

Statutory Instrument 262 of 2001.

Postal and Telecommunication (Internet Services) Regulations, 2001

SI 262/2001

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IT is hereby notified that the Minister of Transport and Communications has, in terms of section 99 of the Postal and Telecommunications Act [Chapter 12:05] made the following regulations after consultation with the Authority:—

PART I

PRELIMINARY

1. Title

These regulations may be cited as the Postal and Telecommunication (Internet Services) Regulations, 2001.

2. Interpretation

In these regulations—

“bandwidth” means the capacity or speed of communication circuit leased by an Internet Service Provider from an Internet Access Provider;

“gateway” means the facility that connects one network to the other network,

“interconnection” means the physical or logical linking of communications networks used by the licensees to originate and terminate communication in the networks;

“Internet” means a network of computers connected to other such networks by telephone lines using the internet protocol;

“Internet Access Provider (IAP)” means the telecommunications operator that provides interconnection, and gateway capacity for Internet services;

- “Internet Domain” means the system of Internet addresses that allow each different user a unique identity;
“Internet Protocol (IP)” means the rules and specifications describing how to transmit data via the internet;
“Internet Service Provider (ISP)” means the provider of end- user internet access;
“Mail exchange records (MX records)” means an entry in a domain name system database that directs the routing of mail transfer agents to send information from one location and to receive it at another;
“Voice over Internet Protocol (VoIP)” means the provision of voice telephony over the Internet protocol.

3. Application

These regulations shall apply to Internet access providers, internet service providers and users of the internet service.

PART II

INTERNET SERVICE LICENCES

4. Classes of internet service licences

- (1) An application may be made for any one of the following classes of internet service licence, namely—
- (a) class A Internet Access Provider with capacity for Internet Protocol telephony or an IP-PSTN gateway; or
 - (b) class B Internet Access Provider without Internet Protocol telephony or an IP-PSTN gateway.

5. Licence application procedure

- (1) An application for—
- (a) class A Internet Access Provider licence; or
 - (b) class B Internet Access Provider licence;

shall be made in the manner set out in the Internet specifications and accompanied by the application fee as prescribed by notice in the *Gazette*.

(2) The Authority shall prepare the specifications for internet service providers and cause a notice to be published in the *Gazette* and in such newspaper as the Authority thinks appropriate—

- (a) indicating where the copies of the specifications may be obtained; and
- (b) calling upon proposed applicants for the relevant licence to submit an application in the form of a project document complying with the requirements of the specification and these regulations together with the application fee as prescribed by notice in the *Gazette*.

(3) If, on considering an application made in terms of subsection (1), the Authority is satisfied that—

- (a) the applicant will comply with the provisions of these regulations; and
- (b) the grant of the licence does not infringe the rights of other Internet service providers;

the Authority shall issue a licence to the applicant.

(4) If, on considering an application in terms of subsection (1), the Authority—

- (a) is not satisfied as to the matters referred to in subsection (3); or
- (b) considers that the internet service in respect of which the application is made is adequately provided for by a prior licensee, or that the efficiency of the provision or operation of the internet service in question by any prior licensee may be compromised if the application is granted; or
- (c) considers that it would not be in the public interest to issue a licence to the applicant;

subject to these regulations the Authority may refuse to issue a licence to the applicant concerned:

Provided that—

- (i) before refusing to issue a licence the Authority shall notify the applicant in writing that it proposes to refuse the application and of its reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter; and
- (ii) within ten days after deciding to refuse to issue a licence on any ground, the Authority shall notify the applicant in writing of its decision and of the reasons for it.

(5) The Authority shall cause all the licences issued, to be published in the *Gazette*.

(6) The period between the Authority’s receipt of an application in terms of subsection (1) and the date on which it notifies the applicant of its decision or proposed decision in terms of subsection (3) and (4) as the case may be, shall not exceed three months.

6. Licence fees and contributions

(1) An applicant for class A Internet Access Provider licence and a licensee shall pay to the Authority the following fees and contributions as prescribed by notice in the *Gazette*—

- (a) a non-refundable application fee; and
- (b) a basic licence fee comprising two components—
 - (i) an initial basic licence fee payable on issue of the licence; and

- (ii) an annual licence fee;
 - (c) an annual contribution to the Universal Service Fund.
- (2) An applicant for class B Internet Access Provider licence and a licensee shall pay to the Authority the following fees as prescribed by notice in the *Gazette*—
- (a) a non-refundable application fee; and
 - (b) an initial basic licence fee payable on the issue of the licence; and
 - (c) an annual licence fee.

7. Terms and conditions and duration of licences

- (1) A licence shall be in written form and shall, in the case of—
- (a) class A Internet Access Provider Licence; and
 - (b) class B Internet Access Provider Licence; be valid for eight years.
- (2) A licensee shall provide internet connection facilities for licensed operators to interconnect with its Internet Network pursuant to the terms and conditions agreed upon between the parties.
- (3) Without limitation to any other conditions that may be so specified or otherwise applicable, a licence may specify—
- (a) specifications, in accordance with ITU standards, to be adopted in the operation of the licence;
 - (b) universal service obligations to be undertaken by the licensee;
 - (c) performance specifications to which the licensee is to conform;
 - (d) the obligation of the licensee in relation to the conclusion of any agreement with any other person licensed in terms of these regulations on interconnection with established licensed networks;
 - (e) the obligation of the licensee in relation to the provision of emergency service.

8. Material breaches of licences

- (1) Without limiting any other grounds on which the Authority may cancel a licence, the following events whether specified in the licence or not, shall constitute material breaches of the licence justifying the cancellation of the licence concerned—
- (a) failure by a licensee to provide Internet services within three months of the date of issue of licence;
 - (b) failure by a licensee to provide the licensed service to customers in accordance with the targets specified in its business plan;
 - (c) continuous interruption of the licensed service for a consecutive or combined period of 30 days over any four-month period, provided that the interruption is not the result of *force majeure*;
 - (d) where a licensee is declared bankrupt or insolvent or is liquidated under any written laws in force in Zimbabwe or any other country;
 - (e) failure by a licensee to pay any prescribed fees or contributions or any penalty imposed in terms of section 43 of the Act on such a licence by the Authority.

9. Renewal of internet service licences and notice of termination or renewal

- (1) The Authority may renew a licence issued in terms of these regulations upon the written request by the licensee.
- (2) A licensee may submit to the Authority a written request for the renewal of its licence at least one year before his licence expires.

10. Amendment of internet service licences

- (1) A licensee may submit to the Authority a written request for amendment of his licence at any time.
- (2) Where the Authority proposes to amend a licence the Authority shall notify the licensee in writing accordingly and shall in its notice specify—
- (3) The licensee may respond to a notification in terms of subsection (2) within 30 days from the date on which the Authority serves the notice on the licensee.
- (4) If the licensee does not respond to the Authority within the period required under subsection (3), the Authority shall amend the licence in the manner specified in the notice.
- (5) Where the licensee responds within the period required under subsection (3), the Authority may amend the licence taking into consideration the representations raised by the licensee.
- (a) the proposed amendment;
 - (b) state the reasons for the proposed amendment; and
 - (c) the date on which the Authority intends to effect the amendment

PART III

INTERNET DOMAINS

11. Domains and domain administration

- (1) The country Internet top level (cTLD) and second level domains shall be the property of the Authority.
- (2) The Authority shall, from time to time, award contracts for the administration of domains through a competitive bidding process.
- (3) A domain administration awarded in terms of subsection (2) shall be valid for a period of five years, after which it shall be renewed in terms of subsection (2).
- (4) The Authority shall determine the second level domains under the top level domains from time to time.
- (5) The Authority shall require all internet access providers, internet service providers and internet users to define MX records and third level domain names as required under the approved second level domains, within three months of the date of publication of these regulations.
- (6) No licensee or access provider, or users of internet service shall define MX records under the country top level domain, (zw) and second level domains except for domain administrative functions only (information@co.zw).

PART IV

GENERAL PROVISIONS APPLICABLE TO INTERNET SERVICE LICENSEES

12. IP telephony

- (1) An Internet Access provider may offer Internet Protocol telephony on the same licensing terms and conditions as those for the conventional telephony.
- (2) An Internet Protocol telephony shall be interconnected with other networks at the trunk switch level or other level subject to the approval of the Authority.
- (3) The gateway between an Internet Protocol telephony network and other telecommunications networks shall have the same status as a trunk switch on a fixed telecommunications network and shall allow bi-directional origination and termination of traffic.

13. Internet service provision to educational and health institutions

A licensee providing access to internet services to educational or health institutions at a tariff of at least ten *per centum* below the average market rate shall be eligible to a rebate of at least one per centum of its annual licence fees.

14. Internet content and Internet connection to public broadcasting service

- (1) Internet content shall be subject to existing laws of Zimbabwe.
- (2) All Internet Protocol multi-casting services, audio and video shall be confined to the Internet Protocol network.
- (3) Internet services connected to public broadcasting service shall be regulated by the broadcasting regulations.

15. Preservation of secrecy

(1) It shall be a condition of the issue of a licence that if any message, the receipt of which is not authorised thereunder, is received by means of the internet service concerned, the licensee shall not disclose the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except an officer of the Authority or a competent legal tribunal and shall not retain any copy or make any use of such message or access to it to be reproduced in writing, copied or made use of.

(2) A licence shall not be issued unless the applicant signs, in the presence of an officer of the Authority, a declaration of secrecy in the following form—

“I (*name in full*) do solemnly declare that if any internet communication which I am not entitled to receive is unintentionally received through my working of an internet service, I will not make known or allow to be made known its contents, origin or destination, its existence or the fact of its receipt to any person otherwise than in terms of subsection (1).”

16. Indemnity

A licensee shall at all times indemnify the Authority against all actions, claims and demands which maybe brought or made by any person in respect of any injury arising from any act of the license or his agent in connection with the working of the service or system for which he is licensed.