



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 PROPOSED AMENDMENT OF THE STANDARD TERMS AND CONDITIONS REGULATIONS – CLASS LICENCES 2010

1. ISPA refers to the proposed amendments to the
 - 1.1. Standard Terms and Conditions for Class Broadcasting Services Regulations (“**the BS Regulations**”),
 - 1.2. Standard Terms and Conditions for Class Electronic Communications Network Services Regulations 2010 (“**the CECNS Regulations**”), and the
 - 1.3. Standard Terms and Conditions for Class Electronic Communications Services 2010 (“**the CECS Regulations**”)

published as Schedules 1 to 3 respectively to Regulation 525 of 2010 in Government Gazette 33296 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 L to the Class Licensing Processes and Procedure Regulations to cater for such a notification.

COMMENCEMENT OF OPERATIONS

3. ISPA welcomes the proposal to amend the CECNS Regulations to extend the time period within which to commence provision of licensed services to 24 months after the effective date. This time period is necessary for licensees to ensure that they can successfully set up their networks.
4. ISPA notes that the status quo of commencement within 12 months continues to apply in the CECS Regulations. This may, however, have the unfortunate consequence of requiring a licensee which is self-providing its own network (i.e. providing ECNS to itself) to start commencing ECS before it is required to provide ECS.

ISPA Management Committee:

Ant Brooks*, Graham Beneke, Guy Halse, Jenny King, Siyabonga Madyibi,
Duncan Martin, Mohammad Patel, Mike Silber, Elaine Zinn* (*ex officio)

5. ISPA does not see any compelling reason not to also allow 24 months for commencement of ECS. 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.

SUBSTITUTION OF REGULATION 11 OF THE CECNS REGULATIONS AND THE CECS REGULATIONS

6. The reference to regulation 11 should be a reference to regulation 12 of the CECNS Regulations and the CECS Regulations.

SHORT TITLE

7. The Regulations stipulate the following short titles:
 - 7.1. "Standard Terms and Conditions for Class Broadcasting Services Regulations"¹
 - 7.2. "Standard Terms and Conditions for Class Electronic Communications Network Services Regulations 2010"², and
 - 7.3. "Standard Terms and Conditions for Class Electronic Communications Services 2010"³.
8. The Draft Regulations propose the short titles:
 - 8.1. "Amendment Standard Terms and Conditions for Class Broad casting Services, 2015"
 - 8.2. "Amendment Standard Terms and Conditions for Class Electronic Communications Network Service 2015",
 - 8.3. "Amendment Standard Terms and Conditions for Class Electronic Communications Network Service 2015".
9. ISPA suggests that – following convention and the need for consistency and clarity – the short titles should be:
 - 9.1. "Standard Terms and Conditions for Class Broadcasting Services Amendment Regulations 2015"
 - 9.2. "Standard Terms and Conditions for Class Electronic Communications Network Services Amendment Regulations 2015", and
 - 9.3. "Standard Terms and Conditions for Class Electronic Communications Services Amendment Regulations 2015".

¹ Schedule 1, Regulation 12

² Schedule 2, Regulation 13

³ Schedule 3, Regulation 13

DELAYED IMPLEMENTATION

10. 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.
11. 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

12. 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.
13. 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

14. 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