

LAWS OF SOUTH SUDAN

National Communications Licensing Regulations, 2016



**LAWS OF SOUTH SUDAN
NATIONAL COMMUNICATIONS LICENSING
REGULATIONS, 2016**

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In accordance with the provisions of Chapter V read together with Section 92 of the National Communications Act, 2012, the Authority with the approval of the Competent Minister, issue and promulgate the following into Regulations:

CHAPTER I

Preliminary Provisions

1. Title And Commencement

These Regulations shall be cited as the National Communications Licensing Regulations, 2016, and shall come into force on the date of its signature.

2. Repeal and Saving

Any existing regulations or orders, directives, rules and guidelines governing the subject of these Regulations is hereby repealed; provided that any orders issued or regulations made thereunder, except to the extent they are cancelled by or are otherwise inconsistent with provisions of these Regulations shall continue in force and effect until repealed or amended by these Regulations.

3. Interpretation

In these regulations, all words and expressions that are defined under the Communications Act, 2012, shall have the same meanings herein; unless the context otherwise, requires:

“Act”

means the National Communications Act, 2012.

“License Certificate”

means the certificate, which proves the award of the licensee of licence, in accordance with provisions, of the Act and these Regulations.

| | |
|------------------------------------|---|
| "Predatory Pricing" | means lowering the price of services to the extent of extinguishing competitors from the Telecommunications market to dominate such market. |
| "Effective Marketing Power" | means the licence Agreement concluded between the Authority and licensee. |
| "Agreement" | means the licence Agreement concluded between the Authority and licensee. |
| "Contact Address" | means the physical address, telephone number, and facsimile number and email address of licensee or applicant for licence. |
| "Market Structure" | means description of the state communications market in relation to competition. |

CHAPTER II

Grant, Renewal, and Revocation of License

4. Market Structure

The Authority may from time to time publish details of communications market structure prevailing in the country and shall, when issuing licences, consider the market structure.

5. Application for License

1. Any person who desires to operate any communication system or provide communications service requiring licence under the Act, shall apply to the Authority for licence.
2. The application for licence under these Regulations, shall be in manner and form prescribed by the Authority.
3. An entity applying for licence under these Regulations shall ensure that its objectives conform to the prevailing communications sector policy.
4. An applicant for licence shall submit to the Authority:
 - a. registration or identification documents from respective competent authorities;
 - b. applicant contact address;
 - c. where applicable, detailed business plan for proposed services;
 - d. detailed information relating to proposed system or services to be provided;
 - e. where applicable, information relating to previous experience in management of proposed system or the provision of services for which the licence is sought; and
 - f. any other information that the Authority may require.

6. Failure to Submit Documents or Information

1. When an applicant fails to submit all documents or information required under these Regulations, the Authority shall reject the application and inform the applicant in writing of the rejection.
2. When the Authority rejects any application due to incomplete or insufficient information, the rejection shall not, except where tender process is involved, bar applicant from re-submitting the application.
3. The Authority shall treat re-submitted applications as new applications.

7. Granting of License

Upon completion of the application process, the Authority shall, if it is satisfied that the applicant has complied with requirements under these Regulations, grant licence to the applicant.

8. Licence Terms and Conditions

The Authority may specify terms and conditions of licence that are in compliance with provisions of the Act, Regulations and other relevant rules and licensee shall comply with all terms and conditions of its licence.

9. Notification of Change of Particulars

Any licensee shall:

- a. notify the Authority of its intention to change the name or contact address it filed with the Authority, at least thirty days (30 days) before effecting such change; and
- b. notify the Authority and public of any trade or brand name it intends to use, at least thirty days prior to using the trade or brand name.

10. Change in Shareholdings

1. Licensee shall ensure that its objectives comply, at all times with Government Communications Sector Policy, published from time to time.
2. Licensee shall notify the Authority of any proposed change in ownership, control or proportion of shares held in it, at least thirty (30) days before the change is effected. Provided that:
 - a. any change in shareholding exceeding fifteen percent (15%) of issued share capital; or
 - b. acquisition by any existing shareholder of at least five percent of additional shares;

Shall require prior written consent of the Authority and the Authority shall notify the applicant of its acceptance or refusal, stating reasons for its decision within thirty days of receipt of request for consent.

11. Transfer or Assignment of License

1. Licensee shall not transfer or assign any licence granted under the Act, without written consent of the Authority.
2. The Authority may, when considering an application for transfer or assignment, consider the same requirements and terms as if considering an application for grant of new licence.

3. The Authority shall communicate its decision on any application for transfer or assignment of licence to any applicant within thirty days (30) of receipt of the application and state reasons for decision.

12. Renewal of License

1. Licensee shall make an application for renewal of its licence in accordance with the procedures specified in these Regulations and the Act.
2. When considering any application for renewal of licence, the Authority shall consider the extent of compliance by licensee, with terms and conditions contained in the licence in the previous licence period.

13. Revocation of License

1. The Authority may revoke any licence in accordance with provisions of the Act.
2. Any person aggrieved by decision of the Authority made under this Regulation, may appeal to the Court of competent within thirty (30) days from the date of decision.

CHAPTER III

Obligations of Licensee and Quality Service

14. Obligations of Licensee

Any licensee shall in addition to terms and conditions of the licence:

- a. improve quality service, by identifying service deficiencies and making appropriate changes;
- b. maintain quality service, while considering environmental and operating conditions;
- c. avail information to ensure informed subscriber choice of services and licensees;
- d. improve operation and performance of interconnected networks; and
- e. assist in development of related communications markets.

15. Principles for Developing Quality Service Standards

The Authority shall, when developing quality service standards, ensure that:

- a. parameters related to quality service are clearly defined and measurable;
- b. information about standards relating to quality service are sufficient, comparable and accessible;
- c. communications infrastructure and services are compatible with international standards;
- d. practices increasing user satisfaction and decreasing user complaints are encouraged;
- e. discrimination relating to the quality service offered, between similar users is avoided; and
- f. special needs of disabled users are also considered when developing quality service parameters.

16. Quality Service Standards

The quality service standards under these Regulations may be determined based on:

- a. parameters defining the applicable quality service measurements for specific services;
- b. methods of measuring service performance against predetermined parameters;
- c. measurable service characteristics of parameters determined by the Authority; and

any applicable targets for parameters identified by the Authority from time to time.

17. Measurement, reporting and record keeping

1. The Authority shall, from time to time, publish notice in the Public Media, prescribing quality service parameters that licensee are to measure and report.
2. The notice published under sub-regulation (1) of this Regulation shall specify measurement and reporting intervals for quality service parameters set by the Authority.
3. Licensee shall, for each parameter prescribed by the Authority under sub-regulation (1) of this regulation:
 - a. take measurements using method specified for the parameter;
 - b. compile, summarise and submit measurements to the Authority, in prescribed format and within specified period;
 - c. submit any additional information required by the Authority, including details of times, places and other particulars of measurements, as the Authority may, from time to time direct; and
 - d. retain all quality service data, including measurements and related records, for a minimum of twelve months after the reporting period or the Authority may, from time to time, direct.

CHAPTER IV

Miscellaneous Provisions

18. Inspection and Investigation

The Authority may inspect or investigate matters relating to measurement quality of service of any licensee from time to time in order to ensure compliance.

19. Publication of Reports on Measurements of Quality Service

The Authority may publish measurement results or quality service reports submitted by licensees.

20. Telecommunications Contractors

1. The Authority shall, before issuing any licence to telecommunications contractor under these Regulations, consider:
 - a. applicant ability to conduct the business; and
 - b. competence of the technical staff undertaking its works.
 - c. the telecommunications contractor shall, when undertaking work, ensure that the work complies with guidelines issued by the Authority from time to time and any other internationally acceptable prevailing standards.
2. The Authority may revoke the licence of any telecommunications contractor who contravenes provisions of sub-regulation (2) of this Regulation.

21. Approvals from other Authorities

Notwithstanding the licence issued by the Authority, licensee shall bear responsibility of obtaining approvals of other Government agencies, local authorities or other relevant authorities that may be required for provision of licenced services, installation, placement, laying or maintenance of any facilities on, under or across any land.

22. Duty of Care

1. Licensee shall, when installing its facilities, take all reasonable steps to ensure that it causes little detriment or damage, and inconvenience to the public, as may be practicable in the circumstances.

2. If any licensee engages in any activity relating to any land under these Regulations, the licensee shall take all reasonable steps to restore the land to the condition it was before the activity began.
3. Licensee shall, when installing its communications systems, take all reasonable steps to:
 - a. observe international standard and practices;
 - b. protect safety of persons and property;
 - c. protect environment; and
 - d. ensure that the activity does not adversely interfere with:
 - (i). operations of any public utility;
 - (ii). public roads and paths;
 - (iii). movement of traffic; and
 - (iv). use of land.
4. Licensee shall enter into an agreement with any public utility whose operations are likely to be affected by activity of the licensee, to provide for the most convenient manner in which the licensee shall engage in that activity.

23. Validity of Provisions

Where one or more of provisions of licence, for any reason becomes invalid or unenforceable, the validity or enforceability of the other provisions of the licence shall not be affected.

24. Transitional Provisions

1. Where the Authority introduces new licensing framework, any person holding licence issued under the former licensing framework shall, continue to hold the licence in accordance with its terms, provided that such terms have been determined by the Authority to be fair and non-discriminatory, and may migrate to the new licensing framework in accordance with the migration modalities issued by the Authority.
2. When licensee who hold licence before commencement of these Regulations notifies Authority that the licensee opts to migrate to new licence:
 - a. the Authority shall issue new licence to licensee on terms that not detract from rights held by the licensee under the old licence, provided that due emphasis shall, be placed on fair, equitable and non-discriminatory terms;
 - b. the new licence issued by Authority to licensee shall be valid for unexpired term of the old licence or full duration of the new licence whichever period is shorter;
 - c. old licence shall cease to be valid immediately after new licence commences; and

- d. old licensee shall be deemed to have waived right to continuation of old licence and no compensation shall be due to the old licensee in this regard.
3. Where any old licensee notifies the Authority that, it opts to continue with old licence:
- a. old licensee shall be entitled to continue to operate the network or provide service contemplated and authorised by that licence, for the remainder of the period of that licence; and
 - b. old licence shall expire at the end of the licence period specified in that licence, and licensee may apply for renewal under new licensing framework.

25. Offences and Penalties

Subject to provisions of sections 97 and 98 of the Act, any person who provides any services under the Act, without licence issued by Authority of contrivances provisions of these Regulations, commits an offence and shall upon conviction be punishable with fine not exceeding South Sudan Pounds equivalent of US Dollars Five Hundred Thousand (500,000 USD) or imprisonment for period not exceeding three (3) years or both.

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