

## Update on VANS Licence Conversion

17 November 2008

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### Introduction

On 14 November 2008 ICASA released a General Notice indicating that it had resolved to issue all VANS with ECNS and ECS licences as part of the licence conversion process. This note seeks to provide guidance to VANS licence holders as to what is required of them to take advantage of this development.

The General Notice is available at <http://tinyurl.com/67q96l>.

Please note that the General Notice is itself a little problematic – this note will be updated as soon as clarity can be obtained from ICASA.

### All VANS?

Yes, all VANS. In a turnaround from its previous position ICASA has indicated that VANS licences issued after 19 July 2006 will also be included in the licence conversion process and will therefore also be awarded ECS and ECNS licences as part of this process.

Note that this decision is still subject to the public participation process set out in the Notice.

### The proposed framework for conversion of VANS to ECNS

ICASA requires that all VANS licencees submit the following information:

- Full name of the licencee;
- Shareholding details expressed in percentages
- Details of ownership by historically disadvantaged individuals expressed in percentages;
- Full names, telephone numbers and cell phone numbers of the contact persons;
- Postal and physical addresses of the licencees;

- Whether the licensee prefers to be converted into an class or individual ECNS;
- The geographic area in which the licensee intends to roll out network infrastructure & whether the licensee intends providing ECNS of national or provincial scope;
- Proposed obligations in terms of section 93(4)(b) of the ECA:
  - The licensee must commence the roll-out of the network within 12 months of the licence being issued;
  - The licensee must submit a comprehensive technical plan, including propagation analysis, for the purpose of the Authority's monitoring and information;
  - Licensees must indicate voluntary obligations on how they intend to contribute to social and economic development in SA.

ICASA requires that this information be submitted by 12h00 on Friday 5 December 2008. Interested parties are also requested to make any submissions they may feel necessary on the licence conversion framework and draft ECNS licence which forms part of the General Notice.

[It is not clear why information required in terms of the proposed framework must be submitted before the framework is completed – this seems somewhat illogical but is probably prompted by ICASA's need to finalise licence conversion before 19 January 2009.]

### **What could still go wrong?**

It is still open to the Minister to lodge a petition with the Supreme Court of Appeal (SCA) in terms of which she can request that they consider whether she should have the right to appeal against the original Altech decision. Such petition must be lodged within 15 court days of the delivery of the TPD judgement refusing her leave to appeal (i.e. 21 November 2008).

If the Minister opts to take this approach she will also need to relaunch her urgent application against ICASA in order to try and get a court to rule that they are not entitled to issue out these licences as part of the licence conversion process until such time as her right to appeal has been exhausted.

In the absence of any clarification from the Minister it would probably be advisable to wait until after 21 November 2008 before the matter can be regarded as settled and VANS licensee's entitlement to an IECNS licence can be regarded as certain.

Finally, the Minister has also indicated an intention to amend the ECA to make it clear that VANS are not entitled to IECNS licences as part of the licence conversion process. This is, however, unlikely, mainly because it is not clear what would be amended and the entire exercise would be massively complex with very slim prospects of success. This strategy also requires time, and the ability of the Minister to further

delay licence conversion has been significantly reduced by the refusal of her application for leave to appeal.

### **Licence Fee regs**

One potential difficulty is that the licence fee regulations remain outstanding and it does not seem that these will be finalised before the end of January 2009. In the framework proposed by ICASA they specifically ask whether VANS licencees wish to receive an individual or a class ECNS licence and licencees will need to make this decision and communicate it to ICASA.

While some VANS may opt to undergo conversion anyway there are going to be some VANS licence holders who will need to assess the final version of the Fees Regulations before they make this decision due to the proposed differential between annual licence fees for individual licences (3% of revenue due to licensed activities) and class licences (1.5% of revenue due to licensed activities).

### **Conclusion**

VANS licencees are on the brink of being awarded, as part of the licence conversion process, a ECNS and ECS licences which will entitle them to self-provide their own networks. All that is required now is for the Minister to remove herself as an obstacle and for ICASA to provide the information for VANS licencees to figure out the optimal licence conversion for their businesses.

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