



LICENSING APPLICATION GUIDELINES, 2016

1.0 INTRODUCTION

In exercise of the powers conferred by the Communications Act, Cap 68:01 of the Laws of Malawi, Malawi Communications Regulatory Authority (hereinafter referred to as the “Authority”) issues these guidelines for granting of electronic communications licences in the Republic of Malawi.

The developments in the communications sector, especially the evolution from analogue to digital technology has facilitated the convergence of services like voice, data and video. Increasingly these are now being rendered through single platforms bringing about a convergence in services and devices. These new developments require a new regulatory approach on facility, transmission, switching and access of information and communications networks. The increased requirement for communication has resulted in the need for flexible and easy communication facilities that are user-friendly and above all efficient and economically accessible.

The demand for communication services has rapidly grown in both developing and developed countries. It is this unprecedented growth in demand that has prompted the Authority to introduce the new converged licensing framework (CLF).

2.0 APPLICATION

These guidelines will guide applications for electronic communications licences under the Communications Act; the assessment of such applications and the grant of licences by the Authority.

3.0 CATEGORIES OF THE LICENCES

The Authority has classified the following licence categories for electronic communication services:-

3.1 Network Facility Licence(NFL)

This licence that is mainly responsible for resources and facilities authorizes ownership and control of electronic communications infrastructure. Examples of facilities within the scope of this licence include Earth Stations, Fixed links and cables, Public Payphone facilities, Radio communications transceivers and fixed links, Satellite hubs, Satellite control station, VSAT, Space station, Submarine cable landing centre, Switching centre, Towers, Poles, Ducts and Pits used in conjunction with other network facilities.

3.2 Network Service Licence (NSL)

This licencethat is mainly responsible for interconnection, gives authorization to operate electronic communication networks in order to deliver services. Examples of network services are Bandwidth services, Broadcasting distribution services, Telecommunication (mobile /fixed) networks, Access applications service, Space Segment Services.

3.3 Application Service Licence(ASL)

This licence is mainly responsible for end-user services. It authorizes reselling or procurement of services from Network Service operators. The salient feature of this licence is that the licensee does not own network infrastructure nor operate network services. Examples are Internet Service Providers (ISP), Mobile Virtual Network Operators (MVNO), Payphone services, Telecommunication (fixed / mobile) services, IP telephony, Public switched data service.

3.4 Content Service Licence(CSL)

This licence which is mainly responsible for broadcasting content services authorizes the provision of content such as Satellite broadcasting, Terrestrial Broadcasting (Subscription/Free to air), Cable Television, and other electronic media.

4.0 MARKET SEGMENTS

The licence categories under the CLF are further subdivided into three main market segments as follows;

4.1 International Market Segment

Licensees are authorized to offer services from one or more of the four licence categories to International market.

4.2 National Market Segment

Licensees are authorized to provide their services nationwide.

4.3 Regional Market Segment

Licensees are authorized to provide services within the licensed region. However, content services licence is further segmented into a Community Market.

5.0 LICENCE CLASSIFICATION

In accordance with Sections 46 and 49 of the Act, the Authority may issue two classes of licences as follows:

- i. Individual; and
- ii. Class.

5.1 Individual Licence

Licenses issued under this category are those that have large socio-economic impact as well as crucial regulatory obligations. These licences shall be issued upon a successful assessment process and subject to availability of scarce resources such as the radio frequency spectrum and numbers.

Examples of the services that may require licence include Earth Stations, Fixed links and cables, Radio communications transceivers and links, Satellite hubs, Satellite control station, Space station, Submarine cable landing centre, Switching centre, Towers, poles, ducts and pits used in conjunction with other network facilities, Bandwidth services, Broadcasting distribution services, telecommunication (fixed / mobile) services, Access applications service, IP telephony, Satellite broadcasting, Terrestrial Broadcasting, Public switched data service and Space Services.

5.2 Class Licence

Licences issued under this class are those that have lesser socio-economic impact. These licences may be issued unconditionally upon fulfillment of standard terms and conditions. Examples of a Class licence include vsat services, amateur radio services etc.

6.0 APPLICATION PROCEDURES

6.1 Procedures applicable to all licences

Unless otherwise indicated, the following procedures will apply to all licence applications:-

- (a) An application for a licence pursuant to the Communications Act, Licensing Regulations and these Guidelines shall be made;
 - to the Authority;
 - on duly filled applicable forms;
 - on payment of applicable non-refundable fees; and
 - on submission of relevant supporting documentation.
- (b) Where necessary the Authority may advise the applicant on the appropriate licence category and fees payable.
- (c) The Authority will determine the eligibility of the applicant.
- (d) The applicant must notify the Authority of any material change affecting its application including any change in shareholding and structure.

- (e) If the application does not meet the requirements *prima facie*, the applicant will be informed about the missing items within fourteen (14) days of its receipt.
- (f) The Authority may require the applicant to furnish additional information in respect of the application.
- (g) The Authority will register the application and acknowledge receipt to the applicant within fourteen (14) days of receipt of the application.
- (h) If the application meets all requirements, the Authority will, in respect to an application for an individual licence, publish the details of the applicants giving members of the public a period of fourteen (14) days to submit comments or objection to the application.
- (i) Where an objection is raised after publication, the Authority will investigate the grounds of the objections within fourteen (14) days of receipt of the objection.
- (j) If during the investigation the Authority finds valid reasons not to grant the licence, the application will be rejected and the applicant will be informed accordingly within seven (7) days after close of the investigation.
- (k) If the applicant is dissatisfied with the decision by the Authority, the applicant may apply for review of the Authority's decision by a competent Court of Law in accordance with the Act.

- (l) Where there are no objections after the publication of the notice, the Authority shall proceed to consider the application.
- (m) For efficient processing of applications for individual licences made pursuant to section 39 of the Communications Act, the Authority shall, not later than thirty (30) days before the end of each financial year, publish the dates on which it shall receive applications for an individual licence.
- (n) Applications for a Class licence may be submitted to the Authority at any time.
- (o) The Authority shall complete processing of applications within sixty (60) days from receipt of the application.
- (p) Where the Authority is satisfied that a licence should be issued;
 - (i) The Authority will issue a draft applicable licence to the applicant;
 - (ii) The applicant must return a duly signed licence agreement to the Authority within thirty (30) days of receipt; and
 - (iii) The Authority will issue an invoice within seven (7) days after signing of the licence agreement.
- (q) The Authority will publish in the Government Gazette an extract of the licence subject to payment of relevant licence fees;
- (r) The Authority will reject any licence application where the applicant has;

- (i) provided insufficient or false information;
- (ii) withheld material information; or
- (iii) Any other reason consistent with the Act, applicable Regulations and these Guidelines.

6.2 Procedures applicable to Individual Licences

An application by any person for any service that requires an individual licence shall be made in the following manner;

- (a) A duly completed Form A (**ANNEXURE 1**)
- (b) Payment of the applicable application fee per licence;
- (c) Tax clearance certificate;
- (d) Details as per the checklist attached (**ANNEXURE 2**); and
- (e) Such additional information or documents as may be requested by the Authority to be submitted within a stipulated timeline.

NOTE: Failure to submit within the stipulated timeline given will result in the application being withdrawn without prejudicing the right of the applicant to make a fresh application.

6.3 Class Licences

An applicant who wishes to provide services under a Class licence will submit the following to the Authority;

- (a) A duly completed Form B (**ANNEXURE 3**);

- (b) Applicable application fees;
- (c) A tax clearance certificate;
- (d) Details as per the checklist attached (**ANNEXURE 4**); and
- (e) Such additional information or documents as may be required by the Authority.

The Authority will process and register Class licence applications **within thirty (30) working days** from receipt of all relevant and complete information from the applicant.

7.0 INFORMATION REQUIRED FOR LICENCE APPLICATION

7.1 Individual Licence Application

An application for an individual licence shall include the following information.

- (a) **Particulars of the Applicant**
 - (i) Name of the applicant, date and place of incorporation, business and registered address (physical and postal), contact telephone number(s), e-mail address, name and designation of a contact person within the applicant;
 - (ii) Detailed information on corporate and shareholding structure including relationship with holding or associated companies clearly indicating the ultimate ownership, both direct and indirect. If the holding company is a public entity, then details of

the public listing should be provided;

- (iii) Detailed composition of the Board of Directors and key management team inclusive of individual shareholders should also be provided;
- (iv) Brief resumes of the key management team indicating relevant prior experience, qualifications and other source of expertise;
- (v) Memorandum and articles of association and certified true copies of its **Certificate of Incorporation or Registration**, and annual return under the Companies Act of the applicant which have been filed with the Registrars General; and
- (vi) Any other information required by the Authority.

(b) **Business plan**

The business plan for the proposed activity which should include;

- (i) A breakdown of the proposed capital expenditure and working capital requirements for the first (5) five years of operation;
- (ii) Projected profit and loss account including details of revenue (the method of calculation should be clearly outlined), balance sheet and budgeted cash flow statements, showing the amount of capital to be invested on an annual basis for five years. All assumptions used (asset depreciations policies, annual increase/decrease in operating expenditure) shall be clearly explained;

- (iii) Projected volume of business, indicative prices for the services and market share for the first five (5) years of operation;
- (iv) Detailed investment appraisal (financial and technical feasibility);
- (v) Detailed market assessment; and
- (vi) Sufficient documentary evidence to prove that the applicant has the financial capability to meet the capital investment required in carrying out the activity proposed. In addition, details of proposed financing structure including proposed sources of funds (whether domestic or foreign). The minimum requirement for paid up capital of the applicant as specified in the Authority's assessment criteria.

(c) **Financial Information**

The financial information of the applicant including, where applicable, the following:-

- (i) The latest copies of detailed audited accounts (profit and loss accounts, balance sheets, cash flow report) for the last three (3) financial years, together with the most recently published interim results;
- (ii) If the applicant is a newly formed company, shareholders' detailed audited financial accounts, together with the most recently published interim results (if available). Bankers' available credit facilities should also be included. For individual

shareholders, documentary evidence of creditworthiness should be given. This may be in the form of bankers' confirmation of deposits from established financial institutions; and

- (iii) Authorized and paid-up capital and relevant certificates confirming the same.

(d) Operational and Technical Plans

- (i) The proposed technical and service rollout plan for the next five (5) years. This would include a description of the activities that will take place in a given timeframe such as commencement of service, equipment requisition, installation and commissioning, proposed marketing activity and rates / tariffs for the services.
- (ii) A description of the nature of the facilities, service, application or content and area of coverage and the types of technology to be used. Detailed information on network diagram/architecture, interconnection interface requirements and range of application services should be provided.
- (iii) The proposed operating procedures including a disaster / business recovery plan. This would include contingency measures, contact point in the event of emergency, details of measures undertaken to ensure business continuity and security of information.

- (iv) The applicant should identify the range of services to be provided and the components of the services. For example, those applying for network facilities licence would have to indicate the network facility for which the licence is being applied (e.g. earth station, fixed links etc.). In addition, the applicant should also notify the Authority if the services provided are in collaboration with foreign network facilities and/or service providers;
 - (v) A description of the resources required for the provision of the services should be outlined. This would include identifying the relevant frequency bands in the spectrum plan or type of numbering or electronic addresses required (where applicable).
- (e) A social economic impact analysis report containing the following:-
- (i) How the applicant's operations will generally benefit the ICT industry specifically and the economy as a whole;
 - (ii) Details of the extent of projected job creation and consideration of minorities including women and people with physical disabilities;
 - (iii) Details of any initiatives undertaken towards infrastructure development while encouraging infrastructure sharing;
 - (iv) Details of any corporate social responsibility activities that the applicant proposes to undertake;

- (v) Where applicable, proposed training plans and strategies for skills transfer to local indigenous Malawians;
 - (vi) Any other relevant information.
- (f) **Other information**
- (i) Details of any other electronic communication licences held by the applicant, or its group of companies, or any company which is deemed to be associated with the applicant;
 - (ii) Corporate information including the particulars of the companies referred to in the paragraph above and particulars disclosing the ultimate beneficial shareholders of the applicant and any company referred to in the paragraph above which hold a licence together with information detailing the direct and indirect shareholdings of all their shareholders.

7.2 **Class licence**

In addition to Form B, an application for a Class Licence shall be accompanied by;

- a) The particulars of the applicant including:-

Certified copies of relevant documents in support of the legal status of applicant (company / partnership / individual / society / others). As an example, applicants which are locally incorporated companies would be required to furnish the relevant incorporation Forms under the Companies together with the memorandum and articles of association; and

- b) A description of the service the Applicant desires to provide in the following form:-
 - (i) Introduction – brief description of network facility/network service / application service / content service; and
 - (ii) Operating procedures including a network topology and/or business model.

- c) For applications for registration of network facilities or network service licences, the applicant shall be required to provide the following;
 - (i) A description of the network (inclusive of network topology/ architecture and configuration of the network);
 - (ii) A description of the software and hardware to be used (inclusive of technical specifications, capability, location and simulation coverage predictions);
 - (iii) Channeling plans for the radio frequency spectrum (where applicable);
 - (iv) Details of proposed customers and scope of the activities or services to be provided (inclusive of duration, whether meant for purposes of meeting special requirements such as coverage of specific events, etc.); and
 - (v) Any other information as required by the Authority.

7.3 Clarification of Information submitted

The Authority may request an applicant:-

- (i) to clarify on any information submitted or
- (ii) to submit further information its application.

7.4 **Refusal to accept application**

The Authority may refuse to accept an application where it deems that information submitted with the application is incomplete.

8 EVALUATION CRITERIA (INDIVIDUALLICENCE)

8.1 The Authority shall consider an application together with the accompanying information on its merits. The merits of each application will be evaluated against a set of criteria that will include the following;

a) Financial Capacity

In examining the financial plan, the Authority will consider whether the applicant possesses the financial capability to carry out the activity in question. Any information on the financial standing of the applicant will be considered.

b) Business Plan

The Authority will consider the feasibility of the business plan vis-à-vis the assumptions provided by the applicant and evaluate this against the current market environment.

c) Technical and Operational Capacity

- (i) The Authority will consider the following
 - (a) whether the applicant possesses the relevant managerial and technical expertise (from not only a local perspective but where possible a global one) to carry out the proposed activity;
 - (b) any previous major projects undertaken by the applicant relating to ICT;
 - (c) whether the applicant has any relevant experience in the communications or ICT industry;
 - (d) Initiatives undertaken, particularly in the area of research and development, by the applicant and/or its holding or associated companies (where applicable);
 - (e) the applicant's proposed technology, technical specifications including a description of the operation of the system and where applicable frequency requirements and service roll out plans; and
 - (f) technological and/or service innovations the applicant proposes to provide. In this regard, the justification for the proposed innovations have to take into account proven efficiency in usage of technology resources i.e. numbering, spectrum e.t.c.

d) Organizational set up

(i) Applicant's Background

The Authority will consider the following:

- (a) the applicant's chain of ownership; and
- (b) If the applicant is an established company, the revenue earnings and the business segment in which the applicant is involved.

(ii) Newly Incorporated Companies

A new company with no revenue track record will be considered based on other criteria such as funding from venture capitalists or holding companies, innovative services to be provided and relevant expertise.

(iii) Shareholding

The Authority will consider the following

- (a) whether the Applicant satisfies the shareholding requirements stipulated in the Communications Act;
- (b) the need to encourage companies with majority shareholding by Malawians to promote participation in the local ICT industry.

Note: Section 35 of the Communications Act requires electronic communications licencees to maintain a local shareholding of 20 percent.

Section 104 of the Communications Act prohibits any person who is not a citizen of Malawi from, directly or indirectly—

(a) exercising control over content service; or

(b) having a financial interest or an interest in voting shares or paid up capital in content service licence, exceeding 20 percent.

e) Socio-economic Impact Analysis

The Authority will consider the socio-economic benefits that will be brought by the applicant to the overall ICT sector including job creation, infrastructure development and promotion of minorities.

The Authority will also consider what the target market of the proposed activity is and the service to be provided. Proposals that cover not only the urban but also the rural and underserved areas will be encouraged.

9.0 REVIEW OF THE GUIDELINES

The Authority may from time to time review or amend these guidelines.

Dated the 15th day of December 2016

ISSUED BY

THE DIRECTOR GENERAL

MALAWI COMMUNICATION REGULATORY AUTHORITY