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## GENERAL NOTICE

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### NOTICE 768 OF 2013



### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

#### **"BITSTREAM AND SHARED/FULL LOOP ACCESS REGULATIONS"**

The Independent Communications Authority of South Africa ("ICASA") hereby gives notice in terms of section 4 (4) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) of its intention to publish the draft "Bitstream and Shared/Full Loop Access" Regulations in terms of section 38 and 4 of the Act and section (3) (J) of the ICASA Act, 2000 (Act No. 13 of 2000).

Interested persons are invited to submit written representation on this draft Bitstream and Shared/Full Loop Access Regulations by 9 September 2013, by post, hand delivery, facsimile transmission or electronically (in Microsoft word) for the attention of:

**Mr Christian Mhlanga**

**Project leader**

**or**

**Block A**

**ICASA**

**Pinmill Farm**

**Private Bag X10002**

**164 Katherine Street**

**Sandton**

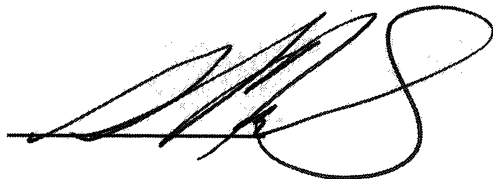
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A handwritten signature in black ink, appearing to be 'S Mncube', written over a horizontal line.

**Dr Stephen Mncube**

**Chairperson**

**Date:** 24 July 2013

## PART I

### 1. DEFINITIONS

In these regulations, any word or expression to which a meaning is assigned in the Act or the ICASA Act shall have the same meaning unless the context indicates otherwise- :

**“Act”** means the Electronic Communications Act, 2005 (Act No. 36 of 2005

**“Aggregation Point”** means the main distribution frame, whether optical or electrical, or the radio network interface that connects the local loop with facilities of an ECNS licensee so as to provide voice and data services;

**“Bitstream Access”** means a facility provided to a facilities seeker in order to provide data services through a logical circuit to an end-user or end-site. The Bitstream logical circuits shall be aggregated and transported between the facilities seeker and the facilities provider through an interconnect in such a way that the facilities seeker has full control over the International Standards Organisation Open Systems Interconnect (ISO OSI) Model Layer 3 (network layer) elements of the service, including routing and addressing.

**“Bitstream and Shared/Full Loop Access Master Lease Agreement”** means a standard lease agreement pertaining to these regulations which contains all relevant terms and conditions;

**“Electronic communications facilities provider (Facilities Provider)”** means an ECNS licensee who is requested to lease its electronic communications facilities in terms of section 43(1) of the Act

**“Electronic communications facilities seeker (Facilities Seeker)”** means any person licensed in terms of the Act, or persons providing services pursuant to a licence exemption, requesting to lease facilities in terms of section 43(1) of the Act;

## 2. PURPOSE OF REGULATIONS

The purpose of these regulations is to:

- a) Facilitate the conclusion of electronic communications facilities leasing agreements with reference to the "Local Loop" by stipulating:
  - i. the facilities that are to be offered in an unbundled form
  - ii. agreement principles;
  - iii. timeframes and procedures to be followed by parties; and
  - iv. the procedures for the submission, review and filing of agreements.
- b) Provide for the requirements for the interconnection between and leasing of local loop facilities; and
- c) Provide for dispute resolution processes and the timeframes for lodging disputes.

**PART II****Interconnection between and leasing of facilities for access to the local loop****3. Facilities to be leased in the provision of access to the Local Loop**

a) **Bitstream Access:** An ECNS licensee must provide the following facilities so as to offer Bitstream access:

- i. Point of interconnection at a point agreed upon in the core network;
- ii. Relevant co-location space; and
- iii. Associated support systems to ensure effective functioning of a point of connection.

b) **Shared/Full Loop Access:** An ECNS licensee must provide the following facilities to a facilities seeker:

- i. Point of interconnection at a Hand-Over Distribution Frame adjacent to any Main Distribution Frame (or equivalent) designated by the Authority;
- ii. Relevant co-location space; and
- iii. Associated support systems to ensure effective functioning of a point of connection.

**4. Requests for interconnection and the lease of facilities in the provision of access to the Local Loop**

a) A request for the leasing of Bitstream and/or Shared/Full Loop and associated electronic communications facilities must be in writing and must, amongst others include:

- i. the date of the request;
- ii. the facilities seeker's technical requirements and physical parameters; and

- iii. the type of facilities that are requested.
- b) An electronic communications facilities provider must respond to a request to lease facilities within seven (7) days of receipt of the request.
- c) The parties must finalise the electronic communications facilities leasing agreement within forty five (45) days from the date of request provided that the parties may agree on a longer period, which period must not exceed sixty (60) days.

#### **5. Financial feasibility**

- a) For purposes of section 43(4) of the Act, a request is financially feasible where an I-ECNS licensee provides the same or similar service to itself or entities under its control.
- b) Any dispute of financial feasibility will be determined by the Authority on a case by case basis.

#### **6. Technical feasibility**

- a) For purposes of section 43(4) of the Act a request is technically feasible where an I-ECNS licensee provides the same or similar service to itself or entities under its control.
- b) Any dispute on technical feasibility will be determined by the Authority on a case by case basis.



**PART III****Principles for electronic communications facilities leasing agreements in support of access to the local loop****7. Non-discriminatory access to the local loop****a) Pricing**

- i. An ECNS licensee may only apply a fee to the facilities seeker similar to that charged to itself or entities under its control;
- ii. The ECNS licensee requesting access to the local loop is obliged to pay for any once-off capital equipment required to facilitate the provision of the requested services; and
- iii. The ECNS licensee requesting access to the local loop is obliged to pay for any billing system-related costs required to facilitate the provision of services.

**b) Equal treatment of requests for access to facilities**

- i. Regulation 9(1) and 9(2) of the Electronic Communications Facilities Leasing Regulations apply.

**c) Quality of Service**

- i. An ECNS licensee who owns a local loop must offer the same or similar technical and service level quality of service it provides for itself or entities under its control.

**d) Transparency**

- i. ECNS licensees who own a local loop must:
  - submit a standard price list to the Authority for the different forms of local loop facilities provided; and
  - provide a standard price list on its website.

## **8. Confidentiality**

An electronic communications facilities leasing agreement may not contain a provision that prevents the public disclosure of the agreement by the Authority or by either of the parties, subject to the provisions of section 4D of the ICASA Act read with section 45 of the Act.

## **9. Local Loop facilities leasing information**

- a) ECNS licensees must publish on its website and, on request and within seven (7) days provide to a facilities seeker, information that is in its possession or control relating to:
  - b) a list of locations for interconnection for access specified in Regulation 3, updated on a six-monthly basis;
  - c) process and commercial information that may assist the electronic communication facilities seeker to formulate a request for leasing electronic communications facilities, including but not limited to:
    - i. any material changes to the electronic communications facilities leasing agreements that may affect the electronic communications facilities leasing agreements; and
    - ii. plans of an electronic communications facilities provider that may have an impact on existing products or services.
- d) Technical information that will assist the electronic communications facilities leasing parties in planning, establishing or maintaining their electronic communications network, including but not limited to:
  - i. the technical specifications of the electronic communications network; and
  - ii. any material changes to the electronic communications facilities leasing arrangements that may affect the electronic communications facilities

leasing arrangements or plans of an electronic communications facilities seeker or the services such party provides or intends to provide by means of that electronic communications facilities leasing.

**PART IV****Framework, model terms and conditions of agreements****OPTION A – Broad Terms and Conditions****10. Terms and conditions of electronic communications facilities leasing agreements for the purposes of Bitstream and shared/full loop services**

An electronic communications facilities leasing agreement must, except where a matter is not relevant to the electronic communications facilities leasing services in question, address the following:

- a) definition of terms and abbreviations;
- b) the technical scope of Bitstream and/or shared/full loop access including:
  - i. a description of the purpose for interconnection and the electronic communications facilities leasing;
  - ii. a description of the electronic communications facilities proposed to be leased;
  - iii. a description of the technical specifications of the facilities;
  - iv. mechanisms for changes to the purpose, technical scope and specifications of the electronic communications facilities leasing; and
  - v. a description of the location of the electronic communications facilities.
- c) infrastructure sharing and co-location, which includes:
  - i. availability;
  - ii. infrastructure sharing and co-location procedures;
  - iii. security procedures and requirements;
  - iv. supplementary services required, such as power supply; and
  - v. physical access to facilities.

- d) billing and settlement which includes:
- i. billing procedures;
  - ii. payment terms and conditions; and
  - iii. billing and settlement disputes procedures.
- e) charges, setting out:
- i. detailed charges per electronic communications facility or set of electronic communications facilities leased; and
  - ii. mechanisms for review of charges.
- f) quality of service and service levels, covering:
- i. service levels and quality of service obligations;
  - ii. penalties;
  - iii. testing and maintenance;
  - iv. fault reporting and repair;
  - v. service level disputes;
  - vi. network protection and safety measures; and
  - vii. initial capacity.
- g) date of coming into operation of agreement;
- h) termination of agreement covering:
- i. grounds for termination;
  - ii. termination procedure; and
  - iii. contractual dispute resolution and arbitration procedures.

**OPTION B – Specific terms and conditions per type of Access**

Please provide recommendations as to terms and conditions applicable to bitstream and shared/full loop access

This includes standard operating procedure manuals, forms and other checklists that may facilitate the conclusion and management of specific terms and conditions. These may include timelines, quality of service metrics and technical standards.

**PART V****11. Dispute resolution****a) Where:**

- i. the reasonableness of any request is disputed, the party requesting electronic communications facilities leasing may notify the Authority in accordance with regulations 5 and 6 of these regulations;
- ii. the electronic communications facilities provider has not responded to the request for electronic communications facilities leasing within the time set out in regulation 4(2) of these regulations, the party requesting electronic communications facilities may notify the Authority; and
- iii. parties have not reached agreement on the terms and conditions of an electronic communications facilities leasing agreement within the time prescribed in regulation 4(3) of these regulations, either party may notify a dispute to the Authority.

- b) A dispute notified to the Authority in terms of these must be in writing and must set out the details of the alleged dispute.

- c) The party lodging the dispute must provide the Authority with sufficient information to allow it to make its decision.
- d) Where the Authority, after considering all relevant information, determines that the dispute warrants further investigation, then the Authority shall:
  - i. provide the other party to the dispute with a copy of the complaint setting out the nature of the alleged unreasonableness or details of the unwillingness to negotiate or agree within fourteen (14) days of the notification of the dispute;
  - ii. afford the other party to the dispute with a reasonable opportunity to respond to the allegations in writing within fourteen (14) days of receipt of the copies of the complaint referred to in regulation 11(2) of these regulations; and
  - iii. afford the party which notified the dispute a reasonable opportunity to reply to the response in writing within fourteen (14) days of receipt thereof.
- e) The Authority may call for oral representations after the submissions made by the parties referred to in regulation 4 of these regulations;
- f) Notwithstanding the provisions of regulation 11(5) of these regulations, the Authority may determine the matter on the basis of the papers submitted to it by the parties.
- g) The Authority will, within fourteen (14) days or such longer period as is reasonably necessary, furnish the parties to the dispute with its final decision.
- h) Regulation 11 of these regulations does not, in any manner, limit the power of the Authority to refer a matter to the Complaints and Compliance Committee in terms section 43 (5) (c) of the Act.

## **PART VI**

### **Submission, filing, review and timeframes of agreements**

#### **12. Submission and review of electronic communications facilities leasing agreements**

- a) An ECNS licensee who owns a local loop must submit a Bitstream and Shared/Full Loop Access Master Lease Agreement to the Authority within 45 days of these regulations coming into force;
- b) The authority may choose to publically consult on the contents of the Master Lease agreement; and
- c) An electronic communications facilities leasing agreement and electronic communications facilities leasing amendment agreement must be submitted to the Authority in terms of section 45 of the Act within five (5) days of the date of signature of the agreement.

#### **13. Consideration by the Authority for compliance**

- a) The Authority will notify the parties in writing within thirty (30) days of submission whether the agreement is consistent with the Act and these regulations.
- b) Where the Authority determines that the electronic communications facilities leasing agreement is consistent with the Act and these regulations, the Authority will notify the parties of compliance.
- c) Where the Authority determines that the agreement is not consistent with the Act and these regulations, the Authority shall direct the parties to agree on new terms and conditions that are consistent with the Act and these regulations within a period determined by the Authority, which period will not exceed thirty (30) days.



**14. Filing of electronic communications facilities leasing agreements**

An electronic communications facilities leasing agreement is considered to be filed with the Authority in terms of section 45(2) of the Act after the Authority has reviewed the agreement and notified the parties of compliance.

**15. Provision of information to the Authority**

- a) Any I-ECNS licensee who provides electronic communications facilities for the purpose of interconnection in providing Bitstream and/or share/full loop access must submit 6-monthly records to the Authority in terms of Table 1.
- b) Any licensee who signs an interconnection agreement for the purposes of bitstream and/or shared/full-loop access must submit records to the Authority in terms of Table 1.

**TABLE 1**

	As of June XXX	As of December XXX
<b>Number of Active Lines</b>		
<b>Number of Active lines by Licensee</b>		
<b>Bitstream Access</b>		
<b>Shared Loop Access</b>		
<b>Full Loop Access</b>		

- c) Such information must be submitted one month after the 6-monthly period

**PART VII****General****16. Commencement date of an agreement**

- a) Parties may agree on a date to commence the leasing of electronic communications facilities. Notwithstanding that date, the Authority may direct the parties to amend certain terms and conditions of the agreement based on the outcome of the review of the agreement.
- b) In the event that the parties have not agreed on the date of commencement, such date shall be the date of notification of compliance.

**17. Suspension and termination of agreement**

- a) All agreements entered into under these regulations must:
  - i. provide for suspension and termination procedures that minimize any adverse effect of the suspension or termination of services on end users; and
  - ii. not allow the suspension of such an agreement except where this is necessary to address quality of service degradation of electronic communication networks or services or other material threat to the maintenance or the operation of the electronic communications facilities.
- b) Neither party may terminate an agreement entered into under these regulations unless the termination is as a result of:
  - i. material breach of the electronic communications facilities leasing agreement; or
  - ii. vis major; or
  - iii. The liquidation, deregistration or insolvency of one of the parties to the electronic communications facilities leasing agreement, or

- iv. The parties have mutually agreed to terminate the agreement;
- c) Either party to an electronic communications facilities leasing agreement must give prior written notice of its intention to terminate the agreement to the Authority and the other party specifying in such notice the grounds for termination and, in the case of material breach, requiring that the breach be remedied within a period of not less than thirty (30) days.

#### **18. Contraventions and penalties**

- a) Upon determination of non-compliance with these regulations, the Authority may impose a fine not exceeding One Million Rand (R 1 000 000.00).
- b) Upon determination of non-compliance by the Complaints and Compliance Committee in terms of the ICASA Act, the Complaints and compliance committee may impose a fine not exceeding Two Million Rand (R 2 000 000.00)

#### **19. Short title and commencement**

These regulations are called the Bitstream and Shared/Full Loop Access Regulations, 2013 and commence on the date of publication of this gazette.

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