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LEGAL NOTICE NO. 77 OF 2016

Lesotho Communications Authority (Administrative) Rules, 2016

Pursuant to section 5(1)(c) of the Communications Act, 2012¹

LESOTHO COMMUNICATIONS AUTHORITY

Makes the following rules -

PART I - PRELIMINARY**Citation and commencement**

1. These rules may be cited as Lesotho Communications Authority (Administrative) Rules, 2016 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In these rules, words have meaning assigned to them in the Act and unless the context otherwise requires -

“Act” means the Communications Act, 2012;

“allocation” means designation of frequency spectrum band or numbers for specific use;

“applicant” means a person who has submitted an application to the Authority requesting any authorisation;

“assignee” means a person to whom numbering or radio spectrum resources have been assigned by the Authority;

“assignment” means authorisation granted for usage of radio frequency spectrum or numbering resource;

“authorisation” means a licence, type approval, assignment of numbering or radio spectrum resource, or similar type of permission that the Authority may grant;

“Authority” means the Lesotho Communications Authority;

“bts” means base transceiver station;

“communications” means communication of information in the form of electronic speech, data, text or images by means of guided or unguided electromagnetic energy;

“communications equipment” means equipment, including hardware and software, used or intended for the provision of a communications service;

“communications infrastructure” means all physical network elements used to provide communications services or incidental thereto;

“dominant licensee” means a licensee who the Authority has determined -

- (a) has the ability to exercise significant market power in any communications market in Lesotho; or
- (b) operates communications infrastructure that is sufficiently costly or difficult to replicate such that requiring new entrants to do so would create a significant barrier to rapid and successful entry by an efficient competitor;

“end user” means a person that uses a communications services other than a licensee who provides such service;

“numbering plan” means a scheme of identification by means of numbers maintained by the Authority in order to ensure that communications are correctly and efficiently directed to their intended points of reception;

“peering” means the exchange of data directly between Internet service providers, rather than via the internet;

“public communications service” means a communications service provided to the general public or to a class of persons so as to be generally available;

“promotion” means a short-term marketing strategy or trial of not more than 6 months for an existing communications product or service or a combination of communications products and services which may involve changes in the product or service or tariff structure;

“radio equipment” means equipment which includes one or more transmitters or receivers with a primary function of radio transmission or reception of radio waves, utilising frequency spectrum;

“radio spectrum” means frequencies or spectrum of naturally propagated electromagnetic waves that are used for transmission and reception of communications signals;

“relevant market” means products and undertakings which are directly competing in a business having taken into consideration the demand and supply side substitutability in the product market as well as geographic market as determined by the Authority;

“signalling point code” means a code used in the networks to identify the national and international exchanges or switching points between which a speech path connection is to be established;

“tariff” means a published charge or rate and other usage conditions under which a customer may receive communication service;

“telecommunications terminal equipment” means equipment which enables communications connected to the interfaces telecommunications network and is intended to be utilised by the end-user or service provider;

“type approval” certification from the Authority that a manufactured item meets required technical specifications;

“vas” means value added services.

PART II - LICENSING

Application for licence

3. (1) The Authority shall prescribe application requirements for classes of licences and shall make them readily available to prospective applicants.
- (2) An applicant shall submit application that meets the requirements as envisaged in subrule (1) together with payment of application fees, except that individual licences shall be applied for on invitation.
- (3) Within 90 days of receipt of an application, the Authority shall approve or reject the application, on condition that no additional information is required from the applicant.
- (4) Where the Authority requires additional information from the applicant, it shall inform the applicant accordingly and the 90 day period shall be adjusted to commence after submission of such additional information.
- (5) Where the applicant fails to provide additional information within 90 days, the application shall automatically expire; and thereafter, the applicant may submit a new application.
- (6) The Authority shall, prior to issuance of a licence to an applicant, satisfy itself that the applicant has the financial and technical capability to construct, own or make available a network or provide the services associated with the licence.
- (7) Where the Authority determines, during the consideration of an application, that there has been misinformation relating to a material aspect of the application, or that the applicant has withheld material information, it may reject the application.
- (8) The Authority shall hold public consultations in respect of a licence application for public comment.
- (9) Upon completion of the application evaluation, the Authority shall notify the applicant in writing on the outcome of the application and -

- (a) where an application has been rejected, the Authority shall inform the applicant of the rejection and the reasons thereof; and
 - (b) where an application has been approved, the applicant shall be issued with a licence upon payment of applicable fees.
- (10) Following the issuance of a licence, a licensee shall commence operations within -
- (a) 2 years for telecommunications licensees; and
 - (b) one year for broadcasting licensees.
- (11) Where a licensee fails to commence operations within periods specified in subrule (10), the licence shall automatically expire.
- (12) The Authority may extend the period envisaged in subrule (10) upon request by the applicant, which extension shall not exceed one year for telecommunications and 6 months for broadcasting licensees.

Licence conditions

4. (1) The Authority may include conditions in a licence which shall outline rights and obligations of a licensee.
- (2) The Authority shall -
- (a) impose licensing conditions which are technology neutral; and
 - (b) in the absence of a compelling justification, not -
 - (i) require a licensee to use, or prohibit a licensee from using, any specific technology to provide a specific communications service, provided that licensees shall use technologies that comply with set standards; or

- (ii) prohibit a licensee from providing multiple services over the same infrastructure.

Amendment of a licence

5. (1) The Authority may, on its own motion or at the request of a licensee, amend any condition in a licence which it has granted.

(2) The Authority shall, prior to making any licence amendment on its own motion, provide the licensee with a written notice which outlines -

- (a) the terms of the proposed amendment;
- (b) the reasons for the proposed amendment; and
- (c) the timeframe and procedures for the licensee to make representations to the Authority on the proposed amendment.

(3) The Authority shall give due consideration to any representations made by the licensee.

(4) A licensee may request to have its licence amended, clearly stating the requested amendment and giving reasons for the request, which request shall not be unreasonably denied.

(5) Where Authority denies a licensee's request for amendment, it shall give reasons for its decision taking into account the reasons advanced in support of the request.

(6) The Authority may hold public consultation before making a determination on any licence amendment.

Renewal of a licence

6. (1) The Authority may renew a licence upon application by a licensee.

(2) In the case of an individual licence -

- (a) the licensee shall submit a renewal application to the Authority not less than 2 years prior to the expiry of the term of the licence justifying such renewal;
- (b) the justification shall include -
 - (i) performance under the current licence giving detailed assessment;
 - (ii) compliance with licence terms, laws and regulatory directives;
 - (iii) contribution to Lesotho's socio-economic development;
 - (iv) corporate social investment;
 - (v) future business projections; and
 - (vi) any other information the licensee may deem appropriate;
- (c) the Authority shall approve a renewal application if it concludes that the licensee has sufficiently met all requirements of the expiring licence and it is in the public interest to renew such a licence.

(3) The Authority may request additional information that it may need to make a decision on the renewal of a licence.

(4) In the case of a class licence, renewal shall be automatic upon payment of prescribed fees unless there is a compelling reason for non-renewal.

Transfer or assignment of a licence

7. (1) A licensee shall not, without prior approval of the Authority -
- (a) transfer its right and obligations under a licence;
 - (b) transfer control over the licensee's operation to another

person; or

(c) assign a licence to another person,

regardless of whether there is any payment in exchange.

(2) The Authority shall not reject any request to transfer or assign a licence unless the Authority determines that -

(a) the proposed transferee or assignee does not meet the established qualifications for the licence; or

(b) the transfer or assignment would substantially restrict competition in any communications market within Lesotho.

Licence suspension and revocation

8. (1) The Authority may suspend or revoke a licence if it concludes that the licensee -

(a) is in breach of regulatory obligations including licence conditions, the Act or rules or any subsidiary legislation;

(b) is not able to comply with regulatory requirements;

(c) has failed to comply with the directives of the Authority;

(d) is engaged in anticompetitive practices;

(e) has lost the ability to provide licensed services;

(f) has failed to pay applicable fees as prescribed by the rules; or

(g) threatens national security and public safety.

(2) The Authority shall give a licensee a 30- day notice of its intention to suspend or revoke a licence during which the licensee may make repre-

sentations to the Authority.

(3) After due consideration of any representations by the licensee, the Authority may -

- (a) prescribe time during which the licensee is required to remedy the offending act or conduct; or
- (b) impose a financial penalty on the licensee payable within a stipulated period.

(4) Where the licensee fails to comply with subrule (3) or the representations are found not compelling to warrant a different determination, the Authority may-

- (a) suspend the licence for a specified period of time; or
- (b) revoke the licence.

(5) Where a licence is suspended or revoked the fees paid in respect of the licence shall be forfeited.

PART III - SPECTRUM MANAGEMENT

Application for spectrum

9. (1) Requirements for spectrum assignment application shall be obtainable at the Authority's office.

(2) A person who requires spectrum assignment shall apply to the Authority and provide such information as the Authority may require.

(3) The Authority shall assign spectrum within 30 days where an applicant is eligible and meets all requirements.

Spectrum assignment

10. (1) The Authority may assign spectrum required -

- (a) to provide licensed services; or

(b) for experimentation.

(2) The Authority may not refuse to assign spectrum unless there are compelling reasons founded on technical exigencies, national security, public safety or other reasonable justifications which shall be communicated to the applicant.

(3) The Authority shall -

(a) assign available spectrum -

- (i) in accordance with the national frequency allocation plan;
- (ii) on a first come first served basis;
- (iii) on condition that harmful interference may not be caused; and
- (iv) taking into account all the technical data of the equipment of the applicant.

(b) harvest any assigned spectrum if it determines that such spectrum is -

- (i) not efficiently used or not used at all;
- (ii) being utilised for purposes other than those it was assigned for;
- (iii) held to distort or prevent competition; or
- (iv) needed for reassignment on the basis of technological development and international agreements.

(4) The Authority shall stipulate conditions of use in respect of both licensed and licence exempt spectrum.

(5) Assigned spectrum shall be used upon payment of applicable

fees as prescribed by the Authority.

(6) An assignee shall not transfer control over the assigned spectrum, either through sale or leasing.

(7) An assignee may relinquish spectrum at any time and billing thereof shall be adjusted in the next financial year.

PART IV - NUMBERING

Numbering plan

11. (1) The Authority shall -
 - (a) plan, allocate, assign and monitor the numbering resource so that there are sufficient numbers for current and future service;
 - (b) facilitate equitable and non-discriminatory access to numbers by service providers entitled to use numbers;
 - (c) be consistent with international harmonisation of numbering; and
 - (d) maintain a numbering register of the assigned numbers.
- (2) The numbering plan shall allocate numbers to identify -
 - (a) networks and network services;
 - (b) call routing and addressing;
 - (c) premium rated services;
 - (d) toll-free and free-phone numbers;
 - (e) call share services;
 - (f) emergency services; and

- (g) value added services.

Application for numbers

12. (1) Requirements applicable for assignment of numbers are obtainable at the Authority's office

(2) A person who requires assignment of numbers shall apply to the Authority, providing such information as the Authority may require.

(3) The Authority shall approve an application for numbering within 14 days where the applicant is eligible and meets all requirements.

Numbering assignment

13. (1) The Authority shall assign numbers on a first-come-first-served basis to provide authorised services either on temporary or permanent basis.

(2) Numbering resource shall be used only with authorisation by the Authority.

(3) An assignee shall not re-sell or trade numbers to a third party.

Eligibility for assignment of numbers

14. (1) A licensee whose licensed services require utilisation of numbers shall be eligible for assignment of numbers.

(2) An unlicensed entity may be assigned numbers for provision of unlicensed services that require utilisation of numbers.

Assignee obligations

15. An assignee shall -

- (a) manage and use numbers assigned effectively and efficiently;
- (b) use the numbers only for the purpose stated at the time of application and assignment;

- (c) return numbering resource to the Authority where there is no longer a need to retain any assigned number; or
- (d) discontinue traffic related to a numbering resource whose service has been terminated or to any numbers in respect of which assignment has been withdrawn.

Cancellation of number assignment

16. (1) The Authority shall cancel an assignment of numbers where the assignee -

- (a) fails to utilize the numbers within 6 months;
- (b) fails to pay prescribed fees;
- (c) uses the numbers in a manner that is contrary to the objective of the assignment or violates these rules; or
- (d) fails to comply with directives of the Authority.

(2) The licensee shall be given an opportunity to make representation before cancellation of numbering assignment.

PART V - TYPE APPROVAL

Equipment to be registered for type approval

17. (1) Telecommunications terminal equipment and radio equipment shall be registered for type approval with the Authority.

(2) The Authority shall publish a list of technical specifications and corresponding equipment types subject to registration to ensure that -

- (a) communications equipment does not present health and safety hazards to the public or users;
- (b) operating frequencies of communications equipment comply with the national frequency plan as published and amended from time to time;

- (c) no harmful interference is caused to other radio-communications services; and
- (d) products as type approved comply with set licensing conditions regarding operation and deployment into networks as licensed.

(3) The Authority shall, where an equipment type does not appear in the list or there is no applicable technical specification, decide on a case-by-case basis, whether an application for type approval may be made and what technical requirements shall apply.

Application for type approval

18. (1) Requirements for type approval application shall be obtainable at the Authority's office and website.

(2) An applicant shall ensure that -

- (a) communications equipment that is intended to be used in Lesotho complies with
 - (i) International Telecommunication Union (ITU);
 - (ii) European Telecommunications Standards Institute (ETSI);
 - (iii) International Electrotechnical Communication (IEC);
 - (iv) International Organization for Standardization (ISO); or
 - (v) relevant International standards with respect to electromagnetic compatibility and safety requirements;
- (b) equipment that utilizes radio frequency spectrum complies with the Lesotho National Frequency Allocation Plan.

- (3) A type approval application shall not be processed until the required documents have been submitted to the Authority.

Type Approval procedure

19. (1) An applicant shall provide evidence of test results carried out by accredited test laboratories and other type approval bodies confirming compliance with the necessary standards and the Authority reserves the right to verify the test results and may request a sample of the equipment to be submitted.

(2) A person involved in the import, manufacture and supply of equipment shall ensure that the equipment complies with the relevant technical specifications and that the documentation that accompanies the equipment is authentic.

Renewal and cancellation of registration

20. (1) Registration for type approval shall be granted on a permanent basis.

(2) An applicant shall submit new applications for upgrades and new models.

(3) The Authority reserves the right to cancel a registration at any time where it has reason to believe that the relevant regulations, rules and technical requirements have not been observed.

Type Approval for changes to equipment

21. A new application for type approval shall be made if a change is made to any of the communications equipment in relation to-

- (a) physical network interface;
- (b) radio frequencies utilization; or
- (c) function of the equipment.

Technical requirements and standards

22. (1) The Authority shall -
- (a) prescribe technical specifications with which the equipment is expected to comply;
 - (b) where there is no relevant specification, specify technical requirements on a case-by-case basis; and
 - (c) ensure that all registered equipment -
 - (i) is electrically safe for users, subscribers or the employees of the telecommunications system operators;
 - (ii) is electromagnetically compatible with other equipment to which it is or will be connected or used; and
 - (iii) is capable of interworking or interoperating with other telecommunication equipment for the purposes of establishing, modifying, charging for, holding or clearing real and virtual connections.
- (2) The Authority shall ensure that all type approval standards used in Lesotho are based on international standards from the following standards bodies -
- (a) International Electro-technical Commission and its International Special Committee on Radio Interference;
 - (b) European Telecommunications Standards Institute (ETSI);
 - (c) International Telecommunication Union (ITU);
 - (d) Institute of Engineering and Technology (IET);

- (e) Institute of Electrical and Electronics Engineers (IEEE); and
- (f) European Committee for Electrotechnical Standardization (CENELEC).

Test Results

23. (1) An applicant shall obtain test results from -
- (a) a laboratory that has been accredited by a body that is a member of the ETSI, International Laboratories Accreditation Cooperation; or
 - (b) any accredited test centre that may be published by the Authority from time to time.

Marking of registered equipment

24. (1) An applicant shall ensure that all registered equipment is marked unless an exemption has been granted by the Authority.
- (2) The mark shall -
- (a) be permanent and placed close to the model identification, on the packaging and in user information where product itself is not marked due to its size or practicality; and
 - (b) be durable and of text no less than 2mm in height.
- (3) The Authority shall grant an exemption from marking the equipment directly where the applicant undertakes to -
- (a) provide a copy of the declaration of conformity with each item of equipment sold;
 - (b) apply the mark to the packaging of the equipment prior to sale; or

- (c) display a copy of the notice close to the equipment at the point of sale and in advertisements to supply the product.

Inspections

25. (1) The Authority may perform inspections on terminal equipment and radio equipment at any time arising from a response to-

- (a) a complaint;
- (b) a report of interference;
- (c) visual inspection of products in a retail outlet;
- (d) inappropriate advertising; or
- (e) a random selection.

(2) Where the results of the inspection are inconclusive or unsatisfactory, additional information shall be requested and a sample for test at a laboratory nominated by the Authority may be required and the holder of the registration shall be responsible for all laboratory charges incurred.

Transfers

26. (1) A person shall not transfer or cede any equipment registration without the written consent of the Authority, which consent shall not be unreasonably withheld.

(2) The Authority shall ensure that the new owner of the registration receives the certificates including access to the supporting documentation.

Changes in products

27. An applicant shall -

- (a) lodge a new application where a product change introduces an additional network interface or requires the use of additional radio frequencies;

- (b) test and assess changes that may affect an existing network interface or have an effect on safety, EMC or radio frequency emissions to establish the maintainance of on-going compliance;
- (c) keep a record and supporting documentation of the changes, relevant test results and the assessment of their impact; and
- (d) lodge a new registration for type approval and declaration of conformity where a change affects any of the information recorded in the register for type approval or the declaration of conformity.

PART VI - ACCESS AND INFRASTRUCTURE SHARING

Requirement to give access to and share infrastructure

28. (1) The Authority may require a licensee to share its communications infrastructure, and the licensee shall allow other licensees to use the infrastructure -

- (a) on a first come first served basis;
- (b) on a cost based pricing structure; and
- (c) on non-discriminatory terms and conditions:

Provided that -

- (i) the infrastructure can be shared without adverse effects to the owner of the infrastructure; and
- (ii) requiring other licensees to replicate the infrastructure, would impede competition and growth of the sector.

(2) The Authority designates, without being exhaustive, the following communications infrastructure as infrastructure that shall always be shared-

- (a) communications sites (BTS, broadcasting and 2-way radio);
 - (b) communications towers or masts (BTS, broadcasting and 2-way radio);
 - (c) poles;
 - (d) ducts; and
 - (e) equipment rooms.
- (3) Access and infrastructure-sharing shall be provided by all dominant licensees in the relevant markets to all requesting licensees on terms that are non-discriminatory; fair and reasonable;
- (4) Requests for access or infrastructure-sharing that are made to dominant licensees shall be notified to the Authority by the dominant licensee within three (3) days of the request being made, with a copy of the request received by the dominant licensee; and
- (5) The Authority shall create and maintain a register of access requests for the purposes of monitoring the compliance by dominant licensees with the applicable time periods for responding to requests, and which may be inspected by any person during the working hours of the Authority at the Authority's office or on the Authority's website at any time.
- (6) Access and infrastructure sharing agreements shall be deposited with the Authority.

Infrastructure designated by the Authority

29. (1) Where a licensee requests to gain access to or share infrastructure that the Authority has designated as infrastructure that shall always be shared -
- (a) the requesting licensee shall submit a written request stating the specific infrastructure that it seeks to gain access to or share;
 - (b) the parties shall have 60 days to negotiate an agreement

regarding the prices, terms and conditions on which the infrastructure shall be accessed or shared.

(2) Where the parties are not able to reach agreement, either party may refer the matter to the Authority for determination.

(3) Access and infrastructure sharing agreement shall be submitted to the Authority and shall take effect after 30 days after submission unless the Authority issues a decision rejecting the agreement, or requiring changes to it.

(4) The Authority shall reject or require changes be made on an access and infrastructure sharing agreement if it concludes, after providing notice and an opportunity for comment, that the agreement, if implemented in that form, is likely to, or shall -

- (a) violate the Act, regulations or rules;
- (b) have a substantial adverse effect on end users;
- (c) distort a relevant market; or
- (d) substantially restrict competition in any Lesotho communications market.

Infrastructure not designated by the Authority

30. (1) Where a licensee seeks to share or gain access to infrastructure that the Authority has not designated as infrastructure that is always to be shared -

- (a) the requesting licensee shall submit a written request to the licensee who owns the infrastructure stating the specific infrastructure that it seeks to share or gain access to;
- (b) the licensee who owns the infrastructure shall, within 15 days of receiving the request, inform the requesting licensee whether or not it is willing to negotiate an access and infrastructure-sharing agreement.

(2) Where the licensee who owns the infrastructure is willing to ne-

gotiate an access and infrastructure-sharing agreement -

- (a) the parties shall have 60 days to negotiate an agreement regarding the prices, terms and conditions on which the infrastructure shall be shared or to which access shall be granted; and
- (b) where the parties are not able to reach an agreement within 60 days, either party may refer the matter to the Authority for determination.

(3) The Authority shall require the parties to negotiate and conclude an access and infrastructure sharing agreement within 60 days, unless the licensee who owns the infrastructure demonstrates to the Authority that -

- (a) access or sharing is not technically feasible;
- (b) access or sharing is incompatible with the licensee's legal or contractual obligations;
- (c) access or sharing poses a risk of harming the licensee's network or degrading the quality of the licensee's services;
- (d) the licensee currently lacks capacity, including physical space, to provide access to or share infrastructure ;or
- (e) the licensee will require the use of the requested capacity or infrastructure, within the next 24 months, to provide a communications service.

(4) Where the licensee who owns the infrastructure is not willing to negotiate an access or infrastructure sharing agreement, the requesting licensee may refer the matter to the Authority for determination.

National roaming

31. (1) The Authority may direct a licensee to enter into national roaming agreements, either on its own motion or at the request of another licensee, for such places as it may be desirable to avoid duplication of infrastructure.

- (2) National roaming agreements shall be entered into on commercial or reciprocal basis, and on the principles and considerations similar to those of access and infrastructure-sharing.

PART VII - COMPETITION MANAGEMENT

Violations

32. (1) The Authority may -
- (a) on its own motion; investigate any licensee suspected; or
 - (b) upon a complaint; investigate any licensee alleged,
- to have violated provisions sections 23 and 24 of the Act.
- (2) The Authority shall, where there is a suspected or alleged violation, give a written notice to the licensee -
- (a) stating that the Authority is investigating a possible violation; and
 - (b) directing the licensee to provide the Authority with information or documents in furtherance of the investigation.
- (3) The licensee shall, within 30 days from the date of the notice provide the Authority with the information and in the format as the Authority may request.
- (4) The Authority shall -
- (a) afford the licensee and any person aggrieved by the alleged or suspected violation an opportunity to make representations to the Authority;
 - (b) after considering representations, by the licensee or a person aggrieved by the violation under this rule, make a determination on the matter.

(5) The Authority shall, upon satisfaction that a licensee is competing unfairly, issue an order -

- (i) directing the licensee in breach to refrain from any unfair competition practices;
- (ii) the licensee in breach to take remedial steps to rectify the violations;
- (iii) imposing a fine not exceeding M500,000.00 for every month during which the contravention continues;
- (iv) declaring any agreements concluded pursuant to the said violation invalid; or
- (v) specifying such remedy as may be necessary, taking into account peculiarity of the case under consideration.

Interconnection

33. (1) Interconnection shall be provided on a fair and non-discriminatory basis, as regards -

- (a) quality of service; and
- (b) treatment of customers.

(2) The interconnecting licensees shall provide interconnection, and treat each other on the terms similar to those of affiliates, subsidiaries or other similarly situated interconnecting parties.

(3) Any difference in treatment shall be done in a transparent manner on the basis of costs and technological imperatives.

Interconnection agreements

34. (1) A licensee shall respond to any request for interconnection made in terms of the Act within 30 days of receipt of such a request, and in the order

in which the requests are received.

(2) Parties shall conclude an interconnection agreement within 90 days of the request for interconnection.

(3) A licensee is considered unwilling to negotiate or unable to agree an interconnection agreement if the licensee does not comply with timelines prescribed in subrules (1) and (2), and an aggrieved licensee may refer the matter to the Authority for determination.

(4) Matters referred to the Authority in terms of subrule (3) above shall be determined in accordance with sections 30(5) and 31(6) of the Act.

Peering

35. A licensee who transmits or carries internet traffic shall connect to the Lesotho Internet Exchange Point (LIXP) as the primary peering point.

International agreements

36. (1) An agreement between a licensee and a foreign service provider for the interconnection of networks, the exchange of international communications traffic or any other communications related services shall -

- (a) have rates or charges that reflect the best available in the market for a particular service;
- (b) not be prejudicial to Lesotho consumers in terms of quality of service or rates payable;
- (c) not favour affiliates or parent companies; or
- (d) not be in violation of the Act, these rules or such other regulatory instruments as are binding on the licensee.

(2) A licensee may be required to submit a list of international agreements it has with international service providers stating -

- (a) name of the international service provider;

- (b) relationship with the service provider;
- (c) details of the service which is the subject matter of the agreement; and
- (d) rates and charge payable in consideration under the agreement.

(3) The Authority may direct a licensee to provide full details of any international agreement including a justification for such agreement to determine its compliance with subrule (1).

(4) Where the Authority concludes that an international agreement does not comply with subrule (1), the Authority shall, after considering representations by the licensee, direct the licensee to-

- (a) take corrective measures within specified time frame; or
- (b) terminate the agreement within specified time frame.

Ownership and management

37. (1) A person shall not -
- (a) have ownership rights or interests, either directly or indirectly, in more than one individual licensee of the Authority which are in competition;
 - (b) participate in management, either on full-time or part-time basis, of more than one individual licensee of the Authority which are in competition.

PART VIII - TARIFF REGULATION

Tariff Approval

38. (1) A dominant licensee shall -
- (a) prior to offering a public communications service or promotion, file the proposed tariff for that service or

promotion with the Authority in writing;

- (b) ensure that the filing -
 - (i) contains all relevant information concerning rates and charges for the service or promotion, including deposits, non-recurring charges and monthly charges and any early termination charges;
 - (ii) contains all non-price terms and conditions applicable to the service or promotion, including any restrictions on eligibility;
 - (iii) specifies the rights and remedies available to customers in the event of disputes regarding billing or provision of the service or promotion;
 - (iv) is accompanied by all accounting and costing information as the Authority may require; and
 - (v) complies with all other requirements and conditions contained in the dominant licensee's licence.

- (2) The Authority shall, within 10 days of receiving the filing -
 - (a) issue a decision approving the filing, in which case the filing shall come into force and effect from the date designated on the approval;
 - (b) issue a decision rejecting the filing, giving reasons for the rejection; or
 - (c) issue a directive stating -
 - (i) the specific changes that the dominant licensee shall make; or
 - (ii) the specific conditions that the dominant

licensee shall comply with,

and the dominant licensee shall either withdraw the filing or make the changes directed by the Authority, or comply with the conditions imposed by the Authority, as the case may be:

Provided that the Authority shall not require the dominant licensee to offer public communications services under tariff, rates or charges that are below its incremental cost of providing the service plus a reasonable return on investment.

(3) Where the Authority fails to take action within 10 days of receipt of the filing, the filing shall come into effect after the 10th day of the filing:

Provided that a dominant licensee shall not charge or accept rates for a public communications service that are below the incremental cost for providing the service, as determined in accordance with accepted guidelines or accounting principles established for the industry.

(4) A dominant licensee shall publish all approved tariffs in a manner which is accessible to the public.

(5) Members of the public are deemed to have notice of the content of all approved tariffs upon publication by the licensee.

(6) A dominant licensee shall charge, and a customer shall pay, the rates specified in the approved filing and the dominant licensee may not charge more or less than the approved filing for that service or product.

(7) A dominant licensee may provide a public communications service pursuant to an individually negotiated contract; and where the price, terms and conditions differ from those in the dominant licensee's approved tariffs, file, and obtain the Authority's approval for, the terms of the contract.

(8) Where there is conflict between the provision of a contract and the terms of an approved filing, the terms of the approved filing shall prevail.

(9) Where, after a tariff has entered into force and effect and the dominant licensee wants to make any changes to any price, term or condition of that tariff, the dominant licensee shall seek the Authority's approval for the pro-

posed changes to that tariff.

International roaming

39. (1) A licensee shall -
- (a) enter into roaming agreements with mobile service providers in other countries to facilitate seamless mobile services across networks and national boundaries;
 - (b) ensure that roaming agreements comply with bilateral and multilateral agreements or arrangements entered into by Lesotho and any other country or countries.
- (2) The Authority shall avail the agreements or arrangements referred to in subrule (1) to licensees, providing guidelines or clarifications where necessary.

Price caps

40. (1) A dominant licensee shall, within 30 days of receiving notice from the Authority, comply with any price cap on a retail communications service that the Authority may prescribe
- (2) The Authority shall not, with the imposition of a price cap, require the dominant licensee to offer public communications services under tariff, rates or charges that do not permit the dominant licensee to recover its costs of providing such service plus a reasonable return on investment.

PART IX - CONSUMER PROTECTION

Provision of public communications services

41. (1) A licensee who provides public communications services shall do so on -
- (a) reasonable request; and
 - (b) just and reasonable prices, terms and conditions.

(2) The Authority may require a licensee who provides a public communications service to -

- (a) provide the Authority with pricing information, terms and conditions, and costing justification for any communications;
- (b) revise any price, term or condition of any communications service that the Authority concludes, after providing the licensee with notice and an opportunity to comment, is not just and reasonable;
- (c) publish information regarding the prices, terms and conditions for its standard public communication service offerings;
- (d) establish and comply with procedures designed to ensure that customers receive timely, accurate and clear bills; and
- (e) establish, and notify customers of, reasonable standards and procedures to be used in any case in which -
 - (i) a customer disputes any charge;
 - (ii) the licensee intends to modify the prices, terms or conditions on which it is providing service; or
 - (iii) the licensee seeks to suspend or terminate service to the customer.

(3) A licensee shall comply with consumer protection guidelines and procedures developed by the Authority for provision of licensed services and the guidelines shall include but not limited to the following -

- (a) access to adequate information to empower consumers to make informed choice;
- (b) availability of effective consumer redress mechanisms through complaint processes and enforcement of

consumer protections;

- (c) protecting consumers against misleading marketing practices, false or misleading claims and irresponsible, as well as indiscreet handling of personal information;
- (d) protection of consumers against potentially hazardous products to the health and safety of consumers;
- (e) ensure that consumers have access to accurate and clear bills for products and services they have consumed.

Prohibition of unfair trade practices

42. (1) A licensee who provides public communications services shall not engage in unfair trade practices.

(2) The Authority shall determine that a licensee is engaging in or has engaged in an unfair trade practice where the licensee -

- (a) provides false or misleading information about its communication services or the communication services offered by another licensee;
- (b) uses coercion to sell a communications service;
- (c) charges for communication service that the end user did not agree to purchase;
- (d) provides a communication service on prices, terms and conditions other than the prices, terms and conditions to which the parties agreed or are approved by the Authority;
- (e) switches a customer from -
 - (i) a service provided by one licensee to a service provided by another licensee; or
 - (ii) one service to another

without the customer's prior consent;

- (f) blocks access to, increases the cost of or degrades the quality of a communications service provided by another licensee; or
- (g) engages in any conduct that harms the interests of consumers without any legitimate business justification.

(3) The Authority may request a licensee to provide such information as it may deem necessary in order to determine compliance with this rule and the Act, and the licensee shall comply with the request.

Privacy protection

43. (1) A licensee who provides public communications service shall adopt appropriate procedures to ensure that, unless a customer has provided prior consent, the licensee shall not -

- (a) provide subscriber information to any third party; or
- (b) use subscriber information for marketing or for any purpose other than -
 - (i) planning, provisioning and billing for any communications service provided by the licensee;
 - (ii) managing bad debt and preventing fraud related to the provision of communications services;
 - (iii) facilitating interconnection and inter-operability between licensees for the provision of communications services;
 - (iv) providing assistance to law enforcement agencies, or judicial authorities or
 - (v) complying with any regulatory requirement imposed by the Authority.

(2) A licensee who transmits customer-provided information shall -

- (a) not intercept, disclose or use the customer-provided information; and
- (b) take all reasonable measures to prevent the unauthorised interception by, or disclosure to, third parties of the user-provided information.

(3) A licensee shall cooperate with law enforcement officials, pursuant to an order issued by a court of competent jurisdiction, where it is necessary -

- (a) for law enforcement;
- (b) to protect national security or public safety; or
- (c) in the case of an emergency threatening imminent loss of life or property,
- (d) to disclose or use customer-related information.

PART X - COMPLIANCE

Obligation to comply

44. (1) A licensee shall comply with all regulatory requirements and obligations applicable to its type of licence as may be stipulated in the Act, rules, licenses or any directives as may be issued by the Authority.

(2) The Authority shall ensure that a licensee complies with regulatory obligations and may carry out such investigations as are necessary to verify whether a licensee is compliant with regulatory obligations.

(3) The Authority may take such enforcement measures to ensure that a licensee complies with its regulatory obligations.

Inspections

45. (1) The Authority may carry out inspections of the premises, instal-

lations or documents of the licensee as part of any investigation to ensure compliance; and the licensee shall grant access to all such premises, installations or documents.

(2) The Authority may appoint its staff members or independent experts to carry out investigations including inspections, depending on the complexity or nature of the investigation to be carried out.

Penalties

46. The Authority may impose penalties in terms of section 47 of the Act where there is contravention of any provision of the Act, these Rules or licences as the case may be.

PART XI - DISPUTES

Consumer disputes

47. (1) A licensee and its customers shall resolve disputes through private, good faith negotiations.

(2) Where parties fail to resolve a dispute as envisaged by sub rule (1), the aggrieved party shall file a complaint with the Authority, including the full record of prior private negotiations.

(3) The Authority shall -

(a) consult with the licensee against which the complaint was filed, and shall seek to facilitate an amicable resolution of the matter. In the event that the parties are able to privately settle their dispute, they shall, within 14 days of reaching agreement, inform the Authority, in writing, of the terms of the settlement;

(b) where there is an amicable resolution of the dispute within 30 days after receiving the complaint -

(i) issue a decision on the basis of written representations submitted by the parties; or

- (ii) conduct an adjudicatory hearing.

(4) In resolving a dispute, the Authority shall prescribe a specific remedy and shall give reasons in support of its decision.

Licensee disputes

48. (1) A licensee shall resolve all disputes through private, good faith negotiations.

(2) Where a licensee fail to resolve a dispute as envisaged by sub rule (1), the aggrieved licensee shall file a complaint with the Authority, including the full record of prior private negotiations.

(3) The Authority shall -

- (a) consult with the licensee against which the complaint was filed, and shall facilitate an amicable resolution of the matter. In the event that the parties are able to amicably settle their dispute, they shall, within 14 days of reaching agreement, inform the Authority, in writing, of the terms of the settlement;
- (b) where the Authority is unable to facilitate an amicable resolution of the dispute within 30 days after receiving the complaint -
 - (i) issue a decision on the basis of written representations submitted by the parties; or
 - (ii) conduct an adjudicatory hearing.

(4) In resolving a dispute, the Authority shall prescribe a specific remedy and shall give reasons in support of its decision.

Adjudication

49 (1) The Authority shall conduct adjudicatory hearings at such place and time as directed by the Authority.

- (2) Before an adjudicatory hearing is held -
 - (a) the complainant shall submit a statement of claim, fully outlining the facts that form the basis of the complaint, and remedies sought;
 - (b) the licensee against whom the claim is made shall submit statement of defence responding to all issues raised by the complainant.
- (3) The Authority shall issue a determination within 14 days after an adjudicatory hearing.

PART XII - DECISIONS OF THE AUTHORITY

Decisions

50. (1) The Authority shall provide reasons for any decision made in terms of its powers under the Act, and such decisions shall be based on documentary or such evidence as may be before the Authority in a transparent manner.

(2) A decision of the Authority shall be final and shall be implemented unless reviewed as envisaged in subrule (3).

(3) Where a party to a decision made by the Authority is not satisfied with the decision, the party may apply for review in the High Court within 14 days of the decision and the decision shall not be implemented pending finalisation of the review.

Repeal

51. The Lesotho Telecommunications Authority (Administration, Procedural and Service Provision) Rules, 2000² are repealed.

TŠELISO 'MOKELA
CHIEF EXECUTIVE OFFICER

NOTE

1. Act No. 4 of 2012
2. Legal Notice No. 212 of 2000