

## ellipsis regulatory update march 2009

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### Frequency

ICASA appears to be waking from its long slumber with regard to awarding licences in the 2.6GHz and 3.5GHz bands – the so-called WiMax sweet spots - publicly stating that they will publish a new findings document this month to replace the initial document issued on 17 June 2008.

The first attempt caused considerable unhappiness in industry, principally as a result of a 51% BEE pre-qualification criterion and the argument that awards of 20MHz would make the cost of rolling out a national network prohibitive.

Although ICASA have not given any firm content to their plans, progress of any sort is welcome.

The management of spectrum frequency allocated for use in telecommunications in South Africa is very different in a post-licence conversion environment. When the original findings document was published there were around 10 potential applicants for any frequency that became available. Now there are probably closer to 200.

ICASA wants new ECNS licensees to commence rolling out their networks in the next 12 months, but this will be impossible for many until licensed frequency becomes both available and accessible for smaller players.

We can only hope that ICASA have taken this reality into account in whatever revision of the document they will present for public scrutiny.

Link: [2007 Findings Document](#)

There is still no word on the publication of ICASA's long-outstanding [Inquiry into the use of the 5.8GHz band](#). Senior management in ICASA's Engineering Division have previously indicated that the band will be allocated for the provision of Wireless Access Services (WAS) and that the power output level will be set at 2W or 4W.

Finalisation of this process on the above lines would assist in alleviating demand for licensed spectrum. Inquiries as to the publication of the document are ongoing.

## Licence Fee Regulations – ICASA gets it right

There will be a collective sigh of relief amongst licensees as ICASA appears to have reversed its position on licence fees to be paid by holders of electronic communications network services and electronic communications services.

A second draft of licence fee regulations was published on 6 March 2009, showing a remarkable shift towards a considered basis for levying fees on the industry. This is in stark contrast to the [previous draft](#) which was ... misguided ... and universally disliked by industry and other interested parties.

### [Second Draft General Licence Fee Regulations 2008](#)

Comment due by 20 March 2009.

ICASA has also published an accompanying Position Paper setting out the reasoning behind the revision of the draft.

### [Position Paper on General Licence Fees March 2009](#)

In summary ICASA proposes:

- annual licence fees set at 1.5% of Gross Profit (as opposed to 3% of Gross Revenue) where such Gross Profit accrues from licensed activities (the same percentage to be paid by class and individual licensees)
- annual licence fees to be paid annually within 6 months of financial year end of the licensee & supported by audited financial statements or sworn financials (where there is no legal requirement to have audited financials)

- administrative fees which are significantly reduced from those previously proposed
- small businesses meeting the definition under the National Small Business Act 102 of 1996 are to be exempted
- that any outstanding payments from the major licensees set as fixed licence fees will be written off subject to a final payment to be negotiated

ICASA gets its fair share of criticism but they should be applauded for the manner in which they have recognised the deficiencies of their previous approach and set out to remedy them. The publication of a Position Paper is also thoroughly welcome and greatly assists general understanding amongst those affected. This seems to be a growing trend from some divisions of ICASA and it can only be hoped that the practice is more widely adopted by the Authority.

Some reservations around administrative fees aside, the second draft represents a lucid and practical approach to licence fees within the current industry and regulatory environment.

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## Mobile TV: ITA for radio frequency spectrum licences for MDVBS withdrawn

ICASA has withdrawn an ITA for radio frequency spectrum licences for the provision of mobile digital video broadcasting services based on the DVB-H standard. Although no statement has been made as to the reasons for the withdrawal it appears that there is a great deal of confusion around the allocation of frequency for mobile TV and the priority to be accorded to issuing these licence.

ICASA holds an opinion that it should first finalise its revision of the frequency band plan and digital terrestrial television.

In a written response to the media ICASA states that its intention is to finalise the DTT regulations and frequency plan by April 2009. Standard disclaimers regarding pinches of salt apply. The truth appears to be that there is massive manoeuvring behind the scenes regarding frequency and the current mess will remain just that for some time to come.

[ICASA delays mobile TV policy](#)  
[A is for authority - but Icasas doesn't seem to have much](#)

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## Workshop on the Terrestrial Broadcasting Frequency Plan – 11 & 12 March 2009

ICASA has given notice of a workshop on the draft Terrestrial Broadcasting Frequency Plan 2008, to be held at the Protea Hotel Balalaika in Sandton, Johannesburg, on 11 & 12 March 2009.

[Details](#) (but note that the dates have been changed to the 11<sup>th</sup> & 12<sup>th</sup>).

As noted above ICASA proposes to finalise the frequency plan and DTT Regulations by April.

The draft Terrestrial Broadcasting Frequency Plan 2008 is available from the [ICASA website \(9MB doc\)](#).

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## Mergers & Acquisitions

The Competition Commission has gazetted notices of its decision to approve the mergers between Mobile Telephone Network Holdings (Pty) Ltd (MTN) and Verizon South Africa (Pty) Ltd and between Mobile Telephone Network Holdings (Pty) Ltd (MTN) and iTalk Cellular (Pty) Ltd.

The acquisition of Verizon will boost MTN's presence in the corporate value-added services market and will be bedded down through wholly-owned subsidiary MTN Network Solutions (Pty) Ltd, previously Verizon's principle competitor in this niche along with Internet Solutions.

The acquisition of iTalk continues the long-evident strategies of mobile network operators reabsorbing independent service providers.

The Competition Commission has also approved without conditions the merger between Vodacom (Pty) Ltd and Storage Technology Services (Pty) Ltd.

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## Handset Subsidy Regulations – ICASA drops the ball

ICASA has quietly shelved the handset regulations which it has touted as protecting consumers from misleading marketing practices and ensuring greater choice in the use of mobile services.

No formal notice has been published on ICASA's website but ITWeb carried a story titled [ICASA tip-toes around telcos](#) indicating that ICASA had withdrawn the regulations after threats of legal action from Vodacom and issues raised by all three cellular providers.

The [ICASA Handset Regulations 2008](#) were published on 17 June 2008 and scheduled to come into force on 18 August last year, but this implementation date was postponed to 1 February 2009 after Vodacom indicated that it would take the Regulator to court due to the fact that new material, not canvassed in the public participation process, had been included in the final regulations.

Industry opinion is that Vodacom were, on the whole, justified in taking this approach.

ICASA boldly stated that the cellular providers should prepare their systems for implementation on 1 February but instead it withdrew the

regulations and stated that a new draft will be published on 27 February. This deadline has come and gone with only a statement that the new draft will be released in due course.

The basic thrust of the regulations is to make mobile contracts more transparent to consumers and in particular to make it clear that handsets bundled with contracts were not, in fact, “free”. Consumers were also to be given the choice of different lengths of contracts ranging from 6 months to 24 months.

There may well be cogent reasons for redoing the process (although the concept seems laughably simple and delay suits the purpose of those affected), but the failure to in any manner engage with those most affected is not acceptable.

ICASA is mandated to protect consumers. It seems rather more intent on ignoring them.

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### **Policy Direction: Licensing of Broadband Infraco (Pty) Ltd**

Another missive has arrived from the Ivy Towers of the Department of Communications, this time relating to the finalisation of the licensing of Broadband Infraco (Pty) Ltd, the proposed state vehicle for the lowering of telecommunications costs in South Africa.

The Direction calls on ICASA to accept applications for IECNS and IECS licences from Broadband Infraco. This amounts to a strategic policy intervention “to ensure the licensing of Broadband Infraco (Pty) Ltd to provide the services ... in the shortest possible time”.

ICASA is further directed to conduct the necessary processes to accept and consider application for ECNS and ECS licences. After receipt of such applications ICASA is required to publish the terms and conditions for these licences, taking into account ... “the fact that it is a public entity of a developmental state with additional responsibilities related to the socio-economic development of the country.”

ICASA is required to commence with the licensing process within 30 days of publication & inform Infraco of the relevant dates for submissions.

While the process is required to be conducted in a “transparent and fair manner” the Minister has “encouraged” ICASA, given the need to “urgently” allow Infraco to play its role in the economy, to waive the requirement for public hearings.

### **Policy Direction: Licensing of Infraco Broadband**

The original decision to proceed with Infraco was taken by Cabinet in August 2007 so the urgency is entirely of their making. There are serious concerns about just how Infraco is going to fit in and, of course, it is yet another government player in the infrastructure industry. Accordingly industry must have sight of whether the representations and undertakings made are being properly captured in the licence terms and conditions.

Of even greater concern is the answer to the question: what assets is Infraco sitting with, especially once the purchase of the Transtel and Eskom interests in Neotel is finalised later this year?

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### **RICA – Assistance to be provided where a mobile cellular operator is required to effect an interception**

The Minister of Justice has caused the publication of a Notice setting out the assistance to be provided by the State to a mobile cellular operator where the latter is presented with and required to implement an interception direction under the Regulation of Interception of Communications Act (RICA).

### **RICA - Compensation for Mobile Cellular Providers Feb 2009**

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