



**I C A S A**

Independent Communications Authority of South Africa  
Pinmill Farm, 164 Katherine Street, Sandton  
Private Bag X10002, Sandton, 2146

**ECS/ECNS/0400/AUG/09**

**DARK FIBRE AFRICA (PTY) LTD  
COMPLIANCE REPORT – 2011/2012**

## **1. INTRODUCTION**

The following report is intended to give an account of Dark Fibre Africa (Pty) Ltd's compliance for the 2011/2012 financial year. Dark Fibre Africa (Pty) Ltd is required to comply with the Electronic Communications Act 36 of 2005 (the Act), applicable regulations and licence terms and conditions.

## **2. BACKGROUND**

On 12 August 2009, the Authority issued Dark Fibre Africa with the following converted Licences:

- Individual Electronic Communications Network Services (I-ECNS) Licence with licence number 0400/IECNS/AUG/09; and
- Individual Electronic Communications Services (I-ECS) Licence with licence number 0400/IECS/AUG/09.

This Annual Compliance Report assesses Dark Fibre Africa's compliance with the Licence Terms and Conditions, General Licence Fees Regulations ("ALF"), the Universal Service and Access Fund and Form 1 Standard Terms and Conditions. Dark Fibre Africa's financial year end is **31 March**.

Below is an analysis of compliance with the abovementioned regulations.

## **3. DISCUSSION**

### **3.1. COMPLIANCE PROCEDURE MANUAL REGULATIONS, 2011; FORM 1 STANDARD TERMS AND CONDITIONS FOR ECS, ECNS AND BS**

The Compliance Procedure Manual Regulations were published on 15 December 2011.

The purpose of these Regulations is to assist the Authority to proactively monitor compliance and to ensure that information is obtained in a consistent format.

These Regulations apply to all licensees issued with a licence in terms of chapter 3 and 9 of the Act and in terms of the Postal Services Act, 1998 (Act 124 of 1998).

## **General Licence Information**

**3.1.1 Organisation Status-** Dark Fibre Africa leases unlit optical fibre to their I-ECS licenced clients to carry electronic communications services to their customers. Dark Fibre Africa is based in Pretoria.

**3.1.2 Ownership – Dark Fibre Africa** - ownership is limited to local ownership. In terms of its report HDI constitutes 36%.

**3.1.3 Shareholding-** Dark Fibre Africa has 3 shareholders and all are South African companies. The shareholders are: CIV Fibre Network Solutions (Pty) Ltd with 69.493%; New GX Capital Holdings with 11.296% and Remgro Limited with 19.211%.

**3.1.4 Staff-** Dark Fibre Africa has two hundred and sixteen (216) staff members. Of the two hundred and sixteen (216) staff members in the company one hundred and twenty seven (127) are in the technical department, 66% of which are males and 58% are whites. In its management, the company has fifteen (15) staff members, 86% of which are males and 73% are whites.

**3.1.5** The company's HDI shareholding is partly through direct and indirect shareholding. The company states that New GX Capital Holdings is an HDI shareholder. The company states that another HDI shareholder is a company called CI Holdings and this company holds a stake at CIV Fibre Networks which is a 69% shareholder of Dark Fibre Africa. Through this indirect shareholding, Dark Fibre Africa considers CI Holdings one of its HDI shareholders.

## **3.2. LICENCE TERMS AND CONDITIONS**

**Network Coverage** – Paragraph 2 of the Schedule to the issued Licences requires *"the licensee to provide national coverage of its electronic communications network services."*

### **3.2.1 . Network Coverage**

Dark Fibre Africa constructs unlit optical fibre which it leases to its licenced clients to provide electronic communications services to customers. Its geographical coverage is measured by the number of kilometres of optical fibre it has rolled-out.

### **3.2.2. Dark Fibre – Optical Fibre Roll-Out**

As at the 30<sup>th</sup> of September 2012, Dark Fibre Africa's rolled-out optical fibre covered a total distance of six thousand six hundred and sixty two (6 662) kilometres. This represents an increase of 15.35% from its total roll-out as of 31 March 2012. Most of its coverage is concentrated around the Gauteng province, Cape Town and Durban all of which constitute approximately 80% of its total roll-out.

### **3.2.2. Network Type / Infrastructure**

Dark Fibre Africa has unlit optical fibre.

### **3.2.3. Services Offered**

Dark Fibre Africa leases unlit optical fibre to its licenced clients to provide electronic communications.

## **3.3. GENERAL LICENCE FEES REGULATIONS, 2009**

The General Licence Fees Regulations came into operation on the date of publication, being 01 April 2009.

**3.3.1. Regulatory Requirements – Regulation 5** provides that - *"payments in respect of annual licence fees are due as prescribed in schedule 3."*

**3.3.2. Regulatory Requirements – Regulation 1 (4) under Schedule 3** states: *"In respect of Annual Payments, such:*  
*(a) are due annually based on the licensee's financial year;*  
*(b) are due and payable within 6 months from the end of the licensee's financial year end."*

### **Compliance Assessment**

*01 April 2011 to 31 March 2012*

Dark Fibre Africa has not complied with the above Regulations in that it paid its annual licence fees outside the stipulated timeframe of six (6) months stipulated in the Regulations. The payment was due on or before 30 September but was only made on 12 October 2012. The company also submitted its audited financial statements.

### **3.4. UNIVERSAL SERVICES AND ACCESS FUND REGULATIONS, 2011**

The USAF Regulations were published on 10 February 2011 and came into operation on the date of publication.

**3.4.1. Regulatory Requirements - Regulation 3 (1):** requires *"Every holder of a licence granted in terms of Chapter 3, 4 and/or 9 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2% of its Annual Turnover to the Fund"*.

**3.4.2. Regulatory Requirements - Regulation 4(2):** requires that *"Payments in respect of contributions to the Fund:*  
*(a) are due annually based on the licensee's financial year;*  
*(b) are payable within 6 months from the end of the licensee's financial year end.*

#### **Compliance Assessment**

*01 April 2011 to 31 March 2012*

Dark Fibre Africa has a credit with the Authority owing to overpayments it has made in the past. The company's liability in respect of USAF contributions was set off against its credit with the Authority. Dark Fibre Africa has accordingly complied with the above Regulations in respect of the required payment and the required timeframe for the payment.

### **4. CONCLUSION AND SUMMARY OF PERFORMANCE**

#### **4.1 . GENERAL LICENCE FEES REGULATIONS, 2009**

Dark Fibre has not complied with these Regulations in that it paid its licence fees but such fees were not paid within 6 months of its financial year end as required by the Regulations.

#### **4.2 . UNIVERSAL SERVICES AND ACCESS FUND REGULATIONS, 2011**

Dark Fibre Africa has fully complied with these Regulations.

#### **4.3 . NATIONAL COVERAGE – LICENCE TERMS AND CONDITIONS**

Dark Fibre Africa installs unlit optical fibre and its roll-out of optical fibre is concentrated around four (4) cities. The company continuously adds to its total roll-out of optical fibre and does not achieve national coverage as yet.