, i.e. that the methodology stipulated therein is difficult to administer, is a valid and justifiable rationale.

Telkom, however, has serious concerns on the manner in which the Authority has sought to address the shortcomings of the 2009 GLFR. The main concerns of Telkom on the draft GLFR are:

- No guiding principles have been identified as a framework for the regulations.
- No clear basis has been given in support of the proposed formula to calculate the licence fees. In particular no justification for the value of the 0.75% of Revenue has been given

- The Authority states that the new formula is meant to provide a simpler method to assess licence fees. However it results in a material increase in licence fees for Telkom. This in the end will result in increased costs for end users.

Telkom trusts that its contribution will assist the Authority in addressing the shortcomings of the 2009 GLFR in an effective manner which does not negatively affect the industry and does not inadvertently increase the cost of communications.