

LEGAL NOTICE NO. 132 OF 2016

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

FEES

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.

SCHEDULE

LICENCE FEES

INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK

Market Segment	Type of Facility	Application Fee	Initial Licence Fee	Royalty	Duration of licence (years)
International	Gateway facilities including earth station, satellite, 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 (Emalangen)	Royalty	Duration of licence (years)
National	<ul style="list-style-type: none"> Voice not using national numbers; 	15,000 (fifteen thousand)	2% of Net operating Income	5
	<ul style="list-style-type: none"> Data 			
	<ul style="list-style-type: none"> Applications 			

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

TYPE OF LICENCE	Initial Registration Fee (Emalangen)	Annual Licence Fee	Duration of Licence (years)
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

TYPE OF LICENCE	Fee (Emalangen)
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)

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MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY