

11 August 2015

Independent Communications Authority of South Africa

Attention: Mr Peter Mailula

E-mail: pmailula@icasa.org.za

Dear Sir,

WAPA SUBMISSIONS IN RESPECT OF THE DRAFT AMENDMENT CLASS PROCESSES AND PROCEDURES REGULATIONS 2015

1. We refer to the Draft Amendment Class Processes and Procedures Regulations 2015 published as General Notice 658 in Government Gazette 38917 of 26 June 2015 (“the Draft Regulations”) and to the Authority’s invitation to comment thereon, and we set out the WAPA submission below.

GENERAL REMARKS

2. WAPA currently has 226 members, the majority of whom hold Electronic Communications Network Services (ECNS) Licences and Electronic Communications Services (ECS) Licences. These members will be subject to the Draft Regulations, and they accordingly have a direct interest in the Draft Regulations. WAPA accordingly sets out its comments and concerns on the Draft Regulations herein.
3. WAPA members perceive the majority of the proposed amendments in the Draft Regulations as sensible additions which serve to enable the Authority to perform its mandate. We submit that certain proposed amendments could prove to be problematic, and set out our thoughts and proposals in this regard below.

CONSIDERATION OF APPLICATIONS/REGISTRATIONS

4. Regulations 5(6), 8(5), 9(4) and 10(d) of the Draft Regulations indicate that the Authority will not consider applications or registrations if the applicant/registrant is in arrears on any fees prescribe by the Authority or legislated in terms of the Electronic Communications Act 36 of 2005 (“the ECA”).
5. WAPA is aware that of the issue of non-compliance by licensees, particularly as it relates to licence fees and other fees due to the Authority, and understands the reasoning behind the inclusion of these provisions. Nevertheless, WAPA submits that the Authority already has mechanisms and penalties for dealing with outstanding fees in other regulations, and it is more

appropriate for this aspect to be dealt with in terms of the existing regulations, at least in respect of the registration of new Class licences (regulation 5(6) in the Draft Regulations).

6. From a practical point of view: The Authority's Licensing Division must issue a Class licence within 30 days of receipt of a registration notice¹, and the Authority must provide written notice including reasons if there will be any delay beyond the 30-day period², failing which the licence is considered to have been issued by the Authority on the 31st day after receipt of the registration notice³. The proposed amendment would mean that the Authority's Licensing Division would have to raise queries with all other divisions of the Authority on receipt of every registration notice, in order that each may indicate whether the registrant has any fees outstanding. This will add delays to a process that runs fairly smoothly at the moment – at the moment, the Authority does raise queries as to outstanding fees in the case of transfers of licences, as proposed in regulation 10(d), and this has resulted in delays to the 30-day period afforded to the Authority for the consideration of these transfer applications⁴. It is unlikely, in our opinion, that Class licences will be issued within the 30-day period if this proposed amendment is implemented.
7. A big concern for WAPA members is illegal operators (i.e. non-licensed operators and licensees who operate outside of the licence areas specified in their licences). WAPA fears that the proposed amendment may have the unintended consequence of blocking those illegal operators from acquiring licences to cover their actual coverage area.

SUBMISSION METHOD

8. The Draft Regulations include a provision relating to the submission of applications by post under regulation 14A, which deals with Contraventions, and again as untitled regulation 15. It is submitted that this would be more appropriate under regulation 5, which covers other aspects relating to the submission of applications and registrations.
9. The Authority is requested to clarify how this would operate when considered against the requirements for submission in regulation 5(1A) of the Draft Regulations.

SHORT TITLE AND COMMENCEMENT

10. While some of the proposed amendments as set out in the Draft Regulations will operate smoothly if they come into effect immediately, others will be less successful in the transitioning. It is recommended that the Authority have a phasing-in timeline, in which they can ensure that their internal processes are ready to deal with the changes.

¹ Section 17(3) of the ECA.

² Section 17(4) of the ECA.

³ Section 17(5) of the ECA.

⁴ Section 16(6) of the ECA.

FORM H

11. WAPA notes the duplication of sections 1.3 and 4.7 of the form regarding geographic scope of operations. WAPA submits that the inclusion of these questions is unnecessary unless the Authority seeks to enable applicants/transferees to amend the geographic scope assigned to the licences that form the subject of the transfer. We request that the Authority provide clarity in this regard.
12. Section 7.1 has been amended to require (1) for natural persons, an indication of ownership interest, identity and address and (2) for juristic persons, an indication of all shareholders and the percentage shares held by each shareholder. It is submitted that the wording in this section is unclear, as it seems to indicate that if the applicant is a natural person, then one is to provide the natural person's ownership information, and if the application is a juristic person, then one is to provide the shareholder details of the applicant. Currently, the names, ID/registration numbers, shareholding percentages and physical addresses of all shareholders are provided (where the applicant is a juristic person, as this section would not be applicable if the applicant is a natural person). The Authority is requested to clarify what it means here.
13. Sections 7.2 and 8.2 (confirmation of shareholding), 7.4 and 8.4 (listing) 7.5 and 8.7 (HDI ownership), 7.7 and 8.8 (foreign ownership), 7.9 and 8.10 (interest by any shareholder in any other licensees/licences), 7.10 and 8.13 (applicant's/transferee's interest in another licensee) and 9.1-9.5 (suitability of transferee) all also require a written undertaking by the Accounting Officer confirming same to be attached. As above, it is submitted that the Accounting Officer would have no way of confirming this information and thus cannot be expected to submit an undertaking relating to same; for example, the Accounting Officer would not be aware of interests of shareholders in other licences. It is recommended that the Authority reconsider these requirements and how to seek confirmation of the specified information.
14. Section 9.6 requires details of the transferee's 5-year business plan. As the comprehensive business plan (in terms of section 9.7) is to be attached, it is uncertain why details are also required in this section. If the Authority is requesting an executive summary of the business plan in this section, it is recommended that the section wording be amended to reflect this request.
15. Section 9.9 requires the provision of a detailed network architecture layout plan and roll-out plans, including timeframes and roll-out targets. It is uncertain why the Authority requires this separately from the comprehensive business plan required in section 9.7. If this is to form part of the business plan, perhaps the Authority should indicate that information relating to this is required therein. The same applies to the information requested in section 9.10.

FORM L

16. The Draft Regulations make provision for two (2) contact persons' details (3.2, 3.3, 3.10 and 3.11). It is uncertain why two (2) contact persons should be required. It is submitted that the second contact person should be indicated as 'Optional'. It should be noted that Form H only requires one (1) contact person.

17. The Draft Regulations require, in respect of shareholding, a signed letter with the breakdown of the shareholding structure to be changed (3.12). It is uncertain if this is just badly worded, so it appears to be requesting the old shareholding structure (“the shareholding structure to be changed”). It is submitted that the wording be amended to clarify the information required. It is also uncertain who is required to sign the letter; it is submitted that the Authority clarify this too. In practice, the Authority also requires additional information regarding the shareholders, e.g. HDP status and total HDP ownership percentage, and it is submitted that this section should specify all information that the Authority will require in this regard.
18. The Draft Regulations require a resolution authorising the person signing the notice, to be signed by the contact person on the licence (5.2). It is uncertain why the Authority would require the contact person to sign the resolution. The contact person may not be someone who can sign such a resolution, i.e. where the contact person isn’t a director/member of the company.
19. The Draft Regulations require CIPC registration documents to accompany notifications of changes of name (5.3). It is submitted that CIPC confirmation certificates in respect of changes of name would perhaps be better suited. It is also recommended that the regulations require CIPC confirmation certificates where the licensee has changed entity type; the Authority requests these in practice, and it would be simpler to require the relevant documentation to accompany the notification.

ADDITIONAL COMMENTS

20. The Draft Regulations do contain a few spelling errors or typos, and the Authority is requested to address these before finalising the Regulations.
21. The forms in the Draft Regulations are not consistently numbered, and the Authority is requested to address numbering inconsistencies before finalising the Regulations.

CONCLUSION

22. WAPA 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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WAPA REGULATORY ADVISORS