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GENERAL NOTICE

NOTICE 857 OF 2010



Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

REGULATIONS IN RESPECT OF THE PRESCRIBED ANNUAL CONTRIBUTIONS OF LICENSEES TO THE UNIVERSAL SERVICE AND ACCESS FUND

- (1) The Independent Communications Authority of South Africa ("The Authority") hereby, in terms of section 89(2) read with section 4(4) of the Electronic Communications Act, 2005 (Act No 36 of 2005) ("the Act"), hereby publishes the draft USAF Regulations as contained in the schedule herein.
- (2) A copy of the proposed regulation is available on the Authority's website at <http://www.icasa.org.za> and in the ICASA Library at 164 Katherine Street, PinMill Farm, Sandton Block D, between 08h30 and 16h30, Monday to Friday.
- (3) Interested persons are invited to submit written comments or written representations with regard to the proposed regulations, to be received by no later than 16h00 on 22 October 2010 by post, hand delivery, facsimile transmission, or electronically (in Microsoft Word) for the attention of:

Mr. Thato Mahapa
Independent Communications Authority of South Africa
Private Bag X10002
Sandton
2146

Delivery address: Block B, Pinmill Farm, 164 Katherine Street, Sandton. Where possible written representations should also be e-mailed to: tmahapa@icasa.org.za or lmorobane@icasa.org.za

Enquiries can be directed to the Project Leader on:

Landline: 011 566 3215

Fax: 011 566 3216

- (4) All written representations submitted to the Authority pursuant to this notice will be made available for inspection by interested persons at the Authority's library and copies of such representations will be obtainable on the payment of the prescribed fee.
- (5) At the request of any person who submits written representations pursuant to this notice, the Authority may determine that 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 person making the request will be allowed to withdraw such representations or portion thereof.
- (6) The final regulation will be published in the government gazette.



Dr SS Mncube
CHAIRPERSON

SCHEDULE

1. DEFINITIONS

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

“Act” means the Electronic Communications Act, 2005 (Act No.36 of 2005, as amended)

“Annual Turnover” means total revenue generated from licensed activity per annum;

“Applicable Interest Rate” means the uniform interest rate set by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act 1 of 1999;

“BS Licensee” means broadcasting service licensee;

“ECNS Licensee” means Electronic Communications Network Service Licensee;

“ECS Licensee” means Electronic Communications Service Licensee;

“Fund” means the Universal Service and Access Fund established in terms of section 87(1) of the Act;

“Licensed Activity” means ECS, ECNS and BS provided pursuant to a licence issued to a Licensee in terms of Chapters 3, 4 and 9 of the Act.

“the MDDA” means the Agency established in terms of the Media Development and Diversity Agency Act No.14 of 2002;

“USAF Contribution” means the payment due to the Fund in terms of these regulations.

2. PURPOSE OF THE REGULATIONS

- (1) These regulations seek to:
 - (a) prescribe the annual contributions to be paid to the Universal Service and Access Fund ("the Fund") by persons issued with licences in terms of chapter 3 of the Act;
 - (b) prescribe the date when such contributions to the Fund become payable and the manner in which they must be paid.

3. CONTRIBUTIONS TO THE UNIVERSAL SERVICE AND ACCESS FUND

- (1) Every holder of a licence granted in terms of Chapter 3 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2% of its Annual turnover, derived from the licensee's licensed activity, to the Fund.
- (2) An Individual broadcasting service licensee who has paid an annual contribution to the MDDA must set off that contribution against its prescribed annual contribution to the Fund.

4. PAYMENT OF CONTRIBUTIONS

- (1) Where a legal entity holds any combination of a BS Licence, ECS Licence and/or ECNS Licence, such entity may calculate the contribution to the Fund based on the firm's annual turnover based on the audited annual financial statements of that firm.
- (2) Payments in respect of contributions to the Fund:
 - (a) are due annually based on the licensee's financial year;

- (b) are due and payable within 6 months from the end of the licensee's financial year; and
- (c) May **only** be paid by way of an electronic transfer or via a direct deposit into the Authority's bank account, and
- (d) must be based on the:
 - (i) Audited annual financial statement of the licensee; or
 - (ii) Financial statements signed and sworn to by the accounting officer of the licensee where the licensee is not legally obliged to provide audited financial statements.

5. INTEREST

- (1) Interest on all late payments in respect of contributions to the Fund is payable in accordance with the manner prescribed in regulation 4 and is to be levied where payment is overdue by:
 - (a) 14 (fourteen) days or less, at the applicable interest rate;
 - (b) more than 14 (fourteen) days but not more than 28 (twenty eight) days, at the applicable interest rate plus 3% (three percent);
 - (c) More than 28 (twenty eight) days, at the applicable interest rate plus 5% (five percent).
- (2) Where payment in respect of the contributions to the Fund is overdue by more than 45 days, a late payment penalty of 25% of the capital amount due is payable **in addition** to the overdue amount.

6. AMENDMENT OR REPEAL

Government Notice 1270 of Government Gazette No. 31499 dated 10 October 2008 is hereby repealed.

7. CONTRAVENTIONS AND PENALTIES

(1) Upon a determination of non-compliance by the Complaints and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:

- (a) Five hundred Thousand Rand (R500,000) for contravention of regulations 3, 4(2) and 5.
- (b) One Hundred Thousand Rand (R100,000) for contravention of all the regulations not specified in regulation 7(1) (a), and
- (c) Additional One Hundred Thousand Rand (R100,000) for repeated contravention of the regulations.

8. SHORT TITLE AND COMMENCEMENT

- (1) These regulations will be effective from the date of publication in the Government Gazette.
- (2) These regulations will be called the USAF Regulations, 2010.

EXPLANATORY MEMO – USAF REGULATIONS REVIEW

A. INTRODUCTION

- (1) This Explanatory Memorandum seeks to clarify the proposed amendments introduced by the repealing of the existing USAF regulations.
- (2) The Universal Service and Access Fund Regulations are prescribed in terms of section 89 of the Electronic Communications Act 36 of 2005, (The Act). The regulations were published on 10 October 2008, prior to the finalization of the Licence Conversion process undertaken in accordance with section 93 of the Act as well as finalization of the General Licence Fees Regulations published by the Authority on 1 April 2009 in Notice 345 contained in Government Gazette 32084.
- (3) The primary purpose of the current revision process is to address minor amendments to improve the efficiency of implementation of the USAF Regulations and to align them with the General Licence Fees Regulations.

B. BACKGROUND

- (4) The Authority followed a public consultative process as required by section 4 of the Act in prescribing the current USAF Regulations. The process ran parallel to the finalization of the Licence Conversion process required in terms of section 93 of the Act. Further, the Authority was also engaged in the prescription of General Licence Fees Regulations in terms of section 4(1) read with section 5(7)(a)(iii) of the Act.
- (5) The USAF regulations were finalized and published on 10 October 2008 with a delayed implementation date set for 1 April 2009. The delayed implementation date was created to coincide with the implementation of the General Licence Fees Regulations.

(6) As part of prescribing the USAF Regulations, the Authority sought a legal opinion on the interpretation of certain aspects of section 89 of the Act. The legal opinion was duly considered in the finalization of the regulations, as well as the input received from written submissions by the industry including the oral hearings that we held.

(7) Subsequent to the publication of the regulations, various licensees and industry representative bodies have written to the Authority requesting a reconsideration of certain aspects of the regulations which are related to the administrative implementation of the regulations. The Authority has decided to consider some of the requests in this review process and has, to that end, established a Council Committee to manage the process as provided for in terms of section 17 of the Act.

C. ISSUES

(8) The Authority has considered the following revisions to the regulations:

a. Definitions

i. Deletion of the following unused definitions is proposed:

Adjusted Gross Revenue

Agency Fees

Service Provider Discounts

ii. Insertion of the definitions of the following definitions is proposed:

Annual Turnover

BS Licensee

ECNS Licensee

ECS Licensee

USAF Contribution

iii. Revision of the following definitions is proposed:

Applicable Interest Rate

Licensed Activity

b. Payment of Contributions

The Authority is proposing the revision of the entire clause to align it with recent developments in drafting principles. Further, an extension of the period for payment of submissions from three (3) months to six (6) months is proposed.

c. Exemptions

In light of the wording of section 89(1) the Authority has been advised that it does not have the power to exempt any licensees from the payment of USAF contributions as the section does not confer such powers to the Authority.

d. Interest on late payments

The Authority is proposing the revision of the entire clause to align it with recent developments in drafting principles.

e. Contraventions and Penalties

The Authority is proposing the revision of the entire clause to align it with recent developments in drafting principles.

f. Private Electronic Communications network

The Authority is proposing the deletion of the requirement for PECNs to pay contributions towards the USAF because they cannot be considered as licensees. Section 89 specifically requires Licensees to contribute.

D. CONCLUSION

(9) The Authority hopes for constructive engagement on the proposals.
