

# SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

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## S1

### LEGAL NOTICE NO. 125 OF 2016

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#### SWAZILAND COMMUNICATIONS COMMISSION ACT, 2013

(Act No. 10 of 2013)

#### SWAZILAND COMMUNICATIONS COMMISSION (CONSUMER PROTECTION) REGULATIONS, 2016

(Under Section 54)

In exercise of the powers conferred by Section 54 of the Swaziland Communications Commission Act, 2013, the Minister for Information, Communications and Technology makes the following Regulations –

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### ***Citation and commencement***

1. (1) These Regulations may be cited as the Swaziland Communications Commission (Consumer Protection) Regulations, 2015.

(2) These Regulations shall come into force on the date of publication in the Government gazette.

### ***Interpretation***

2. (1) In these Regulations, unless the context otherwise requires –

“Act” means the Swaziland Communications Commission Act, 2013;

“advertisement” has the meaning assigned to it in the Fair Trading Act, 2001;

“alternative dispute resolution procedure adjudicator (ADR adjudicator)” means a person appointed by the Commission to resolve disputes out-of-court;

“Appeals Board” has the meaning assigned to it in the Act;

“business premises” in relation to a supplier means –

(a) any immovable retail premises where the activity of the supplier is carried out on a permanent basis,  
or

(b) any movable retail premises where the activity of the supplier is carried out on a usual basis;

“consumer” has the meaning assigned to it in the Competition Act, 2013;

“data” has the meaning assigned to it in the Electronic Communications Act, 2013;

“digital content” means data which is supplied through an electronic communications network or an electronic communications service;

“durable medium” means paper or email, or any other medium that –

- (a) allows information to be addressed personally to the recipient;
- (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and
- (c) allows the unchanged reproduction of the information stored;

“electronic commerce” has the meaning assigned to it in the Act;

“electronic communications network” has the meaning assigned to it in the Electronic Communications Act, 2013;

“functionality” in relation to digital content includes region coding, restrictions incorporated for the purposes of digital rights management, and other technical restrictions;

“goods and services” means goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption;

“identifiable person” means a person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to that person's physical, physiological, mental, economic, cultural or social identity;

“personal data” means any information relating to an identified or identifiable natural person ('data subject').

### **Scope**

- 3. (1) These Regulations apply to business and to consumer electronic commerce.
- (2) These Regulations are not applicable to transactions between individuals acting in a non-business capacity.

### **Objectives**

- 4. The objectives of these Regulations are to regulate –
  - (a) fair business practices;
  - (b) advertising and marketing;
  - (c) disclosure of the identity and location of suppliers;
  - (d) disclosure of the terms and conditions of contracts;
  - (e) the implementation of mechanisms for concluding contracts for the establishment of fair and effective procedures for handling complaints and resolving disputes;
  - (f) the adoption of privacy principles;
  - (g) the use and disclosure of information about payment; and
  - (h) security and authentication mechanisms;

### **Compliance with these Regulations**

5. Any business engaging in electronic commerce directed at consumers or any business or industry association whose members engage in electronic commerce directed at consumers shall comply with the provisions of these Regulations.

### **Existing laws and regulations**

6. (1) These Regulations are in addition to and not a replacement for other obligations that may exist as a result of consumer protection in terms of other laws, codes of conduct and regulatory mechanisms.
- (2) Compliance with the requirements of this Regulation does not exempt a business from compliance with any other such obligations.
- (3) In the event of an inconsistency with any existing law, that law will take precedence over the provisions of the Regulations.

### **Fair business practices**

7. (1) A Supplier shall adopt fair business practices when dealing with consumers.
- (2) In particular sections 4, 5, 7, and 10-19 of the Fair Trading Act of 2001 which prohibits suppliers from engaging in any conduct that amounts to –
- (a) engaging in misleading or deceptive conduct generally;
  - (b) misleading the public in relation to goods or services;
  - (c) making false representation in respect of goods or services in connection with the supply of goods or services or with promotions;
  - (d) engaging in misconduct in relation to the forgery or false application of trademarks;
  - (e) offering of gifts and prizes with the intention of not providing them as offered;
  - (f) trading, supplying or arranging for the supply of trading stamps or stamp schemes;
  - (g) engaging in bait advertising;
  - (h) inducing another to engage in referral selling;
  - (i) demanding or accepting payment without intending to supply the goods or services as ordered;
  - (j) making misleading representations regarding certain business activities;
  - (k) the use of harassment or coercion in relation to the supply of or payment for goods and services;
  - (l) promoting or operating a pyramid scheme; and
  - (m) importing goods bearing false trade descriptions or false trade marks
- shall apply with necessary modifications to any supplier offering electronic commerce in Swaziland.

### **Advertising and marketing**

8. A Supplier shall –
- (a) ensure that advertising and marketing material is clearly identifiable as such and can be distinguished from other content, including editorial comments, terms and conditions of contracts and independent product reviews, where this may not be reasonably apparent;
  - (b) ensure that the suppliers of the supplier are identifiable from advertising; and
  - (c) be able to substantiate advertising or marketing claims, where consumers could be reasonably expected to rely upon such claims.

### **Information on the identification of suppliers**

9. (1) A Supplier shall provide consumers with accurate, clear and easily accessible information that is sufficient to enable –
- (a) identification of suppliers involved in a particular transaction; and
  - (b) prompt, easy, and effective communication with suppliers regarding such a transaction.
- (2) The information referred to in subsection (1) shall include –
- (a) the name under which suppliers trades and, where the supplier is a registered company, the name of the company;
  - (b) the physical and postal address of the supplier;
  - (c) e-mail address, telephone number and other contact information where enquiries can be directed;
  - (d) any relevant statutory registration or licence numbers; and
  - (e) whereas supplier publicises its membership of any relevant self-regulatory scheme, business association, dispute resolution organisation or other certification body, the supplier shall provide consumers with appropriate contact details, an easy method of identifying that membership and of accessing the relevant codes of practice of that body.

### **Contractual Information**

10. (1) A supplier engaged in electronic commerce shall provide a consumer with a clear and complete text of the terms and conditions of the contract in a manner that enables consumers to make fully informed decision whether or not to enter into the transaction.
- (2) Information concerning the terms and conditions of a contract shall be clearly identified and distinguished from advertising and marketing material.
- (3) Information shall be clear, accurate, easily accessible, and provided in a manner that gives consumers an adequate opportunity for review before entering into the transaction.
- (4) A supplier shall provide all information online which they are required to provide offline either by law or by any relevant code of practice to which they subscribe.

- (5) Where there is a legislative or other mandatory regime for the disclosure of contractual information, compliance with that regime is sufficient to meet the obligation of these Regulations in relation to the disclosure of that information.
- (6) The manner of providing this information shall allow the consumer to retain a copy of the information.
- (7) All information that refers to costs shall indicate the Swazi currency (lilangeni).

**Information on transactions**

11. Where applicable and appropriate given the nature of the transaction, the information relating to a particular transaction shall include –
- (a) the functionality, including applicable technical protection measures, of digital content;
  - (b) any relevant compatibility of digital content with hardware and software that the supplier is aware of or can reasonably be expected to have been aware of;
  - (c) mandatory safety and health care warnings that a consumer would get at the offline point of sale;
  - (d) as far as the calculation of the costs payable is concerned either –
    - (i) an itemisation of all costs collected by suppliers, or
    - (ii) where the total cost of a transaction cannot be ascertained in advance, a statement that a total cost cannot be provided and a description of the method that will be used to calculate it, including any recurrent costs and the methods used to calculate them;
  - (e) notice of the existence of other costs to the consumer that are not collected by suppliers, this may include delivery, postage, handling and insurance and, where it would be reasonably known to suppliers, including taxes and other levies;
  - (f) in the case of a contract of indeterminate duration or a contract containing a subscription, the total costs per billing period or (where such contracts are charged at a fixed rate) the total month costs;
  - (g) notice on-going costs, fees and charges and methods of notification for changes of those costs, fees and charges;
  - (h) if limited, the period for which the offer is valid;
  - (i) any restrictions, limitations or conditions of the contract, such as geographic limitations or parental or guardian approval requirement for minors;
  - (j) the terms of delivery;
  - (k) conditions related to termination, return, exchange, cancellation and refunds;
  - (l) details of any applicable cooling-off period or right of withdrawal, including the conditions, time limit and procedure for exercising that right;
  - (m) the circumstances under which the consumer loses the right to cancel;

- (n) any conditions related to contract renewal or extension;
- (o) details of any explicit warranty provisions offered by the manufacturer, supplier, or business;
- (p) details of any after-sales service provided; and
- (q) details of how to access complaints and dispute procedures referred to in regulations 17-18.

(3) where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation, and if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods.

### **Conclusion of contract**

12. (1) A supplier shall implement mechanisms that allow an opportunity for the consumer to –

- (a) review and accept or reject the terms and conditions of the contract;
- (b) identify precisely the product or service consumers intend to purchase or avail;
- (c) identify and correct any errors or modify the order, and
- (d) retain a record of any purchase or order, transaction confirmation, acceptance of any offer they make.

(2) A supplier shall promptly send the consumer a confirmation that the contract has been concluded on a durable medium.

(3) The confirmation shall include all the information referred to in regulation 11, unless the supplier has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract.

(4) If the contract is for the supply of digital content and the consumer has given the consent and acknowledgement referred to in regulation 13, the confirmation shall include confirmation of the consent and acknowledgement.

(5) Subject to regulation 13, the confirmation shall be provided within a reasonable time after the conclusion of the contract, but in any event –

- (a) not later than the time of delivery of any goods supplied under the contract, and
- (b) before performance begins of any service supplied under the contract.

(6) For the purpose of sub-regulation (5), the confirmation is treated as provided as soon as the supplier has sent it or done what is necessary to make it available to the consumer.

### **Supply of digital content in the cooling-off period**

13. (1) A consumer is entitled to cancel without any reason and without penalty any transaction and any related credit agreement for the electronic supply of digital content within seven days after the date of conclusion of the contract.

(2) Under a contract for the electronic supply of digital content, the supplier shall not begin the supply of the digital content before the end of the cooling-off period unless –



- (a) the consumer has given express consent to the supply of the digital content; and
- (b) the consumer has acknowledged that the right to cancel the contract under sub-regulation (1) will be lost.
- (3) The consumer ceases to have the right to cancel such a contract if the consumer has given the consent and acknowledgement required by sub-regulation (2), and the electronic delivery of the digital content has begun before the end of the cooling-off period.
- (4) The consumer bears no cost for supply of the digital content, in full or in part, in the cooling-off period, if –
  - (a) the consumer has not given prior express consent as required by sub-regulation 2(a); or
  - (b) the consumer has not given acknowledgement as required by sub-regulation 2(b); or
  - (c) the supplier failed to provide confirmation as required by regulation 12(4).

### **Privacy**

- 14. (1) A supplier shall respect consumers' privacy in collecting and handling consumers' personal data.
  - (2) A supplier may collect, collate, process or disclose any personal data pertaining to a consumer if –
    - (a) the consumer consents;
    - (b) it is necessary for the conclusion or performance of a contract to which the consumer is a party;
    - (c) the supplier is obliged by law to collect, collate, process or disclose the personal data;
    - (d) doing so protects a legitimate interest of the consumer;
    - (e) it is necessary for the proper performance of a public law duty to a public body;
    - (f) it is necessary for pursuing the legitimate interests of the supplier of a third party to whom the information is supplied.
  - (3) A supplier may not electronically request, collect, collate, process or store personal data which is not necessary for the lawful purposes for which the personal information is required.
  - (4) A supplier shall disclose in writing to the consumer the specific purpose for which any personal data is being requested, collected, collated, processed or stored.
  - (5) The supplier may not use the personal information for any other purpose than the disclosed purpose without the express written permission of the consumer, unless the supplier is permitted or required to do so by law.
  - (6) The supplier shall, for as long as the personal data is used and for a period of at least one year thereafter, keep a record of the personal data and the specific purpose for which the personal data was collected.
  - (7) A supplier may not disclose any of the personal data held by it to a third party, unless required or permitted by law or specifically authorised to do so in writing by the consumer.

(8) The supplier shall, for as long as the personal data is used and for a period of at least one year thereafter, keep a record of any third party to whom the personal data was disclosed and of the date on which and the purpose for which it was disclosed.

(9) The supplier shall delete or destroy all personal data which is no longer in use in terms of sub-regulation (6) unless the supplier is permitted or obliged by law to retain the personal data.

(10) A party may use personal information to compile profiles for statistical purposes and may freely trade with such profiles and statistical data, as long as the profiles or statistical data does not constitute personal data.

(11) A supplier shall provide a consumer with clear and easily accessible information online about the way in which they retain and use personal information and personal data.

### **Payment**

15. (1) A supplier shall make available to consumers payment mechanisms that are easy to use and offer a level of security that is appropriate for the method and level of payment.

(2) The supplier shall ensure that the consumer, when placing the order, explicitly acknowledges that the order implies an obligation to pay.

(3) If placing an order entails activating a button or a similar function, the supplier shall ensure that the button or similar function is labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the supplier.

(4) A supplier shall ensure that consumers have access to information on –

(a) the available methods of making payments;

(b) the security of those payment methods in clear, simple language in order to assist consumers to judge the level of risk in relying on those methods; and

(c) how to effectively use those methods.

(5) A supplier shall implement reasonable measures to update the payment mechanisms they use to ensure the level of security offered is maintained at an appropriate level over time.

### **Security and authentication**

16. (1) A supplier shall –

(a) ensure that consumers have access to information about the security and authentication mechanisms that the business uses in clear, simple language in order to assist consumers to judge the level of risk in relying on those systems;

(b) provide a level of security appropriate for protecting consumers' personal and payment information;

(c) provide appropriate levels of security for identification and authentication mechanisms to be used by consumers;

(d) not encourage consumers to provide confidential information in a manner that is considered insecure; and

- (e) implement reasonable measures to update the security and authentication mechanisms they use to ensure the level of security offered is maintained at an appropriate level over time.

**Internal complaint handling mechanisms**

- 17. (1) A supplier shall set up and make operational an internal complaint handling mechanism for consumer complaints.
- (2) The internal complaint handling mechanism shall address and respond to consumer complaints and difficulties –
  - (a) within a reasonable time;
  - (b) in a reasonable manner;
  - (c) free of charge to the consumer; and
  - (d) without prejudicing the rights of the consumer to seek legal redress.
- (3) A supplier shall provide clear and easily accessible information to consumers on complaint handling procedures.
- (4) The supplier shall resolve the consumer's complaints within five days of the lodging of the complaint.
- (5) If a consumer is unsatisfied with the resolution provided by supplier's internal complaint handling mechanism, the suppliers shall provide the consumer with information regarding the alternative dispute resolution offered by the Commission.

**Alternate dispute resolution (ADR)**

- 18. (1) The alternate dispute resolution mechanism shall be accessible, efficient; and, without prejudice to judicial redress.
- (2) The Commission shall appoint ADR adjudicators for the investigation and resolution of any consumer complaints which have been brought to the attention of the Commission in terms of Section 36(1) of the Act.
- (3) The Commission shall appoint qualified persons as ADR adjudicators and an adjudicator shall be a person with a legal background and has knowledge and understanding of the communication industry.

**Dispute**

- 19. (1) A consumer may initiate a dispute by submitting a complaint in electronic format to the Commission.
- (2) The consumer shall –
  - (a) request that the dispute be subjected to adjudication;
  - (b) provide name, physical address (*a domicilium citandi et executandi* within the Kingdom of Swaziland), email address and telephone and fax numbers, and of any representative authorised to act on behalf of the consumer in the dispute;

- (c) provide details of the supplier including the name and all contact information of the suppliers to enable the Commission to send a copy of the dispute to the supplier as provided for in terms of regulation 20;
- (d) specify, in detail, the facts on which the dispute is based;
- (e) annex any documentary or other evidence, together with a schedule indexing such evidence; and
- (f) submit any other evidence available in electronic form.

#### **Notification of Dispute**

20. (1) The Commission shall ensure that the dispute complies with the provisions of those regulations, and that the prescribed fee has been paid.
- (2) If the dispute complies with these regulations, the Commission shall forward a copy of the dispute to the supplier and this date shall be the date of commencement of the dispute.
- (3) If the Commission finds that the dispute does not comply with these regulations, the Commission shall immediately notify the consumer of the nature of the non-compliance.
- (4) The consumer shall within five days correct any non-compliance, failing which the dispute is deemed to have been withdrawn, and can only be cured by the filing of a new dispute.

#### **Response**

21. (1) The supplier shall within twenty (20) days of the date of commencement of the dispute submit a response in electronic format to the Commission.
- (2) The response shall –
- (a) respond to the statements and allegations contained in the dispute and detail any grounds to prove that the supplier is not in breach;
  - (b) provide the name, physical address (a *domicilium citandi et executandi* within the Kingdom of Swaziland), e-mail addresses and the telephone and fax numbers of the supplier and of any representative authorised to act on behalf of the supplier in the dispute;
  - (c) identify any other legal proceedings that have been commenced or terminated in connection with or relating to the subject matter of the dispute;
  - (d) annex any documentary or other evidence, together with a schedule indexing such evidence; and
  - (e) submit by any other evidence available in electronic form.
- (3) If the supplier does not submit a response, the ADR panel shall decide the matter based on the dispute contemplated in regulation 19(1).

#### **Reply**

22. (1) The consumer may within five days of receiving the supplier's response from the Commission, submit a reply to the Commission.
- (2) The reply referred to in sub-regulation (1) shall be submitted in electronic format.

**Impartiality and Independence**

23. (1) The Commission shall appoint a DR adjudicator once the time period of the submission of a reply as contemplated in regulation 22(1) has expired.
- (2) The ADR adjudicator shall be impartial and independent and the adjudicator shall disclose to the Commission any circumstances affecting impartiality or independence before accepting an appointment to decide a dispute.
- (3) If at any stage during the dispute, circumstances arise that may affect the impartiality or independence of the ADR adjudicator, then the adjudicator shall promptly disclose such circumstances to the Commission.
- (4) If an ADR adjudicator has disclosed circumstances that may affect the impartiality or independence of the ADR, the Commission shall determine whether an alternate ADR adjudicator should be appointed.

**General Powers of the ADR adjudicator**

24. (1) An adjudicator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case.
- (2) An adjudicator shall ensure that the dispute is handled as expeditiously as possible.
- (3) An adjudicator shall determine the admissibility, relevance, materiality and weight of the evidence.

**Further statements**

25. In addition to a dispute, a response, and a reply, the ADR adjudicator may request further statements or documents relevant to the dispute, response or reply from either of the parties.

**Default**

26. (1) If a party does not comply with any of the time periods established by this ADR procedure or the Commission, the ADR adjudicator shall proceed to a decision on the dispute.
- (2) If a party does not comply with any provisions of or requirement under this procedure or any request from the Commission, the ADR adjudicator may, in the absence of exceptional circumstances, draw such inference therefrom, as the adjudicator considers appropriate.

**ADR Adjudicator Decisions**

27. (1) ADR adjudicator shall decide a dispute in accordance with the principles of law, on the basis of the dispute, response, and reply, if any, and further statements or documents submitted in accordance with these Regulations.
- (2) The ADR adjudicator shall forward its decision on the dispute to the Commission within 14 days of its appointment under regulation 23(1).
- (3) The decision shall be in writing, provide the reasons on which it is based, indicate the date on which it was rendered and identify the name of the adjudicator.

**Appeal**

28. (1) Either party shall have the right to appeal a decision made by an adjudicator by submitting a statement of intention to appeal with the Secretary of the Appeals Board.

(2) The procedure before the Appeals Board presented in Section 47 of the Act, shall apply *mutatis mutandis* to appeals in terms of this Regulation.

**Burden of proof**

29. (1) In case of dispute about the supplier's compliance with any provisions of this Regulation, it is for the supplier to show that the provision was complied with.

**Penalties**

30. (1) The Appeals Tribunal shall after hearing both parties make an appropriate order and such order shall also include an order as to costs.

(2) The Commission shall publish a list of applicable costs for purposes of sub-regulation (1).

**Applicable law and forum**

31. (1) Where a supplier specifies an applicable law or jurisdiction to govern any contract or dispute, it should clearly and conspicuously state that information at the earliest possible stage of the consumer's interaction with the supplier.

(2) A supplier or its subsidiary based in Swaziland that enters into a contract with a consumer whom the supplier reasonably believes is resident in Swaziland, based information or address details supplied by the consumer, should specify that the governing law of that contract is the law of Swaziland and that disputes arising under the contract shall be determined by courts or tribunals of Swaziland.

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY

**LEGAL NOTICE NO. 126 OF 2016**

**THE SWAZILAND COMMUNICATIONS COMMISSION ACT, 2013**

(Act No. 10 of 2013)

**THE SWAZILAND COMMUNICATIONS COMMISSION (SUBSCRIBER REGISTRATION) REGULATIONS, 2016**

(Under Section 54)

In exercise of the powers conferred by Section 54 of The Swaziland Communications Commission Act, 2013, the Minister for Information, Communications and Technology makes the following Regulations –

**ARRANGEMENT OF REGULATIONS**

**PART I**

**PRELIMINARY PROVISIONS**

1. Citation and commencement
2. Interpretation

**PART II**

**SCOPE AND OBJECTIVES**

3. Scope and objectives
4. Application

**PART III**

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6. Registration of new subscribers
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**DATA PROTECTION, CONFIDENTIALITY AND CONSUMER AWARENESS**

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**PART I**

**PRELIMINARY PROVISIONS**

***Citation and commencement***

1. (1) These Regulations may be cited as the Swaziland Communications Commission (Subscriber Registration) Regulations, 2016

- (2) These Regulations shall come into force on the date of publication in the gazette.

### **Interpretation**

2. In these Regulation, unless the context otherwise requires –

“Act” means The Swaziland Communications Commission Act No. 10 of 2013.

“activate” means to allow full access to the electronic communication system of the Licensee who provides a mobile cellular Electronic Communications Service, including the ability to make and receive calls, and to send and receive short message services; “activated”, “activation”, “deactivate” and “deactivation” shall be read and construed accordingly;

“Biometric Information” refers to the information on human characteristics, such as finger prints, voice and facial image, used to identify a Subscriber;

“Code-Division Multiple Access (CDMA)” means to a form of multiple access where several transmitters, each with a unique code, can send information simultaneously over as single communication, optimising the use of available band width.

“Central Database” means the central SIM cards database, containing the specific biometric and other registration information of all SIM card-based telephone Subscribers;

“Existing Subscriber” means a Subscriber on a Licensee's electronic communication services system prior to the commencement date of these regulations'

“Foreign Licensee” refers to a telecommunication and/or Electronic Communications Service licensee by a telecommunications regulator other than the Commission, to provide Electronic Communications Service in a country other than Swaziland;

“Licensee” means any Electronic Communications Service licensee licensed by the Commission for the provision of Electronic Communications Services in Swaziland;

“Limited Access” means the limitation of services available to a licensee on a SIM Card to receive calls and short message services, and make calls to emergency centre numbers and the Licensee's call centre only;

“International Mobile Equipment Identity – number (IMEI-number)” means a 15 or 17 digit code that uniquely identified mobile phone devices.

“Mobile Subscriber Integrated Service Digital Network number (MSISDN-number)” means the telephone number assigned to a SIM card in a mobile phone.

“New Subscriber” means a Subscriber who acquires a SIM Card or subscribes for the provision of Electronic Communications Service after the commencement of these Regulations;

“Personal Information” refers to the full names, gender, date of birth, residential address, nationality, occupation and such other personal information and contact details of a subscriber specified by the Commission in regulation 5.

“Security Agency” refers to the Royal Swaziland Police, the Umbutto Swaziland Defence Force, Correctional Services and National Fire Emergency Services;

“SIM Card” means a Subscriber Identity Module smart and containing the telephone number of a subscriber, encoded network identification details, the personal identification number and other user data such as an address book provided by a Licensee for the provision of Electronic Communication Services. The SIM Card may be embedded in the phone, and not be a separate card, in the case of some technologies such as CDMA;



“Subscriber” means any person who subscribes for the provision of Electronic Communications Services either as a result of the purchase of a SIM Card or the conclusion of a contract for the provision of electronic communication service by a Licensee (including an employee of the Licensee or any person who receives or received such services as a gift, reward, favour, benefit or donation) and shall, where the context so admits, include both Existing Subscribers and New Subscribers.

“Subscriber Information” refers to the personal information of a subscriber which is recorded and stored in terms of Regulation 5;

“Subscriber Registration Period” means the six (6) month period from the effective date or such other date as the Commission may specify, within which an existing subscriber will be required to register pursuant to these Regulations.

## **PART II**

### **SCOPE AND OBJECTIVES**

#### ***Scope and objective***

3. These Regulations are made to provide a framework for the registration of all mobile subscribers in Swaziland and the protection of the subscriber information collected.

#### ***Application***

4. These Regulations apply to all electronic communications service licensees and all individual and corporate mobile subscribers in Swaziland but shall not extend to subscribers of Foreign Licensees, notwithstanding that the latter users are roaming on the network or a Licensee.

## **PART III**

### **SUBSCRIBER REGISTRATION**

#### ***Personal Information***

5. (1) A licensee shall, subject to sub-regulation (4), at its own cost implement a process to record and store, and shall record and store –
  - (a) the Mobile Subscriber Integrated Service Digital Network number (MSISDN-number) that is to be activated by an licensee at the request of a person contemplated in paragraphs (b) and (c);
  - (b) in the case of a person who –
    - (i) in a Swazi citizen or is lawfully and permanently resident in Swaziland, the full names and surname, identity number and at least one address of such person; or
    - (ii) is not a Swazi citizen or who is not permanently resident in Swaziland, the full names and surname, identity number and at least one address of such person in Swaziland, and the country where the passport was issued; or
  - (c) in the case of a juristic person –
    - (i) the full names, surname, identity number and an address of the authorised representative of the juristic person; and
    - (ii) the name and address of the juristic person and, where applicable, the registration number of the juristic person.

- (2) For the purpose of the sub regulation (1), a licensee shall verify –
- (a) the full names, surname, identity number and identity of the person contemplated in sub regulation (1)(b) and (c) and, where applicable, the country where the passport was issued;
  - (b) the name and, where applicable, the registration number of the juristic person;
    - (i) in the case of a person contemplated in sub-regulation (1)(b)(i) and (c), the address; and
    - (ii) the authority of the representative of a juristic person.
- (3) A licensee shall verify any of the information contemplated in sub-regulation (1) by means of –
- (a) an identification document issued by the Government of Swaziland;
  - (b) a registration document, founding statement, document issued by the Swaziland Revenue Authority or any other similar document;
  - (c) a bank statement, a municipal rates and taxes invoice, telephone or cellular phone account of not older than three months, or any other utility bill or an account of a retailer of not older than three months, or an existing lease, rental or credit sale agreement, insurance policy, a current television licence or a new motor vehicle licence document; or
  - (d) a signed letter of authority on appropriate letterhead or an affidavit in respect of the authority of the representative of the juristic person.
- (4) A licensee shall ensure that the facility in or on which the information is recorded and stored, are secure and accessible only to persons specifically designated by that licensee.

**Registration of New Subscribers**

6. (1) A licensee shall register personal information for new subscribers.
- (2) Further to sub-regulation (1) a licensee is required to, at own cost, implement a process to capture and transmit personal information of new subscribers.
- (3) A licensee shall, at the request of a new subscriber, capture and store –
- (a) the identification number of any SIM card that is to be activated by a Licensee at the request of any new subscriber contemplated in paragraphs (b) and (c) below;
  - (b) the personal information of any new subscriber, other than a juristic person, who requests the activation of such SIM Card by the Licensee; and
  - (c) in the case of a corporate body or other juristic person, the personal information of the authorised representative of the corporate body or other juristic persons; and the name and address of the juristic person and, where applicable, the registration numbers of the juristic person.
- (4) A person who contravenes the provisions of sub-regulation (2) and (3) or any provisions which may be stipulated from time to time by the Commission commits an offence and shall be liable to a fine not exceeding E1000 (one thousand Emalangeneni) per Subscriber.

(5) There shall be no proxy registration of SIM cards and any persons registered pursuant to the foregoing sub-regulation (3) shall be liable for activities carried out on the SIM Card.

**Non-activation of New SIM Cards prior to registration**

7. (1) Subject to sub-regulation (2) below, a licensee shall not activate a SIM Card on its electronic communications system unless the licensee has registered the new subscriber's details pursuant to sub-regulation 5.

(2) Notwithstanding the provisions of sub-regulation (1), a licensee shall not be required to register the details of a subscriber of a Foreign Licensee.

**Registration of Existing Subscribers**

8. (1) A licensee shall register personal information for existing subscribers within six (6) months of the coming into force of these regulations.

(2) A licensee shall promote and support the registration of existing subscribers and shall promptly, upon being notified by the Commission, deactivate any SIM Card where the subscriber has not been registered by the end of the Subscriber Registration Period.

**Non-compliance with activation and deactivation requirements**

9. A licensee who activates a SIM Card in contravention of regulation 7 or who fails to deactivate a SIM Card in accordance with these regulations commits an offence and shall be liable to a fine not exceeding one thousand Emalangeni (E1000) per SIM Card or such other amount as may be prescribed by the Commission.

**PART IV**

**DATA PROTECTION AND CONFIDENTIALITY AND CONSUMER AWARENESS**

**Data Protection**

10. (1) A licensee shall, on its electronic communication system, record and store –

(a) personal information; and

(b) every MSISDN-number used with every IMEI-number; and

(c) every IMEI-number used with every MSISDN-number, which shall, on request, be provided to an authorised Security Agency within twelve (12) hours.

(2) Personal information shall be stored by a licensee for a period of five (5) years after –

(a) a customer has cancelled a contract with the licensee; or

(b) the licensee has ended the electronic communications service provided to the customer.

(3) A licensee shall take all reasonable precautions to preserve the integrity and prevent any corruption, loss or unauthorised disclosure of Subscriber Information retained and shall take steps to restrict unauthorised use of the Subscriber Information by its employees who may be involved in capture and/or processing of such Subscriber Information.

(4) A licensee shall not transfer subscriber information outside the Kingdom of Swaziland, except on instruction by an authorised Security Agency.

***Obligation to inform consumers***

11. A licensee shall, from the date of commencement of these Regulations, inform a customer of –

- (a) that customer's obligations in terms of these Regulations;
- (b) the manner in which the obligations have to be complied with; and
- (c) the consequences of non-compliance with these obligations.

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATION AND TECHNOLOGY

# SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

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## LEGAL NOTICE NO. 127 OF 2016

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**THE ELECTRONIC COMMUNICATIONS ACT, 2013**

(Act No. 09 of 2013)

**THE ELECTRONIC COMMUNICATIONS (CRYPTOGRAPHY) REGULATIONS, 2016**

(Under Section 49)

In exercise of the powers conferred by Section 49 of the Electronic Communications Act, 2013, the Minister for Information, Communications and technology makes the following regulations –

***Citation and Commencement***

1. (1) These regulations may be cited as the Electronic Communications (Cryptography) regulations, 2016.
- (2) These regulations shall come into force on the date of publication in the gazette.

***Interpretation***

2. In these regulations, any word or expression to which a meaning has been assigned in the act shall have the meaning so assigned and, unless the context otherwise requires –

“Act” means the Electronic Communications Act, 2013;

“Certification practice statement” means a statement issued by a certification service provider to specify the practices that it employees in generating and issuing certificates;

“Certificate policy” means a named set of rules that indicates the applicability of a certificate to a particular community or class of applications or to both such community and class, as the case may be, with common security requirements;

“Certificate service provider” means an entity that issues identity certificates for the purposes of electronic signatures or provides other services to the public related to electronic signatures.

“Trusted personnel” means any persons who have directed duties or responsibilities for day to day operations, security or performance of those business activities relating to cryptography products or services or any part thereof that are regulated under the Act or these regulations;

“Cryptography” means the practice or study of reversible mathematical techniques used where data is stored and/or transmitted over a communication channel in an unintelligible form without any actual loss of data.

“Cryptography provider” means a licensed entity providing cryptography services.

***Particulars to identify and locate a cryptography provider, or the products or services of a cryptography provider***

3. An application for registration shall contain –
  - (a) The following particulars to identify and locate the cryptography provider –
    - (i) telephone and fax number, website and e-mail address;

- (ii) the constitutive documents of the applicant which are, in the case of a legal person, certified copies of the Memorandum and Articles of Association, certificate of incorporation, founding statement, partnership agreement or trust deed, and in the case of a natural person, a certified copy of the person's identity document book or passport, as the case may be; and
  - (iii) detailed profiles of trusted personnel of the applicant that have supervisory or managerial responsibilities;
- (b) the following particulars to identify and locate the cryptography provider's products or services –
- (i) the physical address where a cryptography product is or will be produced manufactured, created or distributed from;
  - (ii) the physical address where cryptography service is or will be rendered, delivered, sold, made available or distributed from;
  - (iii) the full details of cryptography operations outsourced;
  - (iv) the name, address and contact details of any other cryptography provider that provides a cryptography service or product of the cryptography provider; and
  - (v) if the cryptography provider is a certification service provider, the certification practice statement and certificate policy;
- (c) the particulars required by sub regulations (a) of these regulation, to identify and, locate an entity to whom cryptography operations have been outsourced; and
- (d) particulars indicating whether the cryptography provider provides encrypted bugging and debugging equipment.

#### ***Manner of furnishing required information***

4. (1) An application for registration in terms of the Act shall be made to the Commission or the official in the department designated by the Commission for that purpose, by completing and submitting the application form contained in the schedule together with the other information required in terms of the Act and these regulations, and shall be accompanied by the administrative fee determined in regulation 5.
- (2) A cryptography provider shall inform the Commission or the official in the department designated by the Commission for the purpose, of any changes in the information submitted or the application within thirty (30) days of such change.

#### ***Fees payable***

5. (1) The administrative fee payable by a cryptography provider who registers with the Commission shall be as follows –
- (a) an application fee of E200.00 (two hundred Emalangen); and
  - (b) an annual administration fee of E200.00 (two hundred Emalangen).
- (2) The administrative fees referred to in sub-regulation (1) shall be paid to the Commission and the applicant shall provide proof of payment.

(3) Save for the application fee that is payable upon application, the annual administrative fee shall be paid on or before 31<sup>st</sup> January of each year.

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**SCHEDULE**

(Under Regulation 4)

**REGISTRATION AS CRYPTOGRAPHY PROVIDER**

Where there is insufficient space for the recording of information, the rest of the information shall be marked as Annexure and annexed to the application form.

1. Full name of applicant: .....
2. Street address: .....
3. Postal address including postal code: .....
4. Telephone number including area code: .....
5. Facsimile number: .....
6. Cellular and telephone number: .....
7. Website and e-mail address: .....
8. Detailed description of type of cryptography service or product: .....
9. The constitutive documents of the applicant as published by the Commission: .....
10. Detailed profiles of trusted personnel of the applicant that have supervisory or managerial responsibilities: .....
11. Physical addresses where cryptography product is or will be produced, manufactured, created or distributed from: .....
12. Physical addresses where cryptography service is or will be rendered, delivered, sold, made available or distributed from: .....
13. Full details of cryptography operations outsourced: .....
14. Name, address and contact details of any other cryptography provider that provides a cryptography service or product to the cryptography provider: .....
15. Particulars in section of the Act and Regulation 2(a), to identify and locate an entity to whom cryptography operations have been outsourced: .....
16. Certificate practice statement and certificate policy if applicable: .....
17. Whether the cryptography provider provides encrypted bugging and debugging equipment.

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY



**LEGAL NOTICE NO. 128 OF 2016**

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**THE ELECTRONIC COMMUNICATIONS ACT, 2013**

(Act No. 9 of 2013)

**THE ELECTRONIC COMMUNICATIONS (DOMAIN NAME ADMINISTRATION) REGULATIONS, 2016**

**ARRANGEMENT OF REGULATIONS**

1. Citation and commencement
2. Interpretation
3. Scope
4. Domain name
5. Licensing of registrar and registry
6. Licence requirement for registrars and registries
7. Service Level Agreement between Commission and registry
8. Service Level Agreement between registrar and registry
9. Responsibility of the registry
10. Responsibility of the registrar
11. Fees
12. Resellers
13. Licensing of domain name for registrants
14. Rights of domain name registrants
15. Responsibilities of registrants
16. Traditional provisions

***Citation and commencement***

1. (1) These Regulations may be cited as the Electronic Communications (Domain Name Administration) Regulation, 2016.  
  
(2) These Regulations shall come into force on the date of publication in the gazette.

***Interpretation***

2. In these Regulations, unless the context otherwise requires –  
“administrative contact” means the entity responsible for maintenance of a domain name;  
“country code Top Level Domain (ccTLD) administrator” means the entity managing the .szccTLD;

“ccTLD” means a country code domain at the top level of the Internet's domain name system assigned according to the two-letter codes in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries and their Subdivision);

“Charter” means the “constitution” of a sub-domain, specifying inter alia the purpose and nature of the domain, the criteria for registration of names within the domain, and the manner of administration of the domain;

“closed sub-domain” means a sub-domain which has been licensed for internal use by a single organisation or group or related organisations;

“domain name” means an alphanumeric designation used to identify an Internet resource as part of the global domain name system;

“domain name system (DNS)” is the system used to relate domain names to Internet protocol addresses and other information;

“ICANN” means the Internet Corporation for Assigned Names and Numbers, a California non-profit public benefit corporation established in terms of the laws of the state of California in the United States of America, which has responsibility for the Internet Protocol address space allocation, protocol identifier assignment, general Top level Domains (gTLD), country code Top Level Domain name system management, and root server system management;

“open sub-domain” means a sub-domain which has been licensed to register names for the public or unrelated organisations;

“registrant” means an applicant for or holder of a domain name;

“registrar” means an entity licensed by the Commission to register domain names on behalf of registrants and to update the repository;

“registry” means an entity licensed by the Commission to manage and administer a specific domain and the repository for that domain;

“registry data” means all data maintained in a repository by a registry, including but not limited to –

(a) domain names;

(b) registrant name and contact information;

(c) registrar name and contact information;

(d) zone records;

(e) registration and renewal dates; and

(f) all other data submitted by the registrars concerning particular domain names.

“repository” means the primary register of registry data relating to a domain;

“reseller” means a person appointed by the registrar to provide customer sales and support to registrants;

“Second-level domain (SLD) means the sub-domain immediately under the ccTLD;

“Sub-domain” means any subdivision of the .sz domain name space;

“sub-domain administrator” means an entity managing a sub-domain in the .szccTLD;

“.sz domain name space” means the .szccTLD and all its sub-domains;

“registrant” means a domain name holder;

“.szccTLD” means the country code Top Level Domain name (ccTLD) for Swaziland;

“zone records” means the technical resource information intended for insertion into the second-level domain (SLD) zone file.

## **Scope**

3. (1) The Registration of a domain name shall be subject to the holder accepting the terms of these Regulations.
- (2) By registering .sz domain names, registrants shall further subject themselves to the laws and courts of Swaziland for matters related to the .szccTLD.

## **Domain name policy and development**

4. (1) The Commission shall establish a stakeholder forum comprising of all parties with vested interests in the .sz domain name space and shall consult the stakeholders forum in determining and developing the policies for the .sz domain name and space.
- (2) Both existing open and closed domain shall be chartered and shall adhere to principles determined in the policy for sub-domains.
- (3) The Commission shall approve charters in line with its policy and principles.
- (4) The Commission shall, in consultation with the stakeholder forum and licensed registries and registrars, develop further specific policies, procedures, rules and regulations to improve the management of the .sz domain name space.
- (5) These further policies, procedures, rules and regulations referred to in sub-regulation (4) shall include, but shall not be limited to –
  - (a) transfer of domain registrations between registrars;
  - (b) resolution of disputes regarding domain registration transfers;
  - (c) resolution of disputes between registry operators and registrars;
  - (d) resolution of disputes between licensees and the Commission;
  - (e) Whois policy;
  - (f) rights and usage of data;
  - (g) reserved names;
  - (h) licensing of new sub-domain;
  - (i) deletion and re-delegation of domain;
  - (j) emergency suspension and re-delegation of names; and

- (k) guidelines for –
  - (i) words, phrases or abbreviations that may not constitute sub-domain name; or
  - (ii) words, phrases or abbreviations that are reserved for special purposes.

(6) In addition to the policies, procedures, rules and regulations to be developed by the Commission, the registry operator shall introduce its policies and administrative procedures to facilitate management of the registry. The policies and administrative procedures to facilitate management of the registry. The policies and administrative procedure shall be consistent with those of the Commission, and shall be approved by the Commission.

### **Licensing of registrars and registries**

5. (1) A person shall not operate as a registry or be a registrar without being licensed by the Commission.
 

(2) An applicant applying for licence to operate a registry or to be a registrar shall be a legal persona according to the Companies Act, 2009 and other laws of Swaziland. To the jurisdiction of Swaziland courts in relation to all matters pertaining to the .sz domain name space.

(3) A registry operator may be licensed to operate more than one (1) registry within the .sz domain name space. The onus will be on the registry operator to prove compliance with each sub-domain charter and policies, and satisfy additional requirements which the Commission may set for the sub-domains.

(4) A licence for a registry operator or registrar shall be valid for five (5) years, subject to the payment of annual licence fees to be determined by the Commission.

### **Licence requirement for registrars and registries**

6. (1) A licensed registrar shall be free to register domain names in all .sz sub-domains, provided they expressly consent to comply with each sub-domain's charter, and satisfy additional requirements which the Commission may set from time to time.
 

(2) A registry operator or registrar shall nominate a *domicilium citandi et executandi* within Swaziland regardless of their physical location, which shall be used for official communication with the Commission. In addition, each registry operator or registrar shall consent.

(3) A registry operator or registrar shall indemnify the Commission from all its dealings with the registrants and resellers.

### **Service level agreement between the Commission and operator**

7. A licensed registry operator shall, prior to commencing registry operations, and each registrar shall, prior to commencing to register domain names, sign a service level agreement prepared by the Commission, which agreement shall define in detail issues relating to such issues as the integrity, security, stability and reliability of the domain name system, frequency of reporting, handling of registry data, registry operations, fees and payments, who is serviced, and resolution of disputes between the registry operators and the Commission.

### **Service level agreement between operator and registrar**

8. (1) Subsequent to being granted a licence but before commencing the operation of the registry, each registry operator shall submit to the Commission a service level agreement it intends to sign with all registrars accredited to register domain names in the registry.

(2) The agreement shall outline issues relating to the relationship between the registry operator and the registrars. Such issues shall include –

- (a) obligations of the parties in relation to the registry system operations and access, supported protocols, software to be used by registrars to register names, data requirements, technology requirements, Whois service, operational requirements, and resolution of disputes between the registry operator and registrar.
- (b) registry operator's licensed products to be used by registrars, including license conditions, limitations, licensed software updates and upgrades.
- (c) payment of fees, which includes the fees to be paid by registrars and registrants, and all license fees which the registry operator shall pay to the Commission.

### **Responsibilities of the registry**

9. (1) The registry shall –

- (a) comply with and implement policies, procedures, rules and regulations referred to in regulation 4 in the administration of the .sz domain name space;
- (b) pay license, registration and renewal fees to the Commission;
- (c) provide a Whois service providing free public query-based access to up-to-date data concerning all active registered names in the registry;
- (d) submit an electronic copy of the registry database to the Commission or, at the registry's election and at its expense, to a reputable escrow agent mutually approved by the registry and the Commission at agreed intervals;
- (e) allow all licensed registrars who comply with the technical standards access to register domain names in the registry; and
- (f) adopt new technologies and advances in domain name system (DNS) registry operations.

(2) The registry shall manage –

- (a) and keep up to date registry data by utilising globally accepted standards and measures in registry data management;
- (b) registry operations, which shall include handling .sz domain name registrations and provision of suitable domain name system (DNS) infrastructure, maintenance of technical and operational records, and registration payments; and
- (c) its relationships with registrars and registrants.

### **Responsibilities of registrars**

10. The registrar shall –

- (a) provide .sz domain name registration services for all the sub-domain in which it is licensed to register names;
- (b) submit up to date data about its registrants which data shall be kept in the registry database;

- (c) provide an interactive web page and a Whois service providing free public query based access to up-to-date data concerning all active registered names sponsored by registrar for each sub-domain in which it is licensed;
- (d) maintain its own electronic database, as updated from time to time, containing data for each active registered name sponsored by it within each sub-domain for which it is licensed;
- (e) submit an electronic copy of the database to the Commission or, at registrar's election and at its expense, to a reputable escrow agent mutually approved by the registrar and the Commission at agreed intervals;
- (f) meet technical requirements specified by the Commission;
- (g) pay licence, registration and renewal fees to the Commission;
- (h) account to the registry operators and the Commission for the actions of resellers appointed by the registrar;
- (i) register domain names and modify information associated with that name on the register; and
- (j) manage its relationship with registrants.

**Fees**

11. (1) Domain registration fees shall be set independently by registrars.
- (2) A registrar shall prepay the Commission for the desired number of new or renewed names.
- (3) The registry shall provide domain name services on cost recovery basis.
- (4) Licence fees to be determined by the Commission shall be paid by a registry and registrar on application for a licence.
- (5) The fees shall be determined by the Commission and shall be reviewed on an annual basis.

**Resellers**

12. (1) A Registrar shall be allowed to appoint resellers and enter into agreements with the sellers.
- (2) A reseller shall not be licensed and shall have no contractual obligations with the Commission or registry by virtue of their appointment by registrar
- (3) A registrar shall ensure that a reseller participates in the registration of domain names in compliance with the policies, procedures, rules and regulations of the Commission and in compliance with the charter and requirements of the domains.
- (4) A registrar shall be responsible for the conduct of a reseller and the Commission shall hold a registrar accountable for any reseller's non-compliance with the policies, procedures, rules and these Regulations of the Commission.

### **Licensing of Domain Name for registrants**

13. (1) The registration of a .sz domain name is only available to persons domiciled or corporate bodies registered in the Kingdom of Swaziland.
- (2) The duration of a .sz domain name registration shall be for a period between one (1) and ten (10) years, provided the registrant pays the annual licence fee required by the Commission.
- (3) A licence shall be renewed upon completion of the ten (10) year period.
- (4) A registrant may, through its registrar, renew registration of domain name anytime during this ten (10) year period, provided that such renewal shall not exceed a period of ten (10) years.
- (5) A registrant shall pay registration, annual renewal and other fees due to registrars.
- (6) A Domain name shall be registered in the .sz domain name space on a first-come-first-served basis.
- (7) A Domain name shall only be registered at the third (3<sup>rd</sup>) level.

### **Rights of Domain Name registrants**

14. (1) The right to use a domain name shall be disputed through the Alternative Dispute Resolution procedures set out by the Commission. Should the sub-domain in which the domain name is registered not be covered by Alternative Dispute Resolution procedures, the dispute may be settled through a normal court process.
- (2) A Registrant may update or amend its contact details in the registry via its licensed registrars according to policies and procedures which the Commission or registry operator may introduce from time to time.
- (3) A Registrant shall be free to change registrars provided such changes are in compliance with the .sz domain name policies, procedures, rules and regulations and subject to contractual commitments between the registrant and the registrar.
- (4) A registrant may transfer domain name registration to another person provided that –
  - (a) such transfer does not occur within thirty (30) days after registration;
  - (b) the registrant to whom the registration is transferred expressly accepts to be bound by, and to comply with, all the policies, procedures, rules and regulations of both the Commission and registry and to comply with the applicable sub-domain charter.
- (5) The transfer of domain name registration shall be done subject to any additional policies and procedures set by the registry.

### **Responsibilities of registrants**

15. (1) A Registrant shall –
  - (a) register their .sz domain names through licensed registrars;
  - (b) through a registrar consent to policies, regulations, rules and procedures developed by the Commission in the interest of effectively managing the .sz domain name space, and to the policies, rules and procedures of the registry operator;

(c) ensure that they have a right to use their chosen domain name and that the name chosen is not in violation of any trademark or any intellectual property rights of another party;

(d) ensure that their contact information is up to date;

(2) A registrant applying to register a domain name shall satisfy the requirements of the charter of a sub-domain in which the name is registered. Failure to satisfy requirements of the charter shall render the application unsuccessful.

***Transitional provisions***

16. (1) The Commission shall prepare transition agreements with holders of second level domains and registrars for an initial period of three (3) years.

(2) All domain names existing on the commencement of these Regulations shall continue to exist.

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY



**LEGAL NOTICE NO. 129 OF 2016**

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**THE ELECTRONIC COMMUNICATIONS ACT, 2013**

(Act No. 09 of 2013)

**THE ELECTRONIC COMMUNICATIONS (FACILITIES SHARING) REGULATIONS, 2016**

(Under Section 24)

In exercise of the powers conferred by Section 24 of the Electronic Communications Act, 2013, the Minister for Information, Communications and Technology makes the following Regulations –

**PART I**

ARRANGEMENT OF REGULATIONS

1. Citation and commencement
2. Interpretation
3. Purpose

**PART II**

FACILITIES SHARING

4. Requests for access to facilities
5. Exclusive services and essential facilities
6. Technical feasibility

**PART III**

PRINCIPLES FOR FACILITIES SHARING, COLLOCATION AND INFRASTRUCTURE SHARING

7. Reference offer and standard practice list
8. Quality of service and standards
9. Service level parameters
10. Confidentiality
11. Non discrimination
12. Transparency
13. Electronic communications facilities sharing information
14. General penalty

**PART IV**

GENERAL PROVISIONS

15. Dispute Resolution
16. Appeals

- 17. Transitional Provisions
- 18. Penalties
- Schedule

**PART I**  
PRELIMINARY PROVISIONS

***Citation and commencement***

- 1. (1) These Regulations may be cited as the Electronic Communications (Facilities Sharing) Regulations, 2016.
- (2) These Regulations shall come into force on the date of publication.

***Interpretation***

- 2. In these Regulations, unless the context otherwise requires –  
“Act” means the Electronic Communications Act, 2013;

“Act” means the Electronic Communications Act, 2013;

“collocation” means the physical space at which more than one licensee install their electronic communications facilities along with, on the same floor or in the same premises as other licensees’ electronic communications facilities, and in some cases, interconnects to other licensees’

“essential facility” means infrastructure or resources that cannot reasonably be duplicated, and without access to which competitors cannot reasonably provide competitive services to end users;

“facilities” means infrastructures amenable to sharing without an attendant risk of lessening of competition and includes, but is not limited to –

- (a) rights of way;
- (b) masts;
- (c) poles;
- (d) antenna mast and tower structures;
- (e) ducts;
- (f) trenches;
- (g) space in buildings;
- (h) electric power (public or private source); and
- (i) any other infrastructure as may be added by the Commission from time to time;

“facilities provider” means a licensee who is requested to lease its facilities in terms of sections 47 and 48 of the Act and any licensee currently providing facilities including a provider carrier;

“facilities seeker” means any licensee requesting facilities, including an applicant for a licence and a requesting carrier; and

“facilities sharing” means facilities leasing and sharing, collocation and infrastructure sharing;

“reference offer” means a document setting out the standards of services and facilities that the facilities provider proposes to offer or its offering;

“standard price list” means a document listing standard price list specifications for facilities and services offered by the facilities provider;

“international telecommunications union” means the United Nations specialised agency for information and communications technologies – ICTs.

**Purpose**

3. The purpose of these Regulations is to –
  - (a) Facilitate the conclusion sharing agreements by stipulating –
    - (i) agreement principles;
    - (ii) time frames and procedures to be followed by parties; and
    - (iii) the procedures for the submission review and filing of agreements;
  - (b) provide for the requirements for the sharing of facilities;
  - (c) ensure that the incidence of unnecessary duplication of infrastructure is minimised or completely avoided;
  - (d) protect the environment by reducing the proliferation of infrastructure and facilities installations;
  - (e) promote fair competition through equal access being granted to the installation and facilities of operators on mutually agreed terms;
  - (f) provide for the mandatory sharing of essential facilities in terms of Section 24(2)(g) of the Act;
  - (g) encourage operators to pursue a cost-oriented policy with the added effect of a reduction in the tariffs chargeable to consumers; and
  - (h) provide for dispute resolution processes and the time frames for lodging disputes.

**PART II**

**FACILITIES SHARING**

**Requests for access to facilities**

4. (1) A request for electronic communications facilities shall be made to the Commission in writing and shall include –
  - (a) the date of the request;
  - (b) the technical requirements of electronic communications facilities seekers and physical parameters;
  - (c) the location of the facilities it requests access to, where applicable; and
  - (d) the type of electronic communications facilities that are requested.

(2) A facilities provider shall respond to a request to lease facilities within thirty (30) days of receipt of the request stating –

- (a) its minimum requirements for entering into the facilities sharing agreement; or
- (b) its reasons why the request for facilities sharing cannot be accommodated, which reasons shall be limited to the consideration that –
  - (i) based on the information provided, facilities sharing would threaten the integrity of the providing carrier's network;
  - (ii) it is not technically feasible, as can be demonstrated by the facilities provider to the Commission, or
  - (iii) it would prevent the providing carrier from fulfilling its own reasonably anticipated requirements for use of the land or facility.

(3) The parties shall finalise the facilities sharing agreement within three (3) months from the date of request provided that the parties may agree on a longer period, which period shall not exceed sixty (60) days.

**Exclusive services and essential facilities**

5. (1) For the purpose of this section, “the Corporation” means the Swaziland Post and Telecommunications Corporation established in terms of The Swaziland Post and Telecommunications Corporation Act, 1983.

(2) The Commission shall from time to time, in terms of 24(2)(b), publish a list of essential facilities to which cost-based access shall be provided upon request.

(3) The Commission may, where necessary, publish a framework for providing cost-based access.

(4) The national electronic communications backbone infrastructure established, controlled, maintained and exclusively operated by the Corporation in terms of Section 53(1) of the Act, is declared an essential facility.

(5) The international gateway exclusively provided by the Corporation in terms of Section 53(1) of the Act is declared an essential facility.

(6) A facilities seeker is required to use the services described in sub regulations (4) and (5) provided that the Corporation in terms of sub regulation (7) provides suitable technology capacity to enable licensees to comply with their obligations.

(7) Where the Corporation does not provide suitable services or technology capacity, the facilities seeker shall make a written demand that the Corporation provide such technology or services within sixty (60) days of receipt of the written demand, failing which the facilities seeker is entitled to make alternative arrangements.

(8) Where the Corporation makes the relevant technological capacity of service available, the Corporation shall notify the facilities seekers who shall be obliged to utilise the Corporation's infrastructure within six (6) months of receipt of such notification.

**Technical feasibility**

6. (1) A request is technically feasible if it meets the following minimum requirements -

- (a) the network meets the technical parameters of the requesting party's network at the time that the request is made; and
- (b) offering facilities to the facilities seeker will not have a negative effect on the facilities provider's physical network, network elements or capacity.

(2) Any dispute relating to the technical feasibility shall be determined by the Commission on a case by case basis.

### **PART III**

#### **PRINCIPLES FOR FACILITIES SHARING, COLLOCATION AND INFRASTRUCTURE SHARING**

##### ***Reference Offer and Standard Price List***

7. (1) A facilities provider and a provider of essential facilities shall lodge with the Commission for its approval, a Reference Offer and Standard Price List, or their revision, which sets out the standard of services that the provider proposes to offer or is offering.
- (2) The Reference Offer and Standard Practice List, which shall be lodged with the Commission within three (3) months from the commencement date of these regulations, or the date of being declared an essential facilities provider, as applicable, shall be the basis for the negotiation of an infrastructure sharing and collocation service arrangement.
- (3) The Reference Offer and Standard Practice List, lodged with the Commission shall state the period or the term for which it is to be in force.
- (4) The term shall not begin until approval is given by the Commission and shall not operate simultaneously with any previously approved facilities provider's Reference Offer for the same service.
- (5) The facilities provider shall provide the specified service in the terms and conditions specified in the schedule and at the charges approved by the Commission and shall not depart therefrom without prior written approval of the proposed changes by the Commission.

##### ***Quality of service and standards***

8. (1) The parties to a facilities sharing agreement shall ensure that their agreement –
- (a) contains the technical standards of both parties; and
  - (b) complies with all relevant international standards and recommendations of the International Telecommunications Union and any other standards prescribed by the Commission or other regulatory authorities in Swaziland.
- (2) Where the sharing of an infrastructure such as rights of way and electric power is precedent upon securing the necessary approval of a granting authority, such approval should be obtained before the sharing arrangement can be finalised.

##### ***Service level parameters***

9. A facilities sharing agreement shall contain service levels and provide reasonable remedies and penalties for any failure to meet those service levels.

**Confidentiality**

10. A facilities sharing agreement may not contain a provision that prevents the public disclosure of the agreement by the Commission or by either of the parties.

**Non discrimination**

11. (1) The parties to a facilities sharing agreement shall not unfairly discriminate in the negotiation, conclusion and implementation of such agreement.
- (2) A request from a facilities seeker, including a request for additional facilities in terms of an already concluded facilities sharing agreement, shall be dealt with in the order in which they are received.
- (3) A facilities provider shall apply similar terms and conditions, including those relating to charges, in comparable circumstances to telecommunication facility seekers requiring equivalent services.

**Transparency**

12. (1) Billing and settlement procedure shall be made transparent by the facilities provider.
- (2) Where the provision of one service or facility is dependent in practice on the provision of another service or facility, this relationship shall be clearly identified.
- (3) Equipment and charges shall be sufficiently unbundled so that a facilities seeker does not have to use or pay for anything it does not require for the requested facilities leasing.

**Electronic communications facilities sharing information**

13. (1) Any party to a facilities sharing agreement may publish on its website and shall, on request and within ten (10) days, provide to the other party information that is in its possession or control relating to technical information that will assist the parties in planning, establishing or maintaining their electronic communications network, but not limited to –
- (a) the technical specifications of the electronic communications network;
- (b) physical infrastructure associated with the facilities leasing; and
- (c) any material changes to facilities sharing arrangements that may affect the electronic communications sharing arrangements or plans of an electronic communications facilities seeker or the services such party provides or intends to provide by means of that facilities sharing arrangement.

**General penalty**

14. Any facility sharing party who contravenes any provisions of these Regulations commits an offence and shall be liable to a fine of not exceeding five thousand Emalangeni (E5000.00).

**PART IV**

GENERAL PROVISIONS

**Dispute Resolution**

15. (1) Where the period of negotiations lapses and the agreement is not concluded or a dispute arises between the parties under the facilities sharing agreement, an aggrieved party may lodge a dispute and petition the Commission to arbitrate on any open issues.

(2) An aggrieved party shall submit a complaint to the Commission with all relevant documentation concerning –

- (a) unresolved issues;
- (b) the position of each of the parties with respect to the issues; and
- (c) any other issue discussed and resolved by the parties.

(3) The respondent shall respond to the complaint within twenty-one (21) days from date of receipt of the petition.

(4) The Commission may ask for additional information related to unresolved issues from the parties where it deems fit.

(5) Where any party refuses or fails to respond within twenty-one (21) days from the date of request for additional information by the Commission, the Commission may, within fourteen (14) days, resolve each issue set forth in the petition, if any, by imposing appropriate conditions for complying with the terms and conditions of the agreement and ensure that such resolution and conditions meet the requirements of these Regulations.

### **Appeals**

16. (1) Where a party is not satisfied with the decision of the Commission, that party may appeal to the communications appeals board within thirty (30) days from the date of the decision, that party shall be deemed to be satisfied with the decision of the Commission.

### **Transitional provisions**

17. (1) Any facilities sharing agreement concluded prior to the commencement of these regulations shall be lodged with the Commission in terms of Section 24 of the Act.

(2) Before submitting an agreement to the Commission in terms of this regulation, the parties shall review the facilities sharing agreement and amend it, as may be required, to ensure compliance with these regulations and the Act.

(3) A facilities provider shall comply with sub regulation (1) and (2) three (3) months from the date of commencement of these regulations.

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## **SCHEDULE**

### **TERMS AND CONDITIONS OF ELECTRONIC COMMUNICATIONS FACILITIES SHARING AGREEMENTS BETWEEN A FACILITIES PROVIDER AND FACILITIES SEEKER**

A facilities sharing agreement shall deal with the following matters, except where a matter is not relevant to the facilities sharing services in question –

- (a) definition of terms and abbreviations;
- (b) the technical scope of electronic communications facilities sharing which includes:
  - (i) a description of the purpose of the electronic communications facilities leasing;

- (ii) a description of the facilities proposed to be leased;
  - (iii) a description of the technical specifications of the facilities;
  - (iv) mechanisms for changes to the purpose, technical scope and specifications of the facilities being leased; and
  - (v) a description of the location of electronic communication facilities.
- (c) Infrastructure sharing and collocation, which includes –
- (i) availability;
  - (ii) infrastructure sharing and collocation procedures;
  - (iii) security procedures and requirements;
  - (iv) supplementary services required, such as power supply; and
  - (v) physical access to facilities.
- (d) Billing and settlement which includes –
- (i) billing procedures;
  - (ii) payment terms and conditions; and
  - (iii) billing disputes procedures.
- (e) charges, setting out –
- (i) detailed charges per electronic communications facility or setoff electronic communications facilities leased; and
  - (ii) mechanisms for review of charges.
- (f) quality of service and service levels, covering –
- (i) services levels and quality of service obligations;
  - (ii) penalties;
  - (iii) testing and maintenance;
  - (iv) fault reporting and repair;
  - (v) service level disputes; and
  - (vi) network protection and safety measures.
- (g) approval from all relevant authorities;
- (h) date of coming into operation of agreement;
- (i) termination of agreement covering –
- (i) grounds of termination; and



- (ii) termination procedures.
- (j) dispute resolution and arbitration procedures including contractual dispute resolution procedures.

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY

**LEGAL NOTICE NO. 130 OF 2016**

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**THE ELECTRONIC COMMUNICATIONS ACT, 2013**

(At No. 9 of 2013)

**THE ELECTRONIC COMMUNICATIONS (IMPORTATION, TYPE APPROVAL AND DISTRIBUTION OF COMMUNICATIONS EQUIPMENT) REGULATION, 2016**

(Under Section 40)

In exercise of the powers conferred by Section 40 of The Electronic Communications Act, 2013, the Minister for Information, Communications and Technology makes the following Regulations –

**ARRANGEMENT OF REGULATIONS**

**PART I**

**PRELIMINARY PROVISIONS**

1. Citation and commencement
2. Interpretation
3. Purpose of these Regulations
4. Application of these regulations

**PART II**

**PROCEDURES**

5. Equipment subject to type approval
6. Exemption from type approval
7. Application for type approval
8. Evaluation
9. Type acceptance
10. Provisional type approval
11. Final type approval
12. Equipment imported for personal use
13. Type approval certificate

**PART III**

**APPLICABLE STANDARDS**

14. Installation of approved equipment
15. Type of Approval Label

## **PART IV**

### CONDITIONS FOR IMPORTATION AND DISTRIBUTION

16. Conditions for importation and distribution
17. Re-exportation of equipment

## **PART V**

### TYPE APPROVAL FEES

18. Type approval Fees

## **PART VI**

### ENFORCEMENT

19. Complaint procedure
20. Power to inspect
21. Revocation of type approval of communications equipment
22. Disposal of equipment
23. Offences and penalties
24. Schedule

## **PART I**

### PRELIMINARY PROVISIONS

#### ***Citation and commencement***

1. (1) These Regulations may be cited as The Electronic Communications (Importation, Type Approval and Distribution of Communications Equipment) Regulations, 2016.  
  
(2) These Regulations shall come into force on the date of publication in the Government gazette.

#### ***Interpretation***

2. In these Regulations, unless the context otherwise requires –  
“communication equipment” means radio equipment, telecommunications terminal equipment or broadcasting terminal equipment and apparatus;  
“national standards” means the standards established by the Swaziland Standards Authority;  
“operating network” means a network that can carry communications traffic in the form of voice or data;  
“personal use” means private individual use, not for commercial gain.  
“provisional type approval” means a type approval procedure in terms of regulation 8 of these regulations for equipment to be used for trial, research and demonstrations on a non-commercial basis.

“type acceptance” means the process of evaluating communication equipment or a device or a system, that has been type approved by a recognised foreign national regulatory authority with a view to ensure conformity of such equipment to national standards;

“type approval” and “final type approval” means a process by which communication equipment or a device or system is authorised by the Commission to be used in Swaziland or imported into Swaziland and involves verification of the equipment, device or system’s compliance with the applicable standards and other regulatory requirements.

“type approval certification” means a certificate issued by the Commission confirming compliance of the equipment to the prescribed standards determined by the Commission.

“type approval fees” means fees relating to type approval as set out in the First Schedule of these regulations.

“supplier” means a manufacturer, importer or distributor of equipment registered with the Commission and issued with a General Licence for the Installation and Maintenance, Distribution and Sale of Equipment in terms of the Licensing Regulations made under the Act.

### ***Purpose of these Regulations***

3. The purpose of these regulations is to –
  - (a) provide a framework for the type approval of communication equipment, devices and systems;
  - (b) specify the fee framework with respect to equipment type approval;
  - (c) protect the integrity of networks;
  - (d) protect consumers; and
  - (e) avoid harmful interference.

### ***Application of these Regulations***

4. (1) These Regulations shall apply to verification, registration, certification, acceptance and authorisation of communications equipment and devices to be used or imported into the Kingdom of Swaziland.
 

(2) All equipment that has been type approved in Swaziland prior to the promulgation of these regulations will remain type approved pursuant to these regulations.

## **PART II**

### **PROCEDURES**

#### ***Equipment subject to type approval***

5. (1) All communications equipment shall prior to its use be submitted for type approval or type acceptance by the Commission.
 

(2) the Commission shall grant type approval for each type of equipment once, and subsequent users of the same type of equipment shall not be required to apply to the Commission for approval.

(3) The Commission shall maintain a list of type approved equipment, which will be available upon request.

(4) Notwithstanding sub-regulation (2), where there is a change of model, design or specification of equipment which had been type approved by the Commission, the equipment shall be re-submitted for type approval.

(5) The Commission shall conduct type approval in accordance with the procedures for type approval of communication equipment in Swaziland as it publishes from time to time.

### **Exemptions from type approval**

6. The Commission may, at its discretion, exempt any communications equipment that is temporarily imported into Swaziland for re-export from type approval requirements.

### **Application for type approval**

7. (1) An application for approval of communications equipment shall be submitted in the prescribed forms issued by the Commission and shall be accompanied by –

- (a) test reports confirming compliance with the relevant standards;
- (b) technical, physical, operational, installation and user information;
- (c) software and firmware version numbers for the equipment being type approved;
- (d) proof of payment of the prescribed type approval fee.

(2) A test report referred to in sub regulation 7(1)(a) is only valid if –

- (a) it was prepared for the equipment for which type approval is being applied for;
- (b) no modifications have been made to the equipment following the completion of the test report;
- (c) it has been issued by an authorised test laboratory;
- (d) it has been submitted in full and may not be modified by the applicant; and
- (e) it is not older than 5 (five) years.

(3) The Commission will not return any samples of equipment and associated literature submitted for the purpose of type approval or acceptance to the applicant.

(4) The Commission may, where it deems it necessary, request the applicant to submit additional supporting documents.

### **Evaluation**

8. (1) The Commission shall carry out technical evaluation of equipment by document examination and where applicable laboratory testing of equipment sample, and in accordance with the procedures for type approval and acceptance of communication equipment in Swaziland which the Commission shall publish from time to time.

(2) The samples of equipment submitted shall be –

- (a) in a good working condition;
- (b) properly configured for testing and complete with the necessary test adapters; and

(c) clearly marked with the trade name, model and serial number.

(3) Where the Commission requires clarification on the technical details or other specifications of the equipment submitted for type approval or acceptance, it shall notify the applicant and require the applicant to respond in the required manner within the time specified by the Commission.

(4) An application for type approval or type acceptance shall be rejected or deemed to have been rejected by the Commission if the applicant fails to respond within two months from the date of the Commission's request for details or clarifications.

(5) The Commission shall evaluate an application and communicate its decision to the applicant within sixty days from the date of receipt for details or clarifications.

(6) A successful outcome will result in the Commission issuing a type approval certificate, and an unsuccessful outcome will result in the Authority issuing a letter containing reasons for the rejection of the application.

(7) The applicant may, after addressing the issues stipulated in the rejection letter, resubmit its application to the Commission.

(8) The Commission may grant type approval where it is satisfied that the grant of the type approval –

(a) is in the public interest; and

(b) will not lead to harmful interference to any communications and radio communication network or be a risk to human health or the environment.

### **Type acceptance**

9. (1) The Commission may accept any equipment that has been granted type approval from another country or jurisdiction that is recognised by the Commission, which list of equipment shall be published by the Commission, and may be reviewed from time to time.

(2) Notwithstanding paragraph (1), an applicant for type acceptance shall apply for type acceptance and shall submit –

(a) a sample or samples of the equipment;

(b) copies of test results; and

(c) type approval certificate from that country or jurisdiction as part of an application to the Commission for type acceptance.

(3) The Commission may, on its own initiative or upon receipt of an application, conduct inquiries to determine whether technical standards from other countries or jurisdictions should be recognised in Swaziland for purposes of exempting any equipment from type approval or testing requirements.

### **Provisional type approval**

10. (1) The Commission may award an applicant provisional type approval for up to 6 (six) months in the event that the applicant would like to use the communications equipment for –

(a) Trial, research and demonstration on a non-commercial basis;

(b) Test equipment at an authorised testing lab in Swaziland.

- (2) When requesting provisional type approval, the applicant shall submit information regarding –
- (a) the purpose and duration of the test, trial, research or demonstration;
  - (b) the geographic location of the test, trial, research or demonstration;
  - (c) the number of units to be tested;
  - (d) technical details of the units to be tested;
  - (e) details of the proposed recipients of the units; and
  - (f) proof of payment of the applicable fee.

(3) Where the Commission has determined that equipment that is the subject of an application for provisional type approval complies with the provisional type approval requirements, the Commission may grant provisional type approval for a period not exceeding six months on such terms and conditions that it may determine.

(4) The applicant shall submit the test, trial, research, or demonstration report to the Commission within 30 days of the lapsing of the period for the provisional type approval.

(5) The communications equipment that is awarded provisional type approval in terms of sub-regulation (1) shall be used exclusively by the applicant and the persons identified as recipients in the application.

(6) When granting provisional type approval to equipment, the Commission may, where it considers it necessary, limit the number of units of that equipment that an applicant can hold and utilise.

(7) In the event that the applicant does not wish to apply for final type approval within or after the provisional type approval period, the applicant is obliged to ensure that all units that were deployed or used are withdrawn at the applicant's own costs and within 30 (thirty) days from the lapse of the provisional type approval period.

### ***Final type approval***

11. (1) An application for final type approval shall be made before the expiry of the provisional type approval period and shall indicate the date of grant of provisional approval and shall comply with the requirements of sub-regulation 7(1).
- (2) A provisional type approval shall not lapse or expire while an application for final type approval is pending at the Commission.

### ***Equipment imported for personal use***

12. (1) Equipment imported into Swaziland for personal use by an individual shall be declared at the Swaziland revenue Authority and be subjected to the approval processes of the Commission.
- (2) Equipment which does not meet the technical standards shall be confiscated and destroyed.
- (3) An individual importing equipment for personal use is limited to 10 (ten) units per year.

**Type approval certificate**

13. (1) The Commission shall issue a provisional or final type approval certificate to the successful applicant for a specific model of equipment.
- (2) A type approval certificate, excluding a provisional type approval certificate, is valid for an unlimited duration provided that –
- (a) no modifications are made to the equipment with respect to brand, product name, model and function as recorded on the type approval certificate and the type approval register;
  - (b) there are no significant changes to the technical specifications of the equipment and includes, but is not limited to –
    - (i) the operating frequency band;
    - (ii) RF power and technical standards on which basis the equipment was type approved.
- (3) The equipment or apparatus to be sold or used shall be of the same model that was granted the type approval and not modified in any way without the approval of the Commission.
- (4) The grant of type approval under this Regulation shall not be construed as a guarantee for the proper functioning, performance or quality of the equipment by the Commission.
- (5) A supplier shall ensure that the approved equipment works properly with the public electronic communication network, where applicable.
- (6) The Commission shall not be liable for interference caused to other equipment, injury, or loss of life, or damage to property, arising as a direct or indirect result of the use of any approved equipment.
- (7) where there is doubt relating to the interpretation of a type approval specification, the method of carrying out the test or the validity of the statements made by the manufacturers of the equipment, the interpretation of the Commission shall be final.

**List of equipment**

14. (1) The Commission shall from time to time publish a list of prohibited equipment.
- (2) A person shall not supply, import or distribute for use any equipment that is not on the list or that is prohibited by the Commission.

**Type approval label**

15. (1) A type approval label shall be affixed to all communications terminal or network equipment.
- (2) Every supplier shall ensure that all equipment offered for sale or private use have valid type approval or type acceptance certificates issued by the Commission and is clearly affixed with a type approval label issued or approved by the Commission containing –
- (a) the logo of the Commission, or a recognised authority as may be specified by the Commission;
  - (b) the type of equipment; and



- (c) the alphanumeric identification of the equipment.

### **PART III**

#### CONDITIONS FOR IMPORTATION AND DISTRIBUTION

##### **Conditions for importation and distribution**

16. (1) A person shall not supply, import or distribute radio communications equipment unless that person has a licence granted by the Commission as specified in Section 41 (1) of the Act.
- (2) A licensed supplier shall ensure that –
- (a) the equipment is type approved by the Commission; and
  - (b) customers for radio communications equipment have radio communications licences from the Commission.
- (3) Notwithstanding paragraph (1), a person may import into Swaziland any type approved terminal equipment where the equipment is solely for personal use.
- (4) A person shall not sell communications equipment at a place other than a shop or a distribution centre of a licensed supplier.

##### **Re-exportation of equipment**

17. (1) A supplier who intends to import and re-package equipment for re-exportation or transshipment shall apply for a permit from the Commission.
- (2) Prior to the importation of any communications equipment under this regulation, the supplier shall furnish or cause to be furnished to the Commission full particulars of the respective equipment and the business the supplier is involved in.
- (3) A supplier who imports and repackages equipment for re-exportation or transshipment, communications equipment imported without a permit issued under paragraph (1) commits an offence.

### **PART IV**

#### TYPE APPROVAL FEES

##### **Type Approval Fees**

18. (1) The Commission shall charge type approval fees in terms of the Schedule of these Regulations.
- (2) Type approval fees are payable upfront and are non-refundable.
- (3) The Commission may amend the Schedule annually by notice published in the Government Gazette.

### **PART V**

#### ENFORCEMENT

##### **Complaint procedure**

19. (1) A person may make a complaint in respect of the working of any equipment that has been type approved or object to the type approval of any equipment by submitting a complaint or objection to the Commission in writing stating –

- (a) the name and address of the complainant;
- (b) the name and address, if known, of the person against whom the complaint is made; and
- (c) the facts, including supporting data, where available, showing that the communication equipment does not confirm to these regulations and that the communication equipment may cause harmful interference to communications network or is a risk to human health or the environment.

(2) The Commission shall forward a copy of the complaint or objection to the applicant or holder of a type approval certificate and give the applicant or holder an opportunity to give evidence to rebut the complaint or objection.

(3) The Commission shall consider any complaint or objection received when considering the application for type approval or in evaluating the operation of equipment for that has been granted type approval.

#### **Power to inspect**

20. An authorised officer of the Commission may at reasonable times enter premises on which a supplier is keeping communications equipment for the purpose of inspecting the equipment.

#### **Revocation of type approval of communication equipment**

21. (1) The Commission may, on its own motion or upon a complaint by any person, conduct investigations regarding the operation or use of communications equipment that has been granted provisional or final type approval and may revoke the type approval where it is satisfied that –

- (a) Any of the conditions of sub regulation 10(2) are violated or
- (b) The holder of a final or provisional type approval certificate has violated its conditions; or
- (c) The communications equipment is causing or is likely to cause harmful interference to communications network or is at risk to human health or the environment.

(2) All equipment that is subject of a revoked type approval certificate shall be withdrawn from the market at the cost of the supplier responsible for placing the equipment in the market within thirty (30) days of the notification date.

(3) Any person who is aggrieved by the decision of the Commission made under this Regulation may appeal to the Appeals Board.

#### **Disposal of equipment**

22. (1) The communications equipment which has been submitted to the Commission for type approval and which due to destructive tests or other reasons the Commission determines as not being suitable for return to the applicant, may be destroyed by the Commission.

#### **Offences and penalties**

23. A person who deals in or uses equipment without type approval or acceptance in accordance with these Regulations commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E20,000) or to two years imprisonment.

**SCHEDULE**

## EQUIPMENT TYPE APPROVAL FEES

**1. APPLICATION FEES**

	<b>FEE (EMALANGENI)</b>
TELECOMMUNICATIONS TERMINAL EQUIPMENT (TTE)	4000 (FOUR THOUSAND)
RADIO EQUIPMENT (RF)	4000 (FOUR THOUSAND)
UNTESTED VARIANT	2000 (TWO THOUSAND)
TESTED VARIANT	2000 (TWO THOUSAND)
BADGE ENGINEERING	4000 (FOUR THOUSAND)
LABELS (PACKETS OF 500)	500 (FIVE HUNDRED)
PROVISIONAL TYPE APPROVAL	2000 (TWO THOUSAND)

**2. MISCELLANEOUS FEES**

	<b>FEE (EMALANGENI)</b>
ADMINISTRATIVE MODIFICATIONS TO CERTIFICATE (E.G TRANSFER, NAME CHANGE ADDRESS CHANGE)	500 (FIVE HUNDRED)
RE-ISSUE OF ORIGIN CERTIFICATE FOR APPROVED EQUIPMENT	250 (TWO HUNDRED AND FIFTY)
ADMINISTRATIVE AND TECHNICAL MODIFICATIONS	500 (FIVE HUNDRED)

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY

**LEGAL NOTICE NO. 131 OF 2016**

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**THE ELECTRONIC COMMUNICATIONS ACT, 2013**

(Act No. 9 of 2013)

**THE ELECTRONIC COMMUNICATIONS (INTERCONNECTION) REGULATIONS, 2016**

(Under Section 24)

In exercise of the powers conferred by Section 24 of the Electronic Communications Act, 2013, the Minister for Information, Communications and Technology makes the following Regulations –

ARRANGEMENT OF REGULATIONS

**PART I**

PRELIMINARY PROVISIONS

1. Citation and Commencement
2. Purpose
3. Interpretation
4. Application

**PART II**

INTERCONNECTION OF NETWORKS

5. Obligation to interconnect
6. Requests for interconnection
7. Reference Interconnection Offer
8. Negotiation Procedures

**PART III**

PRINCIPLES FOR INTERCONNECTION AGREEMENTS

9. Quality of Service, Standards and Service Levels
10. Non Discrimination
11. Transparency
12. Points of Interconnection
13. Charges
14. Confidentiality

**PART IV**

GENERAL PROVISIONS

15. General Penalty
16. Dispute Resolution
17. Appeals
18. Transitional Provisions

**PART I**

PRELIMINARY PROVISION

***Citation and Commencement***

1. (1) These Regulations may be cited as the Electronic Communications (Interconnection) Regulations, 2016.
- (2) These Regulations shall come into force on the date of publication.

***Purpose***

2. The purpose of these Regulations is to –
  - (a) provide a framework for electronic communications licensees to interconnect with each other;
  - (b) encourage interoperability between networks;
  - (c) ensure the maintenance of any-to-any connectivity; and
  - (d) facilitate the conclusion of interconnection agreements by stipulating –
    - (i) agreement principles;
    - (ii) timeframes and processes to be followed by interconnection providers and interconnection seekers; and
    - (iii) the procedures for the submission, review and lodging of agreement with the Commission.

***Interpretation***

3. (1) In these Regulations, unless the context requires otherwise –

“Commission” means the Swaziland Communications Commission established under the Swaziland Communications Commission Act, 2013;

“interconnection charges” means the price charged by an electronic communications network licensee to another electronic communications network licensee for the purpose of terminating traffic into a network;

“interconnection seeker” means an electronic communications network licensee requesting to be connected to another electronic communications network licensee for the purposes of termination of traffic;

“interconnection provider” means any electronic communications networks licensee who is requested in terms of Section 24 of the Act, to provide interconnection, or any licensee who is currently providing interconnection;

“electronic communication network licensee” means an entity licensed by the Commission to provide electronic communications network;

“point of interconnection” means a physical or logical point where the system of one electronic communications network licensee is connected to the system of another network licensee for routing of calls and messages from one system to the other; and

“Reference Interconnection Offer (RIO)” means a standardised interconnection offer that is consistent with an interconnection agreement and contains the technical and commercial terms put in place by the Interconnection provider.

### **Application**

4. These Regulations shall apply to all licensees, as provided for in Section 14 of the Act, in relation to termination of traffic into networks of other licensee.

## **PART II**

### INTERCONNECTION OF NETWORKS

#### **Obligations to Interconnect**

5. (1) A licensee shall interconnect with the network of any other electronic communications network licensee in Swaziland.
- (2) A licensee shall, on receipt of a written request for interconnection from an interconnection seeker, interconnect with the interconnection seeker on reasonable terms and conditions set out in the interconnection agreement.
- (3) The interconnecting parties shall have the right to get information from each party in order to plan, establish or maintain the network of licensees, use that information solely for the purpose for which it was supplied and respect confidentiality of information transmitted or stored as provided for in these regulations.

#### **Requests for Interconnection**

6. (1) A request for interconnection shall be made in writing to the interconnection provider and shall indicate the –
7.
  - (a) type of interconnection required;
  - (b) interconnection seeker’s technical requirements based on the technical standards of the interconnection provider;
  - (c) date of the request;
  - (d) date for which interconnection is required;
  - (e) suggested date for commencement of negotiations, and
  - (f) estimate of the interconnection capacity required.

**Reference Interconnection Offer**

8. (1) An interconnection provider that has been declared as having a dominant position following a market analysis as set out in Section 23 of the Act shall prepare a Reference Interconnection offer (RIO) within two (2) months of such declaration.
- (2) The interconnection provider shall submit the Reference Interconnection Offer (RIO) to the Commission for approval before it is made public or given to any interconnection seekers.

**Negotiation procedures**

9. (1) An interconnection seeker shall notify the Commission upon submission of a request in terms of regulation 6(1).
- (2) Within ten (10) days of receiving of a request, an interconnection provider shall acknowledge receipt of said request and provide a timeline for an initial meeting with the interconnection seeker.
- (3) Negotiations on the request shall be concluded within two (2) months of the receipt of the request by the interconnection provider, unless both parties agree to an extension.
- (4) Interconnection negotiations shall commence where the interconnection provider is able to –
- (a) supply the form of interconnection requested by the interconnection seeker; and
  - (b) interconnect within the time frame requested by the interconnection seeker.
- (5) A request for interconnection may only be refused on the grounds, where –
- (a) it is not technically feasible, as proven by the interconnection provider to the Commission; or
  - (b) if there is any other ground as may be determined by the Commission.
- (6) The interconnection provider shall, in writing, notify the interconnection seeker and the Commission of the grounds for refusal in terms of sub regulation (5) and the Commission shall determine whether the grounds are valid.
- (7) The interconnection parties shall negotiate on technical and commercial terms for the interconnection arrangements in a transparent manner and interconnection negotiations shall be conducted freely and in good faith between the parties involved and each negotiating party shall not –
- (a) intentionally mislead the other party;
  - (b) coerce the other party into entering into an agreement; or
  - (c) intentionally obstruct the negotiations.
- (8) An interconnection seeker shall request the intervention of the Commission in negotiating agreements for interconnection where –
- (a) there is no agreement between the negotiating parties, within two (2) months of the commencement of the negotiation; or
  - (b) the interconnection provider has not executed the interconnection agreement on expiry of a seven (7) days' period from agreed commencement date.

**PART III**

## PRINCIPLES FOR INTERCONNECTION AGREEMENTS

**Quality of Service, Standards and Service levels**

10. (1) The parties to an interconnection agreement shall ensure that their agreement –
- (a) Contains the technical standards of both parties;
  - (b) Complies with all of the relevant international standards and recommendations of the International Telecommunications Union as agreed to by Swaziland; and
  - (c) Complies with any other standards as may be prescribed by the Commission.
- (2) The interconnection agreement shall provide for locations that constitute points of demarcation between the network of the interconnection provider and the interconnection seeker.
- (3) The interconnection parties shall agree on operations and maintenance expenses of the facilities necessary to reach the point or points of interconnection within the network of the interconnection provider.
- (4) The interconnection agreement shall contain service levels and provide reasonable remedies and penalties for failures to meet such service levels.

**Non Discrimination**

11. (1) The parties to an interconnection agreement shall not unfairly discriminate in the negotiation, conclusion and implementation of such agreement, unless otherwise requested by the interconnecting party.
- (2) Requests from an interconnection seekers, including requests for additional interconnection in terms of an already concluded interconnection agreement shall be dealt with in the order in which they are received by an interconnection provider.
- (3) An interconnection provider who is found in terms of Section 23 of the Act to have a dominant position shall apply similar terms and conditions, including those relating to rates and charges, in similar circumstances to itself, its affiliates, and other interconnection seekers providing similar services, unless otherwise requested in writing by the interconnecting party.

**Transparency**

12. (1) Billing and settlement procedures shall be transparent.
- (2) Where the provision of one service or facility by an interconnection provider who is found in terms of Section 23 of the Act to have a dominant position is dependent in practice on the provision of another service or facility, such a relationship shall be clearly identified.

**Points of Interconnection**

13. (1) points of interconnection may include, but are not limited to –
- (a) mobile switching centres;
  - (b) media gateways;
  - (c) local exchanges;



- (d) tandem exchanges;
- (e) digital switching centres; and
- (f) internet exchange points.

(2) Where the interconnection provider has informed the interconnection seeker that the requested point of interconnection has insufficient capacity, it shall provide the interconnection seeker details of the nearest point of interconnection.

(3) The interconnection seeker shall be afforded the opportunity to make representations to the interconnection provider regarding the nearest suitable point of interconnection.

### **Charges**

14. (1) Rates and charges offered by an interconnection provider shall be sufficiently unbundled so that an interconnection seeker does not have to pay for anything that it does not require in order to achieve the requested interconnection.

(2) The Commission may prescribe interconnection rates to be offered by operators with a dominant position, if the market is found to be uncompetitive and following a market study conducted in terms of Section 23 of the Act.

(3) Other than as set out in sub-regulation (2), rates and charges shall be subject to negotiation between the parties.

### **Confidentiality**

15. All interconnection agreements shall be lodged with the Commission and may not contain any provisions that prevent the public disclosure of the agreement by the Commission or by either of the parties.

## **PART III**

### **GENERAL PROVISIONS**

### **General Penalty**

16. Any interconnection party who contravenes any provision of these Regulations commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand Emalangeni (E5000) or imprisonment not exceeding a period of one (1) year.

### **Dispute resolution**

17. (1) Where the period of interconnection negotiation lapses and the agreement is not concluded or a dispute arises between the parties under the interconnection agreement, an aggrieved party may lodge a dispute and petition the Commission to arbitrate any open issues.

(2) The aggrieved party shall submit a complaint to the Commission with all relevant documentation concerning –

- (a) unresolved issues;
- (b) the position of each of the parties with respect to the issues; and
- (c) any other issues discussed and resolved by the parties.

(3) The respondent shall respond to the complaint within twenty-one days from the date of receipt of the petition.

(4) The Commission may ask for additional information related to unresolved issues from the parties where it deems fit.

(5) Where any party refuses or fails to respond within twenty one (21) days from the date of request for additional information from the Commission, the Commission may, within fourteen (14) days, proceed to resolve each issue set forth in the petition, if any, by imposing appropriate conditions on implementation of the terms and conditions by the parties to the agreement and ensure that such resolution and conditions meet the requirements of these regulations.

### **Appeals**

18. (1) Where a party is not satisfied with the decision of the Commission, such party may appeal to the Appeals Board within thirty (30) days from the date of the decision

(2) Where the aggrieved party fails to lodge the appeal within thirty (30) days from the date of the decision, the licensee shall be deemed to have accepted the decision of the Commission.

### **Transitional Provisions**

19. (1) Any interconnection agreement concluded prior to the commencement of these regulations shall be lodged with the Commission in terms of Section 24 of the Act.

(2) Before submitting an agreement to the Commission in terms of sub regulation (1), the parties shall review the interconnection agreement and amend it, as may be required, to ensure compliance with these regulations and the Act.

(3) Licensees with existing agreements have three (3) months from the date of commencement of these regulations to comply with sub-regulation (1) and (2).

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY

## LEGAL NOTICE NO. 132 OF 2016

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### THE ELECTRONIC COMMUNICATIONS ACT, 2013

(Act No. 09 of 2013)

### THE ELECTRONIC COMMUNICATIONS (LICENSING) REGULATIONS, 2016

(Under sections 10, 11 and 13)

In exercise of the powers conferred by Section 10, 11 and 13 of The Electronic Communications Act, 2013, the Minister of Information, Communications and Technology makes the following Regulations –

#### PART I

#### PRELIMINARY PROVISIONS

##### ***Citation and commencement***

1. (1) These Regulations may be cited as The Electronic Communications (Licensing) Regulations, 2016.
- (2) These Regulations shall come into force on the date of publication in the Government gazette.

##### ***Interpretation***

2. In these Regulations, unless the context otherwise requires –
  - “Act” means the Electronic Communications Act, 2013;
  - “Class licence” means a general or individual licence as classified by the Commission in terms of the Act.
  - “emergency services” shall include calls using short codes for the purposes of human safety and life or those established for rescue operations in the event of any disaster;
  - “licensed service” means any service provided in terms of an electronic communications network licence, electronic communications service licence, or radio frequency spectrum licence;
  - “Net Operating Income” means the income derived from the provisions of a licensed service and does not include agency fees, interconnection and facility leasing charges, and government grants and subsidies; and
  - “person” means –
    - (a) a company incorporated or registered as such under the Companies Act, 2009; or
    - (b) any body of persons corporate or unincorporated.

##### ***Application***

3. These Regulations shall apply to –
  - (a) Electronic communications network licences;
  - (b) Electronic communications service licences;

- (c) Frequency spectrum licences;
- (d) Equipment sales (retail) and distribution (wholesale) licences;
- (e) Equipment importation licences; and
- (f) Other licences as may be determined by the Commission.

## **PART II**

### LICENCE TYPES

#### **General Licence**

4. (1) The Commission may issue a general licence for the –
  - (a) electronic communications services which do not require the use of numbering resources;
  - (b) importation, distribution or sale of electronic communications equipment; or
  - (c) installation and maintenance of electronic communications equipment.
- (2) A person may submit an application for any licence in sub-regulation (1) during the office hours of the Commission.
- (3) The Commission may confer licence rights to a General Licensee through –
  - (a) the issuing of a licence containing standard licence terms and conditions;
  - (b) the issuing of a certificate; or
  - (c) the registration of licensees on a publically available database.
- (4) General licences are non-exclusive and the Commission may issue any number of licences to an applicant that complies with the requirements of the application and the general licence conditions.
- (5) A holder of a licence under this regulation shall –
  - (a) comply with the conditions of its licence, as applicable, and all regulations relating to consumer protection and health and safety;
  - (b) provide end-users and customers access to emergency services;
  - (c) notify the Commission within seven (7) days of a change in ownership or control; and
  - (d) comply with any other relevant regulations and decisions that the Commission may issue.
- (6) A licence holder under this regulation may not utilise scarce resources in the form of national numbers or frequency spectrum without obtaining the appropriate approval from the Commission.

#### **Individual Licence**

5. (1) The Commission may issue an individual licence for –

- (a) electronic communications services, requiring the use of numbering resources;
- (b) electronic communications networks;
- (c) use of certain frequency spectrum bands.

(2) Any person may submit an application for an individual licence subject to the issue of a decision of the Commission as provided for in Section 11 of the Act.

(3) The decision of the Commission shall include an invitation to apply for a specified type of licence.

(4) The bidding criteria, shall be determined on a case-by-case basis, having due regard to the type of licence to be issued, the development of the market at the time, and the market structure.

(5) Notwithstanding sub-regulation (4) the bidding criteria shall be developed to ensure that only bona fides bidders participate as per section 11 (8) of the Act and shall take into account, amongst other things

–

- (a) national universal access and service objectives;
- (b) local ownership requirements;
- (c) technical experience of the bidder; and
- (d) business plan and financial viability of the bid.

(6) In finalising any individual licence, the Commission shall include conditions relating to the commitments made by the licence on the issues described in sub-regulation (3).

(7) The Commission may decide the number of individual licences available for a given category of licence.

(8) A holder of an individual licence under this regulation shall –

- (a) comply with the conditions of its licence;
- (b) local ownership requirements;
- (c) technical experience of the bidder; and
- (d) business plan and financial viability of the bid.

(9) A licences shall be issued on a technology neutral basis.

### **Access to scarce resources**

6. Any licence holder under these regulations may apply to the Commission for the use of scarce resources in the form of national numbers or frequency spectrum, subject to the following –

- (a) a person may not be awarded a frequency spectrum licence as contemplated in sub-regulation 5(1)(c), if that person does not hold an individual electronic communications network licence; and

- (b) a person may not be awarded numbering resources if that person does not hold an individual electronic communications services licence.

### **Frequency spectrum licence**

7. (1) In issuing frequency spectrum licences, the Commission may –
- (a) Issue frequency spectrum on a first-come-first-served basis provided that the applicant complies with sub-regulation 6; or
- (b) Use the process set out in sub-regulation 5 in respect of individual licences to issue a frequency spectrum licence, where the Commission seeks to employ a competitive bidding process to select a licensee, particularly in instances where demand for a spectrum resource, exceeds supply.

## **PART III**

### LICENSING PROCESS

#### **Application process**

8. (1) A person who intends to apply for a licence shall make the application in the prescribed form and pay such fee as set out in Part IV and the Schedule to these Regulations.
- (2) The application form referred to under sub-regulation (1) shall be accompanied by such supporting documents or information as may be relevant to the type of licence applied for.
- (3) The supporting documents referred to in sub-regulation (2) include –
- (a) proof of payment of application fees, as applicable;
- (b) proof of residence of the applicant notwithstanding the type of licence;
- (c) in the case of an Individual Licence, a performance bank guarantee from a bank registered in Swaziland; or
- (d) a guarantee, where the Commission requires, which shall –
- (i) be addressed to the Chairperson of the Commission;
- (ii) be written on the letterhead of a reputable bank registered in Swaziland;
- (iii) stipulate the name of the applicant, the type of licence applied for, the amount of money for which the guarantee is being issued;
- (iv) be valid for a period of two (2) years;
- (v) be for an amount of money as determined by the Commission; and
- (vi) be furnished within thirty (30) days from the date of notification by the Commission of the requirement of the performance bank guarantee.

#### **Public Consultation and Evaluation**

9. (1) The Commission shall consult the public prior to granting any individual licence, other than a frequency spectrum licence, which process is provided for in the Radio Communications and frequency spectrum Regulations.

- (2) Where the Commission receives multiple competing applications, it –
- (a) shall allow the public and competing applicants an opportunity of no less than thirty (30) days to make written submissions to the Commission on the applications; the applicants shall be afforded an opportunity of no less than fourteen (14) days to respond; and
  - (b) may hold public hearings in respect of the applications received.
- (3) Whether the Commission has undergone the public consultation process contemplated in sub-regulation 9(2) or not, the Commission shall publish its intent to grant a licence in at least two (2) major national publications, providing the public at least fourteen (14) days to make written submissions on the decision.
- (4) After completing the public consultation and evaluation process, the Commission may approve or decline a licence application and public the reason for its decision.

### **Grant of licence**

10. (1) Where a licence application is approved by the Commission, the Commission shall issue the appropriate licence or certificate to the successful applicant.
- (2) A licence granted under this regulation shall be valid for a period as prescribed in the Schedule for the service applied for.
- (3) A licensee shall commence the provision of commercial services within a maximum period of twelve months from the date of issuance of the licence.
- (4) Where a licensee fails to provide services within the period referred to in sub-regulation (2), the licensee shall submit to the Commission reasons for failure to provide the services and the Commission may extend the period as the Commission may consider appropriate.
- (5) Where a licensee fails to provide the services after the expiry of the extended period provided for in sub-regulation (3), the Commission shall revoke the licence.

### **Renewal of licence**

11. (1) A licence may be renewed, upon application by the licensee.
- (2) An application for a renewal of a licence shall be submitted at least twelve (12) months prior to the expiration of the licence, and the Commission shall make a decision relating to such renewal application by no later than three (3) months before the expiry date of the licence.

## **PART IV**

### **FEEES**

#### **Application fee**

12. A person who applies for a licence under these Regulations shall pay an application fee as prescribed in the schedule before the Commission may consider the application.

#### **Initial licence fee**

13. (1) A licence shall pay an initial fee as prescribed in the schedule.
- (2) The Commission shall before issuing of a licence for an application that has been successful, issue an invoice to the applicant to pay an initial licence fee.

(3) Where, within one month from the date of issuance of the invoice, the applicant fails to pay the initial fee, the Commission may reject that application.

(4) The Commission may extend the period of payment of the initial fee for one month upon request by the applicant, and upon showing good cause for such extension, save that, the Commission shall not grant further extension.

### **Recurring licence fees**

14. A licence shall pay a recurring licence fee within one month of the date of issuance of the invoice by the Commission, such fees include –

(a) royalties as set out in the Schedule, which royalties shall be calculated based on the licensee's annual financial statement results;

(b) annual licence fees as set out in the Schedule;

(c) renewal fees as set out in the Schedule; and

(d) any other licence fees as may be determined by the Commission from time to time.

### **Late payment and failure to pay**

15. The Commission may –

(a) impose interest on all late payments in respect of the licence fees set out in these regulations at the applicable interest rate as published by the Ministry of Finance.

(b) suspend the licence of any licensee that fails to pay the annual licence fees until such time that the annual licence fees and/or royalties are paid in full.

## **PART V**

### **OWNERSHIP AND CONTROL**

#### **Transfer, Assignment or Disposal of licence rights**

16. (1) A licensee shall not assign, transfer, dispose of any rights or obligations or in any manner alienate the licence or any part of it without the prior written consent of the Commission.

(2) Where the Licensee seeks to transfer its licence to another person, it shall comply with all terms and conditions of its licence as at the date of transfer and shall have paid all outstanding fees to the Commission.

(3) Notwithstanding sub-regulation (1), the licensee shall have discretion to appoint agents or sub-contractors to enable it to properly and efficiently exercise its rights to carry out its obligations in terms of the licence.

#### **Change in Ownership and Control**

17. (1) The Licensee shall notify and obtain the prior approval of the Commission in respect of –

(a) any change in the direct or indirect ownership of five percent (5%) of the issued voting share capital of the licensee changing hands; and

(b) any change in the ownership of the issued voting share capital that results in a change to the composition of one quarter of the board of directors.



(2) A request for approval of a change in shareholding shall include –

- (a) payment of fees as may be prescribed by the Commission as set out in the Schedule of these Regulations;
- (b) relevant documents including certified copies of share certificates, and a certificate for change of shareholding structure issued by the Registrar of Companies; and
- (c) a consent obtained from the Registrar of Companies.
- (d) proof that the licensee complies with all terms and conditions of its licence as at the date of the change in shareholding and has paid all outstanding fees to the Commission.

(3) The Commission will not unreasonably withhold its consent of a change in shareholding and may only reject an application if the change will result in non-compliance with the Companies Act, 2009 and any other law governing shareholding.

(4) The provisions of this section shall not preclude the shares of any licensee from being listed on the Swaziland Stock Market, provided that such listing shall not have the effect of vesting more than thirty percent (30%) of the issued voting share capital of the licence in –

- (a) any non citizen of the Kingdom of Swaziland;
- (b) a manufacturer or supplier of equipment; or
- (c) a company which is either wholly owned by, or the majority of whose shareholders are non Swazi citizens.

## **PART VI**

### **INFORMATION AND REPORTING**

#### ***Provision of Information***

18. (1) A licensee shall provide and maintain such information as will enable the Commission to carry out its functions under the Act in such manner and at such times as the Commission may request.
- (2) The Commission shall have the right to request a licensee to submit periodic reports, statistics and other data as well as request additional information with a view to effectively supervising and enforcing effectively the terms of the licence.
- (3) The Commission shall in making any request for information, ensure that no undue burden is imposed on the licensee in procuring and furnishing such information.
- (4) A licensee may request confidentiality on commercially sensitive information submitted to the Commission, and shall provide reasons for the request for confidentiality, which will duly be considered by the Commission.

#### ***Reporting***

19. (1) Individual Licensees and General Licensees shall submit an annual financial report to the Commission within three (3) months of the Licensee's financial year end which include –
- (a) independently audited financial statements prepared in accordance with generally accepted accounting practices; or

(b) financial statements signed by the accounting officer where the licensee is a class licence and is not legally obliged to provide audited annual statements;

(c) details of the amount spent in respect of each category of regulatory fees including fees for frequency, numbering, application, initial licence, annual licence, royalty and any other fees as the Commission may require.

(2) The disclosure referred to in sub regulation (1)(b) shall be made in the notes supporting the financial statements.

(3) Individual Licensees and General Licensees shall submit an annual operational report in March of every year which shall include, but not be limited to information on –

(a) compliance with applicable licence obligations;

(b) compliance with applicable regulations and the Act; and

(c) current shareholding specifying local and foreign ownership with the percentages.

(4) All licensees that provide network or infrastructure services shall submit –

(a) an annual report in January setting out their network rollout plan which provides current rollout and anticipated rollout for the next three (3) years; and

(b) quarter reports indicating compliance with their network rollout plans and any licence obligations relating to network rollout.

(5) Without prejudice to the preceding provisions, the Commission may require the licensee to submit other operational and accounting information or clarifications it may require in order to effectively supervise and enforce the terms of the licence and the provisions of the Act.

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## SCHEDULE

### LICENCE FEES

#### INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK

<b>Market Segment</b>	<b>Type of Facility</b>	<b>Application Fee</b>	<b>Initial Licence Fee</b>	<b>Royalty</b>	<b>Duration of licence (years)</b>
International	Gateway facilities including earth satellite station, submarine cable, etc.	As specified in the Decision referred to in regulation 5	As specified in the Decision referred to in regulation 5	5% of Net operating income	10
National	Switching, transmission and access facilities, microwave links, fixed links, towers, ducts, transmitter, links, etc	As specified in the Decision referred to in regulation 5	As specified in the Decision referred to in regulation 5	5% of Net operating Income	10

Regional		As specified in the Decision referred to in regulation 5	As specified in the Decision referred to in regulation 5	5% of Net operating income	10
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## INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICE

Market Segment	Type of Facility	Application Fee	Initial Licence Fee	Royalty	Duration of licence (years)
International	Interconnected voice and data services	As specified in the Decision referred to in regulation 5	As specified in the Decision referred to in regulation 5	5% of Net operating income	10
National		As specified in the Decision referred to in regulation 5	As specified in the Decision referred to in regulation 5	5% of Net operating Income	10
Regional		As specified in the Decision referred to in regulation 5	As specified in the Decision referred to in regulation 5	5% of Net operating Income	10

## GENERAL ELECTRONIC COMMUNICATIONS SERVICE

Market Segment	Type of Facility	Initial Registration Fee (Emalangi)	Royalty	Duration of licence (years)
National	<ul style="list-style-type: none"> <li>Voice not using national numbers;</li> </ul>	15,000 (fifteen thousand)	2% of Net operating Income	5
	<ul style="list-style-type: none"> <li>Data</li> </ul>			
	<ul style="list-style-type: none"> <li>Applications</li> </ul>			

GENERAL LICENCE FOR THE INSTALLATION AND MAINTENANCE, IMPORTATION, DISTRIBUTION  
AND SALE OF EQUIPMENT

<b>TYPE OF LICENCE</b>	<b>Initial Registration Fee (Emalangen)</b>	<b>Annual Licence Fee</b>	<b>Duration of Licence (years)</b>
Equipment Installation and maintenance Licence	200 (two hundred)	1,000 (one thousand)	3
Equipment Importation Licence	200 (two hundred)	1,000 (one thousand)	3
Equipment Distribution Licence (Wholesale)	200 (two hundred)	1,000 (one thousand)	3
Equipment Sales Licence (Retail)	200 (two hundred)	1,000 (one thousand)	3

GENERAL AND INDIVIDUAL RENEWALS AND TRANSFERS

<b>TYPE OF LICENCE</b>	<b>Fee (Emalangen)</b>
General Licence Renewal	1,000 (one thousand)
Individual Licence Renewal	5,000 (five thousand)
General Licence Transfer	1,000 (one thousand)
Individual Licence Transfer	50,000 (fifty thousand)

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY

**LEGAL NOTICE NO. 133 OF 2016**

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**THE ELECTRONIC COMMUNICATIONS (NUMBERING) REGULATIONS, 2016**

(Under Section 39)

In exercise of the powers conferred by Section 39 of the Electronic Communications Act, 2013, the Minister for Information, Communications and Technology makes the following Regulations –

ARRANGEMENT OF REGULATIONS

**PART I**

PRELIMINARY PROVISIONS

1. Citation and commencement
2. Interpretation
3. Application

**PART II**

ELECTRONIC COMMUNICATION NUMBERING AND ADDRESSING

4. Duties of the Commission
5. Establishment of a National Communications and Numbering Plan
6. Assignment of communication numbers
7. Eligibility for assignment of communication numbers
8. Procedure for assignment of communication numbers
9. Procedure for assignment of VAS short codes
10. Obligations of licensees or assignees
11. Change of communication numbering
12. Cancellation of assignment

**PART III**

SIGNALLING POINT CODES

13. National signally point codes plan management
14. Assignment of signally point codes
15. Signalling point codes (SPCs) assigned obligations

**PART IV**

GENERAL PROVISIONS

16. Compliance with numbering and address plans
17. Prohibition of generation and use of fictitious numbers and addresses
18. Offences and penalties

Schedule

**PART I**

PRELIMINARY PROVISIONS

***Citation and commencement***

1. (1) These Regulations may be cited as the Electronic Communications (Numbering) Regulations, 2016.  
(2) These Regulations shall come into force on the date of publication in the gazette.

***Interpretation***

2. In these Regulations, unless the context otherwise requires –  
“Act” means the Electronic Communications Act, 2013;

“Commission” means the Swaziland Communications Commission established in terms of Section 3 of the Swaziland Communications Commission Act, 2013;

“communications addresses” means an address determined by the Commission from time to time, for use in communication;

“communication number” means the number, sign or other mark that a licensee uses for identification of communications systems when the licensee is delivering communication services in order to connect between the place of transmission and the place of reception, or for the identification of the type of content of transmission the communications system is to deliver;

“licensee” means a person licensed under the Act;

“Maritime Mobile Service Identity” means a number used for the purpose of identification while using Global Maritime Distress Service System search and rescue facilities on board ships;

“National Communication Numbering and Addressing Plan” means the plan for electronic communications numbers and addresses, postal codes and national addressing system established by the Commission under regulation 5;

“Numbering Scheme” means the procedures and criteria for the reservation, assignment, and by the Commission;

“Signalling Point Codes (SPC)” means codes used in the network to identify the exchanges national or international between which path connections are to be established;

“short code” means a number that is not a supplementary code and has a maximum of six (6) digits;

"Unstructured Supplementary Service Data (USSD)" means a Global System for Mobile (GSM) communication technology that is used to send text between a mobile phone (using a number that contains at least one occurrence of a star (\*) or a hash (#) and an application programme in the network;

"utilised numbers" means numbers that are allocated to customers or kept for internal system and human communications or that have been distributed to a dealer on SIM cards;

"VAS short code" means an electronic communication number designated for Value Added Services;

"Value Added Services (VAS)" means extra electronic communication services as provided by an assignee in addition to other basic telecommunications services.

### **Application**

3. These Regulations shall apply to all electronic communication operators and any service provider in relation to Telecommunication numbering resources.

## **PART II**

### ELECTRONIC COMMUNICATION NUMBERING AND ADDRESSING

#### **Duties of the Commission**

4. The Commission shall maintain control of all electronic communication numbers and addresses to ensure fair and efficient use by –
  - (a) Performing proper planning, allocations, assignment and monitoring; and
  - (b) Maintaining the national electronic communication numbering register for all carriers and operators in respect of resources which have been assigned.

#### **Establishment of a National Communications and Numbering Plan**

5. (1) The Commission shall establish a National Communication Numbering and Address Plan and control all communication numbers and addresses to ensure fairness and efficiency by –
  - (a) undertaking planning, allocation and monitoring;
  - (b) maintaining the national communication numbering and address register for all licensees in respect of resources which have been assigned;
  - (c) facilitating maintenance of the national electronic address and users register;
  - (d) managing postal codes and national addressing systems;
  - (e) assigning call signs to all amateur radio operators in the country.
  
- (2) The National Communication Numbering and Address Plan shall include communication numbers used to identify –
  - (a) electronic communication networks or various carriers;
  - (b) terminal facilities for cellular phones;
  - (c) signalling transmission equipment;

- (d) emergency, help, health and inquiry calls;
- (e) terminal transmission line facilities for data communication services;
- (f) unstructured Supplementary Services Data (USSD) applications;
- (g) value added services; and
- (h) Terminal transmission line facilities for paging services, space for future technological developments.

#### **Assignment of communication numbers**

6. Where an application for communication numbers or addresses is submitted to the Commission, the Commission shall, after taking into account the National Communication Numbering and Address Plan and availability of the numbers and addresses, assign and issues certificate of assignment together with the conditions attached to the use of the communication numbers, the numbers or addresses required for the communication or addresses, upon payment of a fee may be prescribed by the Commission.

#### **Eligibility for assignment of communication numbers**

7. (1) All licensed telecommunications network operators and service providers shall be eligible for assignment of electronic communication numbers.
  - (2) Unlicensed entities may apply for VAS short codes subject to the nature of Value Added Services to be provided.
  - (3) Unlicensed entities shall be assigned to one VAS short code; and where more than one VAS short code is required, the applicant shall be obliged to have the appropriate license as provided by the Commission.

#### **Procedure for Assignment of communication numbers**

8. (1) Any electronic communication licensee or unlicensed entity requiring electronic communication numbers shall submit to the Commission –
  - (a) the appropriate application form;
  - (b) documents and reasons for use of the said numbers;
  - (c) estimated demand as the grounds for said request; and
  - (d) plans for provision of telecommunication services for the numbers required.
- (2) Subject to sub-regulation (1), the Commission may assign electronic communication numbers and issue a certificate of assignment based on the conditions that –
  - (a) the electronic communication numbers required for provision of electronic communications services are available; and
  - (b) the relevant fees are paid.

#### **Procedure for Assignment of VAS Short Codes**

9. (1) VAS short codes shall be assigned serially with respect to categories and availability.



- (2) The minimum requirements for VAS short codes applicants are –
- (a) dully filled application form;
  - (b) certified copy of certificate of incorporation or registration;
  - (c) certified copy of company's Memorandum and Articles of Association;
  - (d) company profile;
  - (e) taxpayer's Identification Number (TIN); and
  - (f) physical and mailing address

***Obligations of licensees or assignees***

10. A licensee or assignee shall use the communication numbers and addresses assigned by the Commission in accordance with the National Communication Numbering and Address Plan and ensure that the resources are –
- (a) utilised efficiently;
  - (b) limited to provision of communication services;
  - (c) utilised in a manner that ensures that communications systems and services are identified;
  - (d) utilised and paid for as prescribed by the Commission; and
  - (e) not transferred without the prior written consent of the Commission.

***Changes of communication numbering plan***

11. In the event that the numbering plan has to change, the Commission shall issue a general notice to the public and the assignee at least six (6) months prior to the date of change.

***Cancellation of assignment***

12. (1) Where a licensee fails to use the number or address assigned by the Commission within the prescribed period or fails to pay any prescribed fees or uses the number in a manner contrary to the Regulations, the licensee shall be required to submit to the Commission the reasons for such failure, after which the Commission may take such measures as it deems fit including among others, cancellation of the assignment.
- (2) A licensee who fails to utilise a number or address assigned to it by the Commission within the period prescribed in the assignment may apply, in writing, to the Commission for the extension of the time within which the licensee ought to utilise the number or address.
- (3) An application for extension of time under sub-regulation (2) shall include the reasons for the failure to utilise the number within the time prescribed.

**PART III**

## SIGNALLING POINT CODES

***National Signalling Point Codes Plan Management***

13. (1) The National Signalling Point Codes Plan shall include international and national formats used to identify –
- (a) The world geographical zone where the network is located;
  - (b) The geographical area or network within a specific world zone;
  - (c) The signalling point (international exchange) within a specific geographical area or network;
  - (d) A signalling area or network code (SANC);
  - (e) The network or operator in which the exchange is located;
  - (f) The hierarchical layer of the exchange in the operator's network;
  - (g) The geographical area where the exchange is located; and
  - (h) Space for future assignment.
- (2) The Commission shall maintain and update the Signalling Point Codes Plan as appropriate.

***Assignment of Signalling Point Codes***

14. The Commission may assign Signalling Point Codes and issue a certificate of assignment with the conditions –
- (a) If it determines that the Signalling Point Codes required for provision of electronic communication services are available; and
  - (b) Upon payment of the relevant fees.

***Signalling Point Codes (SPCs) Assignee obligations***

15. Any Signalling Point Codes assignee shall use the code only as assigned by the Commission and in accordance with the national Signalling Point Codes Plan.

**PART IV**

## GENERAL PROVISIONS

***Compliance with numbering and address plans***

16. (1) A licensee shall apply and abide by the numbering plan prescribed by the Commission.
- (2) The Commission may, before developing a numbering plan, consult with licensees in respect of –
- (a) arrangements for the allocation and re-allocation of numbers within the initial numbering plan; and
  - (b) additions to, or replacement of the initial numbering plan.

(3) The Commission shall, at least six (6) months before prescribing a new numbering plan, give notice to licensees and the general public by notice in the gazette and any other media that the Commission considers appropriate.

**Prohibition of generation and use of fictitious numbers and addresses**

17. A person shall not regenerate or use fictitious numbers or addresses.

**Offences and penalties**

18. (1) A person who contravenes these Regulations commits an offence and shall on conviction, be liable to a fine of not exceeding three thousand Emalangi (E3000) or imprisonment for a period not exceeding one (1) year.

(2) A licensee who uses numbers or addresses contrary to these Regulations, commits an offence and shall on conviction, be liable, upon conviction, to a fine of not exceeding three thousand Emalangi and/or imprisonment for a period not exceeding one (1) year.

**SCHEDULE**

APPLICATION FORM FOR ELECTRONIC COMMUNICATION NUMBERS OR CODES

<b>Application for allocation, assignment &amp; reservation of Codes or Block of Numbers</b>	<b>Date:</b>
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<p><b>1. Application type:</b> e.g. Geographic, mobile, fixed</p>
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Application for: Allocation	Assignment	Reservation
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<b>2. Applicant's Information</b>
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Company Name	
Company Reg. No	
Licence No.	
Tel	
Website	
<b>Internal Numbering Representative</b>	
Name and Surname	
Contact No.	
Fax	
Email	

External numbering representative (in case of applicant's using external advisor e.g consultant)

Company name	
Name and Surname	
Contact No.	
Fax	
Email	
<b>Business Address</b>	
Physical Address	
Postal Address	
P. O. Box	
<b>3. Technical Information</b>	
<b>Numbering code, block, individual number requested</b> (Where appropriate second and third preferences should be indicated. N.B allocation of preferred requested numbering is not guaranteed)	
1	
2	
3	
4	
5	
6	
<b>Description of Service</b> (For individual number requests i.e 7 x xxx xxx include the name of the business requesting the number)	

<b>4. Previous allocations (relevant to this application)</b>						
<b>Data date: (if differs from date of application)</b>						
	Service Description of Numbers	Quantity (active)	Quantity (active)			
A	Allocated by the Commission					
B	Internal network services					
C	Contract services					
D	Pre-paid services					
E	Total used for services/network					
	B+C+D					
F	Degree of Usage					
Numbers in Time Window lock (i.e in recycling)						
Numbers Reserved						
<b>4.1 Report on utilisation for the past 6 months</b>						
	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Actual numbers activated						
Actual numbers churned						
<p>I declare that all the information in this Application Form and any of the attachments provided are true and correct. I understand that the approval from SCCOM for this Application is based on the information as declared in this Application Form. Should any of the information declared, found to be inaccurate or incorrect after approval has been granted to the Applicant, SCCOM reserves the right to suspend or revoke such approval without compensation. I declare that the numbers will be used in accordance with the numbering regulations.</p> <p>Name: Date: Signature:</p>						

**Note:**

Reservations will lapse after six (6) months unless covered by an application for an allocation or a further period of reservation.

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY

**LEGAL NOTICE NO. 134 OF 2016**

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**THE ELECTRONIC COMMUNICATIONS ACT, 2013**

(Act No. 09 of 2013)

**THE ELECTRONIC COMMUNICATIONS (QUALITY OF SERVICES) REGULATIONS, 2016**

(Under Section 17)

In exercise of the powers conferred by Section 17 of The Electronic Communications Act, Of 2013 the Minister for Information, Communications and Technology makes the following regulations –

ARRANGEMENT OF REGULATIONS

**PART I**

PRELIMINARY PROVISIONS

1. Citation
2. Application
3. Objectives
4. Interpretation

**PART II**

ELECTRONIC SERVICE PROVIDER OBLIGATIONS

5. Electronic Service Provider obligations.
6. Compliance with electronic Service Provider obligations.
7. Service to be provided on payment.
8. Provision of service.
9. Duty of Service Provider to customers.

**PART III**

QUALITY OF SERVICES

10. Quality of service for Network Operators.
11. Quality of service for Service Providers.
12. Review of quality of service parameters.
13. Over-riding effect.
14. Public emergencies.

15. Procedures for rectifying violations of Quality of service for Service (QoS) requirement.
16. Notifications on Service degradation and outages.
17. Applying sanctions.
18. Compensations.
19. Publishing Service quality measurements.
20. Schedules

## **PART I**

### PRELIMINARY PROVISIONS

#### ***Citation and commencement***

1. (1) These Regulations may be cited as The Electronic Communications (Quality of Service) Regulations, 2016.  
  
(2) These Regulations shall come into force on the date of publication in the gazette.

#### ***Application***

2. These Regulations shall apply in relation to Electronic Communication Services.

#### ***Objectives***

3. These objectives of these regulations are to –
  - (a) create conditions for customer satisfaction by making known the quality of service which the Service Provider is required to provide and the user has a right to expect;
  - (b) measure the quality of service provided by the Service Providers from time to time and to compare them with the norms so as to assess the level of performance; and
  - (c) protect the interest of consumers of electronic communications services.

#### ***Interpretation***

4. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context indicates otherwise –

“Act” means the Electronic Communications Act No. 09 of 2013;

“Basic Telephone Service” includes collection, carriage, transmission and delivery of voice messages over licensee’s Public Switched Telephone Network in licensed service area and includes provision of all types of services except those requiring a separate licence;

“Busy Hour” means the one hour period each day for which the traffic of the resource group concerned is greatest in the day under consideration;

“Call Connection Success Rate” means the percentage of successfully connected calls to the number of call attempts;

“Call Drop Rate” means the percentage of calls which, once they have been correctly established and therefore have an assigned traffic channel, are interrupted prior to their normal completion by the user, the cause of the early termination being within the operator’s network;

“Cellular Mobile Services” means services derived from a Public Land Mobile Network;

“Downtime” means the sum of all the time during reporting period when the fault exists on the service;

“Electronic Communication Services” means transmission and provision of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user's choice;

“Electronic Communications Services Provider” means an entity engaged in the provision of electronic communications services’

“Fault” means a state where a network does not meet the service specifications and some repair action is required;

“Force Majeure” means earthquake, epidemic, war, famine, state of emergency or any other event declared as such by the Government;

“Interconnect Route Utilisation” means the amount of transmission capacity utilised with respect to the total transmission capacity provided for interconnection;

“Interactive Voice Response (IVR) Time” means the duration of the announcement of the entire Interactive Voice Response (IVR) options before a customer can make a choice;

“Mean Opinion Score (MOS)” means a numerical indication of the perceived quality of received media after compression or transmission. The Mean Opinion Score (MOS) is expressed as a single number in the range 1 to 5, where 1 is lowest perceived quality, and 5 is the highest perceived quality;

“Time to Repair (TTR)” means duration of the instant a fault notified to the published point of contact of the Service Provider to the instant where the service has been restored to the normal working order;

“Multimedia Message Service (MMS)” means mobile phone communication messages that could include audio, video and text messages;

“Public Switched Telephone Network” means a network set up and operated by basic service providers for the specified purpose of providing fixed communication services between subscribers using telephone sets or accessories;

“Public Land Mobile Network” means a network set up and operated by a licensed operator for the purpose of providing land based mobile communication services to the public and which provides communications facilities to subscribers using mobile stations (MS) or mobile handsets;

“Short Message Service (SMS)” means, text messages component of mobile communications systems.

## PART II

### ELECTRONIC SERVICE PROVIDER OBLIGATIONS

#### **Electronic Service Provider obligations**

5. An Electronic communication services provider shall ensure that –
  - (a) performance of electronic communication services meet or exceed levels of performance as set out in these regulations; and



(b) customers are provided with information to enable them to make informed decisions.

#### **Compliance with Electronic Service Provider obligations**

6. An Electronic communications services provider shall –
  - (a) Establish measurement systems consistent with the framework that will be proposed by the Commission in consultation with stakeholders; and
  - (b) Provide monthly returns of measurement results for all services to the Commission.

#### **Services to be provided on payment**

7. An Electronic communication services provider shall provide services to a person who applies and is capable of paying the appropriate charges for the provision of the services.

#### **Provision of Service**

8. An Electronic communication services provider shall not intentionally interrupt the operation of the services in the normal course of business, nor may it in the normal course of business suspend the provision of any type of the service without having first notified the Commission in writing and having provided reasonable advance notice to persons affected by such interruption or suspension.

#### **Duty of Service Provider to Customers**

9. In executing obligations to customers, an Electronic communication services provider shall –
  - (a) establish and maintain efficient information services to assist a customer with queries relating to the services, including installation, customer assistance and directory assistance;
  - (b) provide to customers in respect of each category of the licensed service, equal access to service in the licensed area at the same quality of service and at the same tariff;
  - (c) submit to the Commission for approval a service level agreement containing the minimum quality of service standards to which customers are entitled, and the remedies and compensation available when the service falls below such standards;
  - (d) notify all Customers of the terms and conditions of the Service Level Agreement and thereafter provide licensed services based upon the agreement; and
  - (e) modify the Service Level Agreement and notify the customer accordingly.

### **PART III**

#### **QUALITY OF SERVICES**

##### **Quality of Service for Network Operators**

10. A network licensee shall install, repair and maintain electronic communications facilities at quality of services parameters as specified in the First, Second, Third and Fourth Schedules.

##### **Quality of Service for Service Providers**

11. An Electronic communications services provider shall operate an electronic communications network as per the schedules.

**Review of Quality of Service Parameters**

12. The Commission may review the quality of services parameters from time to time.

**Over-riding Effect**

13. Whenever higher quality of service parameter has been stipulated as a condition of licence, the quality of service as required by the licence shall override the parameters given herein.

**Public Emergencies**

14. (1) In the event of force majeure the Commission may require the licensee to provide the necessary services to the Government giving priority to the support activities required to overcome the emergency.

(2) The licensee shall submit to the Commission its plan for the procedures and operations which the licensee shall follow in the event of any such emergency and shall update the emergency plan upon request by the Commission.

(3) In the event that the emergency or crisis is related to matters concerning national security, the licensee shall coordinate with the relevant authority indicated by the Commission and shall implement the emergency plan as far as reasonably practicable in accordance with the instructions as may be given by the Commission.

**Procedures for rectifying violation of Quality of Service requirements (QoS)**

15. In case of a violation, a formal notice will be sent to the Electronic Communication Service Provider to correct the problem within fourteen (14) days. An applicable sanction will be applied if the problem persists after the stipulated period or reoccurs after an initial notification.

**Notifications on Service degradation and outages**

16. An Electronic Communications Service Provider shall notify the Commission and affected Customers in any locality within an hour for service degradation or outages which may extend beyond an hour.

**Applying Sanctions**

17. Sanctions as per the Fifth Schedule shall be imposed on an Electronic Communications Service Provider if the problem after the stipulated period or reoccurs after an initial notification.

**Compensation**

18. In addition to the sanctions stipulated in the Fifth Schedule, affected customers shall be compensated by the Electronic Communication Service Provider as may be prescribed by the Commission except in the cases of force majeure.

**Publishing service quality measurements**

19. The Commission shall publish results of service quality measurements on monthly and Regional basis.

**FIRST SCHEDULE****QUALITY OF SERVICE (QoS) PARAMETERS FOR INTERCONNECTION**

Every Service Provider shall meet the following Quality of Service benchmarks for any interconnected service in respect of each specified parameter measured by real calls on any interconnected route and shall submit a monthly report based on daily peak hour conditions.

No.	Parameter Name	Target	Measurement Method
1	Interconnection Route Utilisation	Not more than 80% of capacity	<u>Amount of carried traffic to another network x 100</u> Total capacity of route to another network
2	Time to Repair (TTR) Interconnection Route	Not more than One Hour	Time of Total Service Restoration – Time of Notification of Fault

**SECOND SCHEDULE****QUALITY OF SERVICE (QoS) PARAMETER FOR CELLULAR MOBILE SERVICE**

Every cellular mobile Service Provider shall meet the following Quality of Service benchmarks for cellular mobile service in respect of each specified parameter measured by test traffic in any locality and shall submit a monthly report based on daily peak hour conditions.

No	Parameter Name	Target	Measurement Method
1	Service Coverage	>75dBm for Indoors >85dBm for In-vehicles >95dBm for outdoor in city	Field Strength measurements
2	Call Connection Success Rate	>99%	<u>Number of successfully connected call attempts x 100</u> Total number of attempts
3	Call Drop Rate	>2%	<u>Number of calls dropped x 100</u> Total number of attempts
4	Voice Service Access Delay	<10sec	Maximum time taken for Voice service connection in all cases
5	Voice Quality (Mean Opinion Score (MOS))	>3.5	ITU Recommendation on Voice Quality testing
6	Downtime for Cell (Site)	<4 hours	Time Restored – Time of Fault
7	Downtime for Interconnect Route	<1 hour	Time Restored – Time of Fault
8	Minimum Data Speed Rate	>2Mbps	Throughput
9	Data Service Availability	≥99.9%	As measured in data networks
10	Data Service Utilisation	≥80%	As measured in data networks
11	Data Service Access Time	<Five (5) seconds	Maximum time taken for data service connection in all cases

12	Data Access Success Rate	≥99%	$\frac{\text{Number of service connections made} \times 100}{\text{Total number of connections required}}$
13	Data Service Drop Rate	≤1%	$\frac{\text{Number of service connections lost} \times 100}{\text{Total number of services connections made}}$
14	SMS / MMS delivery success	>99%	$\frac{\text{Number of SMS/MMS to recipients delivered} \times 100}{\text{Total Number of SMS/MMS received at Service Centre}}$
15	SMS / MMS delivery time	<5s	Time of Service delivered to destination number – Time of service sent from originating number

### BILLING, CUSTOMER SERVICE & SATISFACTION MEASURES

No	Parameter Name	Target	Measurement method
16	Voice calls	Accurate charging	Per second charging
17	Messaging	Accurate charging	Message Length of 160 characters
18	Internet Services	Accurate charging	QoS charging Volume Charging Time Charging
19	Interactive Voice Response (IVR)	<15sec	Duration of announcement of the entire IVR options before a customer can make a choice.
20	Call Centre Operator Response	<30sec	Duration of waiting after the option to a Customer Care Assistant has been chosen by the Customer.
21	Customer satisfaction on overall quality of service	>95%	$\frac{\text{Number of answers as good quality}}{\text{Number of customers interviewed}}$

### CUSTOMER SATISFACTION ATTRIBUTES

The performance of the Cellular Mobile Service Providers in respect of the following Quality of Service benchmarks shall be subject to periodic assessment by the Commission through customer satisfaction surveys, which may be conducted by the Commission either through its own officers or employees or through any agency appointed by it.

No.	Parameter Name	Target
22	% of customers satisfied with the service availability	>90%
23	% of customers satisfied with the service accessibility	>90%
24	% of customers satisfied with the reliability	>90%
25	% of customers satisfied with billing performance	>90%
26	% of customers satisfied with the held/enquiry services	>90%

### THIRD SCHEDULE

#### QUALITY OF SERVICE (QoS) PARAMETERS FOR BASIC TELEPHONE SERVICE

Every basic telephone Service Provider shall meet the following Quality of Service benchmarks for basic telephone service in respect of each specified parameter measured by test calls in any locality and shall submit a monthly report based on peak hour conditions.

No	Parameter Name	Target	Measurement method
1	Time to Repair (TTR)	≤ 8 hours	Sum of duration of each repair time in hours for all the fault incidences in a day
2	Call Connection Success Rate	>99%	Number of successfully connected call attempts x 100 Total number of attempts
3	Call Drop Rate	<2%	Number of calls dropped x 100 Total number of attempts
4	Voice Service Access Delay	<10sec	Maximum time taken for Voice service connection in all cases
5	Voice Quality (Mean Opinion Score {MOS})	>3.5	ITU Recommendation on Voice Quality testing

#### BILLING, CUSTOMER SERVICE & SATISFACTION MEASURES

No	Parameter Name	Target	Measurement method
6	Voice calls	Accurate charging	Per second charging
7	Provision and installation of telephone on premises after payment	≤5 days	Number of days from service request to service operators
8	Interactive Voice Response (IVR)	≤15sec	Duration of announcement of the entire IVR options before a customer can make a choice
9	Call Centre Operator Response	<30sec	Duration of waiting after the option to a Customer Care Assistant has been chosen by the Customer
10	Customer Satisfaction on overdraft quality of service	>95%	<u>Number of answers as good quality</u> Number of customers interviewed

#### CUSTOMER SATISFACTION ATTRIBUTES

The performance of the Basic Telephone Service Providers in respect of the following Quality of Service benchmarks shall be subject to periodic assessment by the Commission through customer satisfaction surveys, which may be conducted by the Commission either through its own officers or employees or through any agency appointed by it.

No.	Parameter Name	Target
11	% of customers satisfied with the service availability	>90%
12	% of customers satisfied with the service accessibility	>90%
13	% of customers satisfied with the reliability	>90%
14	% of customers satisfied with billing performance	>90%
15	% of customers satisfied with the help/enquiry services	>90%

#### FOURTH SCHEDULE

#### QUALITY OF SERVICES (QoS) PARAMETERS FOR INTERNET SERVICE

Every Internet Service Provider shall meet the following Quality of Service benchmarks for Internet service in respect of each specified parameter measured by test calls in any locality and shall submit a monthly report based on peak hour conditions.

#### SERVICE QUALITY ATTRIBUTES

No.	Parameter Name	Target	Measurement method
1	Call Connection Success Rate	<99%	$\frac{\text{Number of successfully connected calls} \times 100}{\text{Total number of attempts}}$
2	Call Drop Rate	<2%	$\frac{\text{Number of calls dropped} \times 100}{\text{Total number of connected calls}}$
3	Voice Service Access Delay	<10%	Maximum Time taken for Voice service connection
4	Voice Quality (Mean Opinion Score {MOS})	>3.5	ITU Recommendation on Voice Quality testing
5	Downtime for Cell (Site)	<4hours	Time Restored – Time of Fault
6	Downtime for Interconnect Route	<1hour	Time Restored – Time of Fault
7	Minimum Data Speed	$\geq 2\text{Mb/s}$	Throughput
8	Data Service Availability	$\geq 99\%$	As measured in data networks
9	Data Service Utilisation	$\leq 80\%$	As measured in data networks
10	Data Service Access Time	<Five (5) seconds	In all cases
11	Data Access Success Rate	$\geq 99\%$	$\frac{\text{Number of successful connections made} \times 100}{\text{Total number of connections requested}}$
12	Data Service Drop Rate	$\leq 1\%$	$\frac{\text{Number of connection lost} \times 100}{\text{Total number of connection made}}$

#### BILLING, CUSTOMER SERVICE & SATISFACTION MEASURES

No.	Parameter Name	Target	Measurement method
13	Provision and installation of Internet equipment (modem and related accessories) on premise after payment	$\leq 5$ days	Number of days from Service request to Service operations

14	Interactive Voice Response (IVR)	<15sec	Duration of announcement of the entire IVR options before a customer can make a choice
15	Call Centre Operator Response	<30sec	Duration of waiting after the option to a Customer Care Assistant has been chosen by the Customer
16	Customer satisfaction on overall quality of service	>95%	<u>Number of answers at good quality</u> Number of customers interviewed

### CUSTOMER SATISFACTION ATTRIBUTES

The performance of the Internet Service Providers in respect of the following Quality of Service benchmarks shall be subject to periodic assessment by the Commission through customer satisfaction surveys, which may be conducted by the Commission either through its own officers or employees or through any agency appointed by it.

No.	Parameter Name	Target
17	% of customers satisfied with the service availability	>90%
18	% of customers satisfied with the service accessibility	>90%
19	% of customers satisfied with the reliability	>90%
20	% of customers satisfied with billing performance	>90%
21	% of customers satisfied with the help/enquiry services	>90%

### FIFTH SCHEDULE

#### SANCTIONS ON DEFAULT ON QUALITY OF SERVICE COMPLIANCE

No.	Parameter Name	Sanction	Amount (Emalangeni)
1	Interconnection Route Utilisation	Directive to expand capacity within 3 months	E20,000 per day after 3 months on default of Operator(s) responsible for delay
2	Time To Repair (TTR) Interconnection Route	Compensation	E20,000 per hour to be paid by defaulting Operator to the other interconnect party
3	SDCCH Congestion	Fine	E20,000 per hour per district to be paid by defaulting Operator to Commission
4	Call Connection Success Rate	Fine	E20,000 per hour per district to be paid by defaulting Operator to Commission
5	Call Drop Rate	Fine	E20,000 per hour per district to be paid by defaulting Operator to Commission

6	Voice Service Access Delay	Fine	E20,000 per hour per district to be paid by defaulting Operator to Commission
7	Downtime for Cell (Site)	Announcement to affected locality after first hour	E20,000 per hour after four (4) hours to be paid
8	Data Service Availability	Fine	E20,000 per hour per district to be paid by defaulting Operator to Commission
9	Data Service Utilisation	Directive to expand capacity within 3 months	E20,000 per day after 3 months on default of Operator(s) responsible for delay
10	Data Service Access time	Fine	E20,000 per hour per district to be paid by defaulting Operator by Commission
11	Data Access Success Rate	Fine	E20,000 per hour per district to be paid by defaulting Operator to Commission
12	Data Service Drop Rate	Fine	E20,000 per hour per district to be paid by defaulting Operator to Commission
13	% of SMS/MMS delivery success	Fine	E20,000 per hour per district to be paid by defaulting Operator to Commission
14	Time to Repair (TTR) a Fixed Telephone Service	Compensation	E200 per hour after eight (8)
15	Provision and installation of telephone on premise after payment	Hours per Customer Compensation	E1,000 per day after five (5) days per Customer
16	Provision and installation of Internet equipment (modem and related accessories) on premise after payment	Compensation	E1,000 per day after five (5) days per Customer
17	Accurate Charging of Services	Fine after notification by Commission to correct in four (4) hours	E20,000 per hour per service to be paid by defaulting Operator to Commission

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY



**LEGAL NOTICE NO. 135 OF 2016**

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**THE ELECTRONIC COMMUNICATIONS ACT, 2013**

(Act No. 09 of 2013)

**ELECTRONIC COMMUNICATIONS (RADIO COMMUNICATIONS AND FREQUENCY SPECTRUM)  
REGULATIONS, 2016**

(Under Section 49)

In exercise of the powers conferred by Section 49 of the Electronic Communications Authority Act, 2013, the Minister for Information, Communications and Technology makes the following Regulations –

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## **PART I**

### PRELIMINARY PROVISIONS

#### **Citation and commencement**

- 1. (1) These Regulations may be cited as the Electronic Communications (Radio communications and Frequency Spectrum) Regulations, 2016.  
  
(2) These Regulations shall come into force on the date of publication in the gazette.

#### **Interpretation**

- 2. In these regulations, unless the context otherwise requires –

“Act” means the Electronics Communications Act, 2013;

“assignment” means the authorisation given by the Commission to use a radio frequency or radio frequency channel under specified conditions;

“allocation” means an entry in the National Radio Frequency Plan of a given frequency band for the purpose of its use by one or more terrestrial or space radio communication services of the radio astronomy service under specified conditions (A band is therefore allocated to a service).

“authorised frequency” means the frequency assigned to a station by the Commission;

“harmful interference” means radiation or induction which –

- (a) endangers the functioning of a radio-navigation service or of a safety service; or
- (b) obstructs or repeatedly interrupts an authorised radio or telecommunications service;

“International Telecommunications Convention” means the basic treaty that establishes the legal basis for the International Telecommunications Union and defines its purpose and structure including the protocols and obligations on members.

“ITU-R Recommendations” means a set of international technical standards developed by the Radio communications Sector of the ITU.

"ITU Radio regulations" means the complete texts as adopted by the World Radio Communications Conference (Geneva, 1995) (WRC-95) and revised and adopted by subsequent World Radio Communications Conferences, including all Appendices, Resolution, Recommendations and ITU-R Recommendations incorporated by reference.

"SADC frequency management plan" means a framework for the harmonisation across SADC member states on the use of the radio frequency spectrum.

"network" means two or more stations operated by a person and used or intended to be used in communication with one another;

"radio emission" means any emission of electromagnetic energy of frequency currently less than three hundred (300GHz) Gigahertz without continuous artificial guide or such other frequency as the Commission may from time to time publish in the Government gazette.

"spectrum assignment" means the authorisation by the Commission to any licence specific frequency or frequency pairs for use within a given allocation, at a specified geographic location;

"Station" means a transmitter, receiver, a combination of transmitters and receivers, or any accessory thereto which is used or intended to be used for radio communications;

"transmitter" means anything, irrespective of its use, function or the purpose of its design, that is capable of radio emission;

"radio communication" means all electronic communication by means of radio waves;

"user" means any person or body of persons who uses or operates radio communication services.

### **Application**

3. (1) These Regulations shall apply to all frequency spectrum users.
- (2) A frequency spectrum user shall apply for and utilise spectrum subject to –
  - (a) the finalisation of the Swaziland Table of frequency allocations or National band plan; and
  - (b) further consideration policy approach to spectrum licensing, auctions or competitive bidding or eligibility.

## **PART II**

### RADIO FREQUENCY PLANNING

#### **National Radio Frequency Plan**

4. (1) All spectrum allocations and assignments shall be considered with the current national radio frequency plan.
- (2) Users of radio frequency spectrums shall comply with the provisions of the current national radio frequency plan.

#### **National Frequency Allocation Plan**

5. (1) The Commission may, in accordance with Section 34 of the Act, prepare a national allocation plan.
- (2) The National Frequency Allocation Plan shall fall under the Radio Frequency Plan and shall be detailed and provide a description of how a band is allocated.

(3) Radio Frequency Spectrum Band Plans shall specify the purposes for which bands may be used, arising from Government policy initiatives or public demand.

(4) Radio Frequency Spectrum Band Plans may specify or propose –

- (a) detailed frequency channelling arrangements;
- (b) technical and other requirements; or
- (c) principles or assignment and implementation for the detailed allocation of the radio frequency spectrum between types of services.

(5) Radio Frequency Spectrum Band Plans shall be subject to consultation.

### **PART III**

#### **RADIO FREQUENCY LICENSING AND ASSIGNMENT**

##### **General licensing requirements**

6. (1) A person shall not possess, establish, install or use any radio communications station which requires licensing under these Regulations in any place or on board any local vessel, aircraft or vehicle, unless that person has a valid licence granted by the Commission.
- (2) A radio communication licence shall not confer any ownership rights of the frequency on the licensee.
- (3) A licensee shall not transfer frequency assigned to that licensee and the rights therein without the written consent of the Commission.
- (4) A licensee shall comply with the provisions of the International Telecommunications Convention.
- (5) Where the authorisation is for a period not exceeding one (1) month, the Commission may grant temporary authorisation for the utilisation of the frequency spectrum and the minimum applicable fee will be for a period of one (1) month.

##### **Radio Frequency Spectrum Licence Exemption**

7. (1) The designated apparatus and frequency spectrum bands that are exempted from frequency spectrum licensing in Swaziland are –
  - (a) the 2.400 – 2.483GHz, 5.150-5.350GHz and 5.470-5.725GHz bands; and
  - (b) short-range devices designed to operate at low power levels in accordance with ITU-R Recommendation and as well as other internationally recognised and industry based standards; and
  - (c) apparatus exempted from frequency spectrum licensing as set out in the schedule.
- (2) Other licence exempt radio spectrum may be designated by the Commission and made known to the public.
- (3) Exempted devices shall be permitted for terrestrial use only and shall operate on non-protection basis from other authorised services in the same or adjacent frequency bands and shall not cause harmful interference.

(4) Notwithstanding sub-regulation (1)(a), all eligible users providing a communications service require a general electronic communications service licences from the Commission and their operations should be in conformity with the Commission's operational guidelines for the band.

(5) The users in these bands shall not claim protection from interference and shall not cause interference to other licensed users in other bands.

(6) A user or possessor of radio apparatus and related radio frequency spectrum which are exempt shall use or possess the radio apparatus on condition that –

- (a) they are type approved or type accepted by the Commission;
- (b) frequencies, transmitting power and external high gain antenna of the radio apparatus is not altered without a new type approval certificate being issued by the Commission;
- (c) the radio apparatus are not operated within and not exceed the technical parameters set out on the schedule with respect to the frequency band, maximum radiated power or field strength limits and channel spacing, relevant standards and duty cycles and antennas to be used as contained in column E of the schedule;
- (d) The antenna of the radio apparatus is not higher or above average ground level than the lowest point of the place where the radio apparatus operates effectively;
- (e) The radio apparatus do not cause interference to any person issued with a radio frequency spectrum licence by the Commission; and
- (f) The user of the radio apparatus in the licence exempt frequency operates on non-interference and zero protection basis from interference.

#### **Application criteria for approval**

8. (1) The Commission shall, when considering an application for frequency assignment, take into consideration –

- (a) spectrum availability for the type of service and proposed location;
- (b) whether the proposed service can be satisfied by any other means of communications;
- (c) the distress and safety radio communication services which require protection from harmful interference; and
- (d) the current technical advances that ensures the most efficient spectrum use.

(2) The Commission may assign a frequency to the applicant, and shall for that purpose take into account all technical data of the equipment and associated accessories that the applicant is proposing to use.

(3) The Commission shall issue spectrum based on a first come first served basis.

(4) Notwithstanding sub regulation (3), where the Commission anticipates that the spectrum to be assigned –

- (a) is in high demand, in that demand for the spectrum exceeds supply; or
- (b) is considered to be of high economic value.

(5) The Commission may use market based approaches, including the competitive bidding process for individual licenses which is provided for in the Licensing regulations, to assign the spectrum.

### **Assignment of frequency**

9. (1) The Commission may assign one or more frequencies when it is satisfied that such assignment will not cause harmful interference to any station or licensee operating in accordance with the Swaziland Table of Frequency Allocations.
- (2) A person licensed to operate and provide radio communication systems and services shall apply to the Commission, for the assignment of the necessary frequency.
- (3) Where the Commission is satisfied with an application, it may assign the applicant a frequency, which the applicant shall use in accordance with the prescribed technical and operating parameters.
- (4) Where the frequency applied for is not available, the Commission may assign frequency in an alternative frequency band, subject to agreement with the applicant.
- (5) The Commission may impose such conditions as it may consider necessary for the use of the assigned frequency.

### **Amount of frequency**

10. The Commission may prescribe the minimum or maximum number or amount of radio communication channels or frequency which any user or licensee may be granted.

### **Sharing of frequency**

11. (1) The Commission may, where necessary, and where technically feasible, require a licensee to share a frequency.
- (2) The Commission shall implement the sharing through an arrangement that shall not impose unreasonable burden to the licensee involved.
- (3) A Licensee may not other than as directed by the Commission, share or trade a frequency.

### **Procedures for coordination with shared frequency**

12. (1) A Licensee is required to make every effort to come to an agreement over the use of shared spectrum before declaring a dispute.
- (2) The Commission may at its discretion, for the particular frequency bands, require that licensees, who have an assignment on a shared basis, collectively submit a spectrum sharing coordinated agreement.
- (3) The Commission may at its discretion specify coordinated procedures to the licensees of shared spectrum assignments.
- (4) A licensee may request the Commission to assist it in coordination.

### **Dispute Resolution in shared frequency**

13. (1) Where a licensee is unable to come to an agreement on the use of shared spectrum, one or more of the licensees may declare a dispute by informing the Commission in writing, indicating the subject matter of the dispute.

- (2) The Commission shall within thirty (30) days initiate an investigation into the dispute.
- (3) The Commission shall within thirty (30) days of initiation, carry out an investigation into the dispute that may involve a closed or public hearing involving the holders of radio frequency spectrum licence in the shared assignment.
- (4) In resolution of the dispute the Commission may –
- (a) prescribe the removal of radio apparatus;
  - (b) impose penalties on one or more of the licensees should it be ascertained that the said licensees are in contravention of their license conditions, the regulations or the Act;
  - (c) suspend or cancel a Radio Frequency Spectrum licence in accordance with the provisions of the Act;
  - (d) impose other terms and conditions as required.

#### **PART IV**

##### STANDARD TERMS AND CONDITIONS OF RADIO SPECTRUM LICENSES

#### ***Obligations of licenses***

14. (1) A licensee who has been assigned frequency bands for use shall –
- (a) maintain and provide, at the Commission's request, an inventory of the assigned frequency bands;
  - (b) keep the licence in force by regular payment of annual fees prescribed by the Commission;
  - (c) put into use the assigned frequency within the period specified by the Commission;
  - (d) use such measures as may be prescribed by the Commission to eliminate unauthorised emissions, harmful interference or illegal use of the spectrum;
  - (e) optimise the utilisation of frequency spectrum resource in the manner prescribed by the Commission; and
  - (f) implement all the measures prescribed by the Commission.
- (2) The Commission may, where it considers it necessary, require a licensee to migrate to a new frequency band –
- (a) in instances specified in the frequency management plan;
  - (b) to harmonise with ITU Radio regulations;
  - (c) to harmonise with SADC frequency management plan; or
  - (d) to adapt to Swaziland specific requirements.
- (3) The Commission shall implement the migration further to public consultation and through an arrangement that shall not impose unreasonable burden to the licensee involved.

(4) A licensee shall not make material change to a licensed station or change the station parameters specified in the licence, without a written authorisation from the Commission.

#### ***Duration of a Radio Frequency Spectrum Licence and renewal***

15. (1) The grant of Radio Frequency Spectrum Licence and assignment shall not be construed as conferring upon the holder a monopoly of the use of the frequency or a right of continued tenure in respect of the frequency.

(2) Unless otherwise specified in regulations or in the licence, a Radio Frequency Spectrum Licence shall remain valid for a period of one (1) year until renewed.

(3) The Commission shall not unduly refuse a renewal if a licensee –

(a) has paid all the applicable fees;

(b) has utilised the frequency spectrum resource in an effective and efficient manner; and

(c) has completed with all other reporting and license requirements.

#### ***Frequency spectrum pricing***

16. (1) The Commission may from time to time prescribe the methods of determining frequency spectrum pricing.

(2) The Commission shall not avail frequency spectrum licences to a licensee unless the licensee has paid frequency spectrum licence fees and complied with the conditions imposed by the Commission.

(3) The Commission may recall frequency assignments that have not been utilised within the period specified in the licence.

(4) Where a frequency assignment is recalled for non-utilisation, the licence fee paid in accordance with sub regulation (2) shall not be refunded.

#### ***Pricing parameters***

17. (1) The Commission shall adopt a pricing formula that reflects the economic value of frequency spectrum in order to encourage efficient use of frequency spectrum and stimulate growth.

(2) The pricing formula adopted under sub-regulation (1) shall take into account the –

(a) size of spectrum assigned;

(b) frequency band and level of congestion within the band;

(c) market demand;

(d) power output;

(e) geographical usage; and

(g) such other factors as the Commission may from time to time determine.

(3) The Commission shall review and publish the pricing formula for frequency spectrum at least once in every three (3) years.



**PART V**

## GENERAL PROVISIONS

**Monitoring and inspection**

18. (1) The Commission shall monitor all emissions from licensed stations to ensure the efficient utilisation and compliance with licensed parameters.
- (2) The licensee shall permit unlimited access by the Commission's authorised officers to the licensee's installation at reasonable times for the purposes of inspection and verification of operational parameters.
- (3) The owner and management agents of a building shall –
- (a) require proof of licences and authorisation from the Commission before authorising the installation of any radio communication systems in their premises;
  - (b) keep records of all equipment installations; and
  - (c) permit unlimited access by the Commission's authorised officers to the licensees' installations for the purposes of inspection and verification of operational parameters.
- (4) A licensee shall, when requested to do so, make available to the Commission's authorised officers all records that relate to a station's operations.
- (5) A licensee shall report in writing any interference experienced to the Commission.
- (6) Where the Commission, pursuant to a report made to it or on its own accord, is of the view that certain measures need to be undertaken to avoid or mitigate any interference, the Commission may require a licensee or a class of licensees, in writing, to take the measures specified.

**Inspection, siting and maintenance of illuminated towers and control equipment**

19. (1) A licensee of a radio station that has an antenna structure shall paint and illuminate the tower, perform routine inspections and maintenance of the tower and on any other associated control equipment, required to ensure that it is properly marked and illuminated.
- (2) A licensee shall comply with directions given by the Commission in consultation with the government agency responsible for civil aviation, in matters relating to antenna towers.
- (3) A licensee shall ensure that the siting of antennas and towers complies with all applicable laws to which they are subject.
- (4) A licensee shall ensure that the siting and installation of transmitters, antennas and towers comply with the laws and guidelines relating to radiation limits that may be in force from time to time.

**Radio spectrum management and monitoring facilities**

20. Where the Commission is of the opinion that a radio operation or structure may cause harmful interference to its operation, the Commission may restrict the installation or operation of radio communications apparatus or erection of structures within a specified area from the Commission's radio monitoring facilities.

**Offences and Penalties**

21. (1) A licensee who uses any radio communications station for or in furtherance of unlawful conduct or to deliberately interfere with lawful users of frequency spectrum, commits an offence and shall on conviction, be liable to a fine not exceeding fifty thousand Emalangeni (E50,000).

(2) Any person who, upon receiving a request for information concerning the use of frequency spectrum from the Commission, fails to disclose the information or gives false or misleading information commits an offence and shall on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E20,000).

**SCHEDULE**

(Under Regulation 7)

**APPARATUS EXEMPT FROM RADIO FREQUENCY SPECTRUM LICENCES**

<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>
<b>Frequency Bands</b>	<b>Type of Device</b>	<b>Maximum Radiated Power of Field Strength Limits &amp; Channel Spacing</b>	<b>Relevant Standard</b>	<b>Additional Requirements</b>
<b>K=kHz</b> <b>M=MHz</b> <b>G=GHz</b>				
9-59.75k	Inductive Loop System	72 dBuA/m @ 10m No duty cycle restriction No channel spacing	EN 300 330 EN 301 489-1,3 EN 60950	CEPT/ERC / REC 70 - 03
59.75-60.25K	Inductive Loop System	42 dBuA/m @ 10m No restrictions on duty Cycle No channel spacing	EN 300 330 EN 301 489-1,3 EN 60950 ISO/IEC 18047-2	CEPT/ERC / REC 70-03
60.25-70k	Inductive Loop System	72 dBuA/m @ 10m No restrictions on duty cycle No channel spacing	EN 300 330 EN 301 489-1,3 EN 60950	CEPT/ERC / REC 70-03
70-119K	Inductive Loop System	42 dBuA/m @ 10m No restrictions on duty cycle No channel spacing	N 300 330 EN 301 489-1,3 EN 60950 ISO/IEC 18047-2	CEPT/ERC / REC 70-03  ASK, FSK & PSK

119-135K	Inductive Loop System X	72 dBuA/m @ 10m No restrictions on duty cycle No channel spacing	EN 300 330 EN 301 489-1,3 EN 60950	C E P T / E R C / REC 70 – 03  ASK, FSK & PSK
740-8800K	Inductive Loop System	9 dBuA/m @ 10m No restrictions on duty cycle No channel spacing	N 300 330 EN 301 489-1,3 EN 60950	C E P T/ E R C / REC 70-03
6.765-6.796M	Inductive Loop System	42 dBuA/m @ 10m No restrictions on duty cycle No channel spacing	EN 300 330 EN 301 489-1,3 EN 60950	C E P T / E R C / REC 70-03
13.553 – 13.567M	Inductive Loop System	42 dBuA/m @ 10m No restrictions on duty cycle No channel spacing	EN 300 330 EN 301 489-1,3 EN 60950	C E P T / E R C / REC 70-03  ASK, FSK & PSK
26.957 – 27.283M	Inductive Loop System	42 dBuA/m @ 10m No duty cycle restriction No channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	C E P T / E R C / REC 70 - 03
26.995; 27.045; 27.095; 27.145; 27.195M	Surface Model Control	100 mWerp No restriction on duty cycle No channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	C E P T/ E R C / REC 70-03
35.00-25.25M	Aircraft Model Control	100 mWerp No restrictions on duty cycle 10 kHz channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	C E P T / E R C / REC 70-03
36.65-36.75M	Wireless Microphones	100 mWerp 100% duty cycle No channel spacing	N 300 422 EN 301 489-9 EN 60950	C E P T / E R C / REC 70-03

40.65-40.70M	Wireless Microphones	100 mWerp 100% duty cycle No channel spacing	EN 300 422 EN 301 489-9 EN 60950	C E P T / E R C / REC 70 - 03
40.655, 40.675, 40.685, 40.695	Surface Model Control	100 mWerp No restrictions on duty 10 kHz channel spacing	N 300 220 EN 301 489-1,3 EN 60950	C E P T / E R C / REC 70-03
40.66-40.7M	Non-specific SRD	10 mWerp No restrictions on duty cycle No channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	C E P T / E R C / REC 70-03
46.61-46.97M  49.67-49.97M	CTO Cordless Phones	10 mWerp	The Authority  TE-013	C E P T / E R C / REC 70-03
53-54M	Wireless Microphone	50 mWerp for class 1 equipment 100 mWerp 100% duty cycle No channel spacing	EN 300 442 EN 301 489-1,3 EN 60950	C E P T / E R C / REC 70 - 03
54.4500; 54.4625; 54.4750; 54.500; 54.5125; 54.5375; 54.5500M	Model Control	5 Werp 12.kHz channel spacing	N 300 220 EN 301 489-1,3 EN 60950	C E P T / E R C / REC 70-03
141-142M	Remote Control Industrial Apparatus	100m Werp	EN 300 220 EN 301 489-1,3 EN 60950	
148-152M	Wildlife telemetry tracking	25m Werp	N 300 220 EN 301 489-1,3 EN 60950	The use of this band is restricted to National game parks

169 – 4 – 169.475m	Market Reading	500m Werp 50kHz channel spacing <10% duty cycle	EN 300 220 EN 301 489-1,3 EN 60950	CEPT / ERC / REC 70 – 03  ECC/DEC (05) 02
173.2125 – 173.2375M	Non-specific SRD – Tele command only	10 mWerp 25 kHz channel spacing	N 300 220 EN 301 489-1,3 EN 60950	
173.2375 – 173.2875M	Non-specific SRD	10 mWerp 25 kHz channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	
173.965 – 174.015M	Wireless Microphones and assistive Listening Devices	2 uWerp 100% duty cycle No channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	CEPT / ERC / REC 70-03
402-405M	Medical Implants	25 uWerp No duty cycle restriction for devices with LBT, otherwise  $\leq 1$ & 25 kHz channel spacing	EN 300 839 EN 301 489-1,3 EN 60950	ITU-R RS.1346  CEPT / ERC / REC 70 - 03
402-406M	Doppler Shift movement detectors, wireless microphones, garage door openers and motor car alarm systems	10 mWerp No channel spacing 100% day cycle	EN 300 422 EN 300 220 EN 301 489-1,3 EN 60950	
433.05 – 434.79M	Non specific SRD	1 mWerp No channel spacing 100% day cycle	EN 300 220 EN 301 489-1,3 EN 60950 ISO/IEC 18047-7	CEPT / ERC / REC 70-03  ASK, FSK, PSK & FHSS
433.05 – 434.79M	Non specific SRD	10m Werp Duty cycle <10% No channel spacing	N 300 220 EN 301 489-1,3 EN 60950 ISO/IEC 18047-7	CEPT / ERC / REC 70-03  ASK, FSK, PSK & FHSS
433.05 – 434.79M	Non specific SRD	10m Werp 100% duty cycle Up to 25 kHz channel spacing	EN 300 220 EN 301 489-1,3 EN 60950 ISO/IEC 18047-7	CEPT / ERC / REC 70 - 03

446-446.1M Includes the following channels  446.00625M; 446.01875M;  446.03125M;  446.04375M;  446.05625M;  446.06875M;  446.08125M;  446.09375M	Public Mobile Radio (PMR)	500mW  12,5 kHz channel spacing	EN 300 296  EN 301 489-1,3  EN 60950	
464.5375M	Security Systems	1W  25kHz channel spacing	EN 300 296  EN 301 489-1,3  EN 60950	
464.500 – 464.5875	Non specific SRD	100mW  No channel spacing	EN 300 220  EN 301 489-1,3  EN 60950  ISO/IEC 18047-7	
463.975M;  464.125M;  464.174M;  464.325M;  464.375M	Low Power Radio	500mW  12,5 kHz channel spacing	EN 300 296  EN 301 489-1,3  EN 60950	CEPT / ERC / REC 70 - 03
863-865M	Wireless Audio Systems	10 mWerp  100% duty cycle  No channel spacing	EN 300-357  EN 301 489-1,3  EN 60950	CEPT/ERC/ REC 70-03  CEPT/ERC DEC (01) 18
863-865M	Wireless Microphones	10 mWerp  100% duty cycle  No channel spacing	EN 300-357  EN 301 489-1,3  EN 60950	CEPT / ERC / REC 70-03
864.1-868.1M	CT2 cordless telephones	10m Werp	EN 301 797  EN 301 489-1,10  The Authority  TE-012	CEPT / ERC / REC 70-03

868-868.6M	Non specific SRD	25 mWerp <1% duty cycle or LBT	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/ REC 70-03  CEPT/ERC/ DEC (01) 04
868.6 – 868.7M	Alarms	10 mWerp <1% duty cycle No channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/ REC 70-03  CEPT/ERC/ DEC (01) 09
868.7-869.2M	Non specific SRD	25 mWerp <0.1% duty cycle or LBT 25 kHz channel spacing	N 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/ REC 70-03  CEPT/ERC/ DEC (01) 04
869.25 – 869.3M	Non specific SRD	10m Werp <0.1% duty cycle 25 kHz channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/ REC 70 - 03
869.65 – 869.7M	Alarms	25 mWerp 10% duty cycle 25 kHz channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/ REC 70-03
869.7.870.0M	Non specific SRD	5 mWerp 100% duty cycle 25 kHz channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/ REC 70-03
1880.1900M	DECT cordless Hones	250m Werp (peak) 1.728 MHz channel spacing	N 300 406 EN 301 489-1,3 EN 60950 The Authority TE001	
2400-2483.5M	Non specific SRD	10m Werp No duty cycle No channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/ REC 70 - 03

2400-2483.5M	Wideband Wireless Systems  WLAN  Wideband Data Transmission Application (WBDTS)  Model Control	100 mWerp  No duty cycle  No channel spacing	EN 300 2328  EN 301 489-1,3  EN 60950	C E P T / E R C / REC 70-03
2400-2483.5M	FDMA	25 mWerp  No duty cycle  No channel spacing	EN 300 440  EN 301 489-1,3  EN 60950	C E P T / E R C / REC 70-03
5150-5350M	Wireless Access Systems/Radio Local Access Network (WAS & RLAN) indoor use only	200 mWerp  Dynamic Frequency Selection (DFS) & Transmitter Power Control Obligatory	N 300 893  EN 301 489-1,3  EN 60950	ITU-R M.1625
5470-5725M	Wireless Access Systems/Radio Local Access Network (WAS & RLAN) Indoor use only.	1 mWerp  Dynamic Frequency Selection (DFS) & Transmitter Power Control Obligatory	EN 300 893  EN 301 489-1,3  EN 60950	ITU-R M.1625
5725-5875M		1 watt peak eirp  Any modulation		
5725-5875M		4 watt peak eirp  Frequency hopping or digital modulation only		
5795-8505M	RTTT data	2 W eirp  No duty cycle restriction  No channel spacing	N 300 674  EN 301 489-1,3  EN 60950	ITU-R M.1453   C E P T / E R C / DEC (92) 02



5805-5815m	RITT data	2 W eirp No duty cycle restriction No channel spacing	EN 300 674 EN 301 489-1,3 EN 60950	ITU-R M.1453 CEPT/ERC/ DEC (92) 02
9200-9500M	FDDA	25 mWeirp No duty cycle restriction No channel spacing	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/ DEC 70-03
9500-9975M	FDDA	25 mWeirp No duty cycle restriction No channel spacing	N 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/ DEC 70-03
10.5-10.6G	FDDA	500 mWeirp No duty cycle restriction No channel spacing	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/ DEC 70 - 03
13.4.14G	FDDA	25 mWeirp No duty cycle restriction No channel spacing	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/ DEC 70-03
17.1-17.3G	Wireless Access Systems/Radio Local Access Networks (WAS & RLAN)	100 mWeirp	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/ DEC 70-03
24.00-24.25G	Non specific SRD	100 mWeirp No duty cycle restriction No channel spacing	N 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/ DEC 70-03
24.05-24.25G	FDDA	100 mWeirp No duty cycle restriction No channel spacing	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/ DEC 70 - 03

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY

**LEGAL NOTICE NO. 136 OF 2016**

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**ELECTRONIC COMMUNICATIONS ACT, 2013**

(Act No. 09 OF 2013)

**ELECTRONIC COMMUNICATIONS (THE UNIVERSAL SERVICE AND ACCESS) REGULATIONS, 2016**

In exercise of the powers conferred by Section 49 of the Electronic Communications Act, 2013 the Minister for Information, Communication and Technology makes the following Regulations.

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## **PART I**

### PRELIMINARY PROVISIONS

#### ***Citation and commencement***

1. (1) These regulations may be cited as the Electronic Communications (Universal Service and Access) Regulations 2016.  
  
(2) These Regulations shall come into force on the date of publication in the Government Gazette.

2. In these regulations, unless the context otherwise requires –

“Act” means the Electronic Communications Act No. 9 of 2013;

“Annual Turnover” means total revenue generated from licensed activities per annum, less service provider discounts, interconnection and facilities leasing charges and government grants and subsidies, based on audited financial statements, or, if the licensee is not required by law to audit its financial statements, on the annual financial statements signed and sworn by the accounting officer of the licensee;

“Applicable Interest Rate” means the interest rate set by the Monetary Policy Consultative Committee of the Central Bank of Swaziland;

“Automated location identity” means any location information processed in an electronic communications network indicating the geographical position of the subscriber equipment;

“Caller line identity (CLI)” means a facility by which the subscriber number of a caller is displayed on the called party prior to the call being established and is a form of automatic number identity;

“Cost analysis” means an economic evaluation of the component parts of a whole and their relation by using budgeting and accounting practices to determine the true cost and may include a cost-benefit analysis;

“Designated licensee” means a licensee that has been designated in terms of Section 31 of the Act;

“Emergency Centre” means a centre that facilitates the carrying of emergency communications to emergency organisations;

“Higher Education Institutions” means any institution established by or under any law in terms of the Education Act No. 9 of 1981, as amended from time to time;

“Internet Service” means a service that links the user to a collection of interconnected web pages that are transferred using Hypertext Transfer Protocol (http), and is collectively known as the World Wide Web (www);

“Internet Service Provider (ISP)” means an entity that provides access to, or a presence on, the Internet in terms of an electronic communications network or service licence;

“Licensed Activity” means any service provided pursuant to a licence issued in terms of the Act;

“Market Gap Analysis” is the process of identifying and evaluating requirements of a geographic area, market segment or target population and possible solutions to meet these requirements, and includes the identification of the True Access Gap and the Smart Subsidy Zone;

“Regulatory impact assessment (RIA)” means a system approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives;

“Relevant licensee” means any type of category of licence that is required to comply with a relevant provision of the Act or these regulations as may become applicable to a licence type or category from time to time;

“School” means all primary, secondary or high schools as defined in the Education Act No. 9 of 1981, as amended from time to time;

“Sim card” means subscriber identity module, which is a smart card that gives a cellphone its number and customer identity and stores data for Global System for Mobile communications (GSM) cellular telephone subscribers. Such data includes user identity, location and phone number, network authorisation data, personal security keys, contact lists and stored text messages. Security features include authentication and encryption to protect data;

“Sim-lock” means the inability of a subscriber to use the sim card of another electronic communications network licensee or electronic communications service licensee on the subscriber's equipment;

“Smart-subsidy zone” means certain rural or high cost areas, and low-income population groups, or other segments of the market that will not be reached for the provision of communications by the market alone, even if it is an efficient market, within a reasonable time; there are areas and groups which have commercial potential but may need a once-off subsidy to mitigate commercial risks, making the area more attractive to commercial operators;

“Soft-lock” means the inability of a subscriber to use the billed or paid services of the electronic communications network licensee or electronic communications service licensee on the subscriber's equipment;

“Special Tariff” means the discounted rate determined by the Commission that shall be offered by licensees to all requesting schools, higher education institutions, government hospitals and public health facilities by licensees providing internet access;

“Public Health Facility” means a public health care facility established or deemed to be established in terms of the Public Health Act No. 5 of 1969;

“Government Hospital” means a hospital established or deemed to be established in terms of the Public Health Act No 5 of 1969, as amended from time to time;

“Status quo analysis” means the current state of the Information Communication Technology (ICT) industry in a particular area including universal access and universal service provision;

“True Access Gap area or zone” means the extent of public access to electronic communications, at affordable prices, determined by following the process set out in these regulations;

“Universal Access” means the extent of public access to electronic communications at affordable prices determined by following the process set out in these regulations;

“Universal Access Fund” means the universal access fund established in terms of Regulation 4.

### **Power Functions of the Commission**

3. (1) The Commission shall pursuant to the Act and these regulations promote the objectives of universal service and access by monitoring and enforcing compliance with specific annual obligations, Licence Conditions and objectives of the Commission by all persons who are subject to the Act and these regulations.
  - (2) In applying and implementing these regulations, the Commission shall –
    - (a) designate universal service providers with obligations to provide universal services;
    - (b) monitor and enforce compliance with and the carrying out of universal service plans by the universal service providers; and
    - (c) monitor and enforce a mechanism for the assessment, collection and recovery of the universal service levy.

**PART II**

## UNIVERSAL ACCESS FUND

**Establishment of the Universal Access Fund**

4. (1) The Commission shall operate a separate and dedicated account approved by the Board, with an authorised bank in Swaziland, in which all monies received in terms of the Act and these regulations or allocated otherwise for the provision of universal services shall be deposited.
- (2) All payments to be made and provided for in terms of the Act and these regulations are to be made from this account.

**Responsibilities of the Chief Financial Officer**

5. The Chief Financial Officer of the Commission shall be responsible for the accounting of monies received and payments made from the Universal Access Fund, and shall keep or cause proper accounts and records of account to be kept as are necessary to represent fairly the state of affairs of the Universal Access Fund.

**Universal Access Fund Contributions**

6. (1) Every provider of public electronic communications services shall contribute annually to the universal access fund, such amount, as determined by the Commission, based on the estimated cost of achieving universal service targets, which amount may not exceed two per cent (2%) of the relevant licensee's Annual Turnover.
- (2) Payments in respect of contributions to the universal access fund shall be –
- (a) due annually on or before the due date, which is six (6) months after the licensee's financial year end;
- (b) paid by way of an electronic transfer or via a direct deposit into the account operated in terms of Regulation 4(1);
- (c) based on the audited financial statement of the licensee or financial statements signed and sworn to by the accounting officer of the licensee where the licensee is not legally obliged to provide audited financial statements.
- (3) The Commission may charge interest for every day that the licensee is in arrears in respect of contributions to the Universal Access Fund, based on the applicable interest rate.
- (4) A person who contravenes the provisions of this regulation commits an offence and shall on conviction be liable to a fine not exceed five hundred thousand Emalangeni (E500 000).

**PART III**

## UNIVERSAL SERVICE COMMITTEE

**Appointment of the Universal Service Committee**

7. (1) The Minister shall, on recommendations by the Commission, appoint members of the Universal Service Committee.
- (2) The appointment of members of the Universal Service Committee shall be made on the grounds of the Universal Service Committee shall be made on the grounds of their qualifications, expertise or experience in the fields, when viewed collectively, of development planning, community development, social science, economics, electronic communications, supply chain management, project management and technology.

**Remuneration of the Universal Service Committee**

8. The remuneration of the Universal Service Committee shall be made from the Universal Access Fund, as determined by the Board.

**Appointment of staff of the Universal Service Committee**

9. (1) The Commission may employ persons as may be necessary to provide assistance to the Universal Service Committee, with the performance of the functions required by the Universal Service Committee, within the Swaziland Communications Commission.

(2) The employment of the persons referred to in Regulation 9(1) shall be made on the grounds of their qualifications, expertise or experience in the fields, when viewed collectively, of development planning, community development, social science, economic, electronic communications, supply chain management, project management and technology.

**Operating and capital costs**

10. All other operating and capital costs of the Universal Services Committee and staff, shall be financed from monies appropriated in terms of Section 49 of the Act.

**Functions of the Universal Service Committee**

11. (1) The Universal Service Committee shall –

- (a) prepare and update a strategic plan, which will be made publicly available once it is approved by the Board, at least once every three (3) years and is to be used by the Universal Service Committee in carrying out its functions;
- (b) conduct a needs analysis which shall be subjected to a public consultation process and shall amongst others identify the true access gap and the smart subsidy zone, at least once every three (3) years, and make the report available to the public and implement a process to address these gaps;
- (c) determine and make recommendations to the Board on the annual objectives with the purpose of ensuring the services listed in Section 30 of the Act, after following a regulatory impact analysis (RIA), which may be revised from time to time.

**Duties of the Universal Service Committee**

12. The Universal Service Committee shall –

- (a) promote the goal of universal service and access;
- (b) conduct research into and keep abreast with national and international information communications technology developments and universal access and service initiatives on an on-going basis;
- (c) designate licensees to carry out universal service obligations;
- (d) monitor and evaluate compliance to universal service obligations by relevant licensees with the assistance of other departments within the Commission, where required;
- (e) request any information, documentation or reports from relevant licensees, as may be required in order to perform its functions;
- (f) conduct bi-annual surveys and evaluate the extent to which universal service has been achieved, and make the findings publicly available;

- (g) implement supply chain management processes including but not limited to the preparation of tender documents, invitation to tenders, evaluation and awarding of tenders;
- (h) conduct project management for the implementation and completion of contracts or any projects as may be required;
- (i) procure the services of experts and other consultants to provide advice and services relating to the performance of any of its functions;
- (j) participate in policy development, and facilities cooperation regarding the Rural Access Fund; and
- (k) initiate or cause the Commission to initiate proceedings in terms of Section 36 of the Act.

## PART IV

### UNIVERSAL SERVICE AND ACCESS AND ALLOCATION OF FUNDS

#### **Scope of Universal Service and Access**

13. Universal Service obligations and funding developed by the Commission may apply to any or all of the following categories of Information Communication Technology services and infrastructure –
- (a) Voice communication services;
  - (b) Data communication services;
  - (c) Infrastructure for the provision of voice or data communication services;
  - (d) Equipment and end user devices; and
  - (e) Training and skills development.

#### **Persons eligible to receive subsidies**

14. (1) Persons eligible to receive subsidies from the Universal Service Fund, subject to Fund projects and priorities as determined by the Commission, may include –
- (a) Persons with disabilities;
  - (b) The elderly or recipients of social grants; and
  - (c) Schools, higher education institutions, Government hospitals and public health facilities.
- (2) Licensee eligible to receive subsidies from the Universal Service Fund, following a competitive tender process, may include –
- (a) persons with disabilities;
  - (b) the elderly or recipients of social grants; and
  - (c) schools, higher education institutions, Government hospitals and public health facilities.
- (2) Licensee eligible to receive subsidies from the Universal Service Fund, following a competitive tender process, may include –
- (a) designated licensees with universal service obligations, if the obligation falls within a smart subsidy area; and
  - (b) designated licensees, expanding electronic communications networks and services into a true access gap area.



**Competitive Tender Process**

15. A competitive tender process shall be based on, among others, the following minimum processes, information of which will be made publicly available –
- (a) market Gap Analysis; and
  - (b) cost analysis

**Disbursement of funds**

16. Funds shall be disbursed in a competitive tender process, in accordance with the procurement law and any procurement policies by the Commission as a procurement entity in terms of the procurement law.

**Function of the Commission in a competitive tender process**

17. (1) The Commission shall ensure as part of the competitive tender process, that –
- (a) all tender proposal documents are opened in public, and publish the list of bidders and cost offers;
  - (b) all bidders are notified in writing of the acceptance or rejection of their tender proposals and upon request with eth reasons for the Commission's decision; and
  - (c) all bidders are informed of the name of the bidder whose tender proposal has been accepted.
- (2) The Commission shall ensure that a written agreement is concluded after the acceptance of a tender proposal within thirty (30) days from the date on which the bidder was notified of the acceptance of a tender proposal.
- (3) The Commission shall ensure that the written agreement includes, but is not limited, to the following explicit requirements –
- (a) measurement deliverables;
  - (b) timelines;
  - (c) regular reporting requirements;
  - (d) the conclusion of a service level agreement , where applicable;
  - (e) repair and maintenance obligations, where applicable;
  - (f) training services; where applicable;
  - (g) payment schedules;
  - (h) penalty clauses; and
  - (i) quality of service requirements, where applicable.

(4) Where the bidder fails to enter into an agreement with the Commission, within thirty (30) days, unless such period was extended based on mutual agreement between the Commission and the bidder, or if when required the bidder fails to furnish security for the performance of the agreement, the acceptance of the tender documents may be withdrawn by the Universal Service Committee and another tender document from among the tenders already submitted to the Commission may be accepted or new tenders may be invited.

### **Implementation of Universal Service Fund Projects**

18. (1) The Universal Service Committee shall appoint a project manager for every accepted project or tender proposal to –
- (a) ensure compliance by the licensee to the agreement concluded in terms of regulation n18(1)(d) with the Commission including adherence to time frames and submission of reports or compliance with annual objectives or licence conditions of designated licensees;
  - (b) inform the Commission timeously of any instances of non-compliance; and
  - (c) conduct independent assessment of compliance by the licensee.
- (2) The Universal Service Committee shall monitor and evaluate each project, to assess whether the implemented project has had required impact based on its strategic plan.

## **PART V**

### UNIVERSAL SERVICE OBLIGATIONS

#### **Universal Service Obligations**

19. All Universal Service Obligations that may be imposed shall be competitively neutral, transparent and measureable.

#### **Imposition of universal service obligations**

20. The Commission may impose Universal Service Obligations on designated licensees, which are to be included as an annexure to their licenses in instances where the obligations –
- (a) are offered or imposed as a condition of a licensing process;
  - (b) are the outcome of a competitive tendering process; and
  - (c) form part of the Commission's annual objectives or universal service strategy, based on the conducting of a market gap analysis and cost analysis.

#### **Roll-out time-tables**

21. (1) Designated licensees with no coverage and roll-out time tables at the time of publication of these regulations, shall meet the roll-out targets and time tables specified in a schedule and as may be determined by the Commission from time to time.
- (2) Designated licensees shall construct, operate, replace and maintain public pay telephones in identified areas, and shall meet the roll-out targets and time tables specified in a schedule and as may be determined by the Commission from time to time.
- (3) All designated licensees shall report in writing to the Commission within thirty (30) days of each financial year on the following, in electronic format where possible -

- (a) details of the service it provides to its customers and the technology used where applicable;
- (b) current network and public pay telephone roll-out status;
- (c) maps indicating the current coverage of the licensee on the date of the report;
- (d) roll-out projections for the next year;
- (e) compliance with any quality of service and emergency services requirements as may be prescribed by the Commission from time to time; and
- (f) repair and maintenance of public pay telephones.

***Provision of Internet services to certain institution at Special Tariffs***

22. (1) A designated licensee, shall provide internet services to school, higher education institution, government hospital and public health facility at a minimum discounted rate determined by the Commission which shall be deducted off the total charge per megabyte levied by any licensee for at least two (2) of its service offering which shall include one pre-paid and one post-paid package. The discounted rate which will be charged per megabyte shall be known as a special tariff.

(2) The special tariff shall be restricted to internet access and connectivity charges for access to the internet but shall not include charges for equipment, related services or voice calls.

(3) The special tariff product and service approach may not be of lesser standard or quality than the products provided as part of the standard customer service approach offered by the licensee.

(4) A school, higher education institution, government hospital and public health facility or licensee of their choice to provide internet services based on the relevant existing products offered by such licensee and apply for the special tariff and shall comply with the applicable customer service approach and requirement of the licensee.

***Restrictions on special tariff***

23. A school, higher education institution, government hospital and public health facility or licensee may motivate for the use of the Universal Access Fund based on either a competitive tender process or an obligation as a designated licensee, to subsidise the following services to facilitate internet access –

- (a) the acquisition of equipment and related products and services (not the product to which the special tariff applies);
- (b) the provision of training to users of the service;
- (c) the provision of management services; or
- (d) The provision of additional infrastructure including buildings, electricity and security.

***Duties of licensee***

24. (1) A designated licensee shall inform every school, higher education institution, government hospital or public health facility within its coverage area of the obligation to provide a special tariff on an annual basis and provide proof of its communication to the Commission.

(4) A designated licensee that provides infrastructure to an internet service provider or another licensee that provides internet services to a school, higher education institution, government hospital and public health facility shall provide such infrastructure or relevant portion of the infrastructure at a similar discounted rate determined by the Commission, that will be deducted off the total charge levied to such service provider or other licensee to facilitate that particular service, where possible.

(5) In the event that a licensee was approached by a school, higher education institution, government hospital or public health facility and is not able to provide internet services it shall inform the Commission in writing with clear reasons for its decision, within thirty (30) days of declining to provide the service.

(6) When approached by a school, higher education institution, government hospital or public health facility the licensee shall –

- (a) clearly indicate if it has network coverage within the specific area, where internet service is required;
- (b) clearly indicate the technology that will be used to provide the internet services to the relevant school, higher education institution, government hospital or public health facility; and
- (d) either apply its standard customer service approach in terms of inter alia credit vetting, commercial contracts, payment arrangements and customer service for a particular product as for any other customer, or if a customised product is developed for the special tariff, publish the customer service approach on its website and make it publically available.

### **Submission of an annual report**

25. A designated licensee shall submit an annual report to the Commission listing the number of schools, higher education institutions, government hospitals and public health facilities that receive a special tariff and indicate –
- (a) traffic volumes;
  - (b) total invoice amounts;
  - (c) a summary of complaints; and
  - (d) payment history.

## **PART V**

### **EMERGENCY SERVICES**

#### **A 112 emergency centre services**

26. (1) For the purpose of this part a 112 Emergency Centre is a service by means of which a subscriber has the ability to contact an emergency centre by dialling the numerals 112 in order to request an emergency service.
- (2) The number 112 is designated as the main national public emergency number for Swaziland.
- (3) A person may not call the national emergency number 112, for any purpose other than to request an emergency service.

(4) A relevant licensee is required to carry communications to 112 Emergency Centres and to the emergency organisations at own cost and may not levy any charge on the caller for placing calls to the 112 Emergency Centre and emergency organisations.

(5) Where more than one licensee carries the emergency request, the licensees shall enter into commercial arrangements to ensure that the payments are made to the licensee with respect to the cost of carrying the request.

(6) A relevant licensee may self-provide a 112 Emergency Centre or outsource the service to a service provider that will provide the service on its behalf, although the licensee will be accountable to the Commission.

(7) A relevant licensee shall make automatic number identity, such as caller line identify and automatic location identity available to 112 emergency services, where a licensee uses the services or network of another licensee, the same obligations applies.

### **112 Emergency Centre requirements**

27. (1) Where there is a need for the licensee, public emergency communications centre, and emergency organisation to use the caller line identity to return the emergency call to the subscriber or end-user, the licensee, public emergency communications centre and emergency organisation may do so for the emergency purpose only.
- (2) A far as practically possible, a 112 Emergency Centres shall have voice, SMS, data and global positioning systems capability.
- (3) A 112 Emergency Centre shall transmit a request for an emergency service to an emergency organisation.
- (4) When members of the public make requests for services, such requests shall be considered as emergencies by the following emergency organisations –
- (a) police services;
  - (b) ambulance service;
  - (c) traffic authority;
  - (e) fire brigade; and
  - (f) any other similar organisation providing assistance to the public in case of emergency.
- (5) A Subscriber whose telephone services is temporarily disconnected or suspended from networks of their respective licensees shall, at all times, have access to the 112 emergency number.
- (6) A Relevant licensee who has Sim-locked and Soft-locked phones shall not prevent the subscriber, end-user or member of the public from accessing the 112 Emergency Centres.

### **Keeping of records**

28. (1) A 112 Emergency Centre, emergency organisation and the licensee shall keep records of all the electronic communications received and transmitted including data relating to the provision of caller line identity and automatic location identity.
- (2) The records referred to in sub-regulation (1) shall be kept for a period of three (3) years.

(3) A 112 Emergency Centre shall keep records relating to its emergency service activities to the satisfaction of the Commission and in compliance with any other applicable law as follows-

- (a) documents relating to persons who are in control or in a position to exercise control over a public emergency communications centre;
- (b) financial records and audited financial statements of the 112 Emergency Centre;
- (c) all contracts entered into by or on behalf of the 112 Emergency Centre in connection with the daily operational activities of the centres;
- (d) log of all calls and other electronic communication requests received and made in a form acceptable to the Commission;
- (e) records for keeping of –
  - (i) all telephonic requests; and
  - (ii) correspondence between the 112 Emergency Centres, licensees and emergency organisations;
- (f) log of all telephone calls, messages and any other electronic communications received by the 112 emergency centres, its point of origination and time and response times; and
- (g) Log of all telephone calls, messages and any other electronic communications made to emergency organisations, its point of origination, time and the response times.

(4) Copies of all correspondence with the Ministry responsible for Information Communications and Technology, emergency organisational and licensees shall be made available to the Commission.

***Duties of licensees, Emergency Centre and emergency organisation***

29. (1) A licensee, 112 Emergency Centre and emergency organisation shall ensure the interoperability of technologies for the efficient and effective provision of emergency communications and ensure that the most efficient and effective technologies are used to provide the physical location details of the subscriber or end-user to the 112 Emergency Centre and from the 112 Emergency Centre to the emergency organisation.

(2) A 112 Emergency Centre established in terms of the Act shall –

- (a) be available for twenty four (24) hours;
- (b) adhere to the Commission's regulations relating to technical standards and specifications, including regulation of equipment and type approval;
- (c) answer an emergency call in less than thirty (30) seconds; and
- (d) give priority to an emergency call over any other electronic communication requests from the public 112 Emergency Centre services.

***Publication of generally accepted emergency numbers***

30. The Commission will publish a list of generally accepted emergency numbers that may be dialled by a subscriber in distress, which shall be routed to the 112 Emergency Centres on the same terms as 112 calls.

**Duties of Licensee**

31. A Licensee shall –

- (a) ensure, at all times, that its networks have diversity, redundancy, transmission quality and dedicated circuits in meeting the requirements in these regulations;
- (b) use mechanisms available to them to make the public, subscriber and end-users aware of the 112 emergency number.

**Directory Services**

32. (1) A licensee is required to –

- (a) maintain accurate subscriber records, which contain at a minimum, the name, physical address and telephone number of each subscriber, which information will be stored confidentiality and have access control measures in place;
- (b) provide a comprehensive subscriber directory and enquiry services whether printed, electronic or both that is updated annually –
  - (i) which is available twenty four (24) hours per day, seven (7) days a week, every day of the year; and
  - (ii) provided it has obtained written consent from each subscriber prior to making such information publicly available.

(2) A licensee is entitled to levy charges for providing subscriber directory services.

**Exemption**

33. A relevant licensee shall be exempt from liability for all claims arising out of acts done in meeting its obligations when making automatic number identity, such as caller line identity and automatic location identity available to 112 emergency centres only.

**Offences**

34. A person who contravenes the provisions of this Part commits an offence and shall on conviction be liable to fine not exceeding fifty thousand Emalangeni (E50,000) or imprisonment for a period not exceeding five (5) years.

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**SCHEDULE**
**ROLL-OUT OBLIGATIONS****Roll-out obligations**

1. An individual licensee shall –

- (a) meet the roll-out targets and time tables as may be determined by the Commission on an annual basis. Make available electronic communication services to an average of forty per cent (40%) of the population across the regions with no region having less than twenty per cent (20%) of the population covered within five (5) years of these obligations being imposed; and

(b) make available electronic communications services to an average of sixty per cent (60%) of the population across the regions with no region having less than thirty per cent (30%) of the population covered within ten (10) years of these regulations coming into effect.

(2) An individual licensee regardless of roll-out time tables shall meet the following additional roll-out targets –

(a) make available broadband services to an average of twenty five per cent 25% of the population within five (5) years of these regulations coming into effect; and

(b) make available broadband services to an average of sixty per cent (60%) of the population within ten (10) years of these regulations coming into effect.

(3) Compliance to any Quality of Service requirements as may be prescribed by the Commission includes the following obligations –

(a) Network availability	The Licensee shall ensure that the Network is available end to end twenty four (24) hours per day, seven (7) days per week, at least ninety five per cent (95%) of the time averaged over ninety per cent (90%) of the Network from the Commercial Date. The Licensee's obligations in respect of network availability subsequent to the first twenty four (24) months of the Licence Period shall be determined by the Authority in terms of the Act and such regulations as may be applicable from time to time.
(b) Call completion rate	The Licensee shall maintain a Busy Hour call complete rate of at least ninety five (95%) on the Network averaged over each two (2) consecutive twelve (12) month period, the first of which shall commence on the Commercial Date.  The Licensee's obligations in respect of the call completion rate subsequent to the first twenty four (24) months of the Licence Period shall be determined by the Authority in terms of the Act and applicable regulations.
(c) Grade of Service	The Licensee shall use its best endeavours to achieve a Grade of Service of at least three per cent (3%) across all its Licensed Lines.
(d) Call quality	The Licensee shall provide at least the nominal call quality to classes of Customer units in accordance with the Technical Standards established in agreement with the Commission.
(e) Quality of Service tests	(i) The Licensee shall, at its own cost and on an annual basis, submit to the Commission independently audited reports on the quality of service offered by it in terms of this Licence. (ii) The reports shall be submitted to the Commission no later than six (6) months after the financial year end, provided that the Licensee shall not be required to submit any such report during the first eighteen (18) months of the Licence Period.



	(iii) The Commission may, at reasonable intervals, conduct audits at the Licensee's cost in order to verify the validity of the audit reports submitted by the Licensee to the Commission.
(f) Network monitoring	The Network shall be monitored by a Network Management Centre or Centres of the Licensee, twenty four (24) hours per day, seven (7) days per week, every day of the year.

**DUMISANI NDLANGAMANDLA**

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY