

1.
Memorandum

GUIDELINE NO: 1/2008

I, as the Regulator of the Telecommunications Industry in Swaziland, have approved these Guidelines and General Information for the Granting of Licences for Operating Internet Services.

The Guidelines are intended to facilitate the regulation of the provision of Internet Services in the country and, in particular, to ensure that the issues pertaining to consumer protection are given the most attention.

A handwritten signature in black ink, appearing to be 'S. M. M.', written over a light-colored rectangular background.

**Managing Director
Swaziland Posts and Telecommunications Corporation
MBABANE**

April 2008

**SWAZILAND POSTS AND TELECOMMUNICATIONS
CORPORATION**

GUIDELINE NO: 1/2008

DATED: April 2008

**GUIDELINES AND GENERAL INFORMATION FOR THE GRANTING OF LICENCES FOR
OPERATING INTERNET SERVICES**

1. The Regulator of the Telecommunications Industry, taking into account the ideals of the provisions of the National Information and Communication Infrastructure (NICI) Policy, and the national development objectives of utilizing Information and Communication Technologies (ICTs) in the implementation of economic, social and cultural development goals, has decided to issue the following new guidelines for the granting of licenses of Internet services on a non-exclusive basis effective from 1st April 2008.
2. These guidelines explain the main aspects of Internet Regulator Policies and seek to provide clarification on matters that are important to the Industry
3. **KEY PRINCIPLES**

The following are the key principles underlying the regulation of Internet services in the Kingdom of Swaziland:

- a. The Ministry of Tourism, Environment and Communication and the Swaziland Posts and Telecommunications Corporation (SPTC) fully support the development of the Internet as it is an important communication medium, a rich source of information, entertainment and education.
- b. The framework for regulation seeks to emphasize transparent licensing procedures, public participation and public education.
- c. In regulating the Internet we are mindful of the provisions of our Constitution which guarantee the freedom of conscience, expression, opinion and the right to receive ideas and information without interference, as well as the limitations which may apply in the enjoyment of these freedoms.

2.
 - d. The Regulator promotes the development of the Internet industry to facilitate research and development, manufacturing, content development and distribution of ICT products and services and employment creation.
 - e. The Regulator aims to facilitate Swaziland's integration and participation in the local and global economy and the global information society.
 - f. In regulating the Internet we ensure that consumers are protected in line with international best practices.
 - g. The Regulator will adopt a soft touch in regulating Internet services. This means that where licensees are found to be in breach of the license provisions or regulations, they will be given an opportunity to rectify the breach before the Regulator takes action.
 - h. The Regulator is committed to maintaining open channels of communication with the public, the industry and other stakeholders. To that extent all stakeholders are encouraged to feel free to bring any relevant matter to the attention of the Regulator if such will assist in the regulation of the industry.

4. LICENCING FRAMEWORK

- a. Pending the passing of the Telecommunications Bill, all Internet services will be regulated under Section 70 of the Swaziland Posts and Telecommunications Act no 11 of 1983.
- b. Generic Internet Service Provider (ISP) Licenses shall be issued on a non-exclusive basis for initial periods of 5 years and will be subject to renewals for such further periods as the law may from time to time permit.
- c. Existing Internet Services Providers shall be deemed to be holders of Internet Service Provider Licenses, provided that they shall be required to submit all registration documents in line with the licensing guidelines in paragraph 5 hereunder within 6 months from the 1st April 2008. The deemed licenses shall be valid for a period of 5 years from the date of submission of the required documents in terms of hereof.
- d. Internet Service Provider Licenses shall be deemed to be Class licenses.
- e. Internet Service Providers include Internet Access Service Providers (IASPs) who function as main gateways to the Internet, and Internet Service Resellers who obtain Internet services access from the IASPs and then resell such service to the public.
- f. Internet Content Providers and information providers to the World Wide Web do not need to register with the Regulator. These include but are not limited to web authors, editors, web publishers and web server administrators. The services

3. of the ICPs shall be regulated by any applicable laws in Swaziland and it shall be the obligation of such ICP's to familiarize themselves with any applicable laws.
- g. Individuals putting up web pages for religious or political causes shall be regulated by the applicable laws. It shall be the onus of such persons to familiarize themselves with the applicable laws if any.

5. QUALIFICATION FOR LICENCES

- a. The applicant must be a Swazi company, registered under the Swaziland Companies Act 1912.
- b. The applicant shall submit the application in duplicate on the prescribed Application form enclosed as **(Annex-I)**.
- c. The applicant shall, at submission of the application, pay a processing fee of E2 000.00 (Two Thousand Emalangenani) in the name of Swaziland Posts and Telecommunications Corporation.
- d. The Application shall be accompanied by the following documents:
 - i. A certified certificate of incorporation.
 - ii. A business plan and technical details of the equipment to be used in the provision of the service.
 - iii. Proof of financial capacity to provide ISP services on a commercial basis
 - iv. Shareholding structure of the company which must reflect that the majority shareholding is held by Swazi nationals
 - v. Resolution authorizing company representative
 - vi. A copy of Memorandum and Articles of Association
 - vii. Existing ISPs should submit a declaration under oath signed by an authorized company representative stating that the ISP is an existing ISP and has been operating as such for a minimum of 12 months prior to 1st April 2008.

6. SCOPE OF SERVICE

The following services can be provided within the scope of the license for Internet service:

- a. Internet Access: to provide Internet Access by use of any device/technology/methodology excluding Television content, this shall be subject to the STY A Act or its successor in law.
- b. The Internet Service Licensee is not permitted to provide PSTN/PLMN connectivity for voice telecommunication

4. services but is permitted to provide PSTN connectivity for purposes of providing Internet services where such PSTN services have been acquired wholesale from the incumbent operator. Voice communication (VoIP) to and from a telephone connected to PSTN/PLMN and following E.164 numbering is prohibited in Swaziland.
 - c. All ISPs shall use the Internet Gateway operated by the SPTC until such times as the monopoly of the SPTC has been discontinued or the law provides otherwise.
 - d. For e-commerce, the licensee shall be subject to the applicable laws of Swaziland, provided that where no such laws exist, it shall be the responsibility of the ISP to ensure that all information is encrypted in line with international best practices, if there are no best practices the Regulator shall provide the minimum standards.
 - e. For services/products requiring the use of the radio frequency spectrum, a separate application will be required for the use of the spectrum, be it licensed or license-exempt.

7. LICENCE FEES

1. An administration fee of E2000.00 (Two Thousand Emalangeni) shall be paid with every application for an ISP license. No application shall be processed until this fee has been paid.
2. An annual license fee of E1 0000.00 (Ten Thousand Emalangeni) or @6% of Annual Gross Revenue (AGR) which ever is greater, is payable 1st April each year or any other date advised by the Regulator in writing.

8. COMMENCEMENT OF SERVICES

- a. The Licensee shall provide licensed service within six months from the date of issue of the license. Commissioning of service will mean providing commercial service to members of the public.
- b. For the purpose of providing the service, the Licensee shall install, test and commission his own suitable equipment so as to be compatible with the other service providers' equipment and connect same to an Internet Gateway owned by the incumbent operator and shall provide the Regulator with a report on such compatibility testing within one month from the completion of such testing and commissioning.

- 5.
- c. The validity of license is initially for a period of 5 (five) years unless otherwise terminated. At the end of the initial period the license shall be renewed upon the Licensee's application for a period of 10 years or for such longer period as the law may provide.
 - d. The minimum standards of the quality of service shall be as prescribed by the Regulator from time to time.
 - e. The Regulator shall have the right to take over the Service, equipment and networks of the Licensee as per direction, and for such limited period as may be determined by the responsible Minister acting in terms of any applicable laws.
 - f. It will be the responsibility of the licensee to obtain IP addresses, domain name etc. from the competent authority.
 - g. The Regulator or personnel authorized by the Regulator reserves the right to carry out surprise inspection.
 - h. The entry fee is not applicable to existing ISPs provided that they shall pay the annual fees with effect from end of the current financial year.
 - I. The ISP shall have the right to surrender its license at any time provided such surrender will not prejudice the rights of its existing customers and subject to any penalties that may be imposed by the Regulator which penalties shall be published from time to time before hand.
 - J. The Regulator shall process applications within three months from receipt of complete documents from the applicant.
 - k. Notwithstanding these guidelines, each license shall be bound by the terms and conditions as set out in the issued license.

9. INTERNET CODE OF PRACTICE

- a. All Internet Services Providers shall be bound by a Code of Good Practice which is being developed by the Regulator in consultation with all stakeholders and will be published in due course for public comment.

6.
 - b. The Code will identify conduct which our community considers offensive and/or undermines the values that are contained in our Constitution.
 - c. ISPs will be expected to develop their own Acceptable Use Policies. These will be informed by the Code of Good Practice and must be used by the ISPs as a basis for taking action against offensive content or conduct.
 - d. The Code of Good Practice shall not be used as a basis for monitoring Internet use by customers.
 - e. Internet Content Providers shall be expected to observe the Code of Good Practice and in the event of any doubt as to whether specific content would violate the Code, ICP are encouraged to seek guidance from the Regulator.
 - f. Web Publishers and Server Administrators are not permitted to monitor the Internet or pre-sensor content. They are only required to deny access to prohibited materials when so directed by the Regulator or any other law enforcement body authorized by law. It is important to note that the primary responsibility for the content remains with the author and not the publisher or server administrator.
 - g. Website owners must be encouraged to exercise editorial judgment and be mindful of the Code when posting material on their websites.

10. CONSUMER PROTECTION

The following key commitments must be made to consumers in line with international best practices and commitments:

- a. All ISP's must inform consumers about their rights in terms of the Code of Good Practice.
- b. All licensees must act in a fair, reasonable and responsible manner when dealing with consumers.
- c. Licensees may not in any way discriminate against consumers on the basis of race, gender, sex, age, religion, disability, ethnic background or sexual orientation.
- d. All ISP's must provide consumers with information regarding services and pricing.

- 7.
- e. ISP must keep consumer's personal information confidential and advise consumers of their right to refer complaints to the Regulator.
 - f. Licensees must provide information which consumers can use to exercise their rights where relevant.
 - g. Licensees must provide consumers with ready access to accurate and easy to understand information relating to
 - i. Services offered
 - ii. Applicable tariffs
 - iii. Terms and conditions
 - IV. Payment policies
 - v. Billing
 - vi. Complaints and handling procedures
 - vii. Relevant contact details.
 - h. Service Contracts shall include at least the following in plain and understandable language
 - i. Nature of contract
 - ii. Minimum duration of contract
 - iii. Notice period for termination
 - iv. Manner of notice of termination
 - v. Any applicable fees for early termination.
 - vi. Billing dates
 - vii. Reasonable notice must be given of any changes to the terms and conditions of the contract.
 - VIII. Commitment to maintain consumer information confidential.
 - I. ISP's must ensure that advertising and promotional information is not misleading and complies with any laws which regulating advertising standards.
 - J. Licensees must commit that defective service will be rectified within the shortest possible time.

Licensees must train their staff to ensure that consumer interests in terms of the Code are protected.

11. SECURITY CONDITIONS

- a. The licensee shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.
- b. The licensee shall cooperate with the government agencies responsible for national security should lawful interception of messages be required.

- c. The Company must provide traceable identity of their subscribers.
- d. The licensee should ensure that necessary provision (hardware/software) is available in their equipment for carrying out Lawful interception and monitoring from a remote site.
- e. For monitoring traffic, the licensee shall provide access of their network and other facilities as well as to books of accounts to the security agencies provided that any such request shall be carried out under lawful authority

Issued by:

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SWAZILAND POSTS AND TELECOMMUNICATIONS CORPORATION

APPLICATION FOR ISP LICENCE

Annex 1

The application form should contain complete information on each and every point. Additional sheets may be added, if required. Incomplete application or application with conditional compliance shall be summarily rejected.

1. Application for the Service Location:
2. Name of Applicant Company: -----
- Trading name (if applicable) -----
- company Registration Number -----
- Does the company have a current trading licence?
(If so please attach copy)
3. Kindly attach details of all Directors with the following information:
 - a) full names
 - b) ID Number
 - c) date appointed
 - d) nationality
 - e) country of residence

Attach names, addresses and contact details of the following professional Advisors to the Company

- a) Attorney
 - b) Auditor
4. Complete postal address with Telephone/FAX Numbers/E-mail:
 - i) Corporate Office:

 - ii) Registered Office:

5. Address for correspondence
With Telephone/FAX numbers/
Email
6. Name of Authorised contact
Person, his designation and
Telephone/FAX Nos./Email
7. Certified copy of Certificate of
Registration duly certified (Please
Enclose as Annexure)
8. Partners/ shareholders in the Company
(details of equity holding)

S. No.	Name of Partner/ shareholder	Swazi/ Foreign	Equity %age
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9. Resolution of Board of Directors/
other proof that the person signing
the application is authorised
signatory.
(Enclose as Annexure)
10. Business Plan
11. Technical details of
Network/infrastructure
12. Proof of Financial Capacity -----
13. Proof of payment of processing
Fee -----
14. Existing ISPs should submit a
declaration under oath signed by
an authorized company representative stating
that the ISP is an existing ISP and has been
operating as such for a minimum of 12 months
prior to 1st April 2008



CERTIFICATES

1. I hereby certify that I have carefully read the guidelines and draft Licence on Internet Service. I fully comply with the terms and conditions therein.
2. I understand that this application, if found incomplete in any respect and/or if found with conditional compliance or not accompanied with the processing fee, shall be summarily rejected.
3. I understand that processing fee is non-refundable irrespective of whether or not the licence is granted to me.
4. I understand that all matters relating to the application or licence if granted to me will be subject to jurisdiction of courts in Swaziland.
5. I understand that if at any time or information furnished for obtaining the licence is found incorrect, my application shall be liable to be rejected and any licence granted on the basis of this application shall be liable for termination.

Date:
Place:

**Signature and name of the
Authorised Signatory
(Company's Seal)**

