



11 August 2015

Independent Communications Authority of South Africa

Attention: Mr Peter Mailula

E-mail: pmailula@icasa.org.za

Dear Peter

**SUBMISSIONS IN RESPECT OF THE DRAFT AMENDMENT STANDARD TERMS AND CONDITIONS –
INDIVIDUAL LICENCES REGULATIONS 2015**

1. ISPA refers to the proposed amendments to the
 - 1.1. “Standard Terms and Conditions for Individual Broadcasting Services, 2010” (“**the BS Regulations**”),
 - 1.2. “Standard Terms and Conditions for Individual Electronic Communications Network Service 2010” (“**the IECNS Regulations**”), and the
 - 1.3. Standard Terms and Conditions for Individual Electronic Communication Services 2010 (“**the IECS Regulations**”)

published as Schedules 1 to 3 respectively to Regulation 523 of 2010 in Government Gazette 33294 of 14 June 2010 (collectively “**the Regulations**”) and to the Authority’s invitation to comment thereon.

AMENDMENT OF REGULATION 2 OF THE REGULATIONS

2. The proposed amendment requires notifications to the Authority in respect of, inter alia, changes in the financial year-end of a licensee. ISPA suggest that the Authority consider amending Form O to the Individual Licensing Processes and Procedure Regulations to cater for such a notification.
3. ISPA requests clarity on regulation 2(1)(c) – specifically, whether the requirement to submit notice of changes to shareholding only applies to those changes of shareholding which do not constitute a transfer of control, or whether this notice is also to be submitted following a change to shareholding which follows receipt of the Authority’s prior written permission to shareholding changes in terms of an application of transfer of control¹.
4. ISPA submits that a clear line needs to be drawn between:

¹ Form G of the Individual Processes and Procedures Regulations.

ISPA Management Committee:

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- 4.1. Changes in shareholding which the Authority will view as a change in control and therefore require an application using Form G; and
- 4.2. Changes in shareholding which the Authority will not view as a change in control and which requires only a notification using Form O.

COMMENCEMENT OF OPERATIONS

5. ISPA notes that amendments proposed to the IECNS Regulations and the IECS Regulations require licensees to commence operation of ECNS and ECS respectively within 12 months from the effective date, unless an extension has been granted.
6. ISPA notes that the Authority has proposed amendments to the corresponding Regulations relating to class licences which would see the period for commencement of ECNS extended to 24 months (with a further extension available upon application). It is not clear why this amendment – which ISPA supports – has not been extended to IECNS licences, but it appears to be an oversight when taking into account that the proposed regulation 5(2) provides that an application for an extension must be brought 12 months before the expiry of the period allowed for commencement (i.e. 12 months).
7. Delays in commencement of provision of services are commonplace. The Authority is aware that there are currently a number of external constraints which may limit the ability of the licensee to commence operations in terms of the licences, including but not limited to access to spectrum, access to permissions for obtaining wayleaves, and delays in obtaining interconnections agreements and services.
8. For this reasons ISPA submits that it would be preferable not to place a finite limit on the extensions which a licensee is able to obtain – on good cause shown – for commencement of services.
9. The Authority should note that new licensees will generally be looking to commercialise the licences as soon as possible so will not be seeking to delay implementation. They will further still be required to comply with reporting and other requirements relating to the licences notwithstanding they are not being used, i.e. there is a holding cost to having the licences but not using them which also incentivises a new licensee to commence service provision.

CONTRAVENTION AND FINES

10. ISPA note that the proposed regulation 12(4) in the Draft Regulations provides for the revocation of the licence where the licensee has not commenced operations in the specified time period, and that the Authority has recently exercised such powers. It is therefore critical that amendments are made to section 5 so that it accords with the reality of commencement of service provision.

SHORT TITLE

11. The Regulations stipulate the following short titles:
 - 11.1. “Standard Terms and Conditions for Individual Broadcasting Services, 2010”

- 11.2. "Standard Terms and Conditions for Individual Electronic Communications Network Service 2010" and
- 11.3. Standard Terms and Conditions for Individual Electronic Communication Services 2010.
12. The Draft Regulations propose the short titles:
 - 12.1. "Amendment Standard Terms and Conditions for Individual Broad casting Services, 2015"
 - 12.2. "Amendment Standard Terms and Conditions for Individual Electronic Communications Network Service 2015",
 - 12.3. "Amendment Standard Terms and Conditions for Individual Electronic Communications Service 2015".
13. ISPA suggests that – following convention and the need for consistency and clarity – the short titles should be:
 - 13.1. "Standard Terms and Conditions for Individual Broadcasting Services Amendment Regulations 2015"
 - 13.2. "Standard Terms and Conditions for Individual Electronic Communications Network Services Amendment Regulations 2015", and
 - 13.3. "Standard Terms and Conditions for Individual Electronic Communications Services Amendment Regulations 2015".

DELAYED IMPLEMENTATION

14. ISPA has observed over time that difficulties experienced in the implementation of new law and regulations can be greatly reduced by allowing for staggered implementation of provisions which require the Authority to design and incorporate an internal process or which industry need to be made aware of so that they have an opportunity to comply.
15. ISPA submits that it would be prudent and helpful to all parties to delay the commencement of the amended Regulations until one month after their publication in the Government Gazette. ISPA cannot identify any prejudice to the Authority or any other party flowing from such an approach.

ADDITIONAL COMMENTS

16. The interpretation of regulations of this nature and the completion and submission of the forms provided is already a relatively complex administrative task. This is complicated by incorrect clause numbering and references, particularly as regards the forms provided.
17. ISPA requests that the Authority take steps to publish a full set of regulations incorporating all amendments so that these are set out in a single document. Providing a simple, single set of regulations which are easy to follow will assist licensees and registrants to comply with the Authority's requirements.

CONCLUSION

18. ISPA thanks the Authority for its efforts herein, and requests that the Authority afford it the opportunity to make oral presentations at any public hearings which it may elect to conduct in connection with this process.

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ISPA REGULATORY ADVISORS