

**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 –

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**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