

Guide to the conversion of VANS licenses: August 2008

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1. Introduction

We are hopefully getting to a stage where the licence conversion nightmare can be wrapped up (ICASA has until 19 January 2009 to finalise this). It is clear from the number of queries which I receive, however, that there is still huge confusion and ignorance as to what is going to happen to VANS licenses in the conversion process.

The following is a “as-simple-as-i-can-make-it-without-confusing-or-misleading-you” guide to VANS licenses and the licence conversion process and some related issued.

If you still are not aware of the licence types under the Electronic Communications Act (ECA) then have a look at **Annexure A – Simple Guide to ECA Licensing**¹.

NB. There probably would not be so much confusion if ICASA had a proper process in place and/or had

decided to communicate properly with the industry it is supposed to be regulating. Given the lack of information I have had to fill in a few gaps so please do treat this as a guide and not as the final word on licence conversion for VANS.

2. Are VANS licenses still available?

No. Unless you purchase one.

3. Are ECS and ECNS licenses available?

No. We are still waiting for ICASA, the Minister of Communications and the National Treasury to finalise the various fees which have to be paid before ICASA will process any licence application or registration.

See

<http://www.itweb.co.za/sections/telecoms/2008/0807161100.asp?A=LEG&S=Legal%20View&O=FPLEAD>
for the latest in this regard.

Note:

- As a rule Individual licences are only available once ICASA has issued out an Invitation to Apply (ITA). Class licenses will be available once the licence fees are finalised.
- Under the ECA your `_register_` for a Class licence and `_apply_` for an individual licence.

4. If your VANS was issued before 19 July 2006:

The official position according to ICASA is that your VANS will be converted to an Electronic Communications Service (ECS) licence.

If you received an allocation of numbers from the National Numbering Plan before 19 July 2006 then your VANS will be converted into an Individual ECS licence (IECS). If this is the case then your name should appear in **Annexure B – VANS to IECS** – and you will have had a draft IECS licence published in the GG recently.

If you did not receive an allocation of numbers from the National Numbering Plan before 19 July 2006 then your VANS will be converted into a Class ECS (CECS) licence. If you fall into this category then there is nothing for you to do at this time except wait for a further announcement about when licence conversion will take place and what is required from you in terms of handing in your VANS and getting your CECS.

¹ Feel free to ignore the footnotes 😊

5. If your VANS licence was issued before 19 July 2006 but you received an allocation of numbers from the National Numbering Plan after this date:

There is no firm outcome here yet. The problem for ICASA is that they cannot simply convert your licence into a Class ECS (CECS) because, by definition, if you have an allocation of numbers then you should be issued with an IECS.

I have unfortunately not been able to get clarity from ICASA as to what they are planning to do here but would forecast that licensees currently in this category will eventually end up with IECS licenses.

6. If your VANS was issued after 19 July 2006:

ICASA has indicated that these VANS licenses will not be “converted” into an ECS licence but that they will be withdrawn after which you will be “reissued” with a new licence. [There does not appear to be a great deal of difference between having your licence “converted” and having it “withdrawn and reissued”.]

Although this is not yet definite it looks like ICASA will take into account what you are doing with your VANS licence, i.e. if you have received numbers then they will probably withdraw your VANS and issue you with an IECS. If you have not received numbers then you will be reissued with a CECS.

7. How do the self-provision High Court applications affect the above?

Both Altech Autopage and the Wireless Access Providers’ Association have approached the High Court regarding whether VANS have the right to self-provide or not. The outcome of these applications may have some fairly fundamental implications for licence conversion of VANS.

Why is this important? Under the ECA ICASA must convert your VANS licence to one or more of the new licence types on no less favourable terms. If the court finds that VANS could indeed self-provide then it is argued that this right needs to be carried across in the conversion process.

Outcome 1: Court says no right to self-provision

ICASA proceeds to do licence conversion as it plans to (i.e. VANS to CECS or IECS depending on whether it has numbers or not – see above).

Any VANS which currently has a physical network or is planning to roll one out will then have to register for one or more Class ECS (CECS) licenses. Note that these licenses are valid for a municipal area (i.e. you can roll out or legitimize your network in that municipal areas) and that there does not appear to be any restriction on holding more than one of these licenses.

Summary: This is not the end of the world or your business. You will need to register for the appropriate licenses once they become available in order to regularise your position.

Outcome 2: Court says yes to self-provision

This gets awfully complicated. Both the Minister and ICASA are of the opinion that if a VANS can satisfy ICASA that it is entitled to self-provide then it must be converted to an ECS + an Individual ECNS licence.

So on the face of it a court ruling that VANS have this right will mean that in theory your licence will be converted in a manner which gives you much the same rights as Telkom or the mobile providers. It is unlikely to be this simple, however, and I do not really want to speculate.

Summary: wait and see.

8. Conclusion

Hopefully those who did not will now know what is going to happen to their VANS licence. Bottom line is that there is no cause for panic or concern...

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Annexure A – Simple Guide to ECA Licensing

Introduction

The Electronic Communications Act No 36 of 2005 (“the ECA”) came into effect on 19 July 2006, replacing the Telecommunications Act of 1996 (“the Telecommunications Act”). While the licensing structure under the Telecommunications Act was complex and artificial, the proposed licensing regime under the ECA, is, by contrast, relatively simple and intuitive.

What follows is intended to provide a straightforward top-level overview of service licensing under the ECA (excluding broadcasting licences and frequency licences). Definitions of various terms taken from the ECA have been included as footnotes for the brave.

Distinction # 1 – Networks carry services

The ECA draws a clear distinction between

- Electronic communications² networks³ – the physical network or infrastructure which is made up of a system of electronic communication facilities⁴

² “**electronic communications**” means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electro- magnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct, but does not include content service;

³ “**electronic communications network**” means any system of electronic communications facilities (excluding subscriber equipment), including without limitation—

- (a) satellite systems;
- (b) fixed systems (circuit- and packet-switched);
- (c) mobile systems;
- (d) fibre optic cables (undersea and land-based);
- (e) electricity cable systems (to the extent used for electronic communications services); and
- (f) other transmission systems, used for conveyance of electronic communications;

⁴ “**electronic communications facility**” includes but is not limited to any—

- (a) wire;
 - (b) cable (including undersea and land-based fibre optic cables);
 - (c) antenna;
 - (d) mast;
 - (e) satellite transponder;
 - (f) circuit;
 - (g) cable landing station;
 - (h) international gateway;
 - (i) earth station; and
 - (j) radio apparatus or other thing,
- which can be used for, or in connection with, electronic communications, including where applicable—
- (i) collocation space;
 - (ii) monitoring equipment;
 - (iii) space on or within poles, ducts, cable trays, manholes, hand holds and conduits; and

and

- Electronic communication services⁵ – the services provided by the conveyance of electronic communications over electronic communications networks.

An entity which owns infrastructure will be operating an electronic communications network and, where this network is made available for use by itself and others, will be providing electronic communications network services⁶. In order to do this it will require an electronic communications network service licence⁷ and will be known as an electronic communications network services licensee⁸.

An entity providing a service carried by such infrastructure or network will be providing an electronic communications service⁹ requiring an electronic communications service licence and will be referred to as an electronic communications service licensee¹⁰.

To illustrate: Telkom owns an electronic communications network (the Public Switched Telecommunications Network or PSTN) consisting of, amongst other things, undersea cables, wire, masts, antennae and radio apparatus (all of which are electronic communications facilities). It may make this infrastructure available for its own use or for use by others. In this sense it is providing electronic communication network services and will require an electronic communications network service licence.

Telkom also provides voice and data services (Public Switched Telecommunications Services or PSTS) to the public over its electronic communications network. In this sense Telkom is providing services, e.g. telephone services, and will require an electronic communications service licence.

(iv) associated support systems, sub-systems and services, ancillary to such electronic communications facilities or otherwise necessary for controlling connectivity of the various electronic communications facilities for proper functionality, control, integration and utilisation of such electronic communications facilities;

⁵ “**electronic communications service**” means any service provided to the public, sections of the public, the State, or the subscribers to such service, which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services;

⁶ “**electronic communications network service**” means a service whereby a person makes available an electronic communications network, whether by sale, lease or otherwise—

(a) for that person’s own use for the provision of an electronic communications service or broadcasting service;

(b) to another person for that other person’s use in the provision of an electronic communications service or broadcasting service; or

(c) for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated by this Act,

and “network services” is construed accordingly;

⁷ “**electronic communications network service licensee**” means a person to whom an electronic communications network service licence has been granted in terms of section 5(2) or 5(4);

⁸ “**electronic communications network service licensee**” means a person to whom an electronic communications network service licence has been granted in terms of section 5(2) or 5(4);

⁹ “**electronic communications service**” means any service provided to the public, sections of the public, the State, or the subscribers to such service, which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services;

¹⁰ “**electronic communications service licensee**” means a person whom an electronic communications services licence has been granted in terms of section 5(2);

Distinction # 2 – How Important is the Network or Service?

We have seen that the ECA introduces two basic classes of service licence –

- Electronic communications networks services licences, and
- Electronic communications services licences.

These two basic classes are themselves then divided, according to the features and importance of the network or service in question, into individual and class licences. In a nutshell individual licences will be appropriate for networks or services of significant importance to socio-economic development¹¹ while class licences will be required for networks or services which are regarded as not having a significant impact on socio-economic development¹².

The result is that we now have four distinct licence categories

- Individual electronic communications networks services licences
- Class electronic communications networks services licences
- Individual electronic communications services licences
- Class electronic communications networks services licences.

There are also some activities which may be regarded as unimportant to the extent that no licence at all is required to perform them. ICASA has the power to declare certain services as licence-exempt¹³, although it

¹¹section 5(3) Electronic communications network services, broadcasting services and electronic communications services that require an **individual licence**, include, but are not limited to—

(a) electronic communications networks of provincial and national scope operated for commercial purposes;
(b) commercial broadcasting and public broadcasting of national and regional scope whether provided free-to-air or by subscription;
(c) electronic communications services consisting of voice telephony utilising numbers from the national numbering plan;
(d) any electronic communications network service, broadcasting service or electronic communications service where a state entity (directly or indirectly) holds an ownership interest of greater than twenty-five (25%) percent of the share capital of the person providing such service; and
(e) such other services as may be prescribed that the Authority finds have significant impact on socio-economic development.

¹² Section 5(5) Electronic communications network services, broadcasting services and electronic communications services that require a **class licence**, include, but are not limited to—

(a) electronic communications networks of district municipality or local municipal scope operated for commercial purposes;
(b) community broadcasting and low power services whether provided free-to-air or by subscription;
(c) such other services as may be prescribed, that the Authority finds do not have significant impact on socio-economic development.

¹³ 6. (1) Subject to subsection (2), the Authority may prescribe the—

(a) type of electronic communications services that may be provided;
(b) type of electronic communications networks that may be operated;
(c) type of electronic communications network services that may be provided; and
(d) radio frequency spectrum that may be used,
without a licence.

may still impose terms and conditions in respect of these services.

There is no list of services which ICASA may declare to be licence-exempt, although the ECA gives us a fairly good idea of the types of services which ICASA may consider declaring licence-exempt. These include:

- electronic communications services provided on a not-for-profit basis;
 - electronic communications services that are provided by resellers;
 - private electronic communications networks used principally for or integrally related to the internal operations of the network owner. Except that where the private electronic communications networks' additional capacity is resold, the Authority may prescribe terms and conditions for such resale. This corresponds with the Private Telecommunications Network (PTN) licence category created by the Telecommunications Act;
 - small electronic communications networks such as local area networks;
 - uses of the radio frequency spectrum that were permitted without a licence prior to the coming into force of this Act and uses of the radio frequency spectrum that the Authority finds would not cause harmful interference with radio frequency spectrum licensees such as low power uses.
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Annexure B – ICASA’s list of VANS to be converted to IECS

24-7 Online
Amobia Communications
Ariviakom
Autopage Cellular
BNR Consulting
Broadlands Networks
BT Limited
Business Connexion
Cheap Calls
CMC Networks
Connection Telecom
Cybersmart
Datapro
Directel
ECN Telecoms
Fixtrade 1641
Frogfoot Networks
Gateway Communications
Grand Bridge Trading 35
ICT Works
Integrat
Internet Solutions
JC Broadband Services
Klatrade 470
Midas Telecom
Midnight Moon Trading 163 t/a Unlimited IP
MTN NS
MWEB
Nashua Mobile
Netawk
Netvoip
New Age Holdings
Nexor 147 CC
Openvoice Service Provider
Oric Telecoms

Orion Cellular
PAWS Telecom
Posix Systems
Q Digital Cable Vision (Pty) Ltd (Smile)
Sainet Internet cc
Smartel Communications
South African Post Office
SpicePhone (Pty) Ltd
SITA
Storm Telecom
Talknet Africa (Pty) Ltd
Telepassport (Pty) Ltd
TelFree Communications (Pty) Ltd
Verizon South Africa (Pty) Ltd
VIPAFONE (Pty) Ltd
Voizacom (Pty) Ltd
X-DSL Networking Solutions (Pty) Ltd
Xtranet Internet Services CC
Zensho Telecoms (Pty) Ltd
Zinandi Communications (Pty) Ltd
