

TELECOMMUNICATIONS ACT, 1996
(No. 15 of 1996)

TELECOMMUNICATIONS REGULATIONS, 1997
(Published on 4th July, 1997)

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PART I — Preliminary

IN EXERCISE of the powers conferred on the Telecommunications Authority by section 26 of the Telecommunications Act, 1996 (No. 15 of 1996), the following Regulations are hereby made —

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| 1. These Regulations may be cited as the Telecommunications Regulations, 1997. | Citation |
| 2. In these Regulations, unless the context otherwise requires — | Interpretation |
| “Act” means the Telecommunications Act, 1996; | |
| “address capacity” means a part of the address plan's total address resource; | |
| “Authority” means the Telecommunications Authority; | No. 15 of 1996 |
| “connexion to a telecommunication system” means either direct connexion by wired, radio optical or other electromagnetic means, to the termination point of a telecommunication system, or the interworking point of such a system; | |
| “license” means a service provider as defined under section 2 of the Act, and shall include a telecommunication system operator; | |
| “number capacity” means a part of the numbering plan's total number resource. | |

PART II — Telecommunication Networks and Services

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| 3. Every licensee shall — | General obligation |
| (a) operate his telecommunication system or provide his telecommunication service in accordance with international telecommunication treaties and conventions which are binding on Botswana; | |
| (b) take the necessary measures to ensure that telecommunication is maintained in the case of war or other crisis or emergency; and | |
| (c) take the necessary measures to ensure that emergency calls or information is conveyed during an emergency or at any other time. | |
| 4. Every licensee shall comply with such numbering system as is determined by the Authority. | Obligation to apply numbering system |
| 5. (1) The Authority shall allocate, to each licensee, a number or address capacity which the Authority considers reasonable taking into account the number of subscribers which the Authority has forecast, the need for operator codes, and any other relevant factor; and the Authority shall, when so allocating number capacity, specify, in writing, the purpose for which such capacity may be used. | Allocation of numbering and address capacity |
| (2) A licensee may apply in writing to the Authority to supply it with the number or address capacity which the Authority has allocated to it. | |
| (3) A licensee shall use only the number or address capacity allocated to it in accordance with subregulation (1), and only for the purpose for which it has been allocated. | |

(4) The Authority may revoke the allocation of a licensee who does not use the number or address capacity allocated to it for the purpose for which it is to be used.

Right to enter
upon land and
construct
lines, etc

6. (1) A licensee may, for the purposes of providing a telecommunication service, and after giving not less than 14 days' notice in writing to the local authority or person owning or having the care and management of any land, street, road, footpath, waterway or railway —

- (a) enter upon such land, street, road, footpath, waterway or railway and there construct or maintain or remove any telecommunication line or pipe or conduct any other work necessary for such lines upon, under, over, along or across any such land, street, road, footpath, waterway or railway; and
- (b) alter or cause to be altered the position, under the ground, of any pipe other than a sewer, drain or mains for the supply of water, gas or electricity.

(2) The local authority or person to which or to whom any such pipe belongs or by which or by whom it is used shall be entitled, while work in connexion with the removal or alteration in the position thereof is in progress, to supervise that work, and the licensee shall pay all expenses incurred by such local authority or person in connexion with such removal or alteration or in connexion with the supervision of the work relating to such removal or alteration.

Gates in fences

7. (1) Where any fence erected on land over or under which a telecommunication line is constructed or is to be constructed renders or would render it impossible or inconvenient for the licensee to obtain access to that land for any purpose of the Act, the licensee may, at his expense, erect and maintain gates in that fence, and shall provide duplicate keys therefor, one of which shall be given to the owner or occupier of such land.

(2) A licensee intending to erect a fence on land over or under which a telecommunication line is constructed or is to be constructed shall give the owner or occupier of that land not less than 21 days' notice, in writing, of his intention to do so.

Trees
obstructing
telecommu-
nication lines

8. Where telecommunication is or may be interfered with or endangered by a tree or undergrowth, the licensee may, at his expense, cause such tree or undergrowth to be cut down or trimmed:

Provided that where circumstances permit the licensee may grant the owner or occupier of the land the opportunity of carrying out the necessary cutting down or trimming.

Electrical
works, etc, to
conform to
requirements

9. (1) Any person intending to erect, move or alter any line for the transmission of electricity shall, before erecting, moving or altering such line, obtain the written approval of the licensee, and the licensee shall be entitled to require such alterations in the route or manner of constructing or moving the said line as shall ensure that the proposed line shall not injuriously affect any existing or proposed telecommunication line.

(2) Where any line for the transmission of electricity is so constructed as to injuriously affect any telecommunication line or any proposed telecommunication line, the owner of such line for the transmission of electricity shall make such alterations thereto as the licensee may determine:

Provided that if it is more economical or practical to do so, the licensee shall, at his own expense, move or alter the telecommunication line in question.

(3) The cost of any alteration made to, or movement of, existing lines for the transmission of electricity to avoid interference with proposed telecommunication lines shall be borne by the licensee provided that electricity line was lawfully erected; in all other cases the cost of alteration or movement shall be borne by the owner of the electricity line.

10. (1) The height of aerial telecommunication lines along any land, street, road or footpath shall be at least 3m, and that of any aerial telecommunication line crossing any such land, street road or footpath shall be at least 5m above the surface of the ground; and a telecommunication line crossing a main road or railway shall be at least 60cm below the surface of the ground.

Height and
depth of lines

(2) Subject to the provisions of regulations 8 and 11, the licensee shall take such steps, at its own expense, as it considers it necessary to effect relief to the owner or occupier of any land who proves, to the satisfaction of the licensee, that he is obstructed in the free use of the land by reason of the insufficient height or depth of any telecommunication line.

11. (1) Where, as a result of any works undertaken by a local authority or any person, it becomes necessary to alter any pre-existing telecommunication line, the cost of such alteration shall be borne by such local authority or person.

Alteration
of works at
request of
local authority
or other person

(2) Where any telecommunication line passing over private property interferes with any building about to be erected on that property, the owner or occupier of that property shall so notify the licensee responsible for that line in writing, and also, at the same time, provide proof that such building is to be erected, and the licensee shall, within four weeks of receiving such notification and proof, cause the line to be altered in such a manner as will remove all obstacles to building operation.

(3) Where the owner or occupier of any land through which a telecommunication line passes requests a licensee to alter or move any telecommunication line for any other reason, the licensee shall, within 28 days of such request, either comply with the request or, if it does not so comply, so inform the owner or occupier in writing, giving reasons for his decision not to comply.

12. (1) A licensee shall, in carrying out any work required for its purposes, exercise due care and shall carry out such work with regard to the safety and convenience of the owners or occupiers of the land, street, road, footpath, waterway or railway upon which the work is carried out, and with minimum damage to the property of that owner or occupier or to telecommunication lines or other telecommunication infrastructure on, over, or under that property and shall make good all streets, roads, footpaths, waterways, railways, telecommunication lines or other infrastructure disturbed by such work.

Damage to
property or
injury to
persons

(2) The licensee shall be liable for compensation for injury or damage caused to any property including telecommunication lines or other infrastructure if such injury or damage was caused wilfully or through the negligence of its employees.

(3) Any person who, either directly or indirectly by his servant or employee, by an animal, vehicle or thing owned by him or in his custody, with intention or through negligence, destroys or damages any line, mast, building or other component constituting telecommunication infrastructure, shall be liable to pay the owner or, if applicable, the user of the infrastructure, the cost of making good the destruction or damage.

13. A licensee shall, in order to fulfill essential requirements, ensure that the network operations or services he provides are technically feasible and are compatible with the networks, operations or services provided by other licensees.

Technical
feasibility
and compa-
tibility

Essential
requirements
applicable to ter-
minal equipment

14. Every service provider and every person who supplies telecommunication equipment shall ensure that any terminal equipment provided or supplied by him complies with the following essential requirements, that is to say that it —

- (a) is electrically safe for users, subscribers or the employees of the telecommunication system operators;
- (b) is electromagnetically compatible with other equipment to which it is or will be connected or used;
- (c) is fitted with a device which will protect the telecommunication system of which it is a part or to which it is connected against electrical, electromagnetic or other similar damage;
- (d) makes efficient use of the radio spectrum where applicable; and
- (e) is capable of interworking with other telecommunication equipment for the purpose of establishing, modifying, charging for, holding or clearing real or virtual connections.

Limitation,
interruption,
termination,
etc, of service

15. (1) A licensee may not limit, interrupt or terminate the provision of any telecommunication service unless —

- (a) it is justified by essential requirements for the efficient provision of a telecommunication network or service;
- (b) he is so ordered by an authorized officer acting in terms of section 23 of the Act; or
- (c) it is justified on a commercial basis following the non-payment or other breach of contract on the part of a subscriber.

(2) A licensee shall, before he limits, interrupts or terminates the provision of a telecommunication service in terms of subregulation (1), give the subscriber concerned at least 14 days notice in writing.

Interconnection
disputes

16. Where a dispute arises in negotiations relating to a network interconnection, the Authority shall, after hearing both parties in accordance with such procedures as it may determine, decide on the matter.

PART III — *Radio Stations, Radio Communication Equipment, Licences, etc.*

Obligation
not to hamper
communication

17. (1) A licensee shall ensure that he does not, in providing his service or operating his equipment, interfere with the frequency or operation of any other telecommunication service or radio equipment.

(2) A licensee shall, where any interference referred to in subregulation (1) occurs, take all steps necessary to eliminate the interference.

Tests

18. Subject to such directions as the Authority may issue, a licensee shall carry out such routine tests as may be necessary for the proper maintenance of his station.

Installation
maintenance
and repair
authorisation

19. (1) The installation, maintenance, and repair of radio communication equipment —

- (a) at a station where the power of the transmitter exceeds 500 watt DC input; or

(b) upon which the safety of life at sea or in the air depends, shall not be undertaken other than by a person authorized in writing by the Authority.

(2) The Authority shall not authorize any person for the purposes of subregulation (1) unless he satisfies such minimum technical qualifications, professional conduct and skills as the Authority may specify.

20. Radio stations shall comply with international regulations concerning distress signals, such as the group ... --- ... (SOS) in radio telegraphy and the word "MAY DAY" in radio telephony and priority shall be given to any other communication.

Distress signals

PART IV — *Type Approval*

21. A licensee shall, before supplying, installing or using any telecommunication equipment, apply, in writing, to the Authority to have that equipment type approved.

Type approval

22. (1) A licensee shall, not less than four weeks before submitting an application to the Authority for the type approval of his telecommunication equipment, have that equipment field tested by the Authority or such body as may be approved by the Authority in order to assess the performance of the equipment in the telecommunication system.

Field tests

(2) The licensee shall submit, with his application for the type approval of his telecommunication equipment, a certificate from the body referred to in subregulation (1) certifying whether or not the said equipment has been field tested, and certifying as to its performance in the telecommunication system.

23. (1) The Authority shall type approve telecommunication equipment only where the licensee concerned can demonstrate that he can arrange for an acceptable repair service in Botswana:

Repair service
precondition
for type
approval

Provided that the Authority may, where it is satisfied that the standard of service will not be compromised, permit the licensee to have a service contact point in Botswana, which service contact point may then, where necessary, send the said equipment abroad for repairs or subcontract the repair service to such person as the Authority may approve.

(2) The Authority may, where it considers it appropriate, exempt a licensee from the requirements of type approval as specified in subregulation (1).

(3) A licensee who wishes to be exempted in terms of subregulation (2) shall apply to the Authority in writing for such exemption at the same time as he applies for type approval stating reasons in support of the application for the exemption.

24. In type approving telecommunication equipment, the Authority shall ensure that the technical configuration of equipment corresponds to the equipment in respect of which an application for type approval is made.

Configuration
of equipment
for type
approval
Operating
instructions

25. Every licensee shall ensure that operating instructions in respect of any telecommunication equipment supplied or installed by him are supplied in both English and Setswana to the user or the subscriber.

26. A type approval in respect of any telecommunication equipment shall be valid for such time as the Authority shall stipulate.

Validity
time of type
approval

27. (1) The Authority may revoke a type approval for any of the following reasons —

Revocation
of type
approval

- (a) the telecommunication equipment does not comply with essential requirements when properly or correctly used for the purpose for which it was intended by the manufacturer;
- (b) an acceptable repair service arrangement ceases to exist;
- (c) a licensee ceases to adhere to the provisions of these regulations; and
- (d) the licensee supplied, with his application for type approval, any information which was false and which he knew to be false, and on which the Authority relied upon to make a decision to grant type approval.

(2) Where it revokes a type approval, the Authority may direct that the telecommunication equipment relating thereto should be withdrawn from the market, or should not be supplied, connected or used in relation to any telecommunication system.

Marking

28. (1) The Authority shall issue to a licensee, upon type approval of any telecommunication equipment, such symbol as shall be determined by the Authority, which symbol shall be permanently affixed, on a visible place, to the equipment.

(2) The Authority shall also issue, to the licensee, a type approval registration number which shall also be permanently affixed to the equipment by the licensee; and the licensee shall further affix, to the equipment, a mark identifying the type, batch or serial number thereof.

(3) No symbol or mark which is likely to be confused with the symbols or mark referred to in subregulation (1) shall be affixed to any telecommunication equipment.

(4) The Authority may, where it considers it appropriate, exempt a licensee from the marking requirements specified in subregulations (1) and (2).

(5) A licensee who wishes to be exempted in terms of subregulation (4) shall apply to the Authority in writing for such exemption at the same time as he applies for type approval stating reasons in support of the application for the exemption.

PART V — *Confidentiality, etc, of messages*

Application

29. (1) The provisions of regulation 30 shall apply to all telecommunication messages and information regarding subscriptions regardless of the medium of the transmission.

(2) The provisions of subregulation (1) shall not apply to any information given to a subscriber in respect of his own subscription, or to information given to facilitate action in an emergency.

Divulging,
etc. of
messages

30. (1) No person shall intercept or tamper with a telecommunication message, divulge the contents or substance of such message to another person, or intercept, tamper with or divulge any information regarding a subscription unless —

(a) he has the consent of the sender or addressee of such message or of the subscriber concerned;

(b) he so intercepts or tampers with the message or information or divulges the contents or substance thereof in pursuance of his intention to maintain the technical operation or quality of any service provided, or in pursuance of any other duty under the Act or these Regulations; or

(c) he is a witness in a court of law.

Forms

31. The Authority may require any person to complete a form supplied by it in connexion with anything which requires to be done under these Regulations.

Penalties

32. Any person who contravenes any provision of these Regulations shall be guilty of an offence and shall be liable to a fine of not less than P10 000 but not more than P50 000 or to imprisonment for a term not exceeding 12 months or to both.

MADE this 19th day of June, 1997.

C.M. LEKAUKAU,
Executive Chairman,
Botswana Telecommunications Authority.