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CONTENTS

No.

Page
No. Gazette
 No.

GENERAL NOTICE

Independent Communications Authority of South Africa

General Notice

280	Electronic Communications Act (36/2005): Practice Note: General Licence Fees Regulations	3	35211
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GENERAL NOTICE

NOTICE 280 OF 2012



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

ELECTRONIC COMMUNICATIONS ACT, 2005: ACT NO.36 OF 2005

PRACTICE NOTE: GENERAL LICENCE FEES REGULATIONS

The Authority hereby publishes the attached practice note to provide an overview of the requirements imposed upon licensees and seek to assist licensees to implement the General Licence Fees Regulations, 2009 published in Government Gazette No. 32084 of 1 April 2009.

A handwritten signature in black ink, appearing to be 'S. Mncube', written over a horizontal line.

DR STEPHEN MNCUBE
CHAIRPERSON

PRACTISE NOTE: GENERAL LICENCE FEES REGULATIONS

1. INTRODUCTION

1.1. Who should read this Practice Note?

This Practice Note should be read by all Electronic Communications Network Service ("ECNS"), Electronic Communications Service ("ECS") and Broadcasting Service ("BS") licensees, in conjunction with the General Licence Fees Regulations, 2009.

1.2 What is the issue?

- 1.2.1. The requirement imposed on licensees to pay Annual Licence Fees ("ALF") based on their gross profit has proved to be cumbersome for licensees, on the premise that licensed services differ from licensee to licensee. Further, licensees have conflicting views of what constitutes "*total revenue generated from licensed services*" and "*total costs directly incurred... in the provision of licensed services*". This is further exacerbated by the fact that the Authority did not deem it necessary to include a list of regulated services in the General Licence Fees Regulations, as a guideline to assist licensees in computing ALF.
- 1.2.2. The General Licence Fees Regulations ("GLFR") place the onus on the licensees to compute the ALF payable to the Authority. This has led to the licensees using their own discretion in determining which revenue and costs to include or exclude in the computation. This has thus affected the amount due and payable to the Authority, which poses a risk in terms of sections 38(1)(c)(i) and 39(2)(b)(i) of the Public Finance Management Act No.1 of 1999.
- 1.2.3. In terms of section 38 (1)(c)(i) of the PFMA, the Accounting Officer "*must take effective and appropriate steps to collect all money due to the department , trading entity or constitutional institution;*"
- 1.2.4. In terms of section 39(2)(b)(i) of the PFMA, the Accounting Officer "*must report to the executive authority and the relevant treasury any impending under collection of revenue due;*"

1.2.5. The Authority recognising that the challenges facing the licensees in computing ALF, has decided to publish this Practice Note to assist licensees to implement the GLFR.

2. BACKGROUND

2.1. The Authority published the final GLFR in Notice 345 of Government Gazette 32084 on 1 April 2009. These Regulations came into effect on 01 April 2009. The publication of the Regulations followed a public consultation process as required by the Act, including public hearings.

2.2. In terms of regulation 5, read with schedule 2 of the GLFR, a licensee is required to pay an ALF in respect of 1.5% of its gross profit within six (6) months of its financial year end. The payment of ALF should be based on gross profit which is defined in the General Licence Fees Regulations as *“total revenue generated from licensed services less total costs directly incurred by the licensee in the provision of licensed services.”*

2.3. Therefore, the Authority has decided to publish the attached Practice Note to contextualise the requirements as contained in the GLFR.

3. GENERAL LICENCE FEES REGULATIONS

Under the Regulations, the annual licence fees are levied on “Gross Profit” generated from licensed activities.

3.1. What is “gross profit”?

Gross profit means total revenue generated from **licensed service** less total costs directly incurred in the provision of such services.

3.2. What is “licensed service”?

Licensed service means Electronic Communications Network Services (“ECNS”), Electronic Communications Services (“ECS”) and Broadcasting Services (“BS”) provided pursuant to the licence issued to the licensee in terms of Chapter 3 and 9 of the Electronic Communications Act, 2005 (“EC Act”).

3.2.1. Examples of licensed services?

ECS:

These are services provided to the public, sections of the public, the State, or the subscribers to such services, which consist wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, such as:

- ❖ Voice;
- ❖ Data¹ (incl Internet Services via Wireless Internet Access; Fixed Line Access);
 - Connections and rentals²;
 - Wireless / Wire-line ADSL Distribution;
- ❖ Roaming;
- ❖ Number Porting;
- ❖ Transmission ;
- ❖ VPNs; and
- ❖ Interconnection

NB: it involves the selling of communication services.

ECNS:

This is where a person constructs and or maintains and or operates or makes available, whether by sale, lease or otherwise the following electronic communications network, for that person's use or to another person for that other person's use, such as:

- ❖ Leasing of infrastructure³;
- ❖ Facilities Leasing⁴;
- ❖ Network (services; maintenance⁵); and
- ❖ Core and Access Network elements.

¹ Includes sms, mms, internet connection, multimedia etc.

² Means any revenue from monthly contract subscriptions for access to the network excluding product cost i.e. handset cost, USB cost etc.

³ Leasing of network infrastructure for the purpose of generating revenue i.e leasing dark or light fibre, local loop, mast, etc.

⁴ As defined in the Electronic Communications Act 36 of 2005 under "electronic communications facility"

⁵ An operator providing maintenance service to a licenced built network thus generating revenue through maintenance i.e. providing a VPN network and providing maintenance service.

BS:

This is any service which consists of broadcasting and which service is conveyed by means of an electronic communications network, such as:

- ❖ Pay Sound and TV Services⁶;
- ❖ Free to air TV Services⁷; and
- ❖ Free to air Sound Services⁸.

3.3. Who is exempted from paying annual licence fees?

- ❖ Class Licences for community broadcasting;

The following Class Licences are exempted from paying ALF

- community sound broadcasting services;
 - community television broadcasting services;
 - community low power broadcasting services;
 - community special event sound broadcasting services; and
 - temporary community television service licence.
- ❖ any such other community broadcasting services as maybe prescribed, that the Authority finds do not have a significant impact on socio-economic development.

The following Class Licences are not exempted from paying ALF:

- **Class ECS;**
- **Class ECNS;**
- **Commercial Low Power Sound Broadcasting Services.**

- ❖ Individual Licences for Public Broadcasting Service;

The following Individual Licences are exempted from paying ALF:

- Small enterprise⁹ as per given threshold¹⁰;

⁶ Subscriptions for access to paid services and revenue from airing of advertisements and programming.

⁷ Revenue generated from airing of advertisements and programming excluding television licence fees.

⁸ Only revenue generated from airing of advertisements and programming.

⁹ As defined in the National Small Enterprise Act, 2003

¹⁰ As stated in the National Small Enterprise Act, 2003

3.3.1. What is their obligation of small enterprises towards the Authority in relation to financial statements?

Small enterprises must submit Annual Financial Statements within six (6) months from the end of their respective financial year end.

3.5. What is the payable annual licence fee?

1.5 % of the gross profit.

3.5.1. How to calculate payable annual licence fee?

Formula

$$(1) GP = GR - TC^{11}$$

where

- i. GR = Gross Revenue
- ii. TC = Total Cost
- iii. GP = Gross Profit

$$(2) P_a = P_p \times (GP)$$

where

- i. $P_p = 1.5\%$
- ii. GP = as calculated above
- iii. $P_a =$ Payable Annual Licence Fees

3.5.1.1. Gross revenue (GR) is the gross revenue only generated from licenced services.

3.5.1.2. Total Costs (TC) is the costs directly incurred in the provisioning of licenced services.

¹¹ Directly Attributed Cost these are costs that can be directly and unambiguously related to licenced services (e.g. Technical/Engineering staff cost, Transmission, Electricity only for network equipment, IT hardware and software only for network services etc.) Indirectly Attributed Cost support cost could be apportioned to licenced services limited to human resources, finance and accounting, insurance (for network equipment and any other), procurement and information systems (IS) should be clearly shown how and where they come about and reasons should be given for same. The following will not be considered as deductibles; Bank and finance charges, Bad debts, advertising and promotions, courier services for customer premises equipment etc.

To make ease of reference the following table can be used;

Company Name		
Financial Year End		
Financial Year		
Auditing Firm /Partner		
Accounting Officer	Name:	Signature:
Company CFO/ Accounting Officer	Name:	Signature:

Total Revenue Generated	R '000	
Total Non-Licensed Revenue	R '000	
Total Licensed Revenue	R '000	

Revenue from Licensed services*	R '000	
1. Voice & Data	x xxx	
2. Roaming	xx xxx	
3. Interconnection	xx xxx	
4. Other unambiguous licensed services*	x xxx	
Total Revenue from Licensed services		xxx xxx
Costs** Incurred from Licensed services		
1. Voice & Data	x xxx	
2. Roaming	xx xxx	
3. Interconnection	xx xxx	
4. Other unambiguous licensed services* cost	x xxx	
Total Cost Incurred from Licensed services		(xx xxx)
Licence Fees Income		xxx xxx

* see 3.2.1 for further examples of licensed services.

** see footnote 11.

Licence Fees due = Licence fees income X 1.5%

Notes:

- i. Only costs which relate and correspond to a declared licensed service should be declared under cost incurred as shown in the example.
- ii. Companies that are required by Law to be audited must request their auditors to sign off on their calculations of the licence fees.

- iii. Companies that do not submit audited financial statements should have their calculations signed off by their CEO/MD/Director and CFO or Accounting Officer.

4. STATUTORY PROVISIONS

Electronic Communications Act 36 of 2005

5. STATUS OF THIS NOTE

Practice Notes are issued by the Authority for the use and benefit of its licensees.
