



Policy Guidelines in Licensing of Telecommunications in SADC

First Edition: February 2002

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1 INTRODUCTION

1.1 Background

The Southern African Development Community (SADC) Protocol on Transport, Communications and Meteorology (“The Protocol”). Protocol provides for the harmonisation of the communications policies in SADC Member States and ultimately legislation, rules and regulations to ensure the development and coherent reform process of the telecommunications sector and to encourage investment in the sector.

The objective for the development of the telecommunications sector as stated in the Protocol is to develop National Telecommunications Networks for the provision of reliable and affordable telecommunications services in order to:

- a) Ensure adequate high quality and efficient services responsive to the diverse needs of commerce and industry in support of regional social and economic growth;
- b) Achieve regional Universal Service (US) with regard to telecommunications services and regional universal access to advanced information services; and
- c) Enhance service interconnectivity within the SADC sub-region and internationally.

In order to achieve these objectives, the SADC Member States have agreed to develop a harmonised telecommunications policy. The Protocol, the SADC Telecommunications Policies and Model Telecommunications Bill provide the framework for the development of a regional policy on licensing and other matters.

In particular, the Protocol states:

“In order to attain telecommunications objectives, Member States agree to develop a harmonised policy aimed at ... promoting and sustaining fair competition between telecommunications service providers.”

The model Telecommunications Policy for SADC states that one of the objectives of the ‘new policy framework’ is “building a competitive regional telecommunications sector” and “developing a regulatory and investor-friendly legislation for attracting local and foreign investors.” The Policy Guidelines on Licensing for Telecommunications in SADC will make a major contribution to achieve this objective.

The Telecommunications Regulators Association of Southern Africa (TRASA) recognised the need to develop Policy Guidelines on Licensing for Telecommunications in SADC and proposes these guidelines to assist

national regulatory authorities and provide all stakeholders with a clear framework for licensing processes in SADC markets, which is increasingly becoming competitive.

Abbreviations and Acronyms

The following abbreviations and acronyms have been used throughout this document:

GMPCS	-	Global Mobile Personal Communications by Satellite
ITA	-	Invitation to Apply
ITU	-	International Telecommunication Union
NRA	-	National Regulatory Authority
QoS	-	Quality of Service
RLIC	-	Regional Licensing Information Centre
SADC	-	Southern African Development Community
SMMEs	-	Small, Medium and Micro Enterprises
TRASA	-	Telecommunications Regulatory Association of Southern Africa
UA	-	Universal Access
US	-	Universal Service

Definition of Terms

Terms for entities used in this document are defined as follows:

Customer- a person who receives and pays for a telecommunication service over a period of time under an agreement with or pursuant to terms and conditions established by the operator with approval of the National Regulatory a notional point identified as a point of interconnection Authority;

Data communications - digital transmission of information usually between computers.

Dominant operator - a regulatory classification of a telecommunications operator that has the largest market share in a given market segment or that is otherwise able to exercise market power in the same or other market segments.

Harmonization - the dynamic process of establishing mutually

complementary policies, legislation, rules, standards, practices or systems between member states on the basis of agreed minimum requirements

Incumbent operator - the existing operator in a market, which is being opened to competition.

Interconnection -the physical and logical connection of two operators networks thereby allowing customers of one system to connect with customers of the other, or to access services provided from the other system.

Interoperability -the technical features of a group of interconnected networks which ensure end-to-end provision of a given service in a consistent and predictable way.

Non-discrimination - a condition by which an operator, engaged in the provision of telecommunications services, shall not apply less favourable technical and commercial conditions on any competitor than what it would apply to itself, its subsidiaries or its affiliates in delivery of services.

National Regulatory Authority - an agency empowered to regulate and monitor the activities of telecommunications operators or any other info-communications providers in the public interest.

Operator - a person that operates telecommunications facilities.

Paging – a service that provides selective calling from any telephone through a base station to one or a predetermined group or radio receivers, which emit an audible, visual, or tactile alert and sometimes then record a numeric, alphanumeric, or even a short verbal message.

Period of Exclusivity - a period of monopoly whereby operator(s) is given conditions to provide certain services.

Resale - the offering to users or customers for profit of telecommunication services obtained from another telecommunication service provider;

Subscriber - any person who subscribes to the service or any part thereof, provided by the operator

Tariffs - any charges raised by an Operator for telecommunication service(s).

Telecommunications - any domestic or international transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user's choosing.

Telecommunications Infrastructure or Network - an integrated system of facilities, which comprise the facilities, used to provide one or more information communications services.

Transparency - requires that network operators will make publicly available either the interconnection agreements or reference interconnection offers.

Universal Access – a policy of government to make telecommunications services available, at affordable prices, to as many people as possible through common points or end-user facilities such as libraries, schools, health-centres, community centres, public call offices and pay-phones. This policy also applies to advanced information services, for instance the provision of Internet services and applications such as tele-education, tele-medicine and electronic commerce.

Value-added services - means (i) the manipulation of the format, content, code, protocol, or other aspect of information transmitted via telecommunications by a customer (ii) the provision of information to a customer, including the restructuring of information transmitted by a customer or (iii) the offering of stored information for interaction by a customer.

2 OBJECTIVES OF LICENSING

There are several reasons why the Member State would wish to licence telecommunications operators, inter alia:

- a) To promote universal service and access and clearly define the obligations any operator would have in the licence;
- b) To promote greater competition in the telecommunications market;
- c) To encourage private sector investment in existing State owned telecommunications operators and new entrants;
- d) To curtail the abuse of market power by all operators;
- e) To efficiently allocate scarce resources such as radio frequency spectrum, numbering and rights of way;
- f) To set out the conditions necessary to protect the consumer;
- g) To create a level playing field for all operators including the new entrant through clear and fair interconnection and facilities sharing guidelines; and
- h) To create certainty and confidence in the regulatory environment.

3 GENERAL PRINCIPLES

The licence regimes in the Member States of SADC should be based on the following principles:

- a) **Separation** – There should be a clear separation between a licence to provide a telecommunications service and a spectrum licence;
- b) **Clarity** – The telecommunications service licence and the corresponding spectrum licence should be clearly defined and detailed;
- c) **Market structure** – Determine the size of the telecommunications market and decide on how many operators could be licensed to meet the demand;
- d) **Transparency** – The process of awarding of licences to operators must be fair, non-discriminatory and transparent;
- e) **Equal treatment** – Market access to operators from one country must be done on the basis that it is not less favourable to operators of any other country;
- f) **Barrier to entry** - Licensing regimes should not constitute an unnecessary barrier to enter the market;
- g) **Public access** - Licences are public documents and should be published in the official government gazette. All Member States will deposit a copy of any licence issued with the TRASA office;
- h) **Licence content** - Licences should not repeat regulations or rules, which are already promulgated but should set out the rights and obligations of operators. It is preferable that the regulatory regime is spelt out in a comprehensive set of regulations;
- i) **Flexibility** – Licensing regimes should be flexible to accommodate the rapid development of technology in the communications sector. This principle may at times be in conflict with the objective to create certainty in the telecommunications market. It is however, necessary to develop a balance between the two;
- j) **Technology neutrality** - Telecommunications service licence should be technology neutral; and
- k) **Access by regulators** – All documents conferring rights and obligations on the licensed operators should be made available to the regulator.

3.0. POLICY

Telecommunications licences may be categorised as follows:

3.1 Individual Licences

3.1.1 Issuing of Individual Licences

Individual Licences may only be issued by Member States:

- a) To provide the operator access to scarce resources such as:
 - i. Frequency spectrum;
 - ii. Numbering plan;
 - iii. Rights of way on both public and private property consistent with sound environmental and conservation principles; and
 - iv. Facilities of the incumbent operators.
- b) To impose conditions and obligations for the provision of universal service and access on the operator; and
- c) Every incumbent operator, who previously provided telecommunications service in a monopolistic environment, will be issued with a long-term individual licence. The licence will impose obligations on the incumbent operator who may have significant market power to limit that market power through an interconnection regime consistent with the guidelines on interconnection adopted by SADC in 2000.

3.1.2 Conditions Attached to Individual Licences

Conditions attached to individual licences may amongst others provide for the following:

- a) Universal service and access obligations consistent with the guidelines as may be adopted by SADC;
- b) Terms and conditions to ensure adequate consumer protection and service quality. Such protection may appropriately include tariff regulations consistent with the Tariff Guidelines adopted by SADC in 2000;
- c) Any special rights an operator may be accorded by the regulator;

- d) Terms and conditions relating to the provision of specific data on regular basis to ensure that regulators are able to adequately monitor the performance of operators against its obligations in the licence;
- e) Conditions relating to the development of human resource capacity;
- f) Licences may not be amended without opportunity for comments made by the licensee and other interested parties; and
- g) Licensed operators should keep records of their customers including pre-paid customers.

3.1.3 Limitation Of Individual Licences

Where a regulator grants an operator any exclusive rights, these rights must be accompanied by a clear set of obligations and timeframe, which shall not extend beyond a period of three years.

Member States may decide to limit the number of individual licences issued beyond the timeframe agreed above only in the following circumstances:

Where the efficient use of the frequency spectrum is compromised;

- a) Where there are limitations on the numbering resources; and
- b) Where viability of licensed services will be adversely affected.

Member States will conduct periodic feasibility studies to assess the viability to issue any additional licences. The results of these studies will be made public and stakeholders will have an opportunity to express their views on the studies and any limitation a member state may wish to impose.

3.1.4 Selection Criteria

Selection criteria when issuing individual licence may include:

- a) Proof of financial capability;
- b) Detailed and sound business plan;
- c) Sound technical plan with proven technical expertise;
- d) Ratio between national and foreign ownership, taking into account the question of empowerment of disadvantaged communities – such as women and people with disabilities; and

- e) Detailed network roll out plan and implementation schedule.

3.2 Class Licences

3.2.1 Issuing of Class Licences

Class Licences (also sometimes referred to as General Authorisations) set out the rights and obligations under which an operator of a telecommunications network can provide a service, without having to specifically seek permission of the regulatory authority to do so. The operator who provides such services, however, must comply with all the requirements set out in the class licence.

3.2.2 Conditions Attached to Class Licence

Where telecommunications services are provided under a class licence the following conditions may be attached:

- a) Compliance with standards and regulations on security of the network operations, maintenance of network integrity, interoperability of networks and services and data protection;
- b) Conditions attached to rights of way to ensure the protection of the environment, avoidance of harmful interference between different systems;
- c) Maintenance of privacy and confidentiality of personal data;
- d) The provision of data and information to monitor compliance with the requirements of the class licence and to build a statistical database;
- e) Operators should be required to present regular reports to the regulator on their network performance, particularly mobile licensees. This report should detail the statistical information on network usage to indicate efficient use of scarce resources;
- f) The effective use of the numbering plan;
- g) Number portability, but implementation could be phased in over a period of time;
- h) The prevention of anti-competitive behaviour and adherence to fair pricing policies;
- i) Adherence to relevant consumer protection rules and regulations;

- j) Universal service and access obligations consistent with the universal service and access guidelines as may be adopted by SADC;
- k) Duration of the licence and applicable fees;
- l) Provision of directory services;
- m) Provision of free emergency services;
- n) Interconnection, in terms of the guidelines on interconnection, facilities sharing and interoperability; and
- o) All applicable rules and regulations of the regulatory authority.

3.3 Notification.

3.3.1 Issuing of Notification Licences

In fully liberalised market segments the national regulatory authority may impose a system of registration with a requirement to provide the National Regulatory Authority with limited information for statistical purposes only. Such segments of the market may include:

- a) Customer Premises Equipment;
- b) Radio Paging;
- c) Internet Service Providers;
- d) Data Communications; and
- e) Value-Added Services.

A registration fee may be charged to cover administrative costs.

Operators will adhere to all applicable rules and regulations.

4 Licencing Process and Procedures

4.1 Incumbents

Member States will licence all incumbent operators - an important step in the process of liberalising the telecommunications market. This step may be considered as a precondition in the process of privatising an incumbent, to the point where many investors are adopting a position of “no licence, no deal.”

The licence to an incumbent operator is generally awarded after a process of negotiation to determine existing and new rights and obligations. It is crucial that licences issued in this manner are open to public scrutiny. The licence should be published in the official government gazette and should allow the public or interested parties an opportunity to comment on the licence. The national regulatory authority will give consideration to comments so received.

4.2 New Entrants

New entrants may be licenced through a competitive process that is clearly defined before the process is initiated.

5 Spectrum Licencing

5.1 Introduction

Before licensing of spectrum can be considered, each SADC Member country should make sure that there is a proper spectrum plan for the country in terms of the regional frequency allocation plan. Once there is a need to licence a new operators, a spectrum band for the new service should be allocated and published with the invitation to apply. All services licensed will largely require spectrum allocation for links and bandwidth provisioning.

Technical standards requirements defined in the SADC Protocol on Transport Communications and Meteorology state that there should be interconnectivity of networks. This is quite critical with respect to mobile network services. The SADC countries need to have roaming arrangements that encourage the communications within the region. A common standard on telecommunication systems should therefore be adopted.

5.2 Types Of Services

There are various types of services that require spectrum use for communications. These include:

- a) Fixed microwave links;
- b) Satellite links;
- c) Global Mobile Personal Communications by Satellite (GMPCS);
- d) Mobile telecommunications services;
- e) Emergency services;
- f) Broadcasting services; and
- g) Paging services.

The various types of services may be licenced differently. The method of licencing a paging service would be different from that of licencing fixed microwave links. The general regulations in terms of assessment criteria should be common to make sure that it meets the government's objectives of economic development.

5.3 Assignment of Spectrum

The assignment of spectrum should be in line with spectrum band plan for SADC, especially for the mobile operators.

5.4 Licensing Methods

The following methods may be followed when licensing spectrum:

- a) Radio Communications Act should be promulgated by Parliament of each country;
- b) Regulations on spectrum licences should be drafted in consultation with the relevant stakeholders and be published before an invitation to apply is issued;
- c) The regulations should be deposited with TRASA for dissemination purposes;
- d) Licence conditions should be made public; and
- e) The invitation to apply (ITA) should specify the laws and regulations applicable for a specified service.

While spectrum licences and telecommunications service licences may be separate documents for administration purposes, it is recommended that both licences be issued at the same time. It is advisable that drafts of both licences be attached to the invitation to apply.

5.5 Spectrum Licence Conditions

5.5.1 Licence Term

The term of the licence should ideally be fifteen years from the date of licence issuance. At the end of this term and any subsequent term, the licensee will have a legitimate expectation for the renewal of the licence for another fifteen years unless there has been a gross violation and breach of licence condition. The spectrum licence may not be renewed if the band used has been allocated for other services in terms of the policy. The licensee would be allocated a band to migrate to at their cost subject to prior warning of at least three years.

A public consultation process should be followed and should commence no later than three years prior to the end of the licence term.

5.5.2 Transferability Of Licence

No licence or any rights acquired there under should be transferred with respect to both bandwidth and geographical coverage without the Approval Of The Regulator.

5.5.3 Eligibility Criteria For Licensee

The licence should stipulate which services will be carried on a licenced frequency. For the purpose of monitoring, the licensee should obtain

authorisation of the regulator if the frequency is to be moved from one licenced area to the next. The licensee will employ the radio frequencies that are the subject of the licence as a radio communication carrier in order to operate one or more radio based transmission facilities that may be used by the licensee or another person to provide radio communications for compensation. Any entity is eligible to apply for spectrum as long as it meets the licensing requirements in a specific country.

5.5.4 Radio Base-Station Installations

There shall be no need for site-specific radio licences. All radio stations should comply with:

- a) International Telecommunications Union (ITU) radio regulations on spurious transmissions;
- b) Environmental impact minimum requirements;
- c) Health requirements;
- d) All technical requirements specified by the regulator; and
- e) All land use requirements.

5.5.5 Technical Information Requirements

The licence conditions should stipulate the information that the licensee should keep. The licensee should provide all technical information required on request by the regulator. This information is for use by the regulator for spectrum monitoring purposes.

5.5.6 Implementation Of Spectrum Usage

The licensee must demonstrate the spectrum usage at appropriate time intervals over the licence period. The licensee should show the coverage achieved for a specific frequency e.g. 60% of the population within the licenced area. The responsibility to manage the frequency spectrum lies with the regulator, who may review the allocation and assignment of the spectrum from time to time.

5.5.7 Additional Spectrum

In the event that the licensee requires additional spectrum at a later stage, this will constitute a new application.

6 Numbering And Number Portability

Numbering and number portability will be implemented in line with guidelines on numbering and standards as may be adopted by SADC.

7 Mechanisms Of The Licensing Process

7.1 Competitive Bidding

The qualification criteria by which the application will be judged must be made public in advance. Applicants must demonstrate how they will provide the service under the licence better than other applicants. In this process the applications are measured against each other.

7.2 Auctions

Auctions involve a process of pre-qualification and only applicants who qualify may bid in the auction. The pre-qualification selection criteria are similar to the criteria set out below. In essence the auction allows one to put an economic value on the licence either to operate a telecommunications service or a parcel of spectrum.

7.3 Selection Criteria

Minimum qualification for the selection criteria may include the following:

- a) Ownership, including provision for indigenous ownership;
- b) Financial resources available;
- c) Viability of the business plan;
- d) Technical capability;
- e) Human resource plan;
- f) Proposed tariff structure;
- g) Geographic coverage and numbers of users covered;
- h) Network roll out targets;
- i) Quality of Service (QoS) targets; and
- j) Efficient use of the frequency spectrum.

7.4 Licence Fees

Licence fees generally are a resource to cover among others operational and administrative costs incurred by the regulator. The fees should cover all the regulatory costs such as the costs incurred in the preparation and issuing of the licence, as well as the costs of monitoring of compliance with the licence conditions. However, Licence fees should be determined

in such a way that they do not constitute a barrier to entry in the telecommunications market.

The applicant will pay an application fee as maybe determined by the regulator. This will form part of the Invitation to Apply for a licence.

Licence fees will comprise of:

- a) Initial licence fee
- b) Annual licence fee
- c) Spectrum fee

8 Conclusion

This document has set out the guidelines for the licensing of telecommunications services in the SADC region. The guidelines suggested will streamline the licensing procedure and processes. The licence terms and conditions suggested are targeted at meeting universal service objectives and development of the telecommunications industry. The policy guidelines are aimed at harmonising the licensing procedures in the region and therefore member states should scrutinise their respective legislation in the light of the policy guidelines. TRASA should monitor the progress in implementation of these guidelines.

End//.....

Appendix “A”

MODEL TELECOMMUNICATIONS LICENCE CHECKLIST

Part A General introduction

The parties

Naming the parties is important to establish that the parties are competent at law to enter into the agreement and is a legal entity. It is advisable to include the registration of the company, shareholders agreements and any other relevant founding document.

Citation

Citation of the legislation and specific clauses in terms of the licence issued. It is advisable to also state the circumstances under which the licence is issued. This is important for the courts and government in the future to ensure consistent interpretation.

Definitions

The purpose of definitions is to make clear what is meant by certain terms and licence conditions. It will be useful to repeat definitions from the legislation and regulations as these may change in the future.

PART B : THE SCOPE OF THE LICENCE

Type Of Licence

Describe the type of the licence viz. licence to operate a telecommunications service or provision of facilities or allocation of spectrum. It is important that services that may be offered under the licence are clearly specified. If a spectrum licence is awarded separately, clear reference should be made to that licence. It may be helpful to describe what the licensee is not entitled to.

Duration Of The Licence

The effective date, duration and the terms of renewal of the licence should be stipulated.

Exclusivity

Any exclusive rights where applicable should be defined in an unambiguous manner. It should clearly define what services will be covered by the clause on exclusivity and the timeframe for the same.

PART C : LICENCE CONDITIONS

Ownership and control

Stipulate clearly the conditions or restrictions that apply to ownership. The licence should also stipulate any conditions on empowerment objectives in relation to ownership.

Universal Service and Universal Access

The universal service and access obligations should be clearly spelt out in the licence.

Type Approval

Any rules on type approval for equipment should be set out in the licence.

Information

Rules for timely submission of information to regulator and the frequency of such reports should be set out in the licence.

Rights Of Way and Environmental Issues

Ensure compliance with applicable legislation, especially the environmental legislations and laws to ensure public safety. Access to private property and any expropriation rights should also be prescribed.

Co-operation with Security Authorities

Rules on interception should be kept in mind and how that will impact on the licensee.

Assignment Of the Frequency Spectrum

The assignment of the frequency spectrum should be clearly set out in the spectrum licence and should be properly cross-referenced in the telecommunications services licence.

NUMBERING AND NUMBER PORTABILITY

The allocation of numbers should be stipulated with reference to the national numbering plan. The obligations for the number portability should also be included.

Directory and Emergency Services

Both Directory and emergency services to be provided by the licensee should be outlined in the licence.

Coverage and Roll Out Obligations

The licence must set out the coverage and network roll out obligations for the licensee with maps and detailed information on the network roll out targets.

Quality of service

Conditions for quality of service should be set out in the licence.

Security Bond

The licence should stipulate security or performance bond requirements where appropriate.

PART D : CUSTOMER PROTECTION

Relevant consumer protection rights should be set out in the licence.

Customer Contract

The licensee should lodge a standard copy of the customer contract with the regulator.

Customer Complaints

The licence should refer to the rules on how to deal with customer complaints.

Customer Privacy

The licence should refer to the rules of how to protect private information of the customers.

Tariff regulations

The licence should refer to the tariff regulations.

PART E : LICENCE FEES

Initial Licence Fee

A once-off licence fee on acquiring the licence should be provided for.

Annual Licence Fees

The licensee may be required to pay an annual licence fees to cover administrative costs of the regulator.

Spectrum Fees

These are fees paid for the use of the spectrum to cover the cost of spectrum management.

PART F: INTERCONNECTION AND RELATIONSHIPS WITH OTHER LICENSEES

Interconnection

Provide for the rights and obligations of the licensee to interconnect with other operators.

Sharing of facilities

The licence should provide for sharing of facilities.

Resale of services

The licence should provide for resale of services by the licensee or by service providers contracted by the licensee.

PART G: LOCAL LOOP UNBUNDLING

The licence may stipulate the conditions under which the local loop will be unbundled.

PART H: TERMINATION, AMENDMENT AND DOMICILE

Termination and Amendment

The procedure and circumstances under which the licence may be terminated or amended should be clearly stipulated.

Amendments

The licence should stipulate how and under what conditions the licence maybe amended.

Renewal

The licence should stipulate the terms, conditions and the procedure for renewal of the licence. The circumstances where licences are not renewed should be clearly identified.

Domicillum et citandi

This provides for the addresses and means of serving documents on either of the parties.

I. Penalties

The licence should stipulate how to deal with breaches of any terms and conditions of the licence.

J. General

Documents conferring rights and imposing obligations on the licensed operators shall be made available to the Regulator.

Appendix “B”

Regional Licensing information Centre

It is proposed that TRASA establish a single Regional Licensing Information Centre (RLIC) where all investors interested in SADC licences would get the relevant licensing information. The RLIC will provide assistance to investors to apply for licences in any of the member states. Where possible the regional licensing centre could also assist applicants to apply for licences in multiple jurisdictions. The RLIC will publish information on the countries where invitations for licence applications are issued.