



## **TELECOMMUNICATIONS LICENCE REVOCATION PROCEDURES**

### **Purpose**

- 1** This paper contains procedures for revoking telecommunications licences issued under the Telecommunications Act (the Act) (Cap 73:02), of the Laws of Botswana. It is meant to guide the Authority in implementing the provisions of Section 36 to ensure consistency.
- 2** Revocation refers to the cancellation of a licence and the withdrawal of the authorization to provide telecommunications Services in Botswana.

### **General**

- 3** In terms of section 36 of the Act, where any person contravenes the provisions of the Act or fails to comply with any lawful direction or requirement of the Authority under any provisions of the Act, or where the Authority is satisfied that the conditions of any licence are not being adhered to, the Authority may revoke, suspend or impose further conditions upon such licence.

Licenses issued for the provision of telecommunications services may be revoked under the following circumstances;

- 3.1** If one or more of the grounds for revocation exists such as where the licensee has breached a material Licence condition such as failing to commence operations within the stipulated timeframe without reasonable cause;
- 3.2** Where the licensee demonstrates a history of repeated or continuous significant deviations that represent a breakdown of process controls, rather than isolated incidents;
- 3.3** Upon request of the licensee;
- 3.4** Where the Licensee is liquidated or is insolvent;

- 4 The above list is not exhaustive, and may vary depending on the circumstances of each particular case.

### **Revocation Procedures**

- 5 Upon the occurrence of one or more of the abovementioned circumstances, the following should be done:
- 6 The company's attention should be brought to the breach in question and be required to remedy the same within 30 days of the date of the letter.
- 7 A minimum of three letters should be written and mailed to the last known address of the Licensee. Each of the letters should give the licensee 30 days to remedy or comply.
- 8 A site visit should be carried out to ascertain the physical presence of the Licensee;
- 9 A report on the findings of the site visits should be made, detailing what the prevailing situation is at the last known physical address. The report should state fully whether there is any infrastructure, personnel in place, or anything that would reasonably reassure someone that operations are taking place.

### **Notice of Intent to Revoke**

- 10 A notification for Intent to revoke should be written to the last known address of the licensee (**Annexure A**). The said letter should detail reasons for the decision to revoke. The same letter should be signed by the Chief Executive or the DCCC.
- 11 In the same notification of intent to revoke, the licensee must be given an opportunity to be heard within 30 days (thirty) from the date of the notification. The notification letter should further advice the licensee on how the hearing will be conducted. (*Annexure B*).
- 12 Following the hearing, a ruling as to whether the reasons given by the Licensee have been accepted by the Authority must be delivered within 7(seven) working days from the date of the hearing.

### **Notice of Revocation**

- 13 Where the Authority is of the view that the reasons given were not reasonable as to convince it not to revoke, the Authority should notify the licensee of its decision to revoke within 14 (fourteen) days of delivery of the ruling. (**Annexure C**)

**Right of Appeal (SECTION 56)**

**14** The company must be advised of its right of appeal to the High Court within .....days (check High Court Rules) from the date of revocation of its licence.

**Publication of revocation (Section 36)**

**15** Notice of the revocation must be published in two consecutive issues of the Gazette and two newspapers in circulation in Botswana.

## Annexure A

### Notice of intention to revoke Licence In Terms of Sections 36 of the Telecommunications Act

1 On the (date) XXX Pty Ltd , was issued with(type of Licence) by the Botswana Telecommunications Authority (BTA) in terms of the Telecommunications Act No.15 of 1996 as amended (herein after "The Act")

#### **(where revocation is due to failure of commencement of operations)**

2 In terms of Clause.....of the Licence, (XXX Pty Ltd) was due to commence its licensed operations on or before the.....

The above notwithstanding, (XXX Pty Ltd) has, despite numerous reminders to wit letters dated..... respectively, failed to commence operations as envisaged.

4 Site visits were made to the company premises located at plot.....whereat the following was observed (findings of the team to be summarized here)

5 Failure to commence operations within the stipulated timeframe without reasonable explanation is deemed by the Authority as a material breach of the licence conditions.

#### **(Where revocation is due to non payment of fees)**

3 The Licensees are required to pay licence fees as determined by the BTA.

3.1 BTA has determined the Licence fees to be paid by (name of company) in respect of the above licence in the sum of P...(Amount in words) per annum.

3.2 (name of company)has, notwithstanding its statutory obligations set out in its Licence, not only failed, but refused to pay its annual licence fees for its licence aforesaid despite its numerous promises to pay such fees.

4 It is evident from its conduct that (XXX Pty Ltd) has no intention of paying the required annual licence fees amounting to P.....

**5 Under the circumstances and in terms of Section 36 of the Act xxxPty Ltd is hereby given notice and afforded the opportunity to rectify its failure to pay licence fees/commence its operations or show cause within 30(Thirty) days hereof, why its licence should not be revoked.**

6 Should the 30 days expire without any action on the part of XXX Pty Ltd, the BTA will revoke XXX Pty Ltd licence without any further reference to it.

Yours Sincerely

.....

**Chief Executive**

## **Annexure B**

### **GUIDE TO CONDUCT OF HEARINGS**

The following rules shall guide hearings before the Hearing Panel/ Committee:

1. The Licensee shall appear personally or may be represented by counsel.
- 2 All parties i.e. Licensee, counsel, Botswana Telecommunications Authority officers (Hearing Officers) and all other persons present shall be identified;
3. All testimony shall be taken under oath and shall be recorded in writing and may also be recorded on tape;
- 4 The Licensee may open the hearing with a brief statement of what he/she intends to establish, or waive such right.
5. All evidence that is relevant, material, reliable, probative, and not unduly repetitious or cumulative shall be admissible, in the sole and exclusive discretion of the Hearing Officer(s).
6. Objections to the admission or exclusion of evidence shall be brief, with grounds for the objection identified.
7. Any offer of proof made in connection with an objection taken to the

admission or exclusion of evidence shall consist of a statement of what factual evidence or expert opinion the proponent contends would lead to relevant probative and admissible evidence.

8. Subsequent to his/her initial testimony, any witness may be examined by any party of record or his/her counsel.

9. Applicant shall testify in his/her behalf and shall be cross permit examined by the Hearing Officers.

11 Licensee shall be given the record of the proceedings both in written form and on tape.

### **POST – HEARING PROCEDURE**

12 Based only upon the testimony presented at the hearing, the Hearing Officer(s) shall prepare a report and recommendation to the BTA management setting forth findings of fact, conclusions of law, and recommendations based on these findings.

13 Management shall consider the Report of the Hearing Officer(s) and may concur with or reject the recommendations of the Hearing Officer(s).

14 The Authority's decision shall be delivered within 7(Seven) working days form the date of hearing and shall be read to the Licensee.

15 A copy of the Authority's decision shall be given to the Licensee.

16 A final decision of the Authority may be appealed to the High Court.

### **Annexure C**

#### **NOTIFICATION OF REVOCATION OF LICENCE**

1. The Botswana telecommunications Authority (BTA or the Authority) hereby informs XXX Pty Ltd, that the licence granted to XXX Pty Ltd on the (date), is hereby revoked in terms of Section 36 of the Telecommunications Act.
2. The reason for the revocation is that XXX Pty Ltd has contravened a material Licence condition, viz **Clause** ... of the Licence. In terms of the said Licence condition XXX Pty Ltd was supposed to commence operations by the..... Despite numerous extensions granted by the Authority, XXX Pty Ltd has failed to commence operations.

3. On the (date) The Authority called XXX Pty Ltd to a hearing whereat XXX Pty Ltd was to show cause why the licence granted to itself should not be revoked.
4. The Authority has considered the submissions made by XXX Pty Ltd and has come to the conclusion that the reasons proffered for breach of material terms and conditions of its licence as noted above are inadequate and have therefore not persuaded the Authority not to revoke the licence. **(Reasons must be given in full)**
5. In consequence, XXX Pty Ltd has failed to convince The Authority why it should not revoke its licence.
6. On the basis of the foregoing the Authority notifies XXX Pty Ltd that the licence issued to it to provide Telecommunications Service in Botswana is hereby revoked with immediate effect.
7. XXX Pty Ltd is also notified that the general public and other stakeholders will accordingly be notified of this development.
8. Should XXX Pty Ltd be aggrieved by the decision of The Authority it is advised of its right of Appeal to the High Court within 14 days of this notification as determined by The Authority, in terms of **Section 56** of the Telecommunications Act.

Yours Sincerely

Chief Executive