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ECS/ECNS (TELECOMS) COMPLIANCE ANNUAL REPORT 2020/2021

N.B: The contents of this report are based on the compliance submissions of respective licensees that the Compliance Department received at the time of writing this report.

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A: Acronyms

Acronym	Description
CCA	Compliance and Consumer Affairs Division
CCC	Complaints and Compliance Committee
CSR	Corporate Social Responsibility
CPMR	Compliance Procedure Manual Regulations, 2011 as published in <i>Government Gazette</i> No. 34863 dated, 15 December 2011.
DoC	Department of Communications
DTPS	Department of Telecommunications and Postal Services
ECA	Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended.
ECS	Electronic Communications Service
ECNS	Electronic Communications Network Service
E - Rate	A 50% discount rate at which internet services should be provided to public health institutions, public and private schools, colleges, further education and training institutions and higher education institutions, in accordance with section 73 of the ECA.
EUSSCR	End User and Subscriber Services Charter Regulations, 2016 published in <i>Government Gazette</i> No. 39898 dated, 1 April 2016, as amended.
GLFR	General Licence Fees Regulations, 2012 as published in <i>Government Gazette</i> No. 36323 dated, 28 March 2013, as amended.
HDGs	Historically Disadvantaged Groups as defined in section 9 (2) (b) of the ECA
ICASA Act	Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), as amended.
ICT	Information and Communications Technology
IMT	International Mobile Telecommunications
IP	Internet Protocol
ISM	Industrial, Scientific and Medical band
ISP	Internet Service Provider
ITA	Invitation to Apply
LSEN	Learners with Special Educational Needs
MSISDN	Mobile Station International Subscriber Directory Number
UMTS	Universal Mobile Telecommunication System
USAF	Universal Service and Access Fund
USAO	Universal Service and Access Obligation
USO	Universal Service Obligations
PTN	Private Telecommunications Network
PSTN	Public Switched Telecommunications Network
QOS	Quality of Service
SIP	Session Initiation Protocol

1. **EXECUTIVE SUMMARY**

In accordance with the Independent Communications Authority of South Africa's (Authority) annual Operational Performance Plan (OPP), the ECS/ECNS Compliance Unit within the Compliance and Consumer Affairs Division (CCA), has a target to report on (60) licensees for purposes of developing a compliance report. The report details assessed compliance during the 2019/2020 financial year. It is noteworthy however, that the report does not in any way mean that compliance aspects with respect to those licensees that are not mentioned in the report was not attended to. The ECS/ECNS Unit has exceeded its target having assessed a total of one hundred (100) licensees for the period under review. Of those reported on, 74 are individual licences, with 26 being class licenses and per table 1, below.

From the monitoring conducted throughout the year, it is becoming more evident that the level of compliance is gradually increasing, while the number of licensees together with the number of Regulations continues to increase as well. The overall compliance is further demonstrated by the number of licensees that submits on their regulatory compliance requirements, that has increased from as few as fifteen (15) in 2010, to approximately 500 licensees in 2020, for the year under review 2019/2021.

The year 2020 has been the most challenging, with the impact of the Covid-19 global pandemic, that even necessitated a parallel regulatory framework through the gazetting of the Information and Communications Technology (ICT) COVID-19 National Disaster Management Regulations, Government Gazette Number 43207, dated 6 April 2020. Being a new regulation, there were teething problems that were encountered when implementing it and ECS-ECNS Compliance had to work with licensees to ultimately ensure that the regulation is accordingly complied with.

2. INTRODUCTION

The core objective of the ECS/ECNS Compliance annual report is to paint a picture in relation to the extent of regulatory compliance by ECS/ECNS licensees in the period under review. A compliance analysis and evaluation assessment are conducted against the relevant pieces of Legislation, Regulations, and prescribed licence terms and conditions of selected licensees.

Compliance monitoring is done over a twelve¹ month period through an analysis and assessment of compliance information submitted by the ECS/ECNS licensees, together with any interconnection and facilities leasing agreements entered into by licensees, as well as notifications (if any), that may be submitted to the Authority, for review and approval.

One major focus area of the ECS/ECNS Compliance annual report, is on the compliance analysis and assessment on financial compliance (i.e. submission of financial information / reports and payments of annual licence fees and USAF contributions). Also, for consideration are the submissions by licensees made in terms of the prescribed Forms as per the Compliance Procedure Manual Regulations (CPMR) 2011, the assessment of the information given on universal service obligations, interconnection and facilities leasing agreements and related regulatory obligations.

In the process of monitoring and analysis the ECS/ECNS Compliance Unit does from time to time, come across instances of failure to comply. In such case the Unit does its best to assist the concerned licensee to understand what is required to comply and takes them through the process to ensure compliance. In instances of a major and/or repeated contravention, the next step then becomes that referral of the said licensee to the Complaints and Compliance Committee (CCC) for investigation, hearing and adjudication. The standard practice though prior to the referral, to ensure a fair administrative process, ECS/ECNS Compliance will write a letter to the concerned licensee notifying it of the alleged contravention and affording it an opportunity to make representations as to why they should not be referred to the CCC.

The period under review for purposes of this report is the 2019/20 financial year, although with respect to financial information the reporting period will be for the financial year 2018/19 as financials are received a year in arrears. The licensees monitored this year are listed in table 1 below. This report provides an account of the level of compliance by the monitored licensees as assessed by the ECS/ECNS Compliance Unit.

¹ The twelve months' period refers to the period 01 April of the previous year to 31 March of the current financial year. However, the period for compliance assessment is the preceding financial year i.e. 2018/2019.

Due to different financial year end periods between the Authority and licensees, some information (for licensees), may not be complete at the time of finalising the Authority's Compliance Report, by 31 March of any year.

It would indeed be amiss if this report omits to make mention of the fact that receipt of compliance information(financial and other compliance forms) this financial year was no easy task as we were facing a global pandemic and our licensees were also not spared, as some would get infected and delay in submitting the requisite information especially in view of the fact that telecommunications services are an essential service.

Table 1: Monitored licensees

No	Licensee	Licence Type	Financial Year-end
1.	Amadwala Trading 5 CC	Class	February
2.	Amobia communication (Pty)Ltd	Individual	March
3.	Avoxi (Pty) Ltd	Individual	December
4.	Balwin Properties	Class	February
5.	Baumie Technologies CC	Class	February
6.	BluLemon Film Productions (Pty) Ltd	Class	February
7.	Borwood Communications (Pty)Ltd	Class	February
8.	Breedenet (Pty)Ltd	Individual	March
9.	Broadband Infracore	Individual	March
10.	BT Communication (Pty)Ltd	Individual	March
11.	Bundu Networx (Pty) Ltd	Class	February
12.	CELL C Limited	Individual	December
13.	Century City Connect (Pty)Ltd	Individual	February
14.	Clear Access (Pt) Ltd	Individual	February
15.	Cloudseed (Pty) Ltd	Individual	June
16.	Comsol Network (Pty)Ltd	Individual	July
17.	Cybersmart (Pty) Ltd	Individual	February
18.	Dark Fibre Africa (Pty) Ltd	Individual	February
19.	Digital Dynamix cc	Individual	February
20.	Directel (Pty) Ltd	Individual	February
21.	DMR Networks	Individual	February
22.	Dube TradePort Corporation	Individual	March
23.	EasyComs Communications (Pty) Ltd	Individual	February
24.	Edelnet	Individual	March
25.	eNetworks	Individual	June
26.	FFG Connection CC	Individual	March
27.	Framework Plus (Pty) Ltd	Individual	March
28.	France Saayman T/A Sonic Computers	Class	February
29.	Gardale Solutions cc t/a G Solutions	Class	February
30.	Gateway Communication (Pty)Ltd	Individual	December
31.	Gigabug / RD Solutions (Pty)Ltd	Class	March
32.	Greenflash Trading 72 (Pty) Ltd	Individual	February
33.	Heinrich Heunis	Class	February
34.	Hero Telecoms (Pty)Ltd	Individual	March
35.	Hymax Talking Solutions	Individual	July
36.	Iclix CC	Individual	March
37.	iCTel (Pty) Ltd	Individual	February
38.	Intaweb (Pty) Ltd	Class	February
39.	Iridium Satellite Republic of South Africa (Pty) Ltd	Individual	December
40.	Jantar Computer Services	Individual	March
41.	Jenny Internet CC	Individual	February

No	Licensee	Licence Type	Financial Year-end
42.	JSDAAV ZA Telecoms	Individual	February
43.	JSDAAV ZA Telecoms (Pty) Ltd	Individual	February
44.	Kaltrade 407(Pty)Ltd	Individual	March
45.	KCS Group	Individual	February
46.	Kliq (Pty) Ltd	Individual	February
47.	Kosh Communication Services (Pty) Ltd	Individual	March
48.	L Com (Pty)Ltd	Class	March
49.	Ladysmith wireless	Class	March
50.	Lasernet (Pty)Ltd	Individual	March
51.	Letaba Wireless Internet cc	Class	August
52.	Liquid Telecommunications South Africa (Pty) Ltd	Class	February
53.	Lycamobile South Africa (Pty) Ltd	Individual	February
54.	Metacom (Pty) Ltd	Individual	February
55.	Mikrotiksa Networks cc	Class	February
56.	Mobile Telephone Networks (Pty) Ltd (MTN)	Individual	December
57.	Myvoip Communications CC	Class	February
58.	Mzansi Lesetta Media	Individual	February
59.	Network for Next Generations (Pty) Ltd	Individual	February
60.	Network for Next Generations (Pty) Ltd	Individual	February
61.	Next Generation Network Telecommunications (Pty) Ltd	Individual	May
62.	Orange Business South Africa (Pty) Ltd	Individual	December
63.	Pioneer Connect (Pty) Ltd	Class	December
64.	RSA Web Internet Services	Individual	March
65.	SA Digital Villages (Pty)Ltd	Individual	March
66.	Satsoft cc t/a Satellite Software	Class	February
67.	Scan RF (Pty)Ltd	Individual	July
68.	Seacom	Individual	December
69.	Sentech	Individual	March
70.	Sevenstone Investment	Individual	February
71.	Skygistics	Individual	November
72.	Spearhead Sale (Pty) Ltd	Class	February
73.	Speed Stream	Class	February
74.	Stuart Vincent Bodill T/A IT Net	Class	February
75.	Sybaweb (Pty) Ltd	Individual	November
76.	Syrinx Communications (Pty) Ltd	Individual	February
77.	Tel Cables (Pty) Ltd	Class	February
78.	Telemedia	Individual	February
79.	Telkom SOC Ltd	Individual	March
80.	Tertiary Education and Research Network of South Africa	Individual	March
81.	The Immediate Ecosystem (Pty)Ltd	Individual	February
82.	Transnet Freight Limited	Individual	March
83.	Tribal Zone Communications (Pty)Ltd	Individual	March
84.	Triqa Wifi (Pty) Ltd	Class	February
85.	TWK Communications (Pty) Ltd	Individual	February
86.	Vangibuzz (Pty)Ltd	Individual	March
87.	Verbisource (Pty)Ltd	Individual	February
88.	Verizon South Africa (Pty)Ltd	Class	April
89.	Vodacom	Individual	March
90.	VOX Telecommunications (Pty)Ltd	Individual	March
91.	Voys Telecoms SA (Pty)Ltd	Individual	December

No	Licensee	Licence Type	Financial Year-end
92.	VTs Connect (Pty)Ltd	Individual	February
93.	WASP (Wireless Associate Service Provider) CC	Individual	February
94.	WIOCC	Individual	March
95.	WIOCC South Africa	Individual	December
96.	Xlink communications (Pty)Ltd	Class	March
97.	XNET Internet service (Pty)Ltd	Individual	March
98.	Xpress Wireless	Individual	March
99.	ZAZU Internet (Pty)Ltd	Individual	March
100.	Zomerlust Systems Design	Individual	March

The sample above has gone to great lengths to be representative of a broad range of licensees, i.e. small, medium, major, top earners, and those who are consistently compliant as well as those that are not fully compliant.

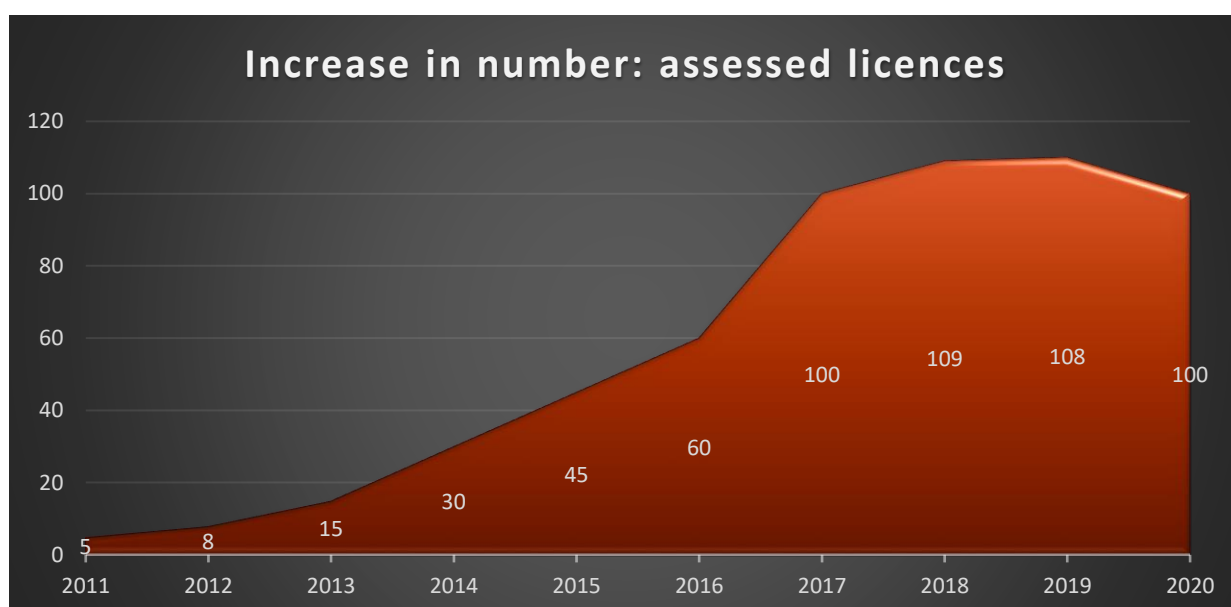


Figure 1: Increase in number of licensees assessed to date

The table below (Table 2) shows the spread of the financial year ends of the 100 licensees reported on for purposes of this report. Having observed from previous years, February is the most common financial year end month, followed by March.

The financial year end influences the payment of licence fees and USAF contribution as well as the conclusion of Authority's compliance assessment. The General License Fee Regulations provides that Licensees have up to six months *after* their financial year end to pay their licence fees and make their USAF contributions.

Table 2: Financial Year Ends (FYE)

FYE	Number of licensees
February	47
March	33
April	1
May	1
June	2
July	3
August	1
November	1
December	11

It is a regulatory requirement that licensees should provide at their financial year end, financial forecasts of the licence fees and USAF contributions that they expect to pay (as they serve as estimates by the Authority). The financial forecasts will later be reviewed against the actual finalised financials (and where applicable, audited), once those are made available to the Authority as per the requirements of the General Licence Fees Regulations.

3. LEGISLATIVE AND REGULATORY CONSIDERATIONS

The mandate of the Authority amongst other, is to grant ECS and ECNS licences and thereafter ensure that licensees comply with their legislative and regulatory obligations. ECS/ECNS licences are granted and issued under chapter 3 of the ECA. The table below lists the key legislative and regulatory tools used, for compliance assessment. For this financial year there is an additional regulation that was published in response to the COVID – 19 pandemic.

Table 3: Legislative and Regulatory instruments

	Legislation
1.	Independent Communications Authority of South Africa Act, 2000 'ICASA Act' (Act No. 13 of 2000), as amended.
2.	Electronic Communications Act, 2005 'ECA' (Act No. 36 of 2005), as amended.
	Regulations
1.	ICASA General Licence Fees Regulations, 2013
2.	Universal Service and Access Fund Regulations, 2011
3.	Compliance Procedure Manual Regulations, 2011 (CPMR)
4.	Regulations on Standard Terms and Conditions for Individual Licences, 2010
5.	Regulations on Standard Terms and Conditions for Class Licences, 2010
6.	Processes and Procedures Regulations for Individual Licences, 2010

7.	Processes and Procedures Regulations for Class Licences, 2010
8.	End User and Subscriber Service Charter Regulations, 2016
9.	Interconnection Regulations, 2010
10.	Electronic Communications Facilities Leasing Regulations, 2010
11.	Regulations on Code on People with Disabilities Applicable to All Licensees, 2007
12.	Code of Conduct for ECS-ECNS Licensees, 2007
13.	Regulations in terms of Section 4 read with Section 73 of ECA in respect of E-Rate 2009
14.	Numbering Plan Regulations, 2016
15.	Call Termination Regulations, 2014
16.	Information and Communications Technology (ICT) COVID-19 National Disaster Management Regulations, Government Gazette Number 43207, 2020.

In accordance with chapter 3 of the ECA, ECS and ECNS licences are categorised into **Individual** and **Class** licences. An Individual licence has provincial or national scope whilst a Class licence is geographically restricted to a district or local municipality. The procedure to issue Individual Service licences as set out in section 9 of the ECA, it is that the Authority will issue an Invitation To Apply (ITA), calling applications for licence, within a prescribed time frame. With respect to Class licences, the Authority receives applications for registration throughout the year.

The number of Individual and Class licences that have been issued by the Authority is broken down in figure 2 below. It is noteworthy that in some instances, licensees hold more than one licence (especially with class licenses, an occurrence that is rare although possible with individual licenses).

The legislative framework also provides for “resellers²” which are entities that provide electronic communications services but they do not require licences. We currently do not monitor resellers.

² Means “a person who-

- (a) acquires, through lease or other commercial arrangement any electronic communication network service or electronic communications service; and
- (b) makes such electronic communications network service or electronic telecommunications service available to subscribers for a fee, whether such electronic communications network service or electronic communications made available by the reseller-
 - (i) are identical to the electronic communications network service or electronic communications service acquired;
 - (ii) are packed, bundled or otherwise regrouped to form new or varied service offerings;
 - (iii) are combined, linked or used in connection with electronic communications networks or electronic communications facilities owned by the reseller; or

ECS and ECNS licensees provide voice, data and network services both at wholesale and retail. Of the six³ main individual licensees, three (MTN, CELL C and Vodacom) provide mobile voice services as their core business whilst Liquid, Telkom and Rain predominantly fixed wireless and data services. The majority of the other ECS and ECNS licensees provide data services as ISP's (internet service providers).

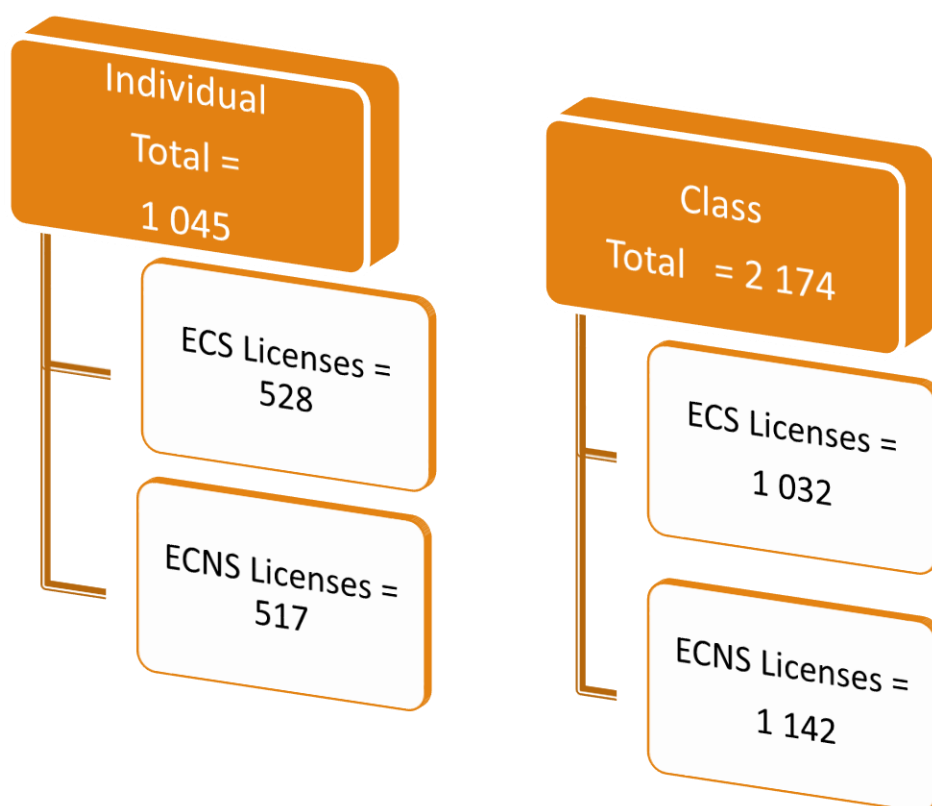


Figure: 2 - Individual & Class licences = 3 219

3.1. Licence Terms and Conditions

A license of each of the ECS/ECNS licensees elucidates the applicable licence terms and conditions. These conditions are also encapsulated in the Authority's Standard Terms and Conditions Regulations. Over and above the said licence terms and conditions, some licensees have specific Universal Service Obligations (USOs), as outlined in section 4 below. When assessing compliance, the Unit also takes into account the conditions as outlined for USO purposes.

(iv) add value to such electronic communications network services or electronic communications services,"

³ Cell C, MTN, Liquid Telecom (formerly Neotel), Telkom, Vodacom and WBS.

4. **COMPLIANCE FINDINGS**

The findings of the monitoring exercise for the selected licensees are outlined below:

4.1. **General Licence Fees Regulations, 2012⁴ (GLF)**

The licensee fees payment framework is provided for by the GLF Regulations. It is based on a percentage of revenue that licensees would have generated from their licensed services during a particular financial year and is based on a sliding scale as per table 3, below⁵:

Table 3: Extract from GLF Regulations⁶

Licenced Revenue	Percentage
R	B
0 – 50 000 000	0.15%
50 000 001 – 100 000 000	0.20%
100 000 001 – 500 000 000	0.25%
500 000 0001 – 1 000 000 000	0.30%
1 000 000 001 and above	0.35%

Pa is the general licence fee payable by the licensee

$$Pa = R \times B$$

The said Regulations prescribe that licensees submit their financial statements and make payments to the Authority, by no later than six months **after** [own emphasis] their financial year end. The requirement is that the financials either be audited or signed off by their Accounting Officer⁷. The financials are then analysed by the ECS/ECNS Compliance Unit, against the GLF Regulations prior to submission to the Finance Division, for invoicing.

Where licensees fail to pay within the prescribed time, interest will be charged on the amount due. Persistent non-payment of fees constitutes non-compliance and could result in referral to the CCC. The GLF Regulations do not exempt any licensee from payment of licence fees, regardless of the amount generated from licensed services.

4.2. **Universal Service Access Fund (USAF) Regulations, 2011**

⁴ Published in *Government Gazette* No. 36323 dated, 28 March 2013.

⁵ Per Schedule 2 of ICASA General Licence Fees Regulations, 2012.

⁶ *Ibid.*

⁷ Per Schedule 3 of ICASA General Licence Fees Regulations, 2012.

On the other hand, the USAF Regulations⁸ requires that licensees pay an annual contribution of 0.2% of their annual turnover to the USAF fund. USAF calculations and contributions must be done within six month of the financial year end of each licensee. Where licensees fail to pay within the prescribed period, interest will also be charged on the amount due.

Spectrum Fees

Licensees who use the frequency spectrum as allocated by the Authority are required to make payment in relation to spectrum fees as follows:

- (i) Radio Frequency Spectrum Regulations, 2015 provides charges for spectrum application fees; and
- (ii) Radio Frequency Spectrum Licence Fees Regulations, 2010 provides for charges for annual spectrum fees.

4.3. Universal Service and Access Obligation (USAO)

Universal Service and Access Obligations (USAOs) "*refers to a state objective to provide broad public access to information and communication technologies (ICTs) to ensure the provision of services to rural, remote, and lower-income users who would not, in the absence of such policies, be served. Universal service and universal access are both regulated in order to facilitate full access to modern technologies, to promote economic development, and to eliminate current disparities between rural and urban areas*"⁹.

With respect to the USAO process, only seven¹⁰ licensees have USAOs as part of their licence conditions. The USAOs as amended¹¹ further oblige the licensees to provide internet connectivity to identified schools or community areas for the duration of their licence period, with the requirement to rollout the USAOs over a period of 5 years, commencing 2014.

Cell C, Liquid Telecom (formerly Neotel) MTN and Vodacom continue to roll-out the USAO obligations adding to the figures of what has been rolled out in the previous years.

Towards the expiry of the 5 years it became clear that the licensees would not have finalised the roll-out due to a variety of challenges they have encountered during the process. Compliance then took the initiative to extend the deadline to mitigate against the possibility of licensees not meeting the initial deadline. The Authority granted the extension by two years.

⁸ USAF Regulations, 2011 published in *Government Gazette No. 34010*, dated 10 February 2011.

⁹ <http://thornton.co.za/resources/telelaw10.pdf>

¹⁰ Cell C, Liquid Telecom (formerly Neotel), MTN, Vodacom, Telkom, Sentech and Rain (formerly WBS)

¹¹ Amended by the Authority on 18 March 2014 and effective from 1 April 2014.

Licensees that are busy with the roll-out are required to report twice a year to the Authority (at the end of April and end of October), on the progress and status of USAO implementation.

Figure 3 below details the USAO rollout obligations for Cell C, Liquid, MTN and Vodacom.





	<ul style="list-style-type: none"> * Connect 1 360 mainstream schools (minimum 300 per annum) * Connect 140 schools for Learners with Special Educational Needs (LSEN)
	<ul style="list-style-type: none"> * Connect 610 mainstream schools (minimum 150 per annum) * Connect 140 (LSEN) schools
	<ul style="list-style-type: none"> * Connect 1 360 mainstream schools (minimum 300 per annum) * Connect 140 (LSEN) schools
	<ul style="list-style-type: none"> * Connect 1 360 mainstream schools (minimum 300 per annum) * Connect 140 (LSEN) schools

Figure 3: Details of the USAOs rollout for each licensee

Below (figure 4) is an illustration of the USAO Rollout requirements for Cell C, Liquid Telecom, MTN and Vodacom

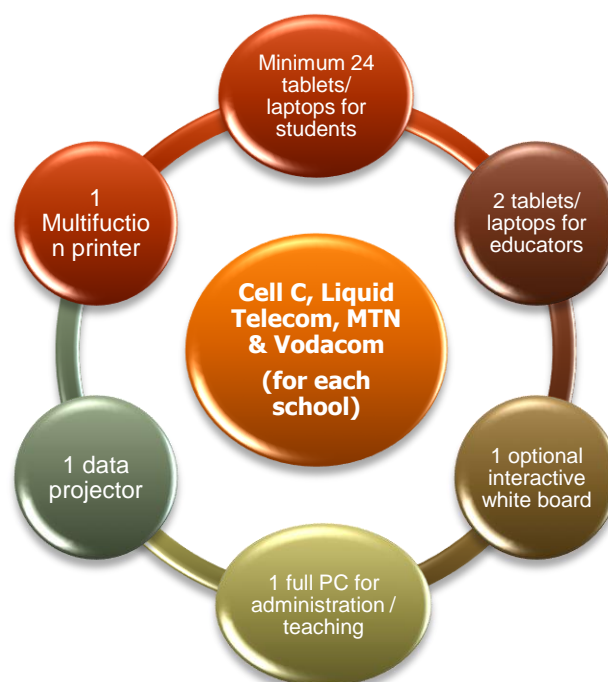


Figure 4: USAO Rollout requirements of Cell C, Liquid Telecom, MTN and Vodacom

4.3.1. Connectivity: Mainstream Schools¹²

4.3.1.1. **Cell C: The licensee has connected a total of one thousand three hundred and sixty (1360) mainstream schools per their allocation.**

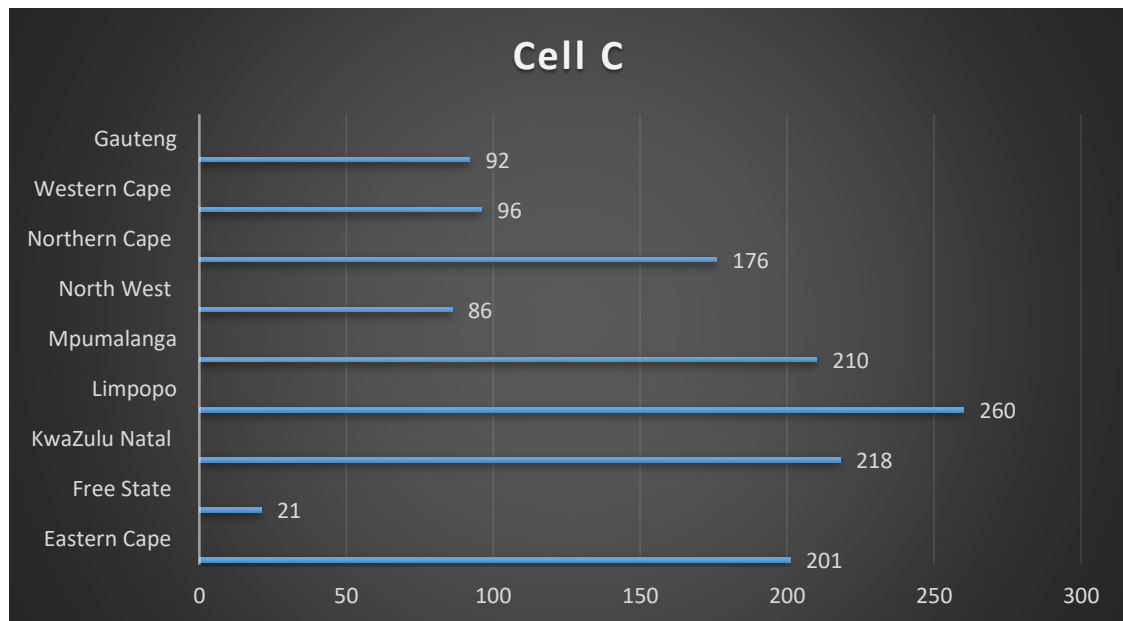


Figure 5: Cell C total connections by province (1360) – mainstream schools only

4.3.1.2. **Liquid Telecom** (formerly Neotel): Liquid Telecom has a total of **six hundred and ten (610)** schools connected. The lower number is informed by the target that was allocated to the licensee.

¹² N.B. The information herein, is purely based on what licensee have reported on, in their various and respective compliance submissions and as signed off by the (principals of the relevant) schools. The ECS/ECNS Compliance unit cannot at this stage independently verify the accuracy of the submissions. However, in the absence of complaints from the schools concerned, the information may be regarded as accurate.

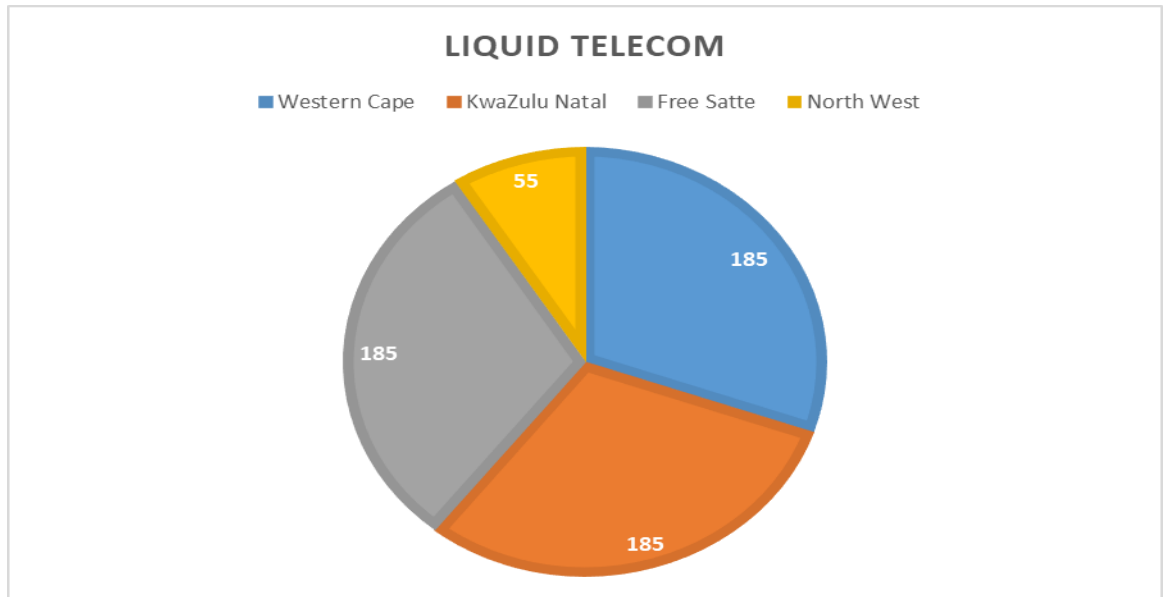


Figure 6: Liquid Telecom total connections by province (610) – mainstream schools only

4.3.1.3. **MTN:** The licensee has also completed its allocated mainstream schools, with a total number of schools being **one thousand three hundred and sixty (1360)**.

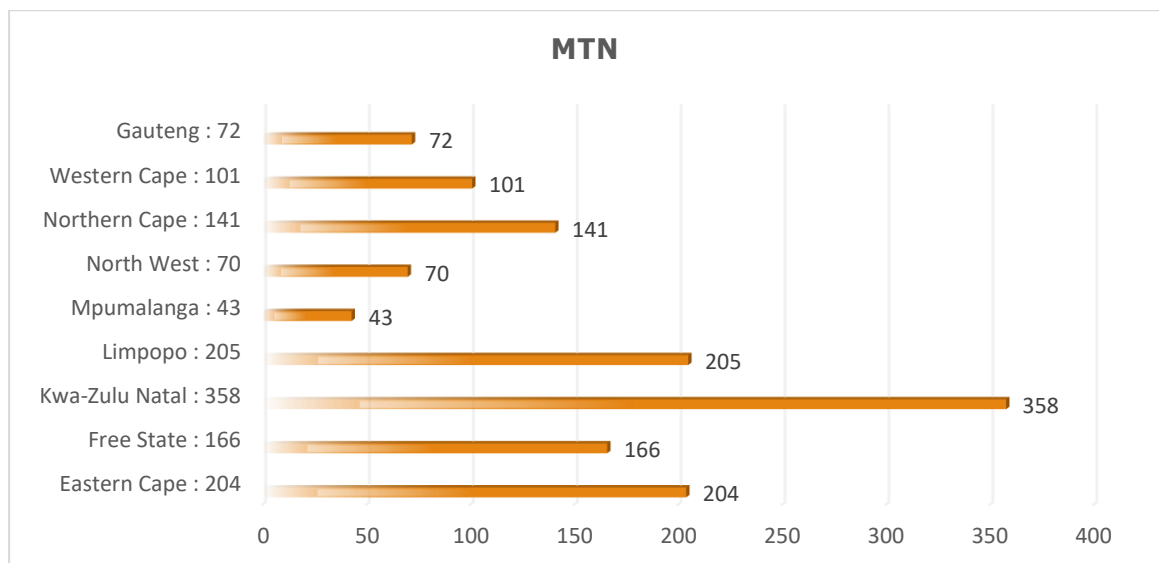


Figure 7: MTN total connections by province (1360) – mainstream schools only

4.3.1.4. **Vodacom:** The licensee was required to connect 1360 mainstream schools however, Vodacom has exceeded that requirement and has **connected 1501 mainstream schools**.

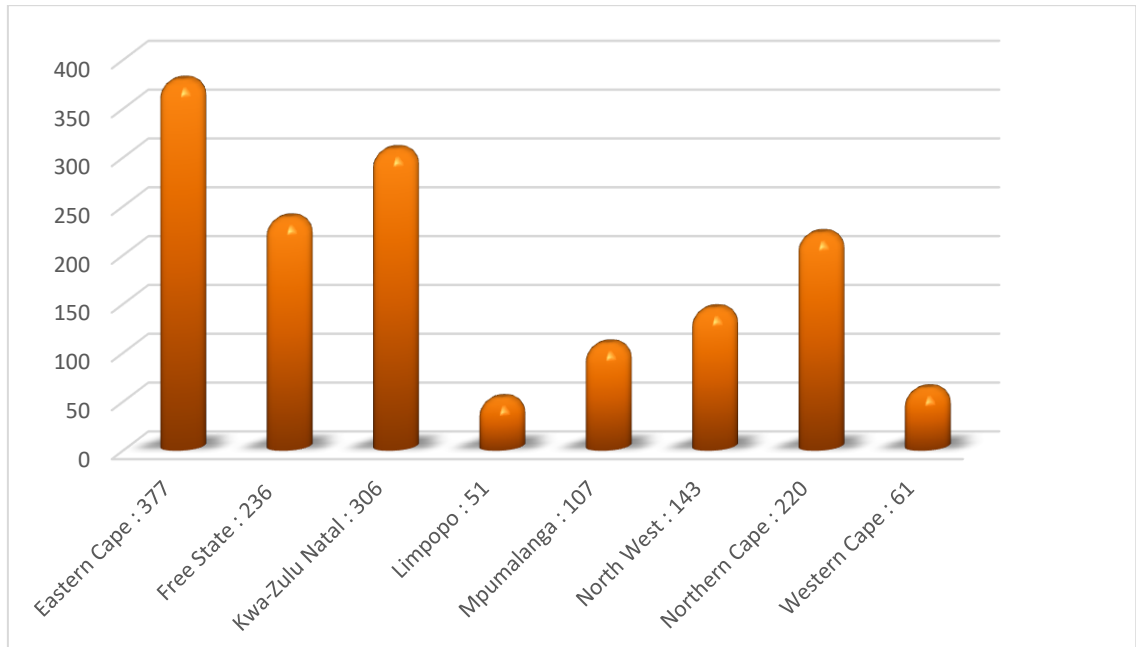


Figure 8: Vodacom total connections by province: Mainstream schools (1501)

Below is a graph demonstrating the total number of mainstream schools connected by province and by respective licensees.

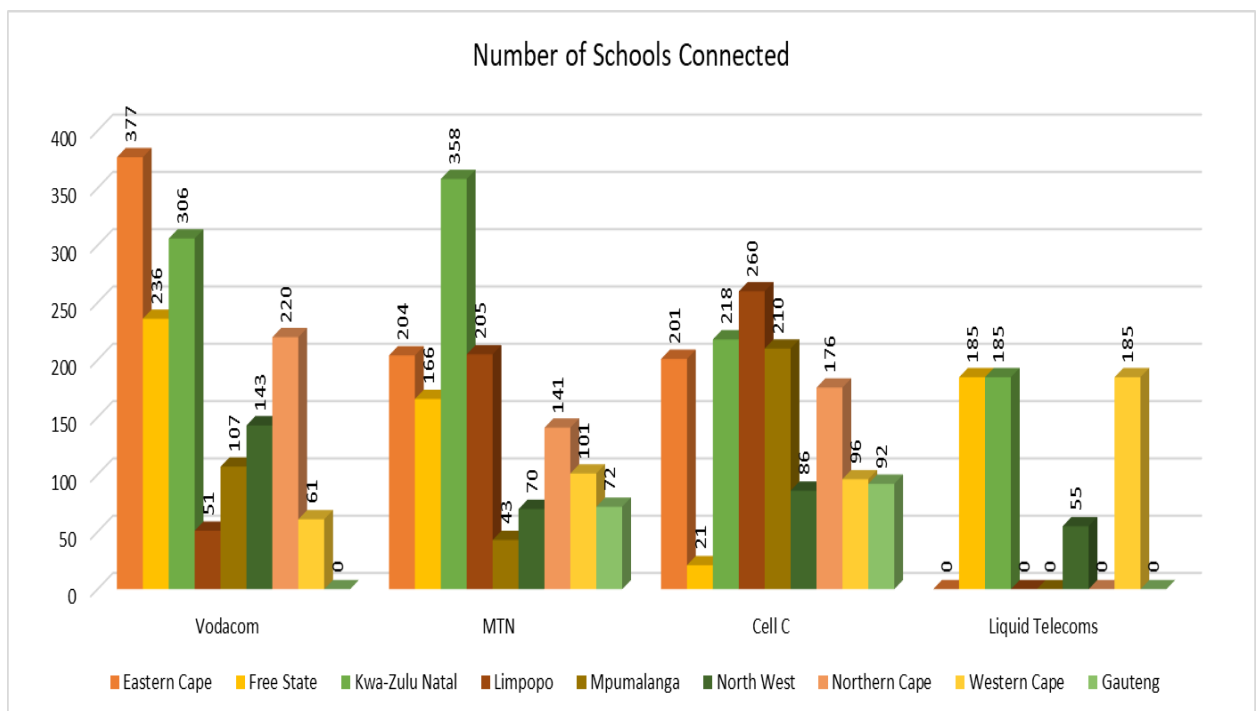


Figure 9: Total Number of Mainstream schools connected by Province

For illustration purposes, Vodacom will be used to demonstrate the coverage and service speeds that are normally used by licensees in rolling out the USAO obligations, below.

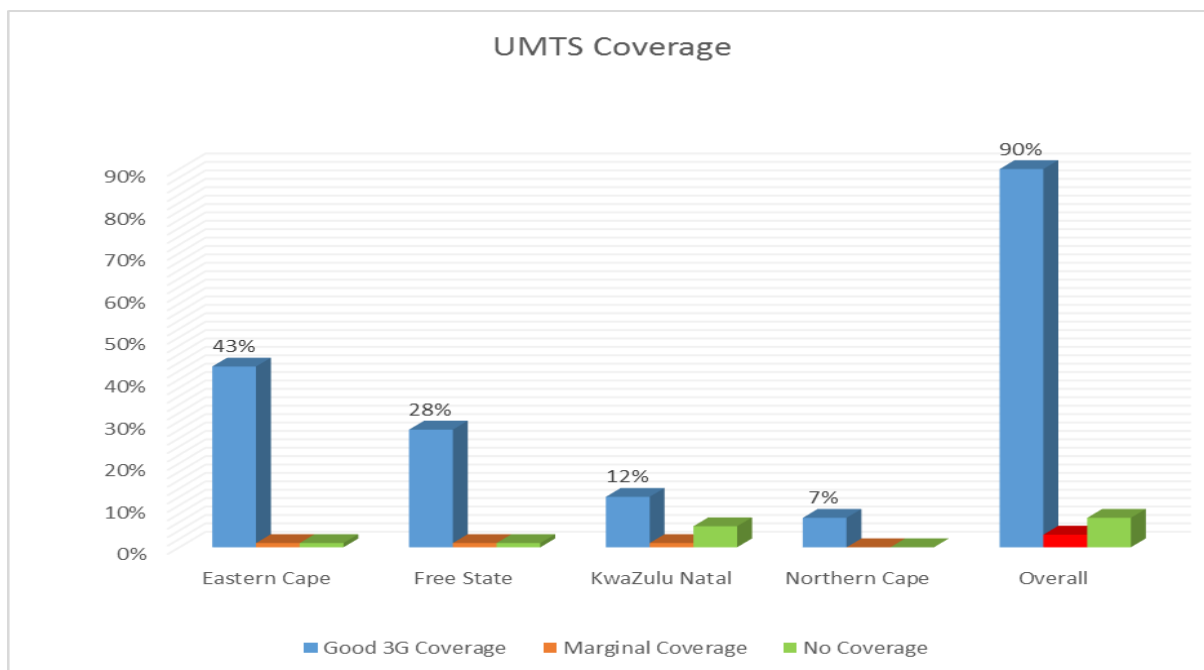


Figure 10: Vodacom's connected Schools Coverage & Service Speed

*Note: In certain instances, a licensee may not have coverage in a certain area, hence the no coverage on figure 10 above. It is noteworthy however, that no coverage does not necessarily imply that schools in that area, also do not receive connectivity at all as the licensee responsible could be using other alternatives such as roaming. Even in areas where all licensees do not have coverage, the rollout still remains helpful as the schools can access education material offline.

4.3.2. **Connectivity: Schools for Learners with Special Educational Needs (LSEN)**

At the beginning of 2017, the Authority convened a meeting with organisations representing people with disabilities, the then Department of Telecommunications and Postal Services (DTPS), and the Department of Education (DoE), to develop and finalise the draft specifications for LSEN. On 01 September 2017, the Authority sent the draft specifications to all four (4) licensees and gave each licensee one (1) LSEN school to connect as a pilot project.

Vodacom, MTN and Liquid Telecom managed to complete their pilot schools and have provided feedback to the Authority. On the other hand, although Cell C assessed the pilot school allocated to it in November 2018, the licensee is yet to implement. A meeting was held with Cell C (on 24 January 2020) to address the matter in which Cell C reiterated its commitment to the LSEN project and in particular, to connect its pilot school so as to provide feedback that will also inform the finalisation of the LSEN specifications. However, Cell C did not commit

to a specific date/deadline by which it will conclude its pilot project to connect the LSEN school.

To date, Vodacom connected and twenty-four (25) schools for Learners with Special Educational Needs (LSEN), and one (1) of the twenty-five schools was a pilot school. However, the licensee is required to go back to the 24 schools and provide additional learner and teacher devices.

MTN connected thirty-four (34) schools for Learners with Special Educational Needs (LSEN), and one (1) of the thirty-four schools was a pilot school. However, the licensee is required to go back to thirty (33) schools and provide additional learner and teacher devices.

MTN, Vodacom and Liquid Telecom have since provided the Authority with submissions that form feedback to the roll out of the pilot schools. In addition to that, the Authority held a meeting with the three (3) licensees in January 2020, where they presented their implementation plans with respect to the LSENs.


4.3.3. **Universal Service Obligations (USAO) (Other Licensees)**

The Universal Service and Access Obligation Council Committee was constituted in 2016 to amend the USAO for Sentech, Telkom and Rain. On 26 January 2017, the Authority published the Amendment of the USAO for Sentech, Telkom and WBS (now Rain) to provide connectivity to TVETS and Primary Healthcare Facilities.



Department of Higher Education & Training informed the Authority that TVETS campuses have already been connected and requested that the Authority provide connectivity to CETs and CLCs.

The Authority's Council Committee responsible for this project continues to track the process to amend the USAO and ensure the completion of same.

Table 4: USAO – Other licensees

	<p>Sentech's USO obligations¹³ initially required it to connect 1500 (one thousand five hundred) public rural schools and e-Learning Solutions Platforms to all TVET's nationally as allocated by the Authority. It has since connected 123 (one hundred and twenty-</p>
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¹³ Request for Amendment of Sentech SOC LTD Universal Service and Access License Obligations, Government Gazette No. 40575, of January 2017.

	<p>three). The Authority has since proposed the provision of a local area network for 63 (sixty-three) community education and training and community learning centres. Consultations with all stakeholders are completed and the Authority will publish the Draft Notice for public comments in mid-February 2021.</p>
	<p>WBS's USO obligations¹⁴ initially required that it provide internet access to no less than 1000 (one thousand) rural and urban public schools. WBS has connected 1 900 (one thousand nine hundred) schools to date.</p> <p>Consultations that will bring changes to the initial obligation have been concluded with stakeholders agreeing to the connectivity of 63 (sixty- three) community education and training and community learning centres. The proposal was published for public comment on 13 March 2020. The Authority will publish the final Specifications in the last week of March.</p>
	<p>Telkom's obligations were initially to provide connectivity as follows:</p> <ul style="list-style-type: none"> • Internet access and services to 3,631 (three thousand six hundred and thirty-one) public health institutions allocated (not done yet and forms part of the review process); and • 120 000 (one hundred and twenty thousand) public payphones, which Telkom installed. <p>The Authority is in the process of reviewing the Telkom USO obligations emanating from a request from Telkom based on the following factors:</p> <ul style="list-style-type: none"> • changed circumstances in the market i.e. widespread prevalence of mobile phones, unavailability of the company to manufacture and produce public payphones; • vandalism of public payphones; • escalating maintenance costs; and

¹⁴ Request for Amendment of WBS Universal Service and Access License Obligations, Government Gazette No. 40575 of 26 January 2017.

	<ul style="list-style-type: none"> • changes in technology making public payphones less relevant. <p>An initial consultation took place and stakeholders agreed on further engagement. The representatives from the DoH however withdrew from the engagements while seeking mandate from their management. The office of the CEO is in the process of co-ordinating a meeting between the office of the DG Health and the Chairperson of the USAO Committee to find a way-forward.</p>
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4.4. **Compliance Procedure Manual Regulations (CPMR)**¹⁵

The main objective of the Compliance Procedure Manual Regulations was the streamlining the submission of compliance information in a simplified manner. The required information was consolidated into forms that licensees complete periodically and submit to the Authority. The forms in the CPMR outline the requisite compliance information that licensees must provide, to give a picture of their compliance with various legislative and regulatory requirements. The forms that apply to ECS/ECNS licence holders, together with their respective requirements are outlined below.

4.5. **Form 1: Shareholding and Staff component**

Form 1 is used to ascertain licensees' basic company information and the structure thereof. This enables the Authority to have insight into the layout of the ICT sector with respect to employment/staff and shareholding distribution by race, gender, historically disadvantaged groups (HDGs), youth, people with disabilities and women. The HDGs information received pursuant to this form provides the Authority with a sense of the extent of transformation within the ICT sector for purposes of attaining the 30% shareholding quota, in line with the requirements of section 9 (2) (b) of the ECA.

In further pursuance of that objective, section 13 of the ECA read with Regulation 12 of the Processes and Procedures Regulations has made it a requirement for individual licence applications for transfer of both ownership and control to only be approved, where the transferee concerned meets the requirement for a minimum of 30% of its equity shareholding to be held by HDGs.

¹⁵ Published in *Government Gazette* No. 34863 dated, 15 December 2011.
ECS/ECNS Annual Compliance Report 2020/21

4.5.1. Form 1 - Findings

Shareholding: In light of the fact that the requirement to have 30% HDG shareholding was introduced after the licence conversion process, many licenses do not have any or have very little HDG as part of their equity ownership. Although this is changing at a very slow pace.

4.5.2. Historically disadvantaged groups (HDGs) Shareholding

The HDG representation within the five major licensees is as provided by licensees and verified by their registration certificates at Company and Intellectual Property Commission (CIPC) offices. The figure below demonstrates the relevant HDG percentages:

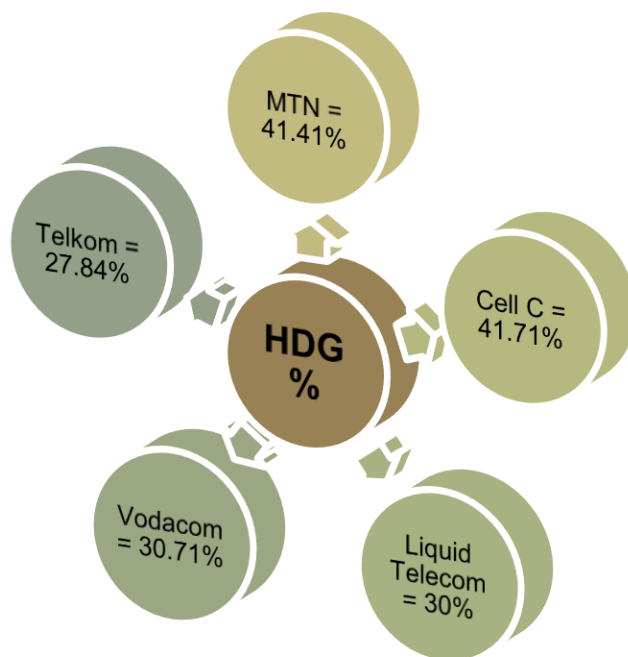


Figure 11: Main Licensees - HDG Shareholding

Having analysed the Forms received from Licensees, it is generally apparent that women shareholding within the industry, though existent, it is still at a significantly lower level looking at the country demographics. Table 10 below, shows the non-management staff breakdown of the major players¹⁶ in the industry:

¹⁶ Major players for purposes of this report only looks at those mentioned in table 6

Table 5: Staff Numbers – Sample

	Female	Male	Total	Black	Coloured	Indian	White
Broadband Infraco	17	39	56	51	1	0	4
Cell C	1 375	1 201	2 576	1 655	379	283	259
Dark Fibre	250	418	668	331	104	60	165
Liquid Telecom	261	502	763	318	94	128	223
Lycamobile	10	15	25	19	1	3	2
MTN	2 192	2 173	4 365	2 594	632	571	568
MyVoip	5	11	16	2	1	12	1
Sentech	71	221	292	228	18	10	36
Telkom	3 164	6 889	10 053	5 062	1 433	938	2 620
Vodacom	1 130	1 251	2 381	1 260	482	258	381
Vumatel	21	37	58	6	1	4	3

4.5.3. Management distribution

The table below shows the management breakdown in the major industry players by race and gender.

Table 6: Management breakdown in major Licensees

Licensee	Male	Female	Black	White	Indian	Coloured
Cell C	102	34	27	60	33	16
Dark Fibre	72	38	24	56	14	6
Liquid Telecom	6	4	4	3	2	1
MTN	543	284	345	230	167	85
Telkom	1 974	866	870	1 353	381	236
Vodacom	208	107	77	122	81	35
Vumatel	37	21	6	37	3	4

The trend in management at Licensees that were assessed, reflects men still being in a great majority comparatively speaking. Also, with respect to race (management), still indicates a lead by White people especially males, followed by Black, Indian and Coloured people.

4.5.4. Form 2: General Licence Fees and 3: Universal Service and Access Fund

The findings of Forms 2 and 3 are dealt with in paragraphs 4.1 and 4.2, above.

4.5.5. Form 4: E - Rate

For purposes of this form, relevant licensees provide the Authority with a report with respect to E-rate services provided. Although the USO project continues to be rolled out, licensees remain frustrated about non-implementation of the 50% E-rate, by the Universal Service and Access Agency of South Africa's (USSASA), as stipulated in regulation 3.1 of the E-Rate Regulations.

4.5.6. Other Forms

Form 5: Tariff Report Form	<ul style="list-style-type: none"> • Indicates which tariff/s is/are being charged by respective licensees.
Form 6A: Sectoral Planning Form	<ul style="list-style-type: none"> • Provides information in relation to the ICT industry e.g churn rates/ interconnection traffic & number portability
Form 7A: Code of Conduct	Consumer (information in relation to consumer information, rights and recourse)
Form 7C : Code on People with Disabilities	<ul style="list-style-type: none"> • Reports on whether licensees put in place relevant facilities for thr needs of the disabled
Form 12: Compliants report	<ul style="list-style-type: none"> • provides information in relation to the extent to which licensees receive complaints and how they are attended to.

Figure 12: Other forms

No major non – compliance aspects were picked up when analysing the forms mentioned in figure 12 above.

4.6. End User and Subscriber Service Charter Regulations, 2009 (EUSSCR)

4.6.1. Data roll over and transfer

ECS-ECNS Compliance in collaboration with the Policy, Research and Analysis (PRA) division, they have on a number of occasions met various licensees (Cell C, MTN, Vodacom and Telkom), with a view to ensure that all parties were on the same wavelength with respect to the interpretation and application of the following sub-regulations:

- Regulation 8B (3) thereof provides as follows:

“A licensee must provide end-users with an option to roll over unused data before the expiry date. In the event of unused data being rolled over, a licensee shall in the first instance apply data usage against the roll over data until that data is fully depleted, and thereafter against the newly allocated data.”

- Regulation 4.5 of which provides as follows:

“A licensee must provide an end-user with an option to transfer data to other end-users utilising services of the same Electronic Communications Service licensee.”

Lots of correspondence was exchanged between the Authority and the parties seeking clarity on the issues raised. Though the team that was involved was of the view that the licensees were in some instances not on the same page with the Authority, Compliance could not consider referring the said aspects of the regulation to the Complaints and Compliance Committee (CCC), on the basis of legal advice that had been sought by the Consumer Affairs Unit because the allegations of non-compliance were more a product of divergent interpretations by the Licensees concerned. Therefore, on the basis of the recommendation per from the Legal Risk and Complaints and Compliance Committee Division, that was provided in July 2020, Compliance put proceedings in the CCC, in abeyance for the Authority to consider whether to amend the EUSSCR Regulations in their current form.

4.7. Network Availability

The EUSSCR Regulations also create an obligation for Licensees to make compliance submissions in relation to their network availability. In relation to the Service Charter Regulations, the report will sample and report on the key industry players Liquid Telecom, MTN, Vodacom, Broadband Infraco and Telkom. The submissions are summarised below:

Table 7: Network availability figures

Regulation 9(1)	An average of 95% of network service availability over a period of six (6) months.					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	<p>95% Fixed = compliant</p> <p>Fixed Wireless: 95% = compliant</p>	<p>Fixed: 99% = compliant</p> <p>Mobile: 98% = compliant</p>	<p>99.73% - Fixed {Wireline} = Compliant</p> <ul style="list-style-type: none"> Diginet Fibre (IP Connect and LAN Connect Fibre) Microwave <p>97.62% - Fixed Wireless Services = Compliant</p> <p>99.83% - Fibre to home & businesses services (Optical line terminals)</p>	<p>95.28% = compliant</p>	<p>95.74 % = compliant</p>	<p>99.51% = compliant</p>

			97.62% - Mobile Services = Compliant			
Regulation 9(2)	An average of 95% of EC service availability within a specified area of coverage over a period of six (6) months.					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	95% = compliant	99% Fixed wireless Services = Compliant 96% Mobile Services = compliant	99.73% - Fixed {Wireline} = Compliant <ul style="list-style-type: none"> • Diginet • Fibre (IP Connect and LAN Connect Fibre) • Microwave 97.62% - Fixed Wireless Services = Compliant 99.83% - Fibre to home & businesses services (Optical line terminals) = Compliant	99.30% = compliant	99.80% = compliant	Not applicable (ECNS holder)

			97.62% - Mobile Services = Compliant			
Regulation 9(5)	Average time to install service – attain 90% success rate within thirty (30) days.					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	Enterprise: 90% = compliant Non-enterprise: 95% = compliant	98% = compliant	85% - Fixed Services (Business Services – Broadband Connect Wireless Premium Brownfield orders) 98.9% - Fixed Wireless Services (Broadband Connect Wireless Lite) 96% - Fixed Service (Residential Services) 98.3% - Business 96% - Fixed Services 96% - Fixed Services (Residential Services)	99.98% = compliant	Residential: 99.67% = compliant Business: 96.38% = compliant	100% (in 2 days) over 90% target = compliant

			85% - Business Services 100% - Mobile Services "Averaged time to install (93.60%) = Compliant"			
Regulation 9(5)	Activation within 48hrs (after installation) Fixed Business =90%, Fixed Res 95%. Fixed wireless = 95%. Mobile = 99%					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	95% = compliant	36 hrs over 99% activated within 48hrs target = compliant	98.3% - (Fixed Services) successfully installed within 30 days from the date of request = Compliant 98.9% - (Fixed Wireless Services) activated within 48 hours = Compliant	99.98 % = compliant	Mobile 98.93% = complaint Fixed 98.93% = compliant	100 % activation within 48 hours = compliant
Regulation 11	Licensee is required to indicate its communication method with customers if it is unable to provide the relevant service.					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco

Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	Website, SMS & telephone = compliant	website = compliant	Indicated = compliant	Website & App = compliant	Website & booklet = compliant	Indicated = compliant
Regulation 12						
	The percentages of connectivity failure rate must not exceed an average of 3% of all connections, over a period of six (6) months.					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	Compliant	0.33% = Compliant	0.42% over a no more than 3% target = compliant	No info (followed up)	No info (followed up)	0.49% over a no more than 3% target = compliant
Operator assisted calls must be answered within three (3) minutes averaged over twelve (12) months. (No % target)						
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	No info (followed up)	173 HV prepaid= 51 seconds, general prepaid = 26 seconds, (high value) = 163 secs,	100% of calls answered in 3 minutes = compliant	97.98% of calls answered in 3 minutes	No info (followed up)	100% of calls answered in 3 minutes = compliant

		general post-paid = 38 seconds over target of 3 min: compliant				
Regulation 12						
	Licensee to indicate if network monitoring centre is available, where it is situated and how it operates.					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	No info (Followed up)	Indicated = compliant	Indicated = compliant	Indicated = compliant	No info (followed up)	Indicated = compliant
Regulation 8						
	Maintenance of an average of 90% fault clearance rate for all faults reported within three (3) days.					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	90% cleared within 5 days' target = not compliant	96% cleared within 24 hrs = compliant	No info (followed up)	No info (followed up)	No info (followed up)	100% over a 90% target = compliant
Regulation 9						
	The remaining 10% of faults reported must be cleared within six (6) days of reporting of the fault.					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020

Findings	No info (followed up)	Indicated = compliant	100% of all faults cleared = Compliant	No info (followed up)	No info (followed up)	100% of all faults cleared within 3 days = Compliant
Regulation 12(3)	Licensee must indicate a point of entry for complaints.					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	Not Indicated = (followed up)	Indicated = complaint	Indicated = complaint	Indicated = compliant	Indicated = complaint	Indicated = complaint
Regulation 12 (4)	Licensee must indicate the complaints handling procedure					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	No info (followed up)	indicated = complaint	Indicated = complaint	Indicated = complaint	Indicated on various platforms = compliant	Indicated =complaint
Regulation 12 (6)	Licensee must acknowledge receipt within forty -eight (48) hrs					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb - July 2020	Feb - July 2020	April – Sept 2020
Findings	No info = (followed up)	Indicated = compliant	Indicated = complaint	No info (followed up)	No info (followed up)	Indicated = Complaint
Regulation 12(7)	Licensee must indicate how many complaints were resolved within fourteen (14) days.					
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco

Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb - July 2020	Feb - July 2020	April – Sept 2020
Findings	No info = (followed up)	Indicated = compliant	Indicated = complaint	Indicated = complaint	No info = (followed up)	Indicated = complaint
Regulation 12 (12)						
Licensee must indicate how many complaints were referred to the Authority for resolution.						
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	No info =Not compliant	Indicated = compliant	Indicated = complaint	No info = (followed up)	No info = (followed up)	Indicated = complaint
Regulation 12 (12)						
Licensee must report on the time for resolution of complaints referred by the Authority.						
	Liquid Telecom	MTN	Vodacom	Cell C	Telkom	Broadband Infraco
Reporting period	Feb – July 2020	March – Aug 2020	Feb – July 2020	Feb – July 2020	Feb - July 2020	April – Sept 2020
Findings	No info (followed up)	Indicated = compliant	Indicated = complaint	Indicated = complaint	No info (followed up)	Indicated = complaint

4.8. Interconnection Agreements

In accordance with section 39 of the ECA, licensees have an obligation to submit, for the Authority's review, any interconnection agreement that they have entered into, no later than seven (07) days from the date of signature of the agreement.

The Authority's review of the submitted agreements is undertaken in line with the provisions of (i) section 39 of the ECA; (ii) the Interconnection Regulations¹⁷; and (iii) the Call Termination Regulations¹⁸, as amended. For purposes of the 2020/2021 financial year, the Authority received 15 interconnection agreements for review. When reviewing the said interconnection agreements, CCA considers factors such as financial and technical feasibility, quality of service, non-discrimination and transparency by the interconnection providers towards interconnection seekers.

In the event that one or more of the required principles are not adhered to, the ECS/ECNS Compliance Unit will notify the parties to rectify the non-compliance to ensure that the agreement meets the regulatory requirements. In instances of legislative or regulatory non-compliance, the contravention would be referred to the CCC for hearing and adjudication.

For the period under review, the Authority had to return a total of four (4) interconnection agreements to the parties for amendments, in order to be compliant with the legislative and regulatory requirements. Briefly, the reason for returning those, was that parties had charged rates that are not in accordance with the Call Termination Regulations.

4.9. Facilities Leasing Agreements

On the other hand, section 43 of the ECA creates an obligation for filing agreements on the leasing of electronic communications facilities between licensees. Upon review of the facilities leasing agreements, the ECS/ECNS Compliance Unit has to ensure that licensees comply with the provisions of the ECA and the Facilities Leasing Regulations¹⁹. Where there is non-adherence or lack of clarity with respect to any of the legislative or regulatory requirements, the lodging party will be notified and afforded an opportunity to provide additional information and/or clarity. However, no facilities leasing agreements were received for review for the 2020/2021 financial year.

¹⁷ Interconnection Regulations as published in *Government Gazette* No. 33101 of 9 April 2010.

¹⁸ Call Termination Amendment Regulations, 2017 published in *Government Gazette* No. 41132 dated 22 September 2017.

¹⁹ Electronic Communications Facilities Leasing Regulations, 2010.

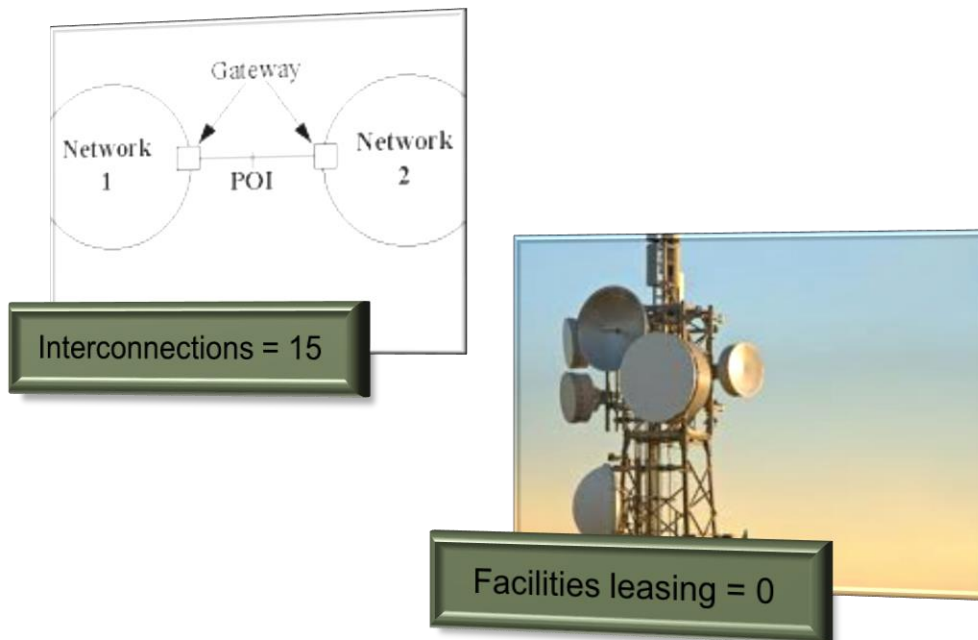


Figure 13: Interconnection & Facilities Leasing Agreements numbers

4.10. Extensions and Notifications

4.10.1. Extension of Commencement Date

Should for whatever reason a licensee not be able to commence operations as per the licence commencement date, they are required in terms of regulation 5 of the Standard Terms and Conditions Regulations, to notify the Authority and request an extension of commencement period, to avoid non-compliance with the above-mentioned provision. Licensees are given a period of twenty-four (24) months for ECNS licences and twelve (12) months for ECS licences, within which to commence operations. The Authority may – upon request and with good cause shown - grant a maximum of one 24- month extension, for commencement of operations. For the current financial year, the Authority did not receive any request for an extension of commencement of operations.

4.10.2. Notifications

Schedule 2, regulation 2 of the Standard Terms and Conditions Regulations, creates an obligation for licensees to notify the Authority of changes to licence information such as an address, contact persons or shareholding. The notice to the Authority must be submitted in terms of Form O of the Processes and Procedures Regulations within the period of 7 days of the occurrence of the change.

5. REFERRALS TO THE COMPLAINTS AND COMPLIANCE COMMITTEE (CCC)

Whenever the ECS/ECNS unit comes across instances of minor non-compliance, the Unit goes an extra mile in an endeavour to ensure compliance by any licensee. However, where there may be serious or even repeat non-compliance, the licensee will not hesitate to refer the matter to the CCC, for hearing and adjudication.

In the current financial year, no licensee was referred to the CCC.

6. CONCLUSION

- 6.1. The overarching compliance mandate flows from the obligations in terms of the Electronic Communications Act, 2005 as amended and the Independent Communications Authority of South Africa Act, 2000 as amended. The compliance monitoring process requires the department to assess compliance with more than 15 Regulations and the licence terms and conditions as detailed in section 3 above.
- 6.2. The current financial year was a difficult. The compliance universe was broadened by the promulgation of the ICASA ICT COVID -19 National Disaster Regulations in April 2020. The said Regulations required analysis and monitoring of additional obligations albeit those were somewhat watered down given the circumstances. Notwithstanding, the Covid Regulations also play a significant role to ensure compliance nonetheless, to respond in a more targeted manner, to the extraordinary circumstances brought on by the global pandemic.
- 6.3. It remains a tall order due to limited resources, to ensure compliance with their licence conditions and related regulatory obligation by all Licensee, in the sector. Nevertheless, in general there is a significant increase year on year, in the level of compliance.

MARCH 2021

END