



MTN Submission:
Draft Regulations regarding Standard Terms and Conditions for Individual Licences under Chapter 3 of the Electronic Communications Act, 2005 (No. 36 OF 2005)

05 May 2022

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1. Introduction

MTN would like to thank the Authority for the opportunity to comment on the Draft Regulations regarding Standard Terms and Conditions for Individual Licences issued on 16 March 2022 in Government Gazette NO:46050, herein referred to as (“Draft Regulations”).

MTN welcomes the Draft Regulations, please find below our comments in respect of the Draft Regulations.

2. Specific comments

Schedule 2: Individual Electronic Communications Network Services

Schedule 2 begins with a heading “Class Electronic communications network services”, and this has been repeated twice in the following headings (Schedule 2 and 3). We believe this is an error. It should be Individual Electronic Communications Network Services and Individual Electronic Communications Services, respectively.

2.1 Amendment of Regulation 2: Notification of change in Licensee details and information

MTN welcomes the extended notice period for notifying the Authority of changes in licensee’ details from 7 days to 14 days.

Further, MTN acknowledges the introduction of a late notice fee payable by the licensee in the event that a licensee does not give notice within the prescribed period. The Authority states that the rationale for imposing a fee is to deter the licensees from submitting notices late. Previously, non-compliance with this regulation was subject to a maximum penalty of R100 000 as contained in the penalty clause of the regulations. MTN welcomes the minimum reduction of penalty from R10 000 up to R100 000. However, R100 000 is still excessive for this kind of transgression. MTN urges the Authority to reconsider this penalty.

Furthermore, the offending licensee would be afforded a hearing before the imposition of an administrative penalty according to the current regulations. The proposed amendment takes this process away by not affording the licensee an opportunity to be heard. This is not in line with the administrative law procedure and a right to be heard before imposition of any penalty. In MTN’s view, licensees should be granted an opportunity to provide an explanation for the late notification.

2.2 Amendment of Regulation 6 of the Regulations: notice period for service interruptions

The Authority seeks to amend the notice period for service interruptions in circumstances that are beyond licensees’ control. The Authority proposes the following amendments:

- Reduction from continuous period of 12 hours to a continuous period of 6 hours or longer to notify the Authority.

MTN proposes that the notice period should remain unchanged considering the current electricity loadshedding challenges and the continuous battery theft in our cell towers. The implication of 6 hours notification is that in a day two notifications may need to be sent to the Authority if Eskom loadshedding is extended beyond the normal times.

MTN supports the second notice period delineated in the Draft Regulations, wherein licensees are mandated to notify the Authority within forty-eight hours of service disruptions that will last for more than seven (7) days. The notice requirement of forty-eight hours is sufficient.

2.3 Amendment of Regulation 8 of the Regulations: Provision of information

MTN acknowledges the Authority's intention to provide certainty in circumstances where a licensee fails to submit information within reasonable time or where there is suspected unwillingness to submit the information. In terms of Regulation 8 of the Draft Regulations the Authority proposes that referral to the Complaints and Compliance Committee (CCC) will be triggered by a "third attempt" at soliciting the requisite information from a licensee. However, this is still wide and subject to interpretation of what is regarded as reasonable. Specifying a time period for responding would provide a greater clarity and certainty. MTN suggests stipulation of the number of days within which the licensee should respond at first, second and third attempt.

2.4 Amendment of Regulation 12 of the regulations: Contraventions and penalties

This proposed amendment excludes failures to comply with regulation 2 (Notification of change in Licensee details and information) and regulation 5 (Commencement of operations) from the application of the penalty clause.

As per our comment in paragraph 2.1, MTN does not support the proposed amendment insofar as the penalty for the late notification of changes is concerned, as this results in the exclusion of a hearing prior to the imposition of a penalty.

MTN supports the deletion of 12(4) on a basis that a licensee will be given an opportunity to be heard before a penalty is imposed.

2.5 Amendment of Regulation 2: Notification of change in Licensee details and information

Please refer to the above comments in paragraph 2.1.

2.6 Amendment of Regulation 8 of the Regulations: Provision of information

As stated on the paragraph 2.3 above, MTN acknowledges the Authority's intention to provide certainty in circumstances where a licensee fails to submit information to the Authority in terms of Regulation 8 by specifying that a referral to the CCC will be triggered by a "third attempt" at soliciting the requisite information from a licensee. Please refer to comments made in paragraph 2.3 above.

2.7 Amendment of Regulation 9 of the Regulations: Publication of tariffs and fees

MTN support the reduced tariff notification period from seven (7) days to five (5) days. However, given the dynamic and competitive nature of the electronic communications sector, we are of the opinion that the Authority could reduce it further, MTN proposes a reduction to three (3) working days.

A shorter notice period will assist licences in the rapidly changing market by allowing the licensees the opportunity to respond quickly to competitive offers, which ultimately benefits the consumer as the products and services will be available or go to market sooner. A longer notice period stifles competition and unnecessarily prolongs the benefits, to the consumer, of competitive offers – usually cheaper and affordable pricing, and innovative products. MTN acknowledges that the Authority has a duty to exercise due diligence on licensed services, however, this is not an approval process, it nearly a notification to the Authority. Therefore, the Authority suffers no prejudice as a result of the reduced timeframe.

During the State of National Disaster between 2020 and 2021, licensees were permitted to file tariff within a reduced period of one (1) day (as per the ICT COVID-19 National Disaster Regulations). This had a significant impact on competition in the market. This was affirmed by the Authority in its Bi-annual Report on the Analysis of Tariff Notifications Submitted to ICASA. MTN urges the Authority to apply the learnings acquired during the management of COVID 19 pandemic in this regard.

2.8 Amendment of Regulation 9 by the insertion of sub regulation 9(1A)

MTN welcomes the proposed insertion of sub-regulation 9(1A) which introduces a notice requirement for termination of existing services at least 5 days prior to termination. MTN is already notifying the authority of termination services in this regard and appreciates the certainty the proposed amendment seeks to provide.

2.9 Amendment of Regulation 12: Contraventions and penalties

Please refer to MTN's comments as per paragraph 2.4.

End.