

ellipsis regulatory update april/may 2009

In this update read all about:

Licence Fee Regulations	2
Frequency update.....	3
Numbering Audit	3
Digital Terrestrial Television (DTT) – draft regulations released.....	3
Mergers & Acquisitions	4
ITA for IECS licences for the provision of broadcasting services	5
Mobile service quality: the ring of hollow regulation	5
Undersea cables	6

Licence Fee Regulations

ICASA has published General Licence Fee Regulations under the ECA - they came into effect as of 1 April 2009.

[ICASA General Licence Fee Regulations 2009](#)

The publication of the final regulations was accompanied by an updated Position Paper which reflects ICASA's view on the submissions it has received and the changes made from the second draft.

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

Annual licence fees are set at 1.5% of Gross Profit (total revenue derived from licensed services less total costs directly incurred in the provision of such services).

The calculation of the amount due must be based on audited financial statements (or sworn statements where audited statements are not required by law), which must be submitted along with the payment.

Fees can be paid quarterly or annually: the deadline for final payment in respect of any financial year is six months from the financial year end of a licensee. Late payments will be subject

to stiff interest penalties and fines for non-compliance.

Licensees with an annual turnover of less than R13 million are exempted from the obligation to pay annual licence fees (but will still need to file something analogous to a zero return).

Comment:

The regulations appear to be intentionally vague as to the manner in which licence fees are to be calculated in practice. There is no definition of Gross Profit (GP) nor any guidance on what will be regarded as costs directly incurred in the provision of licensed services. In the absence of any specified method for calculating GP for the purposes of the calculation of Annual Licence Fees payable, licensees would be entitled to undertake this calculation in any reasonably justifiable and appropriate manner.

There is also a massive question mark hanging over the meaning to be given to the term "licensed services". Industry has been trying to get ICASA to clarify this issue but without success.

Both of the above issues really relate to the need to shift the Telecommunications Act mindset which still pervades the Regulator. Previously VANS licences were largely ignored from a

regulatory perspective – the focus being on the major licences held by Telkom, Sentech and the mobile networks. After licence conversion ICASA is trying to apply the same level of regulation to all holders of licences: this is doomed to failure given the number of these licences and the huge disparity between companies who hold them.

ellipsis is developing an advisory service on licence fee obligations as part of its compliance solutions for licensees under the electronic communications act. We are engaging with ICASA to try and obtain more guidance and thereby give more certainty to licence fee obligations.

Immediate compliance obligations flowing from the transition between VANS licences and ECS/ECNS licences

Annual licence fees for the period from the end of the last financial year to 31 March 2009 must be pro-rated and calculated as 0.1% of turnover from licensed services (i.e. under the VANS licence) and paid by no later than 30 June 2009.

Frequency update

There has been no real progress in assigning frequency to new entrants although ICASA has issued for comment draft regulations intended to update the manner in which fees for the use of licensed radio frequency spectrum are calculated.

[Draft Radio Frequency Spectrum Fees Regulations 2009](#)

There is a reasonably informative discussion document that was published at the same time.

[Draft Radio Frequency Spectrum Fee Discussion Document](#)

The draft proposes the adoption of Administrative Incentive Pricing (AIP), which is a methodology proven to assist in increasing the efficiency with which spectrum is used. The regulations are based for the most part on similar regulations enacted by Ofcom, the communications regulator for the United Kingdom (which is not a bad thing).

Closing date for comments: 29 May 2009.

Numbering Audit

As reported in a previous edition ICASA has commenced with a review of the South African national numbering plan. An important element of this is auditing exactly who has what and ascertaining how efficiently numbers are being used and to what extent they are being used for the purpose for which they are intended.

If you are the holder of numbers assigned to you by ICASA from the National Numbering Plan then expect to receive forms calling for information on the manner in which you are using these numbers and your future plans for them.

[Call for Number Audit April 2009](#)

The deadline for the provision of the required information is 4 August 2009.

comment: ICASA and its consultants have done well to recognise the need for a comprehensive audit and should be applauded for recognising that there is a need to level the playing fields – both in terms of access and regulation – as between incumbent operators and new voice service providers.

Digital Terrestrial Television (DTT) – draft regulations released

ICASA has published Draft Digital Terrestrial Television Regulations (“DTT Regulations”) for comment.

[Draft Digital Terrestrial Television Regulations 2009](#)

The objectives of the regulations:

- to regulate the transmission of terrestrial television broadcasting services from analogue transmission to DTT transmission during the dual illumination period;
- to prescribe a procedure and conditions for assignment of the DTT to multiplexes to the existing television broadcasting services;

- provide for the allocations and authorisation of digital incentive channels;
- provide for the provision of universally accessible, quality television broadcasting; and
- set out the time frames for the rollout of the digital terrestrial television throughout the Republic.

The publication of this draft comes in the wake of the withdrawal of an ITA for a frequency licence to provide mobile television services after e-TV objected that it was necessary to finalise DTT regulations before moving on to mobile TV.

Mergers & Acquisitions

The following noteworthy mergers and acquisitions have been approved by the competition authorities:

25 February 2009: [Vodafone Group Plc and Vodacom Group \(Pty\) Ltd](#) pursuant to the decision by Telkom to sell a large portion of its stake in Vodacom (Pty) Ltd to Vodafone. ICASA has also given [notice of its decision](#) regarding the proposed sale and unbundling of Telkom's shares in the Vodacom Group, noting the following:

1. Vodafone Group plc ("Vodafone") will indirectly increase its stake in Vodacom through the acquisition by Vodafone Holdings SA (Pty) Ltd of an additional 15% ownership interest in the issued share capital of the Vodacom Group from Telkom. This will result in Vodafone having beneficial ownership of 65% of the shares in Vodacom Group and an effective shareholding interest in Vodacom of approximately 60.9%.
2. The issued ordinary shares of Vodacom Group will be listed on the JSE Stock Exchange.
3. Telkom will unbundle its remaining 35% shareholding in the Vodacom Group through a distribution to shareholders.

comment:

It is noteworthy that ICASA have decided to proceed in this regard under the Ownership and Control Regulations promulgated under the Telecommunications Act of 1996 due to the fact that they have not yet managed to even begin the

process of drafting new ownership and control regulations under the ECA. This makes the exercise somewhat farcical given the radically different licensing structures and realities now in play.

11 March 2009: [MTN Group Limited & Newshelf 664 \(Pty\) Ltd](#) relating to MTN's empowerment credentials (see <http://mybroadband.co.za/news/Business/7489.html>).

The competition authorities have also issued a [Guideline on small merger notification](#) which seeks to clarify the circumstances under which parties to a small merger should voluntarily notify the authorities or under which the authorities will intervene of their own volition.

This follows the adjustment of the thresholds determining whether a merger will be regarded as small (and therefore not generally notifiable) published on 6 March 2009 – [Determination of merger thresholds and method of calculation March 2009](#).

ITA for individual free-to-air commercial sound broadcasting service licences

South Africa will welcome three new regional commercial radio stations after ICASA issued an ITA intended to result in the licensing of three new individual free-to-air sound broadcasting service licences (IBS licences). It is anticipated that new services will be licensed in Gauteng, Kwazulu-Natal and the Western Cape provinces.

[ITA for Individual Commercial Free-to-Air Sound Broadcasting Service License](#)

Due date for responses: 31 September 2009
There is a non-refundable application fee of R50 000.

comment: it may be safer to submit your response by 30 September, which is an existing date on the calendar.

ITA for IECNS licences for the provision of broadcasting services

ICASA published a notice on 26 March 2009 inviting “broadcasting services licensees to apply for individual electronic communications network services (IECNS) licences for the provisioning of broadcasting services. The publication of this ITA comes in the wake of a [Ministerial Policy Directive published on 9 January 2009](#).

[ITA for IECNS licence for provision of Broadcasting Services 2009](#)

The Policy Directive, according to ICASA, requires it to prioritise, amongst other things, licensees intending to use satellite infrastructure for the provisioning of broadcasting services and applicants whose primary target is the poor “in order to self-provide their own signal distribution”.

“It is upon this policy directive and in view of our commitment to meet universal access goals and the potential of ICTs to be the effective empowerment tools for the poor, that the Authority will, on considering the applications, pay special attention to the needs of the poorest sections of our population.”

The ITA is open only to licensees entitled to participate in licence conversion (i.e. not new licensees) and licensees that “had temporary permit, authority or licence or were granted a private broadcasting licence by the Authority for broadcasting services and wish to self provide their signal distribution services using satellite technology”.

The deadline for responses is 21 May 2009. There is a non-refundable application fee of R50 000.

In completing the application details will have to be provided as to how the applicant intends:

1. to ensure that electronic communications network services are provided to persons or groups of persons from poorest communities in South Africa also ensuring within those communities diverse views are accommodated; and
2. to promote the empowerment of historically disadvantaged persons including women and the

youth and people with disabilities, in accordance with the requirements of the ICT Charter; and

3. to meet universal access goals; and
4. to serve and empower the poor when the licence is issued; and
5. to ensure that the poor are their primary target customers.

comment: the ITA follows the now standard procedure of talking up the potential for ICTs to make a difference to the economic prospects of the poor without laying any foundation therefore. it is sometimes very hard not to be overwhelmed by cynicism when the talk is used as a smokescreen for a very different walk

Mobile service quality: the ring of hollow regulation

[ITWeb recently reported](#) that a “flood of concerned mobile phone users has led the Independent Communications Authority of SA (ICASA) to check up on the quality of service provided by the mobile networks”.

After the expected denials, prevarications and other avoidance mechanisms had been duly deployed by Vodacom and MTN (Cell C offered no opinion), it was left to ICASA to explain just how it is protecting consumers and ensuring that they are getting what they are paying for:

“We are consistently in contact with them, to make sure they are adhering to regulations.

While he says the monitoring is not a formal investigation into the service providers, the authority has given them guidelines for minimum service levels. These are prescribed by the End-User and Subscriber Service Charter, which is in the process of being finalised.

The regulations require that operators' networks show an uptime of over 95%. Operators are also expected to have a 48-hour turnaround on consumer problems.

The mobile operators are required to submit a report to the authority every three months that indicates problems and resolutions. According to ICASA, the next reports are expected soon

and the authority will check what resolutions the operators have come up with.

The authority suspects the trouble may also stem from network upgrades that the operators are all implementing. Complaints of a similar nature in the past have been attributed to network changes and upgrades.”

comment:

This response indicates just how ineffective ICASA is in its role of regulator of communication services in South Africa. ICASA refers to regulations which have to be adhered to and then states that these are still in the process of being finalised!

This is not possible and the truth is that there is currently a huge gap in regulating quality of service issues due to the debacle surrounding the finalisation of the End-user and Subscriber Service Charter Regulations.

These have been published twice in final format and withdrawn twice after industry indicated that they were not correct either in terms of their substance or the procedure which had been followed.

The regulations therefore do not require that operators have uptime of 95% or a 48 hour turnaround time for answering consumer complaints. Neither are the mobile operators required to file reports every three months. These obligations were set out in the old Mobile Cellular Telecommunications Service (MCTS) licences awarded to Vodacom, MTN and Cell C under the Telecommunications Act – when these licences were converted the quality of service obligations fell away and ICASA have not managed to finalise the End-User and Subscriber Service Charter Regulations which are intended to ensure that these obligations continue to apply.

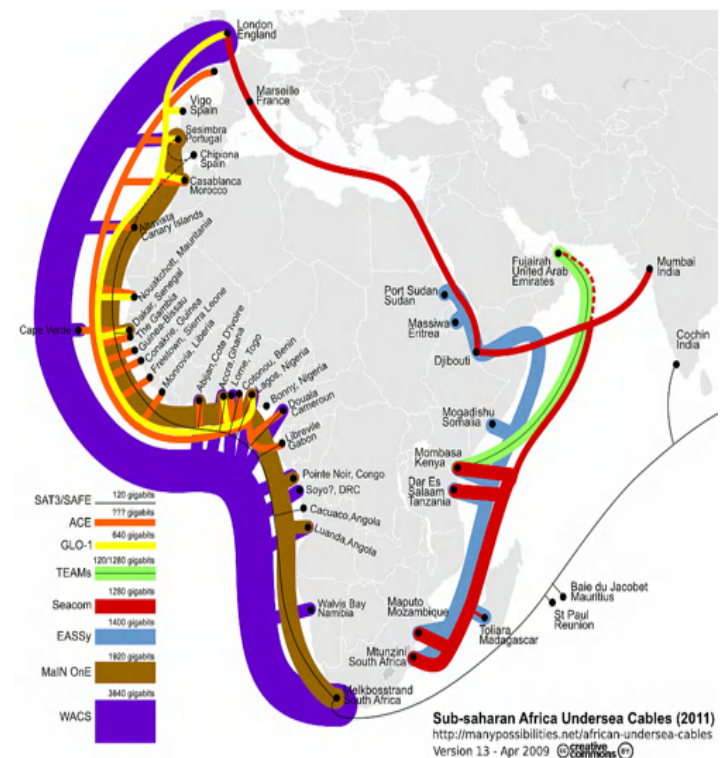
It is anticipated that these regulations will be finalised towards the end of 2009 but, considering their history, there is every chance they will end up in the courts. In the meantime the South Africa

consumer should continue to not expect ICASA to act in their interests

Undersea cables

The imminent arrival of the SEACOM cable in June 2009 is cause for much excitement.

If you are excited and want to know a little more about all the submarine cables planned for the southern tip of Africa over the next few years then have a look at Steve Song’s (being the Telecommunications Fellow at the Shuttleworth Institution) <http://manypossibilities.net/african-undersea-cables/> .



Cause for optimism indeed!

© 2009. ellipsis regulatory solutions cc. dissent encouraged.