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Independent Communications Authority of South Africa

General Notice

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GENERAL NOTICE

NOTICE 1610 OF 2009

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

The Independent Communications Authority of South Africa ("the Authority"), hereby gives notice in terms of section 4(4) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the EC Act") of its intention to amend regulations in terms of section 73 (3) and (4) in respect of E-Rate.

A copy of the proposed regulations is available on the Authority's website (www.icasa.org.za) and in the ICASA Library at 164 Katherine Street, Pin Mill Farm, First Floor, Block D between 10h00 and 16h30, on working days only.

Interested persons are hereby invited to submit written representations on these draft E-rate Regulations **by no later than 22 January 2010** by post, hand delivery, facsimile transmission or electronic mail (in Microsoft Word) for the attention of:

Ms. Thenjiwe Dube
Project Leader
ICASA
Private Bag X10002
Sandton
2146

or

Block C
Pinmill Farm
164 Katherine Street
Sandton

Facsimile: (011) 566 3408 or Telephone: (011) 566 3407

Electronic mail: tdube@icasa.org.za or lmasilo@icasa.org.za

Persons making written representations are requested to indicate if they wish to make oral submissions; the estimated duration thereof must not exceed 45 minutes.

All written representations submitted to ICASA pursuant to this notice will be made available for inspection by interested persons at the ICASA library and copies of such representations will be obtainable on payment of the prescribed fee.

At the request of any person who submits written representations pursuant to this notice, ICASA will determine whether such representations or any portion thereof is confidential in terms of section 4D of the ICASA Act. If the request for confidentiality is refused, the licensee making the request will be allowed to withdraw such representations or portion thereof

The final regulations will be published in the Government Gazette.

PARIS MASHILE
CHAIRPERSON

1. DEFINITIONS

In these regulations any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned, unless the context otherwise indicates:

- (1) **“Act”** means the Electronic Communications Act, 2005 (Act No. 36 of 2005).
- (2) **“Authority”** means the Independent Communications Authority of South Africa established in terms of the Independent Communications Authority of South Africa Act, 2000 (Act no. 13 of 2000).
- (3) **“E-rate”** means the discount of no less than 50% applicable to public schools or public further training institutions, as well as independent schools or private further education and training institutions, as prescribed, to be entitled to the discount for utilising Internet services provided by a licensee.
- (4) **“ICASA Act”** means the Independent Communications Authority of South Africa Act, 2000 (Act no. 13 of 2000).
- (5) **“Internet”** means a collection of interconnected networks using the Internet Protocol which allows them to function as a single, large global virtual network.
- (6) **“Retail rate”** means the lowest commercial charge levied for a service contemplated in terms of section 73(3) of the Act by a licensee for making available services to public schools or further education and training colleges or independent schools that qualify for the E-rate discount.
- (7) **“Upstream Licensee”** means a licensee who provides ECS or ECNS services to a licensee who in turn provides Internet services to public schools or further education and training colleges or independent schools that qualify for the E-rate discount.

2. PURPOSE, SCOPE AND APPLICATION OF THE REGULATIONS

- (1) The regulations prescribe the manner in which E-rate must be implemented in respect of schools.
- (2) These regulations apply to Electronic Communications Service (ECS) and Electronic Communications Network Service (ECNS) Licensees.

3. IMPLEMENTATION OF E-RATE

(1) Requirements

- (a) An upstream licensee must meet another licensee's request to provide an E-rate to:

(aa) public schools,

(bb) categories of independent schools as declared by the Minister in consultation with the Minister responsible for Education,

(cc) public further education and training colleges.

- (b) An upstream licensee shall grant a 50% (fifty percent) discount off the retail rate charged for all electronic communications facilities and / or services provided by a licensee to other licensees and used for the provision of Internet services to:

(aa) public schools

(bb) categories of independent schools.

(cc) public further education and training institutions.

(2) Application processes / Guiding principles

- (a) A licensee who requests a 50% discount on retail rate should make an application with the upstream licensee in terms of section 73 (3) of the ECA.

- (b) A licensee who requests the 50% discount must submit a list of schools intended for Internet connectivity as proof to another licensee.
- (c) The upstream licensee must respond to the request within 7 days upon receipt of the application.
- (d) Should the upstream licensee refuse to provide 50% discount, a dispute should be lodged with the Authority.

(3) **Agreement principles**

- (a) The terms and conditions of each E-rate agreement should aim at facilitating access to connectivity to schools in line with the End User and Subscriber Service Charter Regulations of 2009 as published by the Authority.
- (b) The following principle must inform the terms and conditions of the E-rate agreements:

(aa) **Quality of Service and standards**

The parties to an E-rate Agreement must ensure that their agreement –

- (i) Contains the standards acceptable to all parties and that these enable electronic communications networks to be connected; and
- (ii) Complies with all relevant standards.

(4) **Unfair discrimination**

- (a) The parties shall not unfairly discriminate in the negotiation, conclusion and implementation of an E-rate agreement.
- (b) A licensee must apply similar terms and conditions, including those relating to charges, in similar circumstances to licensees providing similar services.
- (c) A licensee must apply similar terms and conditions, including those relating to charges, in similar circumstances to the schools where the service is rendered.

- (d) If there is infrastructure available to provide the service, parties must finalise an E-rate agreement within 30 days from the date of notification by a licensee that it intends to provide Internet services to public schools, public further education and training institutions and declared categories of independent schools or private further education and training institutions, unless the parties agree to an extended period which must not be more than sixty (60) days from the date of notification.
- (e) If there is infrastructure available to provide the service, parties must finalise an E-rate agreement within thirty (30) days from the date the public schools, public further education and training institutions and declared categories of independent schools or private further education and training institutions request Internet services from an ECS licensee, unless the parties agree to an extended period which must not be more than sixty (60) days from the date of the request.
- (f) If there is no infrastructure available to provide Internet services to the school, then the periods referred to in (d) and (e) above shall become effective from the date that such infrastructure becomes available

(5) Disputes and Complaints

- (a) Any complaint will be dealt with in accordance with the Authority's prescribed regulations.
- (b) Where a dispute arises between licensees, any of the licensees may refer the dispute to the Complaints and Compliance Committee (CCC) so as to resolve the dispute and make a binding order.

4. RECORD KEEPING

- (1) A licensee must keep records of the following documents for a period of not less than 3 (three) years:

- (a) signed contracts;
- (b) Internet service provider bills to schools;
- (c) details of services and locations at which they are provided;
- (d) the effective date of services provided; and
- (e) resumption date should the service be cancelled.

5. PENALTIES

Failure to comply with these regulations by a licensee will result in the imposition of a fine not exceeding R500 000, 00 (Five hundred thousand rand)

6. REPEAL

The regulations published in Government Gazette No. 31979 (Notice No. 246, 2009) are hereby repealed in their entirety.

7. SHORT TITLE AND COMMENCEMENT

These regulations are called the E-rate Regulations of 2009 and shall come into force upon publication in the Government Gazette.

SCHEDULE A – APPLICATION FORM

1	SCHOOL DETAILS		
	Official Name of School Quintile No.		
	EMIS Number		
	Postal Address	Province	
		District	
		Circuit	
	Code		
	Physical Address		
	Code		
	Telephone	Fax	
	e-Mail Address		
	Principal	Tel	
	Chairperson of Governing Body	Tel	

TYPE OF CONNECTIVITY			
	Number of Computers with Internet Access	Type of Connectivity	(Specify)
	Electronic communications service licensee (ECS) / electronic communications network services licensee (ECNS)		(Specify)
	Current Subscription Fee per month		(Specify)