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GENERAL NOTICE NO. 114



## MALAWI COMMUNICATIONS REGULATORY AUTHORITY

### CALL FOR PUBLIC REPRESENTATIONS ON THE PROPOSED DRAFT REGULATIONS TO GOVERN THE PROVISION OF THE TELECOMMUNICATION AND BROADCASTING SERVICES IN MALAWI

Notice is hereby given under Section 32 (2) of the Communications Act, Cap. 68:01 of the Laws of Malawi ('the Act') that the Malawi Communications Regulatory Authority (MACRA) intends to advise the Minister of Information to make the following Regulations to govern the provision of the Telecommunication and Broadcasting licensing Services in the Republic of Malawi namely—

- (a) Telecommunications and Broadcasting Licensing.

Complete drafts of the said Regulations are hereby published together with this Notice. The general public and all interested persons are hereby invited to make written representations on the Draft Regulations which should reach the address below within 21 days from the date of publication of this Notice.

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## COMMUNICATIONS ACT

CAP: 68:01

COMMUNICATIONS (TELECOMMUNICATIONS AND BROADCASTING LICENSING) REGULATIONS,  
2015

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## COMMUNICATIONS (TELECOMMUNICATIONS AND BROADCASTING LICENSING) REGULATIONS, 2015

IN EXERCISE of the powers conferred by sections 32 and 57 of the Communications Act, Cap 68:01 of the Laws of Malawi the Minister of Information on advice from the Malawi Communications Regulatory Authority (MACRA) does hereby issue the following Regulations—

**Citation**

These Regulations may be cited as the Communications (Telecommunications And Broadcasting Licensing) Regulations, 2015.

**2. Application of Regulations.**

- (1) These Regulations shall apply to the licensing of provision of telecommunication and broadcasting services—
- (a) network facilities services licences;
  - (b) network services licences;
  - (c) application services licences;
  - (d) Broadcasting (Content) service licences.

**Interpretation**

In these Regulations unless the context otherwise requires:

“Act” means the Communications Act Cap 68:01 of the laws of Malawi;

“Authority” means the Malawi Communications Regulatory Authority established under the Act.

“Access” means the making available, by an electronic communications licensee of its services or networks, or parts thereof to another licensee or any customer for the purpose of providing telecommunication services

“Application services” means the provision of electronic communication services to end users using licensed network services but does not include content services;

“Application services licence” means a licence entitling the holder to provide one or more application services;

“broadcasting (content) services” means broadcasting services consisting of electronic media including sound, data, text or images for general reception by the public;

“Broadcasting (Content) services licence” means a licence entitling the holder to provide broadcasting services;

“consumer” means any person who uses electronic communication services for purposes which are outside his or her trade, business or profession and includes a subscriber;

“electronic communications” means telecommunications and broadcasting services consisting of transferring of signs, signals, writing, images, sounds, data or intelligence of any nature, transmitted in whole or in part by radio, electro-magnetic, photo electronic or photo optical system

“electronic communication equipment” means equipment, other than end user equipment, used by an operator to provide electronic communication services, including software integral to such equipment;

“End user equipment” means—

- (a) any equipment, apparatus, tower, mast or other structure or thing that is installed for use, or intended for use or used on a customer’s side of a telecommunication network; or
- (b) any system whether software-based or not, that is installed and commissioned for use or intended for use or is used on a customer’s side of a electronic communication network;

“*force majeure*” means an event which is beyond the reasonable control of a licensee and which makes the licensee’s performance of its obligations under the licence impossible.

“licence” means electronic communication licence issued under the Act and pursuant to these Regulations;

“licensee” means a person issued an electronic communication licence under the Act;

“Minister” means the Minister responsible for Communications;

“Facility Services” means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services, but does not include end user terminal equipment;

“Facility Services licence” means a licence entitling the holder to provide one or more facility services;

“Facility Services licensee” means a holder of a facility services licence;

“network service” means a service consisting of transmission of any form of electronic signals (sound, data, text or images,) used in an electronic communication network but does not include services provided solely to the end user;

“network service licence” means a licence entitling the holder to provide one or more network services;

“subscriber” means any person who is party to a contract with a provider of electronic communication services for the supply of those services;

“electronic communication network” means a network for carrying electronic communications services;

#### 4. Objectives of Regulations

(1) The objectives of these Regulations are—

- (a) to promote fair competition, transparency in licensing procedures, technical standards and compliance with essential requirements by setting out rights and obligations of licensees and providers of electronic communication networks, infrastructure facilities, broadcasting (content) services or application services;
- (b) to create a framework for harmonised electronic communication networks;
- (c) to promote infrastructure roll out and development, through the expansion of networks and services;
- (d) to facilitate and regulate the development of viable telecommunication networks for the provision of universal communication services and the fulfilment of the public interest social and economic objectives of the Act and consumer satisfaction;
- (e) to develop and transform the communication sector into a competitive market that meets consumer demands and corresponds to the changing market and technology;
- (f) to adopt a consumer-oriented approach that focuses on delivery of quality services at reasonable and affordable costs; and
- (g) to simplify the communication licensing process to ease market entry and operations;

### PART II—LICENSING

#### CLASSIFICATION AND DURATION OF LICENCE

5.— (1) The Authority shall issue a licences in the categories and duration as provided in the First Schedule to these Regulations.

(2) A licensee shall be required to pay to the Authority fees and levies of such amount as provided for in the First Schedule to these Regulations.

#### APPLICATION FOR A LICENCE

6.— (1) A person shall not provide any electronic communication services without a licence issued by the Authority.

(2) Any person who wishes to apply for a licence shall do so in writing and in the manner prescribed by the Authority.

(3) The Authority shall from time to time issue licensing guidelines prescribing—

- (a) Eligibility of applicants
- (b) licence categories;
- (c) manner of applications;
- (d) application forms for each licence type;
- (e) information to accompany an application for each licence type
- (f) licensing procedures; or

- (g) Any other matter related to licensing.
- (3) Any application made pursuant to this regulation shall be accompanied by such documents or information as may be relevant to the type of a licence applied.
- (4) The Authority may receive applications for telecommunication licences at any time without waiting for a public invitation or tendering process.
- (5) Notwithstanding sub regulation (4) above, the Authority shall issue broadcasting (content) licences subject to s. 48 of the Act which requires the Authority to issue content licences after publishing the details of the licences and a call for licence applications.

#### FAILURE TO SUBMIT RELEVANT INFORMATION

7.— (1) Where an applicant fails to—

- (a) submit documents or information as required in regulation 4; or  
(b) appear on a date scheduled by the Authority to make for representation regarding its application;

the Authority shall not consider the application and inform the applicant in writing within fourteen days from the submission date as requested by the Authority or the date scheduled for representation of the application .

- (2) Failure to consider an application pursuant to sub-regulation (1) above, shall not prevent the applicant from resubmitting another application with the required information except where a tender process is involved.
- (3) Resubmission of application under sub – regulation (2) above shall be treated as a new application.
- (4) An application under this regulation shall be accompanied by applicable non-refundable application fee as provided in the First Schedule to these Regulations.
- (5) The Authority may at any time after the filing of an application for a licence or an application for modification or renewal of a licence or during the term of any licence, require from an applicant or licensee to provide further written statements of fact to enable it determine whether the application for a licence or application for modification or renewal should be granted, denied, or revoked.
- (6) An applicant for a licence shall be bound by all terms, commitments, offers, presentations, proposals, plans and obligations stated in the application and shall ensure the accuracy of the information and representations submitted in the application.

#### Granting of Licence

- 8.— (1) The Authority shall evaluate any application submitted pursuant to regulation (5) within three (3) months from the date of application and shall notify successful applicants and other unsuccessful applicants the results of the evaluation and where necessary publish the results:
- (2) The Authority shall invite successful applicant for negotiations before finalizing the procedures for the granting of the licence.
- (3) Where spectrum requirements are involved the licensee shall make a separate application for a radio frequency licence.
- (4) The Authority shall issue a licence under these Regulations subject to—
- (a) Payment of applicable initial licence fees;
- (b) Publication in the Gazette.

#### Performance Guarantee

- 9.— (1) The Authority shall require an applicant for facilities services, network services, subscription contents services or support services for subscription contents services, to furnish a performance bank guarantee from a bank registered in Malawi and when the Authority so requires, the licensee shall comply with the performance bank guarantee requirements.

- (2) In any case where a performance bank guarantee is required, the licensee shall furnish the bank guarantee in the form prescribed in the Second Schedule to these Regulations or in other form as agreed by the Authority.
- (3) A licensee shall ensure that the guarantee is issued within thirty (30) days from the Effective Date or anniversary of the Effective Date, whichever applies.
- (4) Where applicable, the Licensee shall renew the guarantee annually within twenty eight (28) days of the date of its expiry.
- (5) Failure to furnish the performance guarantee under this regulation by a licensee shall be deemed as a substantial breach of these Regulations and the Authority may revoke the Licence in accordance with regulation 39 of these Regulations.
- (6) In the event that the Authority imposes a penalty upon a Licensee for any breach of the Act, these Regulations, and its licence, the Authority shall, without prejudice to any of its rights or remedies have the right to draw upon the performance guarantee to partly or fully satisfy the penalty so imposed upon giving the licensee seven (7) days notice with reasons for doing so.
- (7) Notwithstanding this regulation, the Authority reserves the right to take any other action against a.

#### Modification of licence

- 10.—(1) The Authority may modify or amend any term or condition of electronic communication licence if it is in the public interest to do so or if it is necessary to take into account developments in the industry or for any other reason deemed necessary by the Authority.
- (2) A licensee may apply in writing for modification or amendment of any term or condition of its licence.
  - (3) Where an application is made pursuant to sub regulation (2), the licensee shall submit the following:
    - (a) A formal letter justifying the reasons for the variation together with an application fee per amendment as stipulated in the First Schedule; and
    - (b) Such additional information or documents as may be requested by the Authority to be submitted within a stipulated timeline and failure to submit within the stipulated timeline given shall result in the application being withdrawn without affecting the right of the applicant to make a fresh application.
  - (4) In considering whether or not to grant the application made pursuant to sub regulation (2), the Authority shall take into account whether such request is contrary to the provisions of the Act, any Regulations made thereunder.
  - (5) The Authority shall amend any provision, in response to a request made sub regulation (2), subject to payment of applicable payment of amendment fees as prescribed by the Authority from time to time.
  - (6) Before amending any provision of any licence issued under these Regulations, the Authority shall—
    - (a) give the Licensee not less than seven (7) days' notice and publish a notice in the *Gazette* stating the amendment that it proposes to make and the reasons for it, and shall give any Licensee or any person with an interest an opportunity to make representations concerning the proposed amendment; and
    - (b) give due consideration to any representations made by the Licensee or any person.
  - (7) The Licensee may submit a response to the proposed amendment within thirty (30) days of the notice.
  - (8) If the Licensee does not respond within the thirty (30) day period under sub-regulation 7 of this regulation, the Authority shall proceed to effect the amendment of the licence.
  - (9) If the Authority receives a response from the Licensee, it shall consider the response and notify the Licensee within thirty (30) days of the reply of its decision to either—
    - (a) rescind the amendment;
    - (b) modify the amendment; or
    - (c) proceed with the proposed amendment
  - (10) The Authority may before giving any notice of modification or amendment of licence, investigate—
    - (a) whether any matter relating to the provision of electronic communication services, operates against the public interest or is likely to do so; or
    - (b) whether the modification may remedy or prevent any adverse effects to the public relating to the provision of electronic communication services.

- (11) The Authority shall, as soon as practicable after commencing an investigation under sub-regulation 10 of this regulation, give notice by—
- (a) serving a copy of the notice initiating the investigation on a licensee; and
  - (b) publishing particulars of the investigation in a manner that may be appropriate for the purpose of bringing it to the attention of a person likely to be affected by it.
- (12) The Authority shall prepare a report on the investigation under sub-regulation 10 of this Regulation which shall—
- (a) include conclusions on the matter investigated and reasons behind the conclusions;
  - (b) specify the negative effects against the public, where it concludes that a matter investigated is against or is likely to be against public interest, and
  - (c) specify modifications to be made to the licence where it concludes that any negative effects specified may be addressed by such amendments .
- (13) The Authority may amend a licence issued under these Regulations if it concludes basing on the report—
- (a) the matter investigated is or is likely to be against the public interest;
  - (b) the negative effects against the public may be addressed remedied or prevented by amendment the licence;
- (14) The Authority shall adhere to the procedure set out in this regulation before making an amendment to a licence following an investigation.

### Renewal of Licence

- 11.—(1) The Authority shall, before renewing a licence issued under these Regulations, take into consideration—
- (a) the satisfactory performance by the licensee of its obligations under its ending licence;
  - (b) the objectives of the Act and any applicable Regulations;
  - (c) the public interest; and
  - (d) any other factor deemed necessary by the Authority.
- (2) Unless otherwise provided in the licence, a licensee shall apply for renewal of its licence at least twelve months before the expiry date of its licence.
- (3) The Authority shall renew a license issued under these Regulations subject to payment of applicable renewal fees as stipulated by the Authority from time to time.
- (4) The Authority may renew a licence with minimal change to the licence conditions or replace it with a new licence or another licence with updated licence conditions that meet the need of the prevailing regulatory environment.

## PART III—GENERAL CONDITIONS

### Provision of services

- 12.—(1) Unless otherwise provided in the licence, a licensee shall be required to roll out its services within a maximum period of twelve months from the date of issuance of the licence.
- (2) Where a licensee fails to provide services in accordance with sub-regulation 1 due to force majeure reasons as determined by the Authority, it may apply to the Authority for a roll out extension.
- (3) An application for roll – out extension made pursuant to sub-regulation (2) shall—
- (a) be in writing;
  - (b) include the force majeure reasons for failure to roll out its services;
  - (c) proposed period for extension;
  - (e) proposed revised roll out plan;
  - (f) Any other information as requested by the Authority.
- (4) Where the Authority is satisfied with the force majeure reasons submitted by the licensee, the Authority may extend the roll- out period subject to the following—

- (a) that the roll out extension should not go beyond twelve months;
  - (b) that such extension shall not be subject to renewal and can only be granted once;
  - (c) payment of extension roll out fees as prescribed by the Authority from time to time;
  - (d) provision of monthly progress reports;
  - (e) Any other additional condition as determined by the Authority.
- (5) Where a licensee fails to provide services after the expiry of extended period, the Authority shall revoke the licence.
- (6) A licensee shall provide services in accordance with the applicable recommendations of the International Telecommunication Union, other international standardization bodies and any other relevant laws or Regulations applicable in Malawi.

#### Requirement to provide information

- 13.—(1) The licensee shall be required to maintain such information as will enable the Authority to carry out its functions under the Act in such manner and at such times as the Authority may request.
- (2) The Authority shall have the right to request the licensee to submit periodic reports, statistics and other data as well as request additional information with a view to supervise and enforce effectively the terms of the licence.
- (3) In making any request for information, the Authority shall ensure that no undue burden is imposed on the licensee in procuring and furnishing such information.

#### Accounting requirements

- 14.—(1) Unless otherwise provided in the licence, a licensee shall within three (3) months of the end of each fiscal year of the licensee, deliver to the Authority financial statements audited in a manner consistent with generally accepted accounting principles and certified by a qualified independent auditor.
- (2) Without prejudice to the proceeding provisions, the Authority may require the licensee to submit other accounting information it may require in order to effectively enforce the provisions of these Regulations and the licensee shall provide such information within such periods as determined by the Authority.

#### Interruption to the licensed services

- 15.—(1) A licensee shall not intentionally interrupt or suspend the operation of a licensed service without first notifying the Authority in writing and without providing advance notice to persons affected or likely to be affected by such interruption or suspension.
- (2) The provisions of sub-regulation (1) shall not apply where the interruption or suspension is—
- (b) Due to an emergency, an event of force majeure or to other circumstances beyond the licensees' control; or
  - (c) to a licensed service supplied by a licensee to a person whose electronic communication system is compromising the integrity of the licensed service .

#### Interoperability and Technical standards

- 16.—(1) A Licensee shall comply with any regulations, technical specifications and rules issued by the Authority as are applicable and appropriate in order to ensure interoperability of the licensed services and licensed systems with electronic communications services and systems provided by other licensed operators
- (2) A Licensee shall ensure that all the equipment comprised in and connected to the licensed systems and used in the provision of the licensed services is type approved by the Authority.

#### Inspection of Installations

- 17.—(1) The Authority shall have the power to inspect any installation by the licensee to ensure compliance with all international technical standards applicable to the licensed services and the licensed systems, including the switching and transmission standards set by the International telecommunication Union and any other applicable regional and international standards.



- (2) The Authority shall have the power to seal any installation which does not comply with the standards as stated in sub regulation (1) of this regulation.

#### **Privacy and Confidentiality**

- 18.—(1) The licensee shall use all reasonable endeavours to ensure the privacy and confidentiality of information and business secrets obtained in the course of its business from any person to whom it provides the licensed services by establishing and implementing procedures for maintaining confidentiality of such information subject to any requirement under any applicable law;
- (2) The licensee shall maintain sufficient records for its confidentiality procedures to satisfy the Authority that the requirements of regulation (1) above are met.

#### **Restriction to the use of apparatus**

19. The licensee shall not use or allow to be used any apparatus in the licensed systems which is capable of recording, silently monitoring, or intruding into live speech telephone calls unless it is in accordance with the requirement of any applicable law.

#### **Indemnity**

20. The licensee shall indemnify the Authority against any claims proceedings arising from any failure by the licensee to comply with these Regulations..

#### **Safety measures**

- 21.—(1) A licensee shall, in respect of services operated, maintained or offered under its licence, take all proper and adequate safety measures to safeguard life or property, including exposure to any electrical emission or radiations emanating from equipment or installation from such operations.

#### **Transfer or assignment of rights or obligations**

- 22.—(1) A licensee shall not assign, transfer, dispose of any rights or obligations or in any manner alienate the license or any part thereof without the prior approval of the Authority.
- (2) In applying for any approval made pursuant to sub regulation (1), a licensee shall submit the following to the Authority—
- (a) A formal letter providing details of the transfer together with any applicable application fee as per First Schedule; and
- (b) Such additional information or documents as may be requested by the Authority to be submitted within a stipulated timeline and failure to submit such information within the stipulated timeline given shall result in the application being withdrawn without affecting the right of the applicant to make a fresh application.
- (3) The Authority shall grant any approval under this regulation subject to payment of any outstanding fees and levies by the applicant.
- (4) Notwithstanding sub-regulation (3), the Authority shall treat the transferee under sub-regulation (1) as a new applicant and shall process the transfer in accordance with regulation (6).
- (5) Notwithstanding the provision of sub-regulation (1), the licensee shall have full discretion to appoint agents or sub-contractors to enable it to properly and efficiently exercise its rights and carry out its obligations in terms of the licence.

#### **23. Fair trading**

- (1) A licensee shall not, whether in respect of the rate or other terms and conditions applied, show undue preference or unfair discrimination towards persons of any class or description with respect to the provision of the licensed services.

- (2) A licensee may be deemed to have shown such undue preference or unfair discrimination if it unfairly favors to a material extent, a business carried out by itself in relation to the provision of the licenced services so as to place other persons competing with that business at a significant competitive disadvantage.
- (3) The Authority shall determine whether an act or omission done or course of conduct by a licensee amounts to undue preference or unfair discrimination.

#### **Prohibition of Ant-Competitive Conduct**

- 24.—(1) A Licensee shall not engage in anti-competitive conduct which in the view of the Authority inhibits or impedes fair competition including exploiting a position of dominance such as to unreasonably gain an advantage which impedes, limits, restricts or distorts fair competition.
- (2) Acts of anti-competitive conduct envisaged in sub-regulation 1 of this regulation include engaging in predatory price cutting which may be implied where—
  - (a) a service is priced at less than marginal cost for a period deemed unreasonable by the Authority;
  - (b) costs charged are likely to price competition out of the market or deter competitors from entering the market;
  - (c) the Licensee is able to recoup the full amount of the loss incurred during the period of price cutting;
  - (d) engaging in cross subsidizing where revenues for any services are used to unfairly cross subsidize the price of other services or equipment;
  - (e) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for services or equipment at a level which cannot be re-sold with a profit margin to customers.
  - (f) entering into exclusive arrangements which deny competitors access to services or equipment.

#### **Complaints handling procedure**

- 25.—(1) A licensee shall conform to complaints handling requirements as provided for in Consumer Protection Regulations made under the Act and in complaints handling guidelines issued by the Authority from time to time.
- (2) Without limiting the generality of sub-regulation (1), a licensee shall file with the Authority, its complaint handling procedures, providing a mechanism by which a consumer may make a complaint concerning its services in accordance with applicable Regulations made under the Act and its licence.

#### **Type Approval of telecommunications systems and equipment**

- 26.—(1) licensee shall conform to type approval requirements as provided for in Type Approval Regulations made under the Act.
- (2) Without limiting the generality of sub-regulation (1), a licensee shall—
  - (a) seek the approval of the Authority before any installation, connection, operation or use of any electronic communications equipment in the system or network;
  - (c) pay type approval fees as set by the Authority from time to time.

#### **Interoperability of Telecommunications Systems**

- 27.—(1) A licensee shall ensure that there is interoperability and compatibility of its telecommunication system with other telecommunication systems of other licensees.

#### **Installation and commissioning of electronic communications systems and equipment**

28. The licensee shall ensure that it gets a construction or installation permission from the responsible authorities for the installation and commissioning of the telecommunication system, network or equipment.

**Shareholding Requirements**

- 30.—(1) An applicant of any individual licence with the exception of content services, shall ensure that it has at least twenty (20%) local Malawian shareholding which shall be maintained throughout the period of the Licence.
- (2) A licensee who is a holder of an individual licence, and do not have the minimum twenty percent shareholding, at the commencement of these Regulation shall ensure it has at least twenty (20%) local Malawian shareholding that within two (2) years from the effective date of these Regulations.
- (3) A licensee shall not effect any changes to its shareholding without prior approval of the Authority.
- (4) An application for approval of change of shareholding under sub- regulation (3) above, shall include—
- (a) details of the transfer of shares;
  - (b) proof that minimum local shareholding requirement is maintained;
  - (c) applicable change of shareholding fee; and
  - (d) any other information as may be required by the Authority.
- (5) The Authority may revoke a licence in accordance with these Regulations where the licensee effects change of shareholding that effectively affect the control of its licence without prior approval of the Authority or fails to comply with local ownership requirements under this regulation.
- (6) The Authority shall deem any change of controlling shareholding that effectively affect the control of its licence or is of more than 50% of shareholding as a licence transfer and therefore regulation 22 (4) shall apply.
- (7) An applicant shall be required when applying for a licence to submit the following shareholding requirements as ongoing obligation throughout the licence period, for approval by the Authority—
- (a) in the case of Network Facilities Licence, Network Services Licence, Application Services Licence, Subscription Content Services Licence, Support Service for Subscription Content Services Licence, submit a list of shareholders local, foreign or both with the respective percentages.
  - (b) in the case of Content Services Licence for free to air broadcasting, the applicant a list of shareholders with a minimum of fifty one percent local ownership; or
  - (c) in the case of a licensee who is listed with the stock exchange, the minimum local shareholding shall be in accordance with the provisions of the relevant Capital Market and Securities laws and its Regulations.
- (8) An applicant for a licence or change of shareholding, shall submit to the Authority certified copies of share certificates of its shareholders.
- (9) A licensee may change its shareholding structures upon submitting to the Authority for its approval the following—
- (a) an application for change of shareholding structure;
  - (b) payment of fees as may be prescribed by the Authority;
  - (c) relevant documents including a certificate for change of shareholding structure from Registrar General ; and
  - (d) a consent obtain from Registrar General.

**Change of name**

- 31.—(1) A licensee shall notify the Authority before changing its name.

**PART IV—SPECIFIC CONDITIONS****Conditions for Application Services Licence**

- 32.—(1) Notwithstanding any provision in these Regulations, an applicant granted application service licence by the Authority shall not commence provision of the relevant services unless—
- (a) it is a holder of network services licence; or
  - (b) has entered into an agreement with a holder of network service licence to use the network for provision of application services.

- (2) Notwithstanding any provision in these Regulations, an applicant granted network service licence by the Authority shall not commence provision of the relevant services unless—
- (a) is a holder of facilities service licence; or
  - (b) has entered into an agreement with a holder of facilities service licence to use the facilities for provision of network services.
- (3) A licensee or licence applicant who enters into an agreement pursuant to sub regulation 1(b) and 2(b) shall submit to the Authority the agreement entered into immediately after conclusion of such Agreements.

#### **Requirements for network service interoperability**

- 33.—(1) A network service licensee shall ensure that there is—
- (a) interoperability and compatibility of the network service system with other network services systems; and
  - (b) availability of access to emergency services to its customers .

#### **Requirement for content services licence**

34. A content services licensee shall be required to submit to the Authority—
- (a) a programme line up;
  - (b) Human Resources Development (HRD) plan; and
  - (c) proof of qualified staff, establishment and manning level.

### **PART V—MISCELLANEOUS**

#### **Human Resource Development**

35. A licensee shall take all reasonable steps to ensure that Malawian nationals under its employment acquire the necessary skills and knowledge for effective discharge of their duties under its licence.

#### **Unlawful Intercept**

37. A licensee shall not use or allow to be used any apparatus comprised in the licensed systems which is capable of recording, silently monitoring, or intercepting into live speech telephone calls unless it is in accordance with the requirement of the law.

#### **Enforcement**

- 38.—(1) Where the Authority is satisfied that a licensee is contravening or has contravened the Act, or Regulations made under the Act or any condition of its licence, it shall commence investigations for the purpose of securing compliance with the Act, Regulation or condition in question.
- (2) Where the investigations under sub regulation (1) indicate that there is likely breach of a condition of the Act, Regulation or licence, the Authority shall make its determination on the matter.
- (3) In making its determination, the Authority—
- (i) may provide an opportunity for public comment on the material issues, through a public consultation;
  - (ii) shall, where there is a public consultation, give full consideration to the public comments received;
  - (iii) shall not be bound by technicalities, legal forms or rules of evidence;
  - (iv) shall act as expeditiously as a proper consideration of the matter may allow, having regard to the need to carefully and quickly inquire into and investigate a dispute and all matters affecting the merits and fair settlement of the dispute; and
  - (v) shall accord an opportunity to the licensee to respond to any allegation of breach after giving it sufficient notice not less than seven days.

- (4) Notwithstanding sub-regulation (3), the Authority may at any time issue an interim order directing a licensee to stop a specific conduct or to take a specific act where the Authority is satisfied that—
- (i) there is prima facie evidence that the operator contravened the Act, Regulations made there-under or the licence;
  - (ii) continuation of the operator's conduct is likely to cause serious harm to other operators, consumers or the general public;
  - (iii) the potential harm in allowing a licensee to continue its conduct outweighs the burden on the licensee ; or
  - (iv) issue of the order is in the public interest;
- (5) Where the Authority determines that a licensee has contravened any conditions of a licence, the Act or Regulations made there-under, the Authority reserves the right to impose any of the following regulatory sanctions—
- (a) issue a compliance order;
  - (b) issue a cease and desist order;
  - (c) Impose a fines;
  - (d) issue warnings;
  - (e) suspend a licence;
  - (f) revoke the licence ;or
  - (g) Make any other order considered appropriate.
- (6) In imposing a fine, under sub regulation (5), the Authority shall consider any aggravating factors, including—
- (a) the gravity of the contravention;
  - (b) the duration of the contravention;
  - (c) whether the contravention resulted in injury to a person or property;
  - (e) whether the licensee acted knowingly, recklessly, or in a negligent manner;
  - (f) whether the licensee has a previous history of contraventions; or
  - (g) Whether the licensee is a repeated offender.
- (7) In imposing a fine the Authority may, in addition consider any mitigating factors including—
- (i) whether the contravention is minor;
  - (ii) whether the consequence from the violation is minor;
  - (iii) whether the licensee took prompt action to correct the contravention;
  - (iv) whether the contravention was accidental; or
  - (v) whether the licensee voluntarily disclosed the contravention to the Authority.
- (8) Where the Authority is satisfied that a licensee is likely to contravene again any Act, Regulation or licence condition, the Authority may revoke the licence.
- (9) The Authority shall in all cases of enforcement impose sanctions that give a significant deterrent to impermissible conduct, but the sanctions shall be proportionate to the severity of the contravention.

#### **Cancellation and Revocation of a licence**

39.—(1) The Authority may revoke a licence if a licensee—

- (a) is in substantial or continuing breach of its licence; or
- (b) is declared insolvent; or
- (c) agrees in writing to a revoke the licence

(2) Before revoking a licensee pursuant to sub-regulation 1 above, the Authority shall follow the procedures set out below—

- (a) notify the licensee of the alleged breach in writing; and
- (b) allow the licensee not less than thirty (30) days from the date of notification in accordance with paragraph (a) above to remedy the breach or to show cause why the licence should not be revoked.

- (3) When considering whether or not to revoke a licence under this regulation, the Authority shall take into account the—
  - (a) licensee's representations,
  - (b) the nature, gravity and consequences of the breach; and
  - (c) Any other factor deemed necessary by the Authority.
- (4) Notwithstanding sub-regulation 2(b), the Licensee may request additional time, not exceeding thirty (30) days, to remedy the breach and such request shall not be unreasonably denied by the Authority.
- (5) Where a licence is revoked by the Authority, a licensee shall surrender the licence to the Authority within fourteen days from the date of revocation.
- (6) A licensee whose licence has been revoked by the Authority shall not be eligible for any other licence issued by the Authority for seven (7) years from the date of revocation.

#### **Invalidity not to affect enforceability**

40. Where one or more of the provisions of these Regulations becomes invalid or unenforceable, that fact itself shall not affect the validity or enforceability of the other provisions of these Regulations.

#### **Register**

- 41.—(1) The Authority shall compile and maintain a register of all licences issued under these Regulations.
- (2) The register compiled under subregulation (1) above, shall be kept at such premises and in such a form as the Authority may consider appropriate.
  - (3) The Authority shall have the following information entered in the register—
    - (a) details of every licensee;
    - (b) details of every modification, revocation or surrender of a licence;
    - (c) details of every direction or determination made or consent or approval given under a licence;
    - (d) the terms of every order made;
    - (e) every penalty imposed on a licensee under the Act, Regulations or licence; and
    - (f) any other information deemed necessary by the Authority.
  - (4) The Authority shall so far as is practicable, ensure the exclusion from the register of any matter relating to the affairs of a person where the Authority considers that its inclusion would or might seriously prejudice the person's interests, except where—
    - (a) the person concerned consents to the matter being entered in the register; or
    - (b) the Authority considers that entering the matter in the register is in the public interest.
  - (5) The Authority shall ensure that the contents of the register are available for inspection by the public—
    - (a) during such hours as may be specified in a notice issued by the Authority; and
    - (b) subject to fees the Authority may determine.
  - (6) The Authority shall upon written application by any interested person, supply a certified copy of the register or an extract from the register, subject to payment of a fee determined by the Authority.

#### **Transitional Provisions**

- 42.—(1) On commencement of these Regulations, the Authority shall convert all existing licences into the applicable licences under regulation 5 of these Regulations within twelve months from the effective date of these Regulations in accordance with Third Schedule of these Regulations.
- (2) When converting the licences pursuant to sub regulation (1), the Authority shall—
    - (a) deem that all existing licensees have duly submitted relevant licence applications as well as paid the relevant application and initial fees;

- (b) issue one or more new licences to the holder of the old licence on terms and conditions that do not detract from the rights held by such licensee under its old licence and that do not confer on it any substantial rights that it did not have under its old licence.
- (3) Unless otherwise determined by the Authority, any new licence issued by the Authority to such old licensee shall be valid for a period the same as the unexpired portion of the old licence.
- (4) The old licence shall, immediately upon the commencement of the new licence, cease to be valid and enforceable.
- (5) On the commencement of these Regulations, the old licensee shall be deemed to have waived its right to the continuation of its old licence and no compensation shall be due to it in this regard.
- (6) The Authority shall deem all old licenses no longer valid and converted into applicable licenses under sub regulation (5), twelve months after the effective date of these Regulations.
- (7) Any licensee who fails to migrate in accordance with this regulation commits a substantial breach of these Regulations, and the Authority shall have right to take any regulatory sanction including payment of relevant application and initial fees against such licensee to ensure compliance.

## FIRST SCHEDULE (A)—LICENCE CLASSIFICATION AND FEES

## Network Facilities

Category	Service description	Sub categories	Current fee (US\$) <sup>1</sup>	Application fee (US\$) <sup>2</sup>	Primary fee (US\$)	Annual fee (US\$)-	Levy (% Gross Annual Revenue - GAR)
Network Facilities Covers all network infrastructure operators of any nature.	Towers, cables, ducts, Vsats, Satellite hubs, satellite Earth stations systems, radio communication transmitters, fixed links, transmission poles, public payphones facilities, Landing points mobile communications systems etc including gateway facilities	International	200,000	10,000	100,000	100,000	4% of GAR
		National	100,000	5,000	100,000	50,000	4% of GAR
		Regional District					

Note: Television service providers (DTH and DTT) may apply on network facilities – rates to be calculated.

<sup>1</sup>Current fees paid for one aggregated unifiield license, hence separated fees should be treaed as one.

<sup>2</sup>Application fees are non-refundable



## Network Facilities

Category	Service description	Sub categories	Current fee (US\$)	Application fee (US\$)	Primary fee (US\$)	Annual fee (US\$)	Levy (% Gross Annual Revenue - GAR)
<b>Network Services</b> Covers all operators that provide basic connectivity and broadband to support applications. These allow connectivity and backhaul among different networks.	Bandwidth services, broadcasting distribution services, cellular mobile services, space services segment services etc.	International	100,000	5,000	100,000	100,000	4% of GAR
		National	100,000	3,000	50,000	50,000	4% of GAR
		Regional	100,000	2,000	20,000	20,000	4% of GAR
		District	100,000	100	1,000	1,000	4% of GAR

**Application Services**Type 1: *With* a network facility and network services license

Category	Service description	Sub categories	Current fee (US\$)	Application fee (US\$)	Primary fee (US\$)	Annual fee (US\$)	Levy (% Gross Annual Revenue - GAR)
<b>Application Services</b> Covers operators that resell or procure services from network service operators to provide functions such as voice data content and e-commerce services to the end users (last mile services ) etc	Internet services providers, payphone services, Virtual Mobile Providers (MNVO), Public cellular services, IP telephone, public payphone services, public switched data service etc.	International	-	1,000	100,000	30,000	4%
		National	-	1,000	10,000	10,000	4%
		Regional	-	1,000	5,000	5,000	4%
		District	-	1,000	1,000	1,000	4%

## Application Services

Type 2: *Without* a network facility and network services license

Category	Service description	Sub categories	Current fee (US\$)	Application fee (US\$)	Primary fee (US\$)	Annual fee (US\$)	Levy (% Gross Annual Revenue - GAR)
Application Services Covers operators that resell or procure services from network service operators to provide functions such as voice data content and e-commerce services to the end users (last mile services ) etc	Internet services providers, payphone services, Virtual Mobile Providers (MNVO), Public cellular services, IP telephone, public payphone services, public switched data service etc.	International	-	1,000	150,000	150,000	4% of GAR
		National	-	500	100,000	100,000	4% of GAR
		Regional	-	250	1,000	5,000	4% of GAR
	Closed group providers using Vsat, VoIP etc		5,000	100	5,000	2,500	4% For bigger Vsat for urban, rural and other areas
	Closed group providers using Vsat, VoIP etc		500	100	500	250	4% For smaller Vsat for urban, rural and other areas

## Content Services

Category	Service description	Sub categories	Current fee (US\$)	Application fee (US\$)	Primary fee (US\$)	Annual fee (US\$)	Levy (% Gross Annual Revenue - GAR)
Content Services Covers providers of traditional broadcast services, (radio & Television)	Satellite broadcasting, terrestrial TV and radio broadcasting and other electronic media.	National Television	5,000	2,500	2,500	5,000	4% of GAR
		National Radio	2,500	2,000	2,500	2,500	4% of GAR
		Regional Television	2,000	1,500	2,000	2,000	4% of GAR
Individual		Regional Radio	1,500	200	1,500	1,500	4% of GAR
		Regional Radio	1,500	200	1,500	1,500	4% of GAR
		Community Radio (Geographical)	100	100	1,000	100	-
		Community Television (Geographical)	1,000	1,000	1,000	1,000	-
		Community of Interest Television (National)	2,500	2,500	2,500	2,500	4% of GAR
		Community of Interest Television (Regional)	3,000	1,500	2,000	3,000	4% of GAR
		Community of Interest Radio					-
		Subscription content services (Direct To Home - DTH)	7,500	1,000	20,000	20,000	4% of GAR
		Subscription content services (Digital Terrestrial Transmission - DTT)	20,000	1,000	20,000	20,000	4% of GAR

1/ Application and primary fee for content services assume full recovery of gazetted cost and a % administrative cost

2/subscriptions need to be defined

3/DTH and DTT are for commercial purposes

SECOND SCHEDULE  
(Made under regulation 9)  
PERFORMANCE BANK GUARANTEE

To: The Director General  
Malawi Communications Regulatory Authority  
P/Bag 261  
BLANTYRE

In consideration of Malawi Communications Regulatory Authority (hereinafter referred to as the "AUTHORITY") having agreed to grant Licences to

..... of P.O. Box ..... (hereinafter referred to as "LICENSEE") to provide ..... (hereinafter referred to as "Licensed Services") on the terms and conditions contained in the said Licences, which inter alia provides for production of a Bank Guarantee to the extent of USD ..... (United States Dollars ..... Only) (GUARANTEED AMOUNT) for provision of the services by way of security for the due observance and performance of the terms and conditions of the said Licences.

1. We ..... (indicate the name and address and other particulars of the BANK) (hereinafter referred to as "the Bank") at the request of the LICENSEE hereby irrevocably and unconditionally guarantee to pay the AUTHORITY a sum of USD ..... (United States Dollars ..... Only) or any part of this guaranteed amount against any loss or damage caused to or suffered or would be caused to or suffered by the AUTHORITY by reason of any breach by the said LICENSEE of any of the terms and conditions contained in the said Licences.
2. We, ..... ("the BANK"), hereby undertake to pay the guaranteed or any part thereof due and payable under this guarantee without any demur, on a written demand from the AUTHORITY stating that the amount claimed is due by way of loss or damage caused or would be caused to or suffered by the AUTHORITY by reason of breach by the said LICENSEE of any of the terms or conditions contained in the said Licences or by reason of the Licensee's failure to perform any of its obligations under the said Licences.
3. We, ..... ("the BANK"), do hereby agree that the decision of the Authority as to whether the LICENSEE has failed to or neglected to perform or discharge his duties and obligations under the terms and conditions of the said Licences and as to the amount payable to the AUTHORITY by the Bank hereunder shall be final and binding on the Bank.
4. We, ..... ("the BANK"), DO HEREBY DECLARE AND AGREE that—
  - (a) the Guarantee herein contained shall remain in full force and effect up to ....., 20..... or shall expire on the date that the full GUARANTEED AMOUNT has been paid to the AUTHORITY under the terms and conditions of this guarantee;
  - (b) the AUTHORITY shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Licences or to extend time of performance of any obligations by the said LICENSEE from time to time or to postpone for any time or from time to time any of the powers exercisable by the AUTHORITY against the said LICENSEE and to forbear or to enforce any of the terms and conditions relating to the said Licences and we shall not be relieved from our liability by reason of any

variation or extension being granted to the said LICENSEE or forbearance act or omission on the part of the AUTHORITY or any indulgence by the AUTHORITY to the said LICENSEE or to give such matter or thing whatsoever which under the law relating to sureties would but for this provision, have effect of so relieving us.

(c) any claim which we have against the LICENSEE shall be subject and subordinate to the prior payment and performance in full of all the obligations of us hereunder and we will not without prior written consent of the AUTHORITY exercise any legal right or remedy of any kind in respect of any such payment or performance so long as the obligations of us hereunder remain owing and outstanding.

5. We, ..... (the BANK) undertake to pay the AUTHORITY the amount demanded within thirty days after receipt of the demand.
6. The guarantee is neither negotiable nor transferable, is restricted to the payment of the sum of money only and is limited to the GUARANTEED AMOUNT.
7. We, ..... (the BANK) undertake not to revoke this Guarantee during its currency except with the previous consent in writing of the AUTHORITY.
8. This guarantee shall be governed by and construed in accordance with the laws of Malawi Issued by—

..... (The BANK)

Name: .....

Qualification: .....

Signature: .....

NOTE: The amount to be specified in the performance bank guarantee shall be as follows:

- (a) Network Facilities and Network Services Licence- USD XXXX
- (b) Application Services Licence- USD XXXXX.
- (c) Support Services for Subscription Content Services-USD XXXX
- (d) Subscription Content Services minimum \$XXXXXX