ZICTA

ZAMBIA INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY

Consultation Paper On

The Review of the Licensing Framework

May 2016

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1. Introduction and Background

The Zambia Information and Communication Technology Authority is mandated under Section 10 of the Information and Communication Technologies Act No. 15 of 2009 (ICT Act) to issue Network and Service Licenses. The increased requirement for communication has resulted in the need for flexible and easy communication facilities that are user-friendly. To this effect, an efficient and responsive licensing framework is required to facilitate the development and deployment of appropriate technologies.

In 2013, the Authority in collaboration with the Central Statistics Office conducted a Regulatory Impact Assessment (RIA) which focused on analysing the impact of the ICT Act and the current licensing regime on the performance of the ICT sector. The results of the said RIA indicated that there was need to have a converged licensing framework. Further, the high-paced changing developments in the ICT sector and the many incompatibilities between the current legal framework and the ICT market at present, have necessitated the review of the framework.

2. Purpose

The purpose of this consultation paper is to seek the views of operators, the general public, and other interested parties, regarding the review of the current Licensing framework on issues pertaining to-

i. A converged licensing framework consistent with the technology neutral regime provided in the ICT Act ;
ii. Regionalisation of licenses; and
iii. Auctioning of optimal spectrum

2.1 Rationale for introduction of a converged Licensing Framework

The simplification of licenses and reduction or elimination of the administrative or formal requirements to enter the market will encourage the entrance of several players in the ICT market, thereby intensifying competition. There are some areas where the convergence regulation can have an intense and diverse impact. Regulation in these areas is itself affected by technological development in three different ways:

i) Firstly, new technologies lead to the development of new services and modes of delivery unforeseen by existing regulation (e.g. use of IP telephony).

ii) Secondly, new technologies affect the overall market structure and the level of competition by changing conditions for supply, which again affect the need for regulation

iii) Thirdly, new technological opportunities create demand for new types of services, which again affects the overall market structure, paving the way for new market players.

This coupled with other reforms would entail that services that previously were reserved for certain operators holding certain licenses would now be offered under a single license which would allow for instance, Internet Service Providers to compete with mobile network operators in the provision of voice services through means such as VoIP.

At present, Mobile Operators are able to compete almost directly with fixed internet providers through the emergence and proliferation of mobile broadband internet service. These two services were previously considered to belong to separate relevant markets due to the substitutability criteria. However, advances in technology have made it possible to substitute fixed internet for mobile broadband. This has had an adverse effect on the fixed internet service providers due to the fact that they have been losing subscribers to mobile broadband. A converged licensing regime that enables ISPs to compete with Mobile operators in the provision of voice could revolutionize the manner in which voice services are delivered. This increase in competition would encourage service providers to compete more in terms of not only cost but quality of service.

In summary, a converged licensing regime would impact the ICT sector as follows:

- The Degree of Competition in the Sector would increase - Technological convergence tends to create new markets and numerous specific competition issues such as increase in market power and barriers to entry into new markets;
- The Number of Market Players - Converged regulation affects not only the number of operators providing different telecommunication, broadcasting and IT services but also their organizational structure due to horizontal or vertical integration, mergers, acquisitions, and diversification;
- Penetration Rates of ICT Services - Converging services have important influences on the ICT sector. New services are launched and new operators enter the sector. This may increase penetration levels. It may however, also affect incumbents and other players in the market in terms of changing their subscriber numbers and revenues;

- Infrastructure Sharing - In a competitive environment, the issue of infrastructure sharing is of great relevance as it can reduce both roll out costs and environmental pollution and allows room for more development in the sector.

Question 1
Do you agree that the present Licensing framework is unduly restrictive of competition and a reform to a converged licensing framework will lead to competition and the introduction of innovative technologies and services at a cheaper cost and better quality of service?

3. Synopsis of the Current Licensing Framework

Under the current licensing framework, the Authority issues Network and Service Licenses. The licenses are further classified into individual and class licenses. Under the Individual Network Licence, the Authority issues the following licenses:
(a) Mobile Cellular
(b) Fixed Internet
(c) Fixed
(d) Network Service Licence

Under the Individual Service Licence, the Authority issues the following licenses:
(a) Mobile Cellular
(b) International Voice
(c) Fixed

Under the Class Network Licence, the Authority issues the following licenses:
(a) Wireless internet
(b) Public Data
(c) Public Payphone
(d) Private Network

Under the Class Service Licence, the Authority issues the following licenses:
(a) Internet Service
(b) Other, which includes Value Added Services (VAS)

The above licence categorisation, is made pursuant to the Information and Communication Fees Regulations SI No. 34 of 2010.

This categorisation however would appear to be at variance with the concept of technology neutrality, as envisaged under section 10 of the ICT Act. Section 10 merely speaks to issuance of Network and Service Licenses, without mention of actual technologies that may be deployed as networks or specific services that may be offered. As such, the current licensing framework is restrictive and serves as an entry barrier to specific sub-sectors of the market. This is because only the actual holders of particular technology based Network and/or Service Licenses may operate certain networks and/or provide very specific services.

For example, only the holders of either Network or Service Voice (whether fixed or mobile) Licenses can make available and accessible voice services. This means that the majority of data licensees are barred from this service provisioning. However, technology has now advanced, to where Voice Over Internet Protocol (VOIP) is easily and widely accessible and available. It merely requires a data link to access voice services. In view of the foregoing, the time has come to allow participation in aspects of the sector, through a revised licensing framework that will enable the growth of the ICT Sector, which will ultimately result in the growth of the whole economy and allow the State to raise more revenue, taking into consideration that the use of voice is declining and the use of data is increasing.

Radio Spectrum Assignments

The Authority also issues Radio spectrum assignments on a provincial or national basis. From inception, the Authority has only offered Radio Spectrum License on a first come first save basis. This model was sufficient taking into consideration that the demand for spectrum was not as high as it is now. Currently, the demand for spectrum has increased and there is an incentive for speculative behavior

In order for the Authority to manage this scarce resource efficiently there is need to put in place a competitive process for the assignment of spectrum.

The Authority conducted a benchmarking study with Kenya and Tanzania which have adopted a fully converged licensing framework. The benchmarking study showed that converged or unified licensing frameworks are international and regional best practice. A service licensee is entitled to deploy any technology in the market segment they chose.

4. BENCHMARKING STUDY

	KENYA	TANZANIA	ZAMBIA
Licensing framework	Unified /Converged - Includes Broadcasting and Content	Unified /Converged - Includes Broadcasting & Content	Segmented by SI 34 Does not include the regulation of broadcasting and content
License categories	Individual Licenses: • Infrastructure • Content • Services and • Application Class Licenses	Individual Licenses: • Network Facilities • Network Services • Application Services • Content Services Class Licenses	Individual Licenses: • Electronic Communications Network • Electronic Communications Service Class Licenses
Categorization of licenses	Individual license - Infrastructure: • Tier 1 • Tier 2 • Tier 3	Individual license - • International • National • Regional • District	No categorization, all individual licenses are national
Licensing of signal distributors	Licensed as Infrastructure Tier 2 license	Issued as Network Service License	Network License as Public or Private Signal Distributor
Annual License fee	0.5%	0.5%	3% and 2%

5. Proposed New Licensing Framework

The Authority has developed a new Licensing Framework that will correspond with the ICT Act and International Best Practice. The new framework shall remove the categorisation of licenses as a licensing criteria. The implication of this is that a service provider in a market category will be at liberty to provide as many services as its facility can allow provided that it has the requisite scarce resources. Under the converged licensing framework, the only requirement will be for the service provider to pay fees for the types of services they wish to provide without needing to apply for additional licenses. This will allow more flexibility in the licensing process. It is also proposed that the mechanism for charging should be dependent on the regions. This entails that the country will be divided in regions with upmarket areas such a Lusaka, Copperbelt and Livingstone attracting higher licence fees as opposed to the predominantly rural areas. This model will enhance the provision of telecommunication services to the unserved and underserved areas, hence bridging the digital divide and help to achieve Universal Access targets.

3.2. PROPOSED LICENSING MECHANISM

To address the current inadequacies of the licensing framework affecting the sector as alluded to above, it is proposed that the licenses be classified as follows:

(a) Network Licence – Facilities and Services

This licence authorises ownership and control of electronic communication infrastructure. This includes both the active and passive elements of a network. Electronic communications facilities shall include but not be limited to the following:

i. Wire
ii. Cable
iii. Antenna
iv. Mast
v. space station
vi. Lease Circuit
vii. Cable Landing Station
viii. International Gateway
ix. Earth Station
x. Radio Apparatus or other thing

These can be used in connection with electronic communications, including where applicable-

a) Collocation space

b) Monitoring equipment

c) Space on or within poles, ducts, cable trays, manholes, hand holds and conduits; and

d) Associated support systems, sub-systems and services, ancillary to such electronic communications facilities or otherwise necessary for controlling connectivity of the various electronic communications facilities for proper functionality, control, integration and utilisation of such electronic communications facilities.

In this instance, facility would mean an electronic communications facility or combination of electronic communications or other facilities that is exclusively or predominantly provided by a single or limited number of licenses and cannot feasibly (whether economically,

environmentally or technically) be substituted of duplicated in order to provide the service.

NETWORK LICENCE- FACILITIES AND SERVICE

Market Segment	Type of facility	Application Fee (Fee Units)	Initial License fee(Fee Units)	Annual Operating Fee(% of GAT)	Duration (Years)	Type of License
International	Gateway facilities such as Earth Station, VSAT/ Hub, Switching Centres, Nodes and Servers and others.	55556	10, 850 000	2	15	Individual
National	Switching, transmissions and access facilities such as VSAT/ Hub; Microwave links; Fixed links, Switching Centres, Laid cables; Fibre Optic, Exchange, Nodes, Servers, Towers, Ducts, Transmitters and Links and other	55556	4,000,000	2	10	Individual
Provincial		27778	555,560	2	5	Individual
District		5556	277,780	2	5	Class

Under this framework, the licenses will further be categorised as-

a) International Market segment where a licensee is authorised to offer Services from one or more of the four Licence category to international Market

b) National market segment where a licensee is authorised to build a nationwide network or provide a nationwide service;

c) Provincial market segment were a licensee is authorised to provide service in a province; and

d) District market segment where a licensee is authorised to build a network or provide a service in a demarcated district.

QUESTION 2

Do you agree that division of the country into regions that is national, provincial and district shall lead to increased access, investment and citizen participation in the ICT Sector?

6. SERVICE LICENSE

The Service License shall have two categories namely, Categories A and B. Both categories of licenses shall enable the license holder to provide the same services in a market segment. The difference is that Category A license holders shall be in possession of a Network License whilst category B service license holders shall not be in possession of a Network Licence. The two are differentiated for purposes of license fees. It would be inequitable for a service provider without a network to pay the same license fees and be subjected to the same regulatory scrutiny as one with a network.

See Tables 2 and 3 below.

SERVICE LICENCE CATEGORY A WITH A NETWORK

Market Segment	Type of Service	Application Fee[1]	Initial License Fee	Annual Operating Fee	Duration	Type of License
International	To provide international connectivity/band width whether by	55556	555560	3	15	Individual

[1] All fees are denominated in fee units. Each fee unit is equivalent to K0.30

	satellite or other technologies					
National	To provide to the public voice, message, Internet services, Internet Telephony (VoIP), pay phone, Value Added Services, Data services, Tracking services etc.	55556	555560	3	10	Individual
Provincial	To provide to the public voice, message, Internet services, Internet Telephony (VoIP), pay phone, Value Added Services, Data services, Tracking services etc.	5556	277780	3	5	Individual
District						Class

SERVICE LICENCE CATEGORY B WITHOUT A NETWORK

Market Segment	Type of Service	Application Fee	Initial License Fee	Annual Operating Fee(% of GAT)	Duration	Type of License
International	To provide international connectivity or bandwidth whether by satellite or submarine or other technologies	55556	10850000	3	10	Individual
National	To provide to the public voice, message,	27778	555560	3	3	Class
Provincial						

District	Internet services, Internet Telephony (VoIP), pay phone, Value Added Services, Data services, Tracking services etc.					

QUESTION 3

Do you agree that the proposal by the Authority to divide the licence categories into network (facilities and services) and service licence (with and without a network) will achieve technology and service neutrality?

QUESTION 4

Do you agree that the proposed fees represent a fair and accurate manner of allocating scarce resources in the sector?

7. SPECTRUM ASSIGNMENT

In view of the proposal to open the telecommunications market to allow other operators, it is proposed as follows:

i. Optimal spectrum, where necessary, should be auctioned such that the highest bidder will get the available spectrum taking into consideration that it is a scarce resource; and
ii. The Information and Communication Technologies (Allocation of 2G Frequencies) Regulations of 2010 and the Information and Communications Technologies (Allocation of 3G Frequencies) Regulations be revoked as the Mobile operators are not utilising all the Spectrum allocated.

QUESTION 5

Do you agree that spectrum auction can be an appropriate means of assigning spectrum in Zambia?

8. LICENSING REQUIREMENTS AND PROCEDURE

Under this framework, it is proposed that the current procedures and requirements for licensing should be revised not only to accommodate provincial and district licensing but also to take into account the increasing competition for the licenses. In the near future, the first come first serve model will not only be inadequate but also inefficient.

A competitive method such as auctioning should be adopted for national licenses, as and when an offer is deemed suitable by the Authority, taking into account all political, economic and social factors affecting the market at any particular moment. It is proposed that the Authority should recommend when, the mode, procedure to be followed when an offer is made after conducting a detailed market survey. It is envisaged that this will bring certainty in the market.

9. CONCLUSION

The proposed licence framework realises the intention of Parliament when it passed the ICT Act, which was, to have a unified technology neutral regime. On account of its attempt to categorise licenses based on technology, the present licensing framework has lacunas brought about by the advance in technology. There has also arisen an incongruence in relation to the objectives of the framework as compared to the needs of the market. In this regard, it has proved problematic to define value added services or to license VoIP. The market has also shifted in ways that the present framework cannot anticipate or cope with; an example is the sale of passive infrastructure by the MNOs to infrastructure companies.

It is proposed that the Network and Service Licenses be divided into two categories, not on account of the technology being employed but in order to foster an equitable fee structure. An enterprise that is operating internationally or nationally should pay more fees than one operating on a provincial or district level. Another innovation has been the introduction of provincial and district licenses and to move away from the first come first serve allocation of licenses.

In employing the proposed licensing framework, it is hoped that:

i. there will be greater competition in the sector resulting in lower tariffs and better quality of service;

ii. that the regionalisation of licenses shall enable greater citizen participation by encouraging the entry of SMEs in the industry;
iii. the new framework though regionalisation shall facilitate universal access by promoting the construction of regional networks with concessionary offers in the license;
iv. the new licensing framework shall resolve the several lacunae that is prevalent in the present framework; and
v. the new licensing framework shall keep with best practice both regionally and internationally.

Overall it is hoped that the new framework shall foster the growth of the sector and ultimately that of the economy.

10. CONSULTATION PROCESS

The Authority is seeking the opinion/ comments from the general public and stakeholders regarding the proposals for the review of the Licensing framework.

Comments should be submitted on or before 16th June,2016 to

Licensingconsultation@zicta.zm or mailed to:

Director General Zambia Information Communication Technology Authority
Head Office:
Stand Number 4909
Corner of Independence & United Nations Avenues
Lusaka - Zambia
General Lines: +260 21 1244424 /241236/244426/246702/244427

This consultation can also be found at: www.zicta.zm

Respondents are invited to comment on any other issues not covered in this consultation document which they consider to be relevant to this consultation.

ZICTA will carefully consider comments submitted and take them into consideration when reviewing the licensing framework. Respondents are required to include their personal /company particulars as well as correspondence address in their submission to this consultative document.

ZICTA reserves the right to make public all written submission made in response to this consultation paper and to disclose the identity of respondents.

ANNEX 1: SUMMARY OF CONSULTATION QUESTIONS

1. Do you agree that the present Licensing framework is unduly restrictive of competition and a reform to a converged licensing framework will lead to competition and the introduction of innovative technologies and services at a cheaper cost and better quality of service?
2. Do you agree that division of the country into regions that is national, provincial and district shall lead to increased access, investment and citizen participation in the ICT Sector?
3. Do you agree that the proposal by the Authority to divide the licence categories into network (facilities and services) and service licence (with and without a network) will achieve technology and service neutrality?
4. Do you agree that the proposed fees represent a fair and accurate manner of allocating scarce resources in the sector?
5. Do you agree that spectrum auction can be an appropriate means of assigning spectrum in Zambia?