

Regulatory update February 2009

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Disclaimer

This update is intended to provide general information: should you interest be piqued by any item please request specifics. A degree of opinion has been inserted to smooth the reading experience.

Licence Conversion

Licence conversion, insofar as it relates to the physical process of issuing new licences to those entitled to them, is largely complete. ICASA issued a General Notice on 16 January 2009 setting out the considerations taken into account in effecting licence conversion, as well as schedules of licensees invited to uplift their new licence certificates.

There are a total of 533 former VANS licensees who have had their right to an IECS and IECNS licence confirmed. Of these around half are listed as having been "granted but not issued" with ICASA indicating that these licence-holders have 90 business days from 16 January 2009 in order to provide outstanding information so that their licences may be issued.

A certain amount of administrative chaos has ensued around the physical issuing of the licences but this will be cleared up by the end of February 2009.

South Africa now has one of the most liberal licensing frameworks in the world and the battle for new entrants turns to getting access (interconnection, facilities leasing, carrier pre-selection, local loop unbundling) to end-users.

Links

- [Schedules of Licensees eligible for licence conversion](#)
- [General Notice on Completion of the Licenses Conversion Process \(without schedules\)](#)

Licence Fee Regulations

The controversy over the draft Licence Fee Regulations continues. Oral hearings held by ICASA on 13 & 14 January 2009 revealed that industry is generally united in its belief that the draft contains provisions which are, to phrase it politely, unlawful and impractical.

While the policy underpinning the draft regulation has not been made public (a problem in itself), it seems abundantly clear that the South African Government has noticed the super-profits being made by Telkom, MTN and Vodacom and decided that it can extract more value from the industry. Thus, although the draft makes mention of the cost-to-regulate principle the reality is that the massive proposed increases are

nothing more than a tax on a specific industry.

Summary:

The draft regulations propose, amongst other things:

- that annual licence fees be based on annual revenue generated from licensed activities (i.e. revenue generated from services or products which could not be provided without the authority granted by the licence) less specified deductions;
- that holders of individual licences (IECNS, IECS) pay an annual licence fee of 3% of revenue generated from licensed activities less specified deductions;
- that holders of class licences (CECNS, CECS) pay an annual licence fee of 1.5% of revenue generated from licensed activities less specified deductions;
- steep administrative fees for transfers of licences and other administrative functions.

Information to hand is that ICASA is busy redrafting the regulations and a new draft will be available shortly.

Links

- [Draft regulations & industry submissions from Telkom, MTN, Neotel, British Telecom & the Internet Service Providers' Association \(ISPA\)](#)
- Outrage ... - <http://www.mg.co.za/article/2008-11-26-outrage-over-planned-telecom-licencefee-hike>

Local Loop Unbundling (LLU)

LLU is another regulatory intervention designed to increase competition by promoting the ability of new entrants into the market to physically reach end-users of electronic communications services.

ICASA have made good progress in informal meetings and is expected to embark on the necessary formal processes shortly.

Of particular interest here is ICASA's informally expressed view that the "local loop" is not confined only to Telkom's copper network but should also include fibre and the wireless local loop where relevant.

Informal documents issued by ICASA relating to LLU are available on request.

RICA

The Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act 48 of 2008 ("the RICA Amendment Act") was signed by the President on 9 January 2009.

No date has been set for the new provisions introduced by the Amendment Act to come into force.

The amendments relate primarily to the obligation imposed on providers of mobile cellular electronic communications services to verify the identity of subscribers using their services on either a pre-paid or post-paid basis.

Summary:

1. ECS providers of mobile cellular electronic communications services (MCECS) must at their own cost implement a process to record and store and must record and store specific identifying information of a potential subscriber before activating a SIM-card on its electronic communication system.
2. The obligation does not apply to a customer of a foreign MCECS provider who is roaming in South Africa.
3. The information to be captured is specified for SA citizens, residents and juristic persons.
4. The process for the verification of this information is not absolutely clear but appears to require

- personal interaction.
5. Information gathered must be stored in a secure environment and the Minister of Justice may in future specify standards relating to security.
 6. Law enforcement agencies (LEAs) may request that an MCECS provider confirm that a person is or was a customer and provide the information collected prior to activation of the SIM card.
 7. LEAs may also access every MSISDN number used with every IMEI number and *vice versa* and records of these must be kept by the MCECS provider. Where requested such information must be provided within 12 hours.
 8. Information gathered and stored must be kept for 5 years after termination of the service provided to any customer.
 9. Harsh penalties remain for any ECS licensee that does not comply with the registration, verification and storage requirements of the Act.

[Links](#)

[RICA Amendment Act](#)

Review of End-user and Subscriber Service Charter Regs - 20090119

These regulations – essentially intended to protect the interests of consumers when dealing with licensees – have been an unmitigated disaster to date. The regulations have been published twice and withdrawn once and ICASA has now notified industry that it is soliciting comment on how the regulations can be improved.

This is the regulatory equivalent of a “Hail Mary” pass.

[Links](#)

[History and relevant documents](#)

ITA for radio frequency spectrum licences for MDVBS

ICASA has published a ITA for radio frequency spectrum licences for the provision of mobile digital video broadcasting services based on the DVB-H standard. The initial focus will be on the JHB/PTA, Durban and Cape Town areas.

The ITA is open to holders of ECS and ECNS licences (noting the specific use to which the frequency must be put). ICASA have set out business models involving ECS or ECNS licensees leading a bid in conjunction with a licensed individual broadcasting services (BS) licensee.

Closing date for applications: 27 February 2009

Non-refundable application fee: R70 000

Applicants, aside from lifting their commercial skirts, must also provide a detailed plan with timeframes for the roll-out of the mobile broadcasting service and the mobile DTT network to provide coverage at the main stadiums for the FIFA Confederation Cup in 2009 and the FIFA Soccer World Cup in 2010.

[Links](#)

[ITA for MDVBS](#)

Policy Direction: ITA for new IECNS licences

The Minister of Communications has issued a very confusing policy direction instructing ICASA to design and issue an Invitation to Apply (ITA) for new IECNS licences. This is odd coming in the wake of the recent conversion of 533 former VANS licences to IECS and IECNS licences, and the mystery is deepened

considerably when the direction states that the ITA must only be open to those who were eligible to have their licences converted.

After the Altech decision and licence conversion the direction makes little sense. Best guess is that it was part of the schedule for managed liberalisation before Altech ruined the party and somehow it has not been recognised as irrelevant.

Links

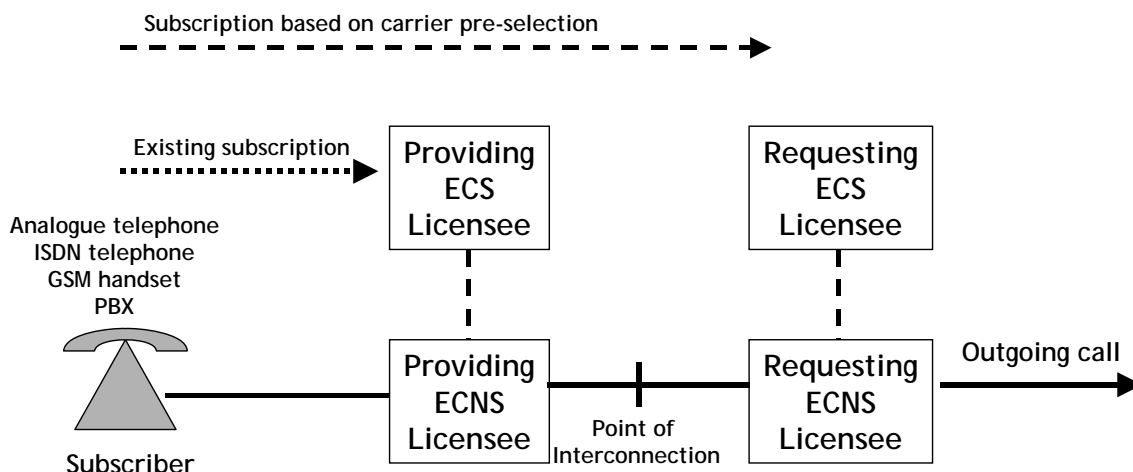
[ITA for new IECNS licences](#)

Focus: Carrier Pre-Selection (CPS)

Carrier Selection (CS) and Carrier Pre-Selection (CPS) are regulatory interventions designed to increase competition in the switched voice services market. Switched voice services refer to traditional voice services as offered by fixed network providers and mobile networks, but exclude any kind of VoIP or other protocol which allows communications to be carried through a broadband connection and over the Internet.

The diagram below sketches the roles played by different service providers under a CPS scenario:

Source: ICASA



- At this stage Telkom is, in the fixed environment, both the Providing ECS and Providing ECNS licensees in the above diagram.
- A new voice provider, Switched (the Requesting ECS), uses Neotel's (the Requesting ECNS) network to deliver its services and wants to be able to also provide services over Telkom's network.
- Neotel requests that Telkom implement CPS over the point of interconnection between them.
- Once this is done Switched can enter into an agreement with the subscriber and Telkom will be obliged to route calls using Switched's services to the point of interconnect with Neotel.

The purpose of the regulations is to promote competition by giving end-users the ability to choose which telecommunication carrier they prefer when making calls.

- Carrier Selection (or CPS Phase 1): a consumer may choose to use the voice services provided by a third party service provider by dialling a specified prefix. For example: a consumer currently using Telkom as an ECS provider of its voice service could dial +22 before dialling the actual subscriber number and by doing so select Neotel to carry that call.

- Carrier Pre-Selection (or CPS Phase 2): where the consumer's choice to use an alternative service provider is effected at network level, i.e. there is no need to dial the specified prefix because it is automatically inserted. Under CPS it is still possible for the consumer to use a different service from the one pre-selected by inserting the prefix associated with that different provider.

At this stage ICASA is proposing that cellular service providers will only be obliged to offer Carrier Select (or CPS Phase 1) in respect of post-paid services, i.e. they will not be required to provide Carrier Select for prepaid services or to offer Carrier Pre-Select (CPS) at all. ICASA's justification for doing so is as follows:

"Mobile access networks

Carrier pre-selection from mobile will work when the user is on their home network including any national roaming but it will not work when the subscriber is roaming internationally. Carrier pre-selection is required from mobile operators in some countries but others regard the level of competition in mobile to be sufficient that pre-carrier selection is not essential.

ICASA has received written statements of demand from licensees for both CPS Phase 1 and CPS Phase 2 from mobile access networks.

In South Africa mobile operators serve many more subscribers than fixed operators and many people have access only to a mobile phone. This makes the provision of adequate competition especially important for mobile.

Unlike fixed access there is already nationwide competition in mobile access networks with three major players in the market, CellC, MTN and Vodacom. In addition in the mobile sector there is already some separation of service provision from network operators and there are some independent service providers. Whilst this does provide some competition, it does not provide the same level of competition as carrier pre-selection because the service provider:

- does not have independent control over the way in which core network services are provided or in which calls are routed
- does not necessarily enjoy cost-based services from the network operator that it uses.

ICASA recognises that the mobile market is complex and that the pricing plans are diverse and that the case for requiring carrier pre-selection is not as strong as it is for fixed networks as there is already some competition.

It is difficult to assess the demand for carrier pre-selection from mobile. Both mobile to mobile and mobile to fixed national calls have a single country-wide rate and so there is no scope for bypassing the long distance element of the call by using another operator. There may however be some scope for selling calls below the access operator's retail rates if the call origination and termination rates decrease. The rates for international calls on some tariffs are currently much higher than for national calls and this suggests that there is potential demand for carrier pre-selection and that it can play a valuable role in reducing prices.

Dialling from mobile is however different from dialling from traditional fixed phones because mobile handsets are designed to have stronger integration with address books and most calls are not dialled digit by digit. Furthermore many calls involve the use of the reply function to a temporarily stored number. This means that call-by-call carrier selection (CPS Phase 1) will be more cumbersome for the user and this may limit demand. CPS Phase 2, in contrast, does not require any change in user dialling.

Overall ICASA concludes that there is some potential demand for carrier pre-selection from mobile but that since there is already some competition the case is weaker than for fixed access networks and therefore the much more account should be taken of the prospective costs."

This position should not be regarded as finalised.

ICASA have indicated that public hearings will take place on 18 & 19 February 2009.

Links

- [ICASA Draft Carrier Pre-select Regulations](#)
- [Draft CPS Regulations with explanatory notes and memorandum](#)

Articles

- See <http://mybroadband.co.za/news/Telecoms/6760.html> with regard to the exclusion of mobile providers from the obligation to provide CS in respect of prepaid services and from the obligation to offer CPS in respect of either pre- or post-paid.

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