



CONCEPT PAPER ON CONVERGED LICENSING FRAMEWORK (CLF)

1.0 INTRODUCTION

- 1.1 The aim of this Consultation Paper is to seek views from the public as well as the ICT industry on a proposed converged licensing framework (CLF) to be adopted by Malawi Communications Regulatory (MACRA).
- 1.2 In line with the objective of fostering the development of ICT services and technology in accordance with recognized international standards¹, MACRA intends to migrate the current licensing regime to a Converged Licensing Framework (CLF) regime for the telecommunications and broadcasting sectors.
- 1.3 This Consultation Paper provides an opportunity for stakeholders including governmental agencies, industry and general public to provide feedback and contribute in the process of MACRA's converged licensing exercise.
- 1.4 This Consultation paper covers: the proposed CLF, types of licences; proposed process of CLF; terms & conditions and the transition issues related to the new CLF regime.

¹ S.4 (2)(f) of the Communications Act cap 68:01 of the Laws of Malawi

2.0 BACKGROUND OF CONVERGED LICENSING

- 2.1 In recent years, technological advancement has seen the blurring of the boundaries between telecommunications and broadcasting services. Transmission systems and networks are increasingly substitutable with capacity to support multiple-play business models, i.e. a single carrier providing voice telephony services, broadband Internet access and broadcasting services through a single platform such as optical fibre, ADSL or wireless network.
- 2.2 The primary reason behind these technical efficiencies and the capacity to support multiple-play business model is that of technology convergence, i.e. where different technological systems evolve towards similar functions. In the past, for example, video used to be only transmitted on dedicated platform for video signals and was received on television sets, AM/FM signals were received and played on radio receivers while voice calls and faxes used to be only transmitted over copper networks. The convergence of technology comprises both technical and functional aspects. The technical aspect refers to the ability of any infrastructure / platform to transmit any type of signal i.e. data, voice or video while functional aspect means that the consumers may be able to access seamlessly different signals i.e. voice, data or video on a common device.
- 2.3 It is therefore crucial for telecommunication licensing and regulatory framework to be responsive to the dynamic changes in the ICT industry in order to promote innovation and industry growth i.e. regulation needs to be impact-sensitive. Convergence has allowed for considerable efficiencies in all knowledge and transaction-intensive service sectors, for example, the financial and healthcare industries. Convergence in some cases brings about major changes in the structure of industry by for example lowering the barriers of entry for new networks such as wireless

networks, enabling ICT players to develop and maintain infrastructure at much lower costs than before. Convergence also means that services will be increasingly bundled together, for example through the delivery of combined telecommunications, internet and broadcasting services. Competition will therefore develop based on both delivery platforms as well as content.

- 2.4 As the regulator and industry promoter for the ICT sector in Malawi, MACRA is conscious of the need to reduce barriers to entry and promote competition in the ICT sector. At the same time, convergence presents opportunities for market players to tap new revenue streams as well as increase the quality and diversity of services they can offer to end users. It is therefore important that Malawi's regulatory framework for the telecommunications and broadcasting sectors evolve to accommodate these trends and opportunities but also address any potential issues that might result from a converging communications sector. Notwithstanding the continuing technological convergence, MACRA as a regulator of the communications industry believes that the implementation of a converged regulatory framework is critical to national development in line with MACRA's strategic plan.
- 2.5 Convergence and globalization may also mean organizations based in countries that have better policies and regulatory structures could benefit more from technological change. As such, an efficient and effective regulatory regime for the communications sector could attract investors to Malawi. Malawi Government has recognized the ICT sector as one of the pillars for development². It is however recognized that technological convergence will need to be met with corresponding regulatory convergence.

² MGDs II

- 2.6 Accordingly, the implementation of a converged regulatory framework would equip MACRA with the regulatory tools for regulating the converged communications sector.
- 2.7 MACRA believes that convergence is likely to assist industry players in expanding into new market segments and identifies such expansion as a key economic driver. Additionally, MACRA has also identified the following factors as convergence driving forces:
- (a) erosion of fixed line voice calls revenue.
 - (b) competitive pressure from new entrants in high-margin sectors of the market and from vertically integrated industry participants (triple play³ bundles);
 - (c) saturation of both fixed and mobile telephone services; and
 - (d) retention and expansion of users' base, lowering customer churn.
- 2.8 In light of the above, MACRA would like to undertake a consultation exercise to gather feedback on its proposed approach towards a converged regulatory framework.

3.0 SITUATION ANALYSIS

- 3.1 MACRA intends to simplify the existing licensing structure as the increasing convergence of service capabilities on common technical platforms may blur the distinctions between different licensing

³ The ability of different networks to carry similar kinds of services or, alternatively, the ability to provide a range of services over a single network.

categories. MACRA's view is that the traditional categorizations of service-based and technology-based licensing systems are no longer appropriate for a converged communication sector.

- 3.2 It is important to recognize that convergence is not just about technology. It is about services and about new ways of doing business and of interacting with society. The emergence of new services and the development of existing services are expected to expand the ICT sector. It is important that the development of new services should not be hindered by the existence of barriers, including regulatory barriers. For example, development of new products and services may be held back by regulatory uncertainty given that existing rules were defined based on traditional distinctions between telecommunications and broadcasting. However, currently, services increasingly cut across the traditional sectors and geographical boundaries and may be provided over a variety of platforms in order to promote a common regulatory approach towards the converged communications sector and eliminate regulatory barriers to the efficient development of such sector.

4.0 BENCHMARKS ON CONVERGED LICENSING FRAMEWORKS

- 4.1 MACRA therefore is proposing to streamline the existing licensing categories by implementing a converged licensing framework. In considering its proposed converged licensing framework, MACRA considered different converged licensing framework approaches / models adopted by various countries as well as challenges experienced by each model. The converged licensing models can be broadly categorized as follows:

I) Model I - Unified (Global) Licensing

This model allows operators to provide multiple services under one licence using any kind of technology. Argentina has adopted this model.

This model is technology- and service- neutral. Operators can provide **all forms** of services under the umbrella of a single licence, using any type of communications infrastructure and technology capable of delivering the desired service.

It does not distinguish between facilities-based service providers and resellers, nor does it distinguish between fixed and mobile services, wire line and wireless services, or local, national, and international services. Spectrum rights and numbering resources are allocated separately from the unified authorization.

Argentina introduced a unified authorization framework in 2000. The Argentinean unified authorization (licencia única) permits licensees to provide any and all telecommunications services to the public.

In most countries, unified licences are issued as individual licences. However, in some countries, the process for issuing the unified licences blends aspects of general authorization processes and competitive licensing regimes. These hybrid processes can best be described as non-competitive individual licensing processes. Even though applicants do not compete for a limited number of licences, they must meet a variety of criteria to qualify for a licence and their applications are subject to close regulatory scrutiny.

II) Model II: Multi – Service Licensing

Like the Unified (Global) licensing, this model is technology- and service- neutral. Unlike the unified Licence, operators can provide **multiple of services** and not all services under the umbrella of a single licence. Generally, multi – service licenses are limited than the unified licences, operators are permitted to provide any designated set of services. The multiple services to be provided under a single licence are based on determined service categories or market segment. There is no uniform approach on the market segmentation or service categories. However countries have categorized this into-

- (a) two markets segments (Two - Tier); or
- (b) four markets (Four – Tier).

(a) Two Tier – Facility based and Service based Licensing

This model establishes different licences for Facility based and Services based licensing. The licensees are categorized into Facilities Based Operators (FBOs) and Service Based Operators (SBOs). Service Based license is further divided into Individual and Class license. The FBOs can build a telecommunications network for the carriage of telecommunications and broadcast traffic. SBOs are operators intending to lease telecommunication network elements such as transmission capacity, switching services, ducts and fibre from any FBO to provide telecommunication services to third parties or resell the telecommunication services of FBOs. FBO licensees can provide SBO services under the same license i.e. in Singapore, Zambia and Botswana.

Due to some challenges and in response to operators' demand to delink the passive network infrastructure from the active network infrastructure, Zambia has however introduced third licence category 'passive Facility Licence'. Botswana is in the process of reviewing its licensing framework due to similar challenges as experienced by Zambia and is proposing to adopt the Four – Tier Licensing model.

(b) Four Tier Licensing

This model establishes four Categories of licenses as follows: Network Facilities Providers, Network Service Providers, Application Service Providers and Content Service Providers. The services falling under these categories are further subdivided into Individual, Class and Exempt Services. Class licenses have a lower level of regulation than individual licenses. Malaysia and Tanzania are some of the countries that have adopted this model.

MACRA further noted that on closer scrutiny the models were not fundamentally different from each other. For example, one could classify facility-based licenses under Unified License and service-based licenses under class license. Under this situation, Model-I and II will be same. Similarly, if network infrastructure facilities (Like IP-I Services), networking services (bandwidth services like IP-II licensee) and value added network application services (like Internet Services) are combined under class license and network application services are put under Unified License then Model-I and Model-II will be the same.

Multi-service licences are sometimes issued as general licenses and in other cases are issued as individual licences. It is not uncommon for countries to have both general and individual license regimes for their multi-service licensing. Individual multi-service licenses are often issued using a non- competitive individual licensing process.

III) Model III – Open Entry

This model uses class licences or general authorization whereby operators are asked to simply notify the Regulator or register their services. This model has been adopted in developed countries with effective competition levels in the sector

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{See -**Annex I** on Country Experiences}.

4.2 MACRAS' PROPOSED APPROACH TO CLF

MACRA is proposing the **Multi- Service -four tier** license regime. See - **Annex II** on details of Proposed CLF Framework. In proposing this approach, MACRA considered the following:

- The need to promote competition in the application market segment and the need to facilitate infrastructure sharing at the infrastructure/facility market segment.
- The benchmark conducted on other countries and the challenges experienced in those countries. e.g. Zambia and Botswana who adopted the Two-Tier Licence regime but have now moved or are moving towards Four-Tier Licence regime. One of the major challenge and consideration that has resulted in this shift is the need for a licensing framework that delinks the passive network infrastructure from the active network infrastructure.
- MACRA already has applications from some operators to delink passive network infrastructure from the active infrastructure.

4.3 MACRAS PROPOSED LICENSING PROCESS FOR CLF

MACRA is proposing a hybrid licensing approach to the CLF where both general and individual license regimes will be used. It is further proposed that Individual licenses be issued using a non-competitive individual licensing process.

5.0 LICENCE CONDITIONS

The terms and conditions for CLF licences include the following:

5.1 Service Area - The service area for existing licensees migrating to the CLF will be the same as the service area in the existing licence.

5.2 Spectrum - All existing spectrum assignments under the original licence will be carried over to the new CLF, with the same remaining validity period for the assignments. The licensee shall be required to apply for any new spectrum assignments as specified by the MACRA.

5.3 Numbering - All existing numbers and codes under the Malawi National Numbering Plan assigned to the licensee shall remain valid under the CLF and shall be subject to any applicable Regulations. Licensees shall be required to apply to MACRA for new numbers and codes.

5.4 Quality of Service - All licensees under CLF shall be required to adhere to quality of service (QoS) standards as prescribed by MACRA from time to time.

5.5 Interconnection - Under CLF interconnection shall be mandatory to applicable licence categories as specified by the MACRA and shall be subject to any applicable Regulations.

5.6 Licence Fees and Levies

Under the CLF each licence category will have a different basic fee structure.

Annual levy of 4% on gross revenue (less interconnection and similar charges, where applicable) will be payable to the Authority by all licensees under each category. The rationale for the fees and levies is to meet the cost of Regulation and Universal access and services provision.

6.0 TRANSITION / MIGRATION TO CLF

The approaches to transitioning to CLF can broadly be classified as follows:

- a. Automatic / Compulsory Conversion
- b. Optional Conversion

6.1 Under the first option the existing licensees are deemed to have submitted all documentation required under the new licence framework to

obtain licences in respect of services and networks that they were previously authorized to provide. Hence the existing licences are automatically issued equivalent licences under the new licensing regime. Migration to the CLF is mandatory and automatic and existing licences are converted to one or more licences under the new CLF. A deadline for migration is also set normally 12 - 24 months (RSA took this approach.)

6.2 The Second approach however requires that existing licensees submit their notification to have their licenses converted to the CLF. However those who do not wish to convert or migrate to the new CLF operate under the existing authorization until the expiry of their licences. (Tanzania and Botswana adopted this approach)

Regardless of the approach taken, conversion to new CLF is done under the following principles:-

- The new licences are granted on no less favourable terms than the existing licenses. However as part of the conversion process, the Regulator may grant rights and impose obligations on licensees to ensure that existing licensees comply with the new CLF Regulations.
- All existing licenses issued under the old traditional licensing regime remain valid until converted to the new CLF regime. Existing licensees remain subject to all terms and conditions that are not consistent with the CLF until the licenses are converted to the new regime.
- All licenses converted pursuant to the CLF retain their original validity period unless otherwise specified by the Regulator.
- Once the existing licence is converted and re-issued under the new CLF, the new licence is governed by the terms and conditions of the CLF and the existing licence will be deemed to have been surrendered to the Regulator and will no longer be in force or have effect.
- MACRA will not grant or include in the terms of a converted licence any monopoly or exclusionary rights in any network or services contemplated in any legislation. Existing monopoly and exclusionary rights are subject to the provision that radio spectrum that is assigned

to a licensee is not considered to be a monopoly or to constitute exclusionary rights.

- Where conversion of a licence entails increased or reduced fees, such fees shall have no retrospective application.

6.3 Countries have also adopted some form of incentive regulation to facilitate the migration process including waiving of application fees and initial fees (Tanzania) or granting of converged licenses with full term. (Tanzania and Botswana).

6.4 MACRAS PROPOSAL ON TRANSITIONAL APPROACH

MACRA is proposing the Automatic Transition to CLF based on the principles above highlighted. MACRA is further proposing a transition period of 24 months from the introduction of the new CLF. All existing licensees will be deemed to have submitted all documentation required under the new licensing framework to obtain a licence in respect of services and networks that they were authorized to provide. However, Licensee may elect to expand or reduce the scope of services in its existing licence.

6.5 Where the Licensee elects to reduce the scope of its existing services MACRA shall re-issue the Licensee under the CLF corresponding to its revised scope. However, MACRA shall treat any notification with expanded scope as a new licence application for those services under the expanded scope and the Licensee will be required to comply with the application requirement for the applicable licence under the CLF.

6.6 MACRA is proposing this Automatic approach due to a number of reasons including:

- I. Compliance with the proposed regulatory technology and service neutral regulation in the Revised Communication Bill.
- II. Facilitation of competition to ensure that licensees of the same licence category are subject to similar rules

III. Adapting to international best practices, as MACRA is way behind since most countries initiated this process as far back as 2006 i.e. South Africa (2006), Tanzania (2008), Uganda, Kenya, Zambia, Botswana (2007).

IV. Facilitating ease of the regulatory management process to ensure effective and efficient regulation where all licensees operate on a level playing field in the same environment.

7.0 ROADMAP TO CLF

In order to effectively implement the CLF, MACRA proposes the Road Map as attached in **Annex III**.

8.0 INVITATION TO COMMENT

8.1 In order for MACRA to have a better understanding of the various requirements from the relevant stakeholders, MACRA hereby invites views and comments from the Industry and members of the public on MACRA's proposed CLF . Specifically MACRA wishes to get feedback on the above proposals including MACRA's classification of licences.

8.2 Respondents are also invited to present views and comments on any other issues related to CLF which respondents consider relevant to the process.

9.0 SUBMISSIONS

9.1 All Respondents are required to include their personal / company particulars as well as correspondence address and contact details in their submissions.

9.2 All views and comments should be submitted in writing and in both hard and soft copies.

9.3 Hard copy submissions to be addressed by mail or fax to the following address:

Director General
MACRA
Private Bag 261
Blantyre.

Fax: 01883 890

9.4 Softcopy submissions are to be sent by email to:

dg-macra@macra.org.mw

9.5 MACRA assumes that all submissions to this Consultation Paper are not made in confidence unless otherwise specified. MACRA reserves the right to reproduce and publish the submissions in whole or in part in any form (including disclosing the identity of the respondent) and to use, adapt, or develop any proposals put forward without seeking permission or providing acknowledgement of the party making the proposal. Any part of the submission, which is considered by a respondent to be commercially sensitive or confidential should be clearly marked and set out in a separate annexure, which MACRA will take into account when disclosing the submission.

9.6 The closing date for this public consultation is 15:30 hours, 6th April 2015

ANNEX I – COUNTRY EXPERIENCES

COMMENTS	TYPE OF CLF	LICENCE CATEGORIES	YEAR	COMMENTS
Uganda	Multi- Service Three – Tier	<ol style="list-style-type: none"> 1. Public Service Provider licence (PSP) Sub divided into 2 (Voice & data) 2. Public Infrastructure Licence (PIP) 3. General Authorization 	-	-
Botswana	Multi- Service Three – Tier	<ol style="list-style-type: none"> 1. Public Telecommunications Operator (PTO) 2. Value Added services (Vans) 3. Private Network Licenses 	2007	In 2014 Botswana started Consultations in the bid to adopt Multi- Service 4 Tier CLF. It further proposed the adoption of compulsory migration to the new 4-Tier licence framework.
Tanzania	Multi- Service Four – Tier	<ol style="list-style-type: none"> 1. Network Facility Licence (NF) 2. Network Service Licence (NS) 3. Application Service Licence (AS) 4. Content 		This is similar to the CLF proposed by MACRA

		Service Licence (CS)		
South Africa	Multi- Service Two – Tier	<ol style="list-style-type: none"> 1. Electronic Communications Network Service Licence [ECNS] (Wholesale to other ECNS or ECS but doesn't deal with end users). 2. Electronic Communications Services [ECS] (Retail services to end users) <p>Grant both general and Class Licences</p>	2006	-
Malaysia	Multi- Service Three – Tier	<ol style="list-style-type: none"> 1. Network Facility Providers (NFP) 2. Network Service providers (NSP) 3. Application Service Providers (ASP) 4. Content Application Service Providers (CASP) 	1999	This is also similar to Tanzania and similar to the proposed CLF by MACRA

ANNEX II: PROPOSED CATEGORIZATION OF CLF

	Type of Licence	Duration & Class	Fee	Services	Sub- Categories
1	Network Facilities Covers all network infrastructure operators of any nature.	10 Years Individual		Towers, cables, ducts, V-sats, Satellite hubs, satellite Earth stations systems, radio communication transmitters, fixed links, transmission poles, public payphones facilities, Landing points mobile communications systems etc	International
					National
2	Network Services Covers all operators that provide basic connectivity and broadband to support applications. These allow connectivity and backhaul among different networks.	10 Years Individual		Bandwidth services, broadcasting distribution services, cellular mobile services, space services segment services etc.	International
					Regional
3	Application Services Covers operators that resell or procure services from network service operators to provide functions such as	10 years - Individual		Internet services providers, payphone services, Virtual Mobile Providers (MNVO), Public cellular services, IP telephone, public payphone services, public switched data service etc.	International
		3 years - General licence			National
					Regional

	voice data content and e-commerce services to the end users (last mile services) etc				
4	Content Services Covers providers of traditional broadcast services, (Radio & TV)	7 years - Individual		Satellite broadcasting, terrestrial TV and radio broadcasting and other electronic media.	National Television
					National Radio
					Regional Television
					Regional Radio
					Community Radio (Geographical)
					Community Television (Geographical)
					Community of Interest Television
					Community of Interest Radio
					Subscription content services

ANNEX III – ROADMAP TO CLF

#	ACTIVITY	DUE DATE
1	Cut-off date for issuance of licenses under current licensing framework	1 st January 2015
2	Publication and submission of Consultation Paper to Operators and relevant stakeholders.	By 6 th March, 2015
3	Feedback from Stakeholders	6 th April, 2015
4	Consultative Meetings with Operators (Telecommunications & Broadcasting)	20 th – 24 th April, 2015
5	MACRA Feedback to operators on consultative meetings outcomes.	7 th May, 2015
6	Implementation of CLF	TBA
7	Issuance of converged licenses	TBA
8	Transition to CLF	TBA

