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GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. R. 93

9 February 2011



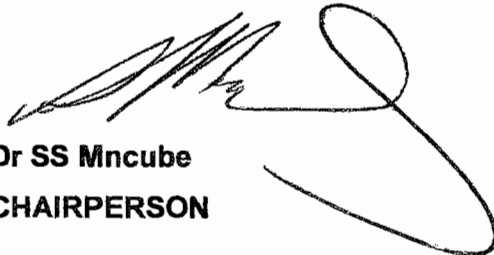
Independent Communications Authority of South Africa

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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

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

The Independent Communications Authority of South Africa ("The Authority") hereby publishes the USAF Regulations as contained in the schedule herein in terms of section 89(2) read with section 4(4) of the Electronic Communications Act, 2005 (Act No 36 of 2005).



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)

"Agency fees" means the percentage of fixed fees due to the agent;

"Annual Turnover" means total revenue generated from Licensed Activity per annum less service provider discounts, agency fees, interconnection and facilities leasing charges, government grants and subsidies;

"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 Services" 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;

“Service provider discounts” means financial incentives offered to service providers by licensees for the purpose of subscriber base improvement;

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

2. OBJECT 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 chapters 3 and 9 of the Act;
- (b) specify 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 Chapters 3, 4 and/or 9 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2% of its Annual Turnover to the Fund.
- (2) A BS licensee who has paid an annual contribution to the MDDA must set off that contribution against its USAF Contribution, provided that the MDDA contribution and the USAF contribution against which it is set off are for the same financial year.

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 USAF contribution based on the Annual Turnover from aggregated revenue generated from the combined licences.

- (2) Payments in respect of contributions to the Fund:
 - (a) are due annually based on the licensee's financial year;

 - (b) are 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

Interest on all late payments in respect of contributions to the Fund is payable at the Applicable Interest Rate and in accordance with the manner prescribed in regulation 4 where payment is overdue.

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) One Hundred Thousand Rands (R100, 000. 00) for contravention of regulations 3, 4(2) and 5.
- (b) Fifty Thousand Rands (R50, 000. 00) for contravention of all the regulations not specified in regulation 7(1) (a), and
- (c) Additional One Hundred Thousand Rands (R100, 000. 00) 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, 2011.

POSITION PAPER – USAF REGULATIONS REVIEW

A. INTRODUCTION and BACKGROUND

(1) This Position paper sets out the reasons for the Authority's decision on the amendment to the 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

(3) On 16 September 2010, the Authority published the draft revised USAF regulations and the Explanatory memo contextualizing the proposed revisions in General Notice 857 contained in Government Gazette 33557. Submissions were received from the following entities:

- a. Association of Christian Broadcasters
- b. Cell C
- c. E.tv
- d. ISPA
- e. MNet and Multichoice
- f. MTN
- g. NAB
- h. Neotel
- i. Radio Pulpit
- j. SABC
- k. SACF
- l. Sentech
- m. Smile Communications
- n. Vodacom.

(4) The submissions were assessed by the committee and revisions were made to the published draft regulations. As no contentious issues were raised, the committee has elected to not convene public hearings in line with the discretion conferred in terms of section 4(6) of the Act.

B. ISSUES

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

a. Definitions

i. Deletion of the following unused definitions :

Adjusted Gross Revenue

ii. Insertion of the definitions of the following :

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 has revised the entire clause to align it with recent developments in drafting principles. Further, the period for payment of submissions has been extended from three (3) months to six (6) months.

c. Exemptions

In light of the wording of section 89(1) the Authority has decided to not create an exemption for any licensees from the payment of USAF contributions as the section does not confer such powers to the Authority. An

exemption may only be considered after an amendment to the act that allows for same.

d. Interest on late payments

The clause has been revised to align it with recent developments in drafting principles and to align it with section 80(1) (b) of the Public Finance Management Act, 1 of 1999.

e. Contraventions and Penalties

The clause has been revised to align it with recent developments in drafting principles. The fines have been adjusted in line with the submissions received.

f. Private Electronic Communications network

PECNs have been deleted from the ambit of the regulations because they are not licensees. Section 89 specifically requires Licensees to contribute.

D. CONCLUSION

(6) The Authority thanks the industry and is grateful for the constructive engagement.

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