

**Vodacom's comments on the Draft Amendment Regulations on the Processes and Procedures in respect of Applications, Amendments, Renewals, Surrender and Transfer of Individual Licences and applications for Special Temporary Authorisations in terms of the Electronic Communications Act, 2005**

Vodacom (Pty) Ltd ("Vodacom") welcomes the opportunity to comment on the

- Draft Amendment Regulations on the Processes and Procedures in respect of Applications, Amendments, Renewals, Surrender and Transfer of Individual Licences and applications for Special Temporary Authorisations in terms of the Electronic Communications Act, 2005 ("Draft P&P Regulations")

Please note that should the Authority decide to allow oral presentations, Vodacom will make use of the opportunity to make oral presentations. We further confirm our willingness to participate in any further consultative process that the Authority may undertake in this regard.

In the remainder of the document, we provide our detailed comments on the Draft P&P Regulations.

## **Draft Amendment Regulations on the Processes and Procedures**

### **1.1. Amendment of regulation 5A in the Regulations**

- a. The proposed amendment reads as follows:

*"The Authority will not consider any application if the Applicant is in arrears with respect to any fees and/or is not compliant with any other applicable regulations or the Act."*

- b. Whilst we agree that Licensees should be compliant with relevant Regulations, the disqualification of an Applicant may be harsh and disproportionate if such non-compliance is immaterial and/or the Applicant has taken steps to rectify the non-compliance.

- c. We propose the following amended wording for consideration.

*"The Authority may decide not to consider any application if the Applicant is in arrears with respect to any fees and/or is not compliant with any other applicable regulations or the Act. In making the decision, the Authority will take into account the materiality of the non-compliance, reasons for non-compliance and steps taken by Applicant to rectify such non-compliance"*

### **1.2. Amendment of regulation 10 of the Regulations**

- a. The proposed amendment reads as follows:

*"Regulation 10 of the Regulations is hereby amended by the deletion of paragraphs (a) and (b) of sub-regulation (3)."*

- b. We submit that the whole of sub-regulation 10(3) should be deleted, as it would not make sense to only delete the sub-paragraphs without also deleting the paragraph that is informed by and to which the sub-paragraphs relate.

### **1.3. Amendment of regulation 11 of the Regulations**

- a. The proposed amendment reads as follows:

*"Regulation 11 of the Regulations is hereby amended by the substitution of sub-regulation (3) for the following sub-regulation: "(3) The Authority will not consider an application if the licensee is in arrears with respect to any fees and/or is not compliant with any other applicable regulations or the Act."*

- b. For the same reasons provided above, we are of the view that the disqualification of the Applicant may be harsh and disproportionate if such non-compliance is immaterial and/or the Applicant has taken steps to rectify the non-compliance.
- c. We propose the following amended wording for consideration.

*"(3) The Authority may decide not to consider an application if the licensee is in arrears with respect to any fees and/or is not compliant with any other applicable regulations or the Act. In making the decision, the Authority will take into account the materiality of the non-compliance, reasons for non-compliance and steps taken by Applicant to rectify such non-compliance"*

#### **1.4. Amendment of regulation 14A of the Regulations:**

- a. The proposed amendment reads as follows:

*"(2) A licensee must submit the notice within fourteen (14) working days of the change occurring where:*

- (a) name, and/or trading name or contact details of the licensee changes;*
- (b) Type of the service/s provided in terms of the licence (only applicable to ECS and ECNS);*
- (c) shareholding (Refer to 14 (C) below);*
- (d) Principal place of business; and*
- (e) Postal address.*

*(3) A notice submitted to the Authority in terms of sub-section (2), outside the prescribed 14 days, must be accompanied by a fee as may be determined by the Authority from time to time."*

- b. It is unclear what is meant by the "type of the service/s" that is provided by ECS and ECNS licensees, since all services provided by such licensees would be ECS and/or ECNS services. Given that the licences are technology-neutral, we request ICASA to clarify what it requires in this regard.

#### **1.5. Amendment of regulation 14C of the Regulations:**

- a. The proposed amendment reads as follows:

The following regulation is hereby substituted for regulation 14C of the Regulations:

*"(1) In the event a licensee proposes changes to its shareholding, however minute, the licensee must submit to the Authority, prior to implementing the proposed changes, a letter detailing:*

- (a) Current shareholding;*
- b) Proposed changes in shareholding; and*
- (c) Past shareholding changes since the issuance of the licence.*

*(2) If the Authority determines that the submitted changes amount to changes in ownership/transfer of control, the Licensee will be instructed to make a submission in line with regulation 11 read with regulation 12.*

*(3) If the Authority determines that the submitted changes do not amount to changes in ownership/transfer of control, the Licensee will be instructed to make a submission in line with regulation 14 (A)."*

b. Considering that the Authority now intends to make a determination regarding proposed changes to shareholding, Vodacom proposes that the Authority commits to a reasonable timeframe within which it will consider any proposed changes by the licensee in the licensee's shareholding in order to mitigate against unnecessary time delays in executing the proposed changes. And that such changes be deemed not to amount to changes in ownership/transfer of control, if the Authority has not responded within this timeframe, and dealt with in accordance with 14 (A).

c. We therefore propose adding sub-regulation (4), for the Authority's consideration:

*"(4) The determination referred to in (2) and (3) above will be made within thirty (30) days of the Licensee notifying the Authority of the proposed changes referred to in (1). The proposed changes would be deemed not to amount to changes in ownership/transfer of control, if the Authority has not responded to the contrary within the thirty (30) days' timeframe"*

d. In addition, considering that the Licensee may not be in control of changes to its' shareholding – for example when a Licensee is a listed entity on the JSE and its shares publicly traded - Vodacom proposes that the following changes be made to 14C (1) for clarity:

*"(1) In the event a licensee proposes and has control with respect to the changes to its shareholding, however minute, the licensee must submit to the Authority, prior to implementing the proposed changes, a letter detailing:..."*

- e. Notwithstanding, of importance is to consider that licensees will be subject to the annual reporting requirements imposed in terms of the Regulations in respect of the limitations of control and equity ownership by historically disadvantaged groups (HDG) and the application of the ICT sector code. This requirement should address the concern the Authority raised with reference to minute changes.