REPORT OF THE COMMITTEE ON INFORMATION, COMMUNICATION TECHNOLOGY AND NATIONAL GUIDANCE ON THE PETITION BY THE INTERNET SERVICE PROVIDERS’ ASSOCIATION OF UGANDA AGAINST THE UGANDA COMMUNICATIONS (FEES AND FINES) (AMENDMENT) REGULATIONS, 2020

OFFICE OF THE CLERK TO PARLIAMENT
JUNE, 2020
1. INTRODUCTION

Rt.Hon. Speaker and Honourable Members, this is a Report of the Committee on Information, Communication Technology and National Guidance on a Petition by the Internet Service Providers' Association of Uganda (hereinafter referred to as 'the Petitioners') against the Uganda Communications (Fees and Fines) (Amendment) Regulations, 2020. The Committee considered the Petition and now reports. The Petition was presented to the Speaker on 04th June, 2020 who referred it to the Committee in accordance with Article 90 of the Constitution of the Republic of Uganda, 1995 and Rule 30(6) of the Rules of Procedure of Parliament.

2. BACKGROUND

On 28th May, 2020, the Minister of State for Information, Communication Technology and National Guidance laid on table a set of 21 Regulations under the Uganda Communications Act, 2013. The list of the Regulations attached under Appendix 'A'. Under Section 93 (1) of the Act, the Minister may, after consultation with the Commission and with the approval of Parliament by statutory instrument, make regulations for better carrying into effect the provisions of the Act.

It is important to highlight the chronology of developments with regard to the Regulations that have provided a premise for this Petition.

On 3rd November, 2017, the Uganda Communications Commission gazetted fees which took immediate effect. Of relevance to this Petition are the fees applicable to the Public Infrastructure Provider Licence and the Public Service Provider Licence which were set at USD 30,000 and USD 10,000 respectively per annum. In this regime, the Petitioners were not prohibited from having both the NPIP and NPSP licences simultaneously. The combined fees for both licences were, therefore, USD 40,000 per annum.

In April 2019, UCC issued a Consultative Paper on the Proposed Review of the Licencing Framework that was being proposed. According to the Consultation Paper, the objective of the review were:

a) To ease market entry and increase competition and consumer choice in the telecommunication sector;

b) To enhance Quality of service provision in the sector;

c) To promote innovation and investment in the telecommunication sector;

d) To increase broadband rollout;
e) To increase local ownership in the telecommunication sector and hence reduce capital flight;
f) To reduce the cost of investment in ICT infrastructure by creating efficiencies in the use of scarce resources;
g) To promote a seamless transition from the existing framework into the new framework.

On 8th November, 2019, the Uganda Communications (Fees and Fines) Regulations, 2019 SI 95 219 were gazetted. Under these Regulations, the fees structure for the telecom sector was determined basing on the licensing framework that had been developed, which sought to set fees for the respective license categories depending on whether the license was for infrastructure or public services at national or regional levels. Further, the fees for the NPIP and NPSP licences were each at USD 300,000. When the Regulations were gazetted, the Petitioners raised several concerns to the Commission and the Minister, who then authorized the Commission to review the fees. Uganda Communications Commission revised the fees which were passed in the Uganda Communications (Fees and Fines) (Amendment) Regulations, SI 66 of 2020. Both these Regulations were laid on the 28th of May 2020 by the Hon. Minister of State for ICT and National Guidance.

2.1 Petition

On the 4th of June 2020, the Internet Service Providers Association of Uganda (ISPAU) petitioned the Parliament of Uganda against Uganda Communications (Fees and Fines) (Amendment) Regulations, 2020. One of the regulations that were laid before Parliament on the 28th May, 2020.

The Petitioners contend that:

a) The fees charged by the impugned Regulations are prohibitive to the internet service provider sub sector and only favour Mobile Network Operators (MNOs) and National Telecom Operators (NTOs). This is because, according to the Petitioners, the said Regulations require that for an Internet Service Provider to remain in business with its current National License, they have to apply for the National Telecom Operators Licence and pay the prohibitive figure of USD 21,300,000 paid by Mobile Network Operators and National Telecom Operators. The Petitioners contend that the internet service provider sub sector lacks the financial muscle of the MNOs and NTOs who serve more than 20 million customers
in total compared to the 16,800 clients serviced by the internet service providers;

b) The impugned Regulations have the effect of cancelling half of the businesses of the Petitioners by outlawing the holding of two licences. The Regulations specify that internet service providers cannot hold two licences National Public Infrastructure Service Provider (NPIP) National and Public Service Provider (NPSP) and yet internet service providers have been holding the two licences under the regime currently in force;

c) The impugned Regulations increase the Annual Licence Fees for the NPSP licence from USD 10,000 to USD 86,000, an increment of by 860% and the NPIP licence from USD 30,000 to USD 86,030, an increment of 186%. The Petitioners contend that these high charges are likely to plunge the internet service providers into loss given the high cost of doing business and the high completion they presently face from the large Mobile Network Operators.

The Petitioners made the following prayers:

a) That Parliament requires the Minister to amend the Regulations to create a category for internet service providers in the licensing regime that caters for both National Public Service Providers and National Public Infrastructure Service Provider licences and non-prohibitive fees are specifically charged for the created category;

b) That an increment in license fees be postponed to Financial Year 2021/2022 to allow the subsector businesses to recover from the downturn of the COVID-19 Pandemic and the resultant lockdown that has led to loss of revenues by 73% through cancellations, suspensions and downgrades;

c) That the matter be handled urgently as there are only a few days left before the start of Financial Year 2020/2021.

3. METHODOLOGY

While handling the Petition, the Committee:

i. Held meetings with the Petitioners, the Ministry of Information, Communication Technology and National Guidance (the Ministry); Uganda Communications Commission (UCC) and the National Information Technology Authority (NITA-U);
ii. Reviewed legal and policy documents: the Uganda Communications Act, 2013 as amended; the Uganda Communications (Fees and Fines) (Amendment) Regulations, 2020 SI 66 of 2020; the Uganda Communications (Fees and Fines) Regulations, 2019, SI 94 of 2019; the Uganda Communications (Licencing) Regulations, 2019 SI 95 2019; the National Broadband Policy, 2018; the National Information and Communication Technology Policy for Uganda, 2014; The Uganda Communications Commission Market Performance Report, 2020, the Uganda Communications Commission Consultations Paper, April, 2019, among others.

4. COMMUNICATIONS LICENSING IN UGANDA

The licencing of communication services in Uganda is governed by a number of Regulations that were made in 2005 and 2006, complemented by other Regulations added over the years. The major service providers in the sector were licensed 20 years ago and since then the ICT sector has witnessed tremendous technological and business advancements like convergence of technology and evolution of value added services. The existing licensing framework is designed in such a way that the licensee can run the infrastructure; network services and content/ applications under the same license (vertical integration). This has resulted in lack of transparency in the cost of services delivered, revenues declared and has also made it hard for service providers to share infrastructure. This results in market entry barriers for new entrants and leads to unfair and non-competitive environment because service providers compete on infrastructure. This has also resulted in capital flight and outsourcing services that would otherwise be provided by Ugandans.

The current licensing regime for Telecommunication service providers falls short of critical regulatory issues that operators need to adhere to as part of their quality of service obligations and for enabling of broadband penetration.

5. OBSERVATIONS AND RECOMMENDATIONS

Observations
In the course of the hearings and after reviewing a number of literature, the Committee concluded that the fees in the impugned Regulations are prohibitive to the Petitioners and would lead to the termination of half of the Petitioners’ businesses, which investments the Petitioners and other internet service
providers have built over the past twenty (20) years. This, in the opinion of the Committee, would have the unwanted effect of lowering the penetration of ICT services in the country. This also, would not be in favour of promoting “connectivity for all” which is one of the key objectives of the National Broadband Policy.

In the course of the committee meetings with the Petitioners, Uganda Communications Commission and the Ministry of ICT and National Guidance, it was stated that there was still room to reach an agreeable position. The Ministry of ICT and National Guidance then asked the Committee to allow them hold meeting(s) for purposes of coming to a common ground. Accordingly, the Committee resolved to allow the parties go into negotiations and inform the Committee of the outcome.

The Committee received a formal communication from the Petitioners, Ministry of ICT and National Guidance and the Uganda Communications Commission indicating that they had agreed on an amicable way forward.

The Minister wrote to the Speaker indicating that the parties had reached an agreement and committed to review the licencing framework and revise the fees. The letter of the Minister is hereto attached marked “Appendix B”.

Recommendations

The Committee recommends that the Minister of Information, Communication Technology and National Guidance withdraws the Uganda Communications (Fees and Fines) Regulations SI No. 94 of 2019 and the Uganda Communications (Fees and Fines)(Amendment) Regulations S.I No. 66 of 2020 that were laid before Parliament on 28th May, 2020.

The Committee further recommends that the Minister of ICT and National and National Guidance should lay before Parliament new Regulations reflecting a favourable licencing framework and fees.

Rt. Hon. Speaker and honourable members, I beg to move that this Report be adopted.
APPENDIX A

REGULATIONS LAID ON TABLE BY THE MINISTER OF STATE FOR INFORMATION, COMMUNICATION TECHNOLOGY AND NATIONAL GUIDANCE ON 28TH MAY, 2020

1. The Uganda Communications (Licensing) Regulations, S.I No. 95 of 2019
2. The Uganda Communications (Universal Service and Access Fund) Regulations
3. The Uganda Communications (Intelligent Network Monitoring System) Regulations
4. The Uganda Communications (Fees and Fines) Regulations
5. The Uganda Communications (Emergency Response) Regulations
6. The Uganda Communications (Computer Emergency Response Team) Regulations
7. The Stage Plays and Public Entertainments Rules
8. The Uganda Communications (Film and Commercial Still Photography) Regulations
9. The Uganda Communications (Content) Regulations
10. The Uganda Communications (Universal Service) Regulations
11. The Uganda Communications (Text and Multimedia) Regulations
12. The Uganda Communications (Pricing and Accounting) Regulations
13. The Uganda Communications (Competition) Regulations
14. The Uganda Communications (Consumer Protection) Regulations
15. The Uganda Communications (Equipment Type Approval) Regulations
16. The Uganda Communications (Interconnection and Access) Regulations
17. The Uganda Communications (Quality of Service Regulations
18. The Uganda Communications (Centralized Equipment Identification and Register) Regulations

[Signatures]
Appendix A
25th June 2020

Rt. Hon. Speaker of Parliament
Parliament of Uganda
Kampala

PETITION BY INTERNET SERVICE PROVIDER’S ASSOCIATION OF UGANDA

Reference is made to the petition by Internet Service Provider’s Association of Uganda, ISPAU that you referred to the Committee on ICT and National Guidance.

I would like to report that after the Committee interacted with the petitioner and ourselves (the Ministry and the Regulator – Uganda Communications Commission) we have agreed on an amicable way forward on the key issues that are of regulatory nature.

These included the licensing framework and the rates that have been revised in agreement with the petitioner. We are now expediting the revised schedule of rates that we shall share with Parliament at the earliest. The petitioner has committed to withdraw both the petition in Parliament as well as the suit in Court.

The Ministry would like to thank your office for facilitating the constructive conclusion of the impasse.

The purpose of this letter therefore, is to inform you that the Ministry has agreed with the ISPA (petitioner) on a constructive way forward.

Judith Nabakooba (MP)
MINISTER OF ICT AND NATIONAL GUIDANCE

Co. Minister of State for ICT and National Guidance
Chairperson, Committee on ICT and National Guidance
Permanent Secretary, Ministry of ICT and National Guidance
Executive Director, Uganda Communications Commission
Chairperson, Internet Service Provider's Association of Uganda
MEMBERS OF THE COMMITTEE ON ICT AND NATIONAL GUIDANCE WHO SIGNED THE REPORT OF THE COMMITTEE ON INFORMATION, COMMUNICATION TECHNOLOGY AND NATIONAL GUIDANCE ON THE PETITION BY THE INTERNET SERVICE PROVIDERS’ ASSOCIATION OF UGANDA AGAINST THE UGANDA COMMUNICATIONS (FEES AND FINES) (AMENDMENT) REGULATIONS, 2020

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