

COMPLAINTS AND COMPLIANCE COMMITTEE¹

DATE OF MEETING: 24 JUNE 2015

CASE NO: 126/2015

IN THE MATTER OF: DATABRIDGE NETWORK CC

PANEL: PROF JCW VAN ROOYEN SC

CLR NOMVUYISO BATYI

MR JACOB MEDUPE

PROF KASTURI MOODALIYAR

MS MAPATO RAMOKGOPA

IN ATTENDANCE: Mr TP Mtolo from the Office of the Coordinator of the CCC.

NO APPEARANCE FOR THE LICENSEE, which was informed of a possible desist order in terms of section 17E(2)(a) of the ICASA Act 2000 and did not indicate that it wished to be present at a hearing.

Coordinator: Ms Lindisa Mabulu.

JUDGMENT

PROF JCW VAN ROOYEN SC

THE ISSUES

[1] Databridge Network cc failed to file financial statements with ICASA² for the years 2005 up to and including 2012. It also failed to provide proof of payment

1.The Complaints and Compliance Committee ("CCC") is an Independent Administrative Tribunal set up in terms of the Independent Communications Authority Act 13 of 2000. Its constitutionality as an independent Administrative Tribunal has been confirmed by the Constitutional Court. It, inter alia, decides disputes referred to it in terms of the Electronic Communications Act ("ECA") 2005. Such judgments are referred to Council for noting and are, on application, subject to review by a Court of Law. The Tribunal also decides whether complaints (or internal references from the Consumer and Compliance Department or Inspectors at ICASA) which it receives against licensees in terms of the Electronic Communications Act 2005 ("ECA") or the Postal Services Act 1998 (where registered postal services are included) are justified. Where a complaint or reference is dismissed the matter is final and only subject to review by a Court of Law. Where a complaint or reference concerning non-compliance is upheld, the matter is referred to the Council of ICASA with a recommendation as to sanction against the licensee. Council then considers a sanction in the light of the recommendation by the CCC. Once Council has decided, the final judgment is issued by the Complaints and Compliance Committee's Coordinator. A licensee, which is affected by the sanction imposed, has a right to be afforded reasons for the Council's imposition of a sanction. In the normal course, where Council is satisfied with the reasons put forward to it by the Complaints and Compliance Committee as to sanction, further reasons are not issued. The final judgment is, on application, subject to review by a Court of Law.

² The Independent Communications Authority of South Africa.

of the prescribed annual contribution³ to the Universal Service and Access Fund (“USAF”) in terms of section 87(1) of the Electronic Communications Act 2005. After correspondence between ICASA’s Complaints, Compliance and Consumer Department (“*Compliance*”) and Databridge, the latter submitted Financial Statements for the 2009-2010 to 2012 financial years. *Compliance*, which has a delegated⁴ monitoring function in terms of the ICASA Act 13 of 2000, referred the omissions of Databridge to the CCC.

[2]The CCC must decide on two matters: firstly whether the late compliance may be excused and, if not excused, what sanction the CCC should recommend to the Council of ICASA to impose.

APPLICABLE LEGISLATION

[3] The USAF annual financial contribution by licensees, which finds its origin in the Telecommunications Act 103 of 1996, was incorporated by section 89 of the ECA 2005, which became effective from July 2006. Regulations governing the matter were then published in the Government Gazette No. 31499, dated 10 October 2008. These regulations included sanctions which could be imposed by the ICASA Council on the recommendation of the CCC. The 2008 Regulations were, however, repealed in 2011 and substituted by a new set of regulations on the 10th February 2011.⁵ The effect of this is that the CCC may only adjudicate the present matter in terms of these regulations. That means that only omissions to pay the USAF levy as from 10 February 2011 are before the CCC. The CCC is only mandated to act in terms of regulations which existed at

³ In terms of section 89(1) of the ECA.

⁴ See section 4(4)(a) and (c) of the ICASA Act 13 of 2000 as amended.

⁵ See the Addendum for the USAF Regulations.

the time of the alleged omission. There is only one such omission by Databridge after 10 February 2011.

[4] The same issue arises in regard to the filing of financial statements. Regulations which made the filing of annual financial statements obligatory were provided for in the Standard Terms and Conditions published in Notice 1138 of 30 November 2007 in the Government Gazette No. 30530. These Regulations were repealed on 12 September 2011 when new Regulations became operational.⁶ Thus, only contraventions of Regulations from 12 September 2011 may be adjudicated by the CCC.⁷

ADDRESSING THE ISSUES

[5] The first issue before the CCC is whether the late filing of financial statements after 12 September 2011 could be regarded as an omission which may be excused as substantial compliance or whether it should lead to a sanction being considered by the Council of ICASA on the recommendation of the CCC.

[6] The second issue before the CCC is whether the omission by Databridge to pay USAF fees amounts to a contravention and, if so, what sanction should Council be recommended to impose. The omission was also rectified after notice to Databridge by *Compliance*. In a letter to the CCC Coordinator, dated 10 June 2015, the Managing Member denied having known of the duty to file and contribute. They immediately rectified the earlier omission.

⁶ Regulations for Individual Electronic Communications Services Licences 2010 and Regulations for Individual Electronic Communications Network Services 2010. Regulation 8 is applicable. See Addendum to this judgment.

⁷ Retroactive prohibitions of this nature are, in any case, constitutionally not permitted – compare section 35 (3)(l) of the Constitution of the Republic of South Africa 1996. The said section, indeed, deals with criminal offences, but the imposition of a sanction in terms of section 17E of the ICASA Act indirectly relates to criminal law, in so far as the omission to give effect to the sanctions could lead to a prosecution in terms of section 17H(1)(f) of the ICASA Act.

[7] On 26 August 2005 ICASA granted Databridge Networks cc a Value Added Network Services (“VANS”) licence. In 2009 the VANS licence was converted to an Individual Electronic Communications Services (“I-ECS) licence. The licensee was further granted an Individual Electronic Communications Network Services (“I-ECNS”) licence in 2009.

[8] On 16 September 2011 ICASA issued a General Notice calling upon all licensees to furnish Annual Financial Statements to ICASA and to further provide proof of payment of USAF and general licence fees for the period 2010/11 to enable ICASA to carry out its duties. This notice further informed licensees of the interest and late penalty which would be levied on any payments after the prescribed period. It also instructed licensees to provide their latest contact details to ICASA.

[9] On 5 October 2012 ICASA’s Licensing and Compliance Programme, requested Databridge to submit proof of payment in respect of the USAF fees for the period 2005 to 2012 as well as their audited financial statements. On 26 April 2013 ICASA issued a further General Notice calling upon each licensee to submit its Financial Statements or Financial Statements signed by its accounting officer for the 2012-2013 compliance assessment term.

[10] Despite the correspondence and notices Databridge, according to *Compliance*, failed to comply during 2013. However, in 2014 documentation reached ICASA which confirmed that payments plus interest had been made. Databridge argues in a letter of 10 June 2015 to the Coordinator of the CCC that it had, in fact, paid earlier, but that this was not acknowledged by ICASA. However, they concede in the same letter that the submissions were, in any case, late.

[11] We have no doubt that the omission by Databridge amounted to non-compliance of the relevant regulations. As explained above, only one omission (2011-12) is relevant for purposes of this inquiry, since the repealed regulations before 10 February 2011 are not applicable to the present matter. The mere fact that ultimately the documentation was delivered and the payment was confirmed does not alter the omission into substantial compliance.⁸ Databridge explained in a letter to the Coordinator, dated 10 June 2015, that it had not been aware of the requirement of annual submissions until ICASA contacted it in 2012 and informed it that the submissions were overdue. The submissions were then made. However, according to the Managing Member, these submissions were not reflected on the ICASA systems.

[12] Of course the submissions were, nevertheless, late – which was conceded by Databridge. It, however, undertook to “never again submit a late payment” in their letter of 10 June 2015 to the Coordinator. However, a licensee should take reasonable steps to keep it informed of what the law requires from it. A high standard of compliance is expected from a licensee and this was lacking in the present case. In *S v Waglines Pty Ltd and Another*⁹ Judge Didcott¹⁰ held that “ignorance of or mistake about the law is cognisable by the courts only if that excuse is an acceptable one. The answer would depend on the care he

⁸ That “substantial compliance” in effect amounts to “compliance” is borne out by several decisions of our Courts. Compare *Ferris v FirstRand Bank Ltd* 2014 (3) SA 39 (CC) at para. [21] in which Acting Chief Justice Moseneke stated as follows: “While our law recognises that substantial compliance with statutory requirements may be sufficient in certain circumstances, Mr and Mrs Ferris have not given compelling reasons why a substantial-compliance standard would be useful or appropriate in determining compliance with a debt-restructuring order. On the contrary, there is no indication in the wording of the Act or the debt-restructuring order that anything less than actual compliance is required. Further, it was raised for the first time at the hearing before this court, and this court has held that it should be wary of deciding issues raised for the first time on appeal. Finally, even if substantial compliance were appropriate in this case, I am not convinced that Mr and Mrs Ferris had substantially complied by the time summons was issued — at that stage they had only paid R1000 of the almost R9000 owing under the order.”

⁹ 1986(4) SA 1135(N) – taken from the summary of the judgment (italics added). Also compare *S v Longdistance (Natal) (Pty) Ltd* 1990 (2) SA 277 (A).

¹⁰ As from 1994 a Justice of the Constitutional Court.

took or did not take to acquaint himself with the true legal position. That person has a duty to acquaint himself with the true legal position, *particularly when he is engaged in a trade, occupation or activity which he knows to be legally regulated.*” The fact that Databridge rectified the matter immediately is, however, relevant in this regard.

[13] However, the 2011 Regulations clearly illustrate the serious nature of contraventions in this regard, especially when one has regard to the magnitude of the fines. Regulation 12 of the September 2011 Regulations demonstrates this:

“12. Contravention and fines

Upon a determination of non-compliance by the Complaint and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:

- (a) One Million Rands (R1 000 000) for contravention of regulations 2, 3, 4, 5, 7, 8(2), 8(3), 9 and 10.
- (b) One Hundred Thousand Rands (R100 000) for contravention of any regulations not specified in regulation 12(1)(a); and
- (c) Additional One Hundred Thousand Rands (R100 000) for repeated contraventions of these regulations.”

[14] What has been found and said about the Individual Electronic Communications Services Licence (“I-ECS”), is also, in terms of the Regulations, applicable to the Individual Electronic Communications Network Services (“I-ECNS”) Licence. Both sets of Regulations include a Regulation 12 and are identical as to fines.¹¹

[15] In the result the CCC finds that Databridge has contravened the Regulations by not filing its documentation and paying its USAF fees as

¹¹ See the Addendum for both sets of Regulations.

required within the stipulated period. The finding of the CCC is also that it was negligent in not having done so.

[16] It is, however, an extenuating circumstance that Databridge paid immediately after having gained knowledge of the regulations and that it has undertaken to “never again submit a late payment and will seek the necessary confirmation in writing from ICASA so as to avoid situations like this again.” This last reference to “confirmation” pertains to its allegation that it had paid in 2012 when it was informed of the duty to pay – however, it has no confirmation from ICASA for this. The fact of the matter is, however, that it should have known about the regulations and should have paid without a reminder.

ADVICE TO COUNCIL AS TO SANCTION

[17] In the light of the fact that Databridge has a clean record, it is recommended to Council that a so-called “desist sanction” would be appropriate for this case. Section 17E(2) of the ICASA Act provides for several alternative sanctions which may be imposed by the Council of ICASA. Section 17E(2)(a) provides as follows:

“The Complaints and Compliance Committee may recommend that one or more of the following orders be issued by the Authority, namely -

- (a) direct the licensee to **desist** from any further contravention; ...”

This sanction is, effectively, a warning to the licensee. Nevertheless, it does not allow the licensee to believe that Council has not regarded its contravention as serious.

The relevant Regulations also provide for an additional fine of up to R100 000 when a licensee is found to have contravened these Regulations again.¹² That should be regarded as an additional warning to the licensee.



JCW VAN ROOYEN SC

10 July 2015

Councillor Batyi, Mr Medupe, Prof Moodaliyar and Ms Ramokgopa concurred with the judgment of the Chairperson.

SEE ADDENDA

¹² See the attached USAF Regulations:

7. Contraventions and penalties

- (1) Upon a determination of non-compliance by the Complaints and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:
 - (a) One Hundred Thousand Rands (R100, 000. 00) for contravention of regulations 3, 4(2) and 5.
 - (b) Fifty Thousand Rands (R50, 000. 00) for contravention of all the regulations not specified in regulation 7(1)(a), and
 - (c) Additional One Hundred Thousand Rands (R100, 000. 00) for repeated contravention of the regulations.

ADDENDA: RELEVANT REGULATIONS (as at 30 June 2015)

INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICES LICENCES (Commencement: 12 September 2011)

1. Definitions

In these regulations terms used have the same meaning as in the Electronic Communications Act, (No. 36 of 2005) unless otherwise defined in these regulations:

“**Act**” means the Electronic Communications Act, 2005 (Act No. 36 of 2005) as amended;

“**ECN**” means an Electronic Communications Network;

“**ECNS**” means an Electronic Communications Network Service;

“**ECS**” means and Electronic Communications Service;

“**Effective date**” means the date on which the Licence is issued;

“**Licence**” means the individual ECS Licence issued to the Licensee in the form contained in Annexure C of these regulations;

“**Licensee**” means the person named in Licence and issued with a licence

to provide services in terms of Chapter 3 of the Act.

“**PECN**” means a private electronic communications network; and

“**Schedule**” means the schedule to the Licence containing the specific terms and conditions which the Authority has imposed upon the Licensee in terms of section 9(7) of the Act and the related legislation.

2. Notification of licensee details and information

(1) A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes in its licence:

- (a) the name of the Licensee;
 - (b) contact details;
 - (c) shareholder; and
 - (d) Notices and addresses
- (2) Any change or transfers of shares undertaken in terms of 2(1)(c) above must comply with all licence terms and conditions and the Act.

3. Licence area

The licence area for operations under this Licence is the Republic or any part thereof.

4. Duration of the licence

The Licence is valid for fifteen (20) years from the effective date.

5. Commencement and operation of service

- (1) A Licensee must commence operation of the ECS specified in the Licence within six (6) months from the effective date, unless the Authority grants, on good cause shown, an extended commencement period on written application, prior to the expiry of the six (6) months.
- (2) Where a Licensee cannot provide the licensed service due to circumstances beyond its control, for a continuous period of twelve (12) hours or longer, a Licensee must notify the Authority in writing of such circumstances within twenty four (24) hours of the occurrence thereof.

6. Services to be provided by the licensee

A Licensee must provide ECS by means of an ECN operated by ECNS Licensee or a licence-exempt PECN operator.

7. Safety measures

A Licensee must, in respect of all apparatus, equipment and installations that it owns, leases or uses, take such safety measures as may be prescribed and in any event such reasonable and necessary safety measures to safeguard life or property, and to limit exposure to electromagnetic emission, radiation and related risks.

8. Provision of information

- (1) The Authority may, in the course of carrying out its obligations under the Act, require a Licensee to provide information, so as to enable it to:

- (a) monitor and enforce consumer protection, quality of service, competition, compliance with licence conditions and other requirements of the Act and related legislation;
 - (b) allow for the assessment and allocation of applicable fees and related requirements;
 - (c) facilitate the efficient use of scarce resources; and
 - (d) collect and compile information to be used for the purposes of sectoral analysis, planning, reporting and conducting inquiries.
- (2) In respect of each information request referred to in sub-clause (1), except where otherwise addressed in applicable regulations, the Authority will provide, among other things, detailed specifications of its information request, applicable response times and a contact person to whom queries may be addressed.
- (3) The licensee must provide the information in accordance with such format as may be prescribed by the Authority.

9. Publication of tariffs and fees

- (1) A Licensee may not provide any service for a charge, fee or other compensation, unless the price(s) for the service and other terms and conditions of the provision of such service:
- (a) have been made known to the end-user by:
 - (i) making such prices and terms and conditions available for inspection at its offices during business hours; and
 - (ii) providing such details to anyone who requests same at no charge;
 - (b) have been filed with the Authority at least seven(7) days prior to the provision of the said service. In making such a filing, a Licensee must utilise a format approved by the Authority in writing.
- (2) A Licensee must submit to the Authority, on a bi-annual basis, a record of the actual services provided and the actual tariffs charged therefore during the previous six months.

10. Metering and billing arrangements

- (1) A Licensee shall install and operate metering and billing systems which accurately record the extent of the service(s) provided to any end-user.

(2) A Licensee must provide an accurate invoice with a detailed statement of services rendered to any end-user at no charge.

(3) The invoice must include information for the entire period covered by such invoice as follows:

- (a) details of services rendered to the end-user;
- (b) breakdown of charges associated with services, and
- (c) such other relevant information associated with the end-user's account.

(4) Upon request by an end-user, the Licensee must provide an itemised bill, which contains a sufficient level of detail to allow verification of charges incurred in using the services provided by the licensee.

(a) Each detailed itemised bill shall contain at least the following information in relation to each individual transaction (voice or data call) charge incurred by the subscriber during the relevant billing period:

- (1) destination,
 - (2) dialled number,
 - (3) date,
 - (4) time,
 - (5) duration, and
 - (6) charge for each individual transaction.
- (b) The detailed itemised bill must be provided:
- (i) via post or in an electronic format;
 - (ii) at such a price that takes into account the difference in the mode of delivery.

11. Specific terms and conditions

The Authority may impose additional terms and conditions upon the Licensee in terms of section 9(7) of the Act and the ICASA Act. These specific terms and conditions will be contained in the Schedule.

12. Contravention and fines

(1) Upon a determination of non-compliance by the Complaint and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:

- (a) One Million Rands (R1 000 000) for contravention of regulations 2, 4, 5, 7, 8(2), 9 and 10;
- (b) One Hundred Thousand Rands (R100 000) for contravention of any regulation not specified in regulation 12(1)(a), and
- (c) One Hundred Thousand Rands (R100 000) for repeated contravention of the regulations.

13. Notices and addresses

- (1) Any notice or certification given by the Authority or the Licensee shall be in writing and:
 - (a) if delivered by hand to the recipient's address, it shall be deemed, until the contrary is proven, that it has been received at the time of delivery;
 - (b) if posted by pre-paid registered post from an address within the Republic of South Africa, it shall be deemed, until the contrary is proven, to have been received on the 14th day after the date of posting; or
 - (c) if sent by facsimile transmission during normal business hours, proof of successful transmission shall be deemed to be proof of receipt, unless the contrary is proven.
- (2) A Licensee shall provide the Authority with an address where it will accept formal service of letters, documents and legal process in this regard as well as a fax and telephone number on which it can be contacted as set out in the Licence.

14. Short title and commencement

These regulations are called the Standard Terms and Conditions for Individual Electronic Communication Services 2010, and will come into operation by notice in the gazette.

15. Repeal of regulations

These regulations repeal Government Gazette No. 30530 containing the Standard Terms and Conditions for Individual licences published in Notice 1138 of 30 November 2007 in its entirety.

INDIVIDUAL ELECTRONIC COMMUNICATIONS *NETWORK* SERVICES LICENCES 2011 (Commencement: 12 September 2011)

1. Definition

In these regulations terms used have the same meaning as in the Electronic Communications Act. (No. 36 of 2005) unless otherwise defined in these regulations:

“Act” means the Electronic Communications Act, 2005 (Act No. 36 of 2005) as amended;

“ECN” means an Electronic Communications Network;

“ECNS” means an Electronic Communications Network Service;

“Effective date” means the date on which the Licence is issued;

“Licence” means the individual ECNS Licence issued to the Licensee in the form contained in Annexure B of these regulations;

“Licensee” means the person named in Licence and issued with a licence to provide services in terms of Chapter 3 of the Act;

“Schedule” means the schedule to the Licence containing the specific terms and conditions which the Authority has imposed upon the Licensee in terms of section 9(7) of the Act and the related legislation.

2. Notification of licensee details and information

- (1) A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes in its licence:
 - (a) the name of the Licensee;
 - (b) contact details;
 - (c) shareholding; and
 - (d) Notices and addresses.

- (2) Any change or transfers of shares undertaken in terms of 2(1)(c) above must comply with all licence terms and conditions and the Act.

3. Licence area

The licence area is as defined in the Licence issued to a Licensee.

4. Duration of the licence

The Licence is valid for twenty (20) years from the effective date.

5. Commencement and operation of service

- (1) A Licensee must commence operation of the ECNS specified in the Licence within twelve (12) months from the effective date, unless the Authority grants, on good cause shown, an extended commencement period on written application, prior to the expiry of the twelve (12) months.

- (2) Where a Licensee cannot provide the licensed service due to circumstances beyond its control, for a continuous period of twelve (12) hours or longer, a Licensee must notify the Authority in writing of such circumstances within twenty four (24) hours of the occurrence thereof.

6. Services to be provided by the licensee

A Licensee must construct, operate and maintain an ECN as well as provide ECNS in the licence area.

7. Safety measures

A Licensee must, in respect of all apparatus, equipment and installations that it owns, leases or uses, take such safety measures as may be prescribed and in any event such reasonable and necessary safety measures to safeguard life or property, and to limit exposure to electromagnetic emission, radiation and related risks.

8. Provision of information

- (1) The Authority may, in the course of carrying out its obligations under the Act, require a Licensee to provide information, so as to enable it to:
 - (a) monitor and enforce consumer protection, quality of service, competition, compliance with licence conditions and other requirements of the Act and related legislation;
 - (b) allow for the assessment and allocation of applicable fees and related requirements;
 - (c) facilitate the efficient use of scarce resources; and
 - (d) collect and compile information to be used for the purposes of sectoral analysis, planning, reporting and conducting inquiries
- (2) In respect of each information request referred to in sub-clause (1), except where otherwise addressed in applicable regulations, the Authority will provide, among other things, detailed specifications of its information request, applicable response times and identify a contact person to whom queries may be addressed.
- (3) The licensee must provide the information in accordance with such format as may be prescribed by the Authority.

9. Publication of tariffs and fees

A Licensee must submit to the Authority, on a bi-annual basis, a record of the actual services provided and the actual tariffs charged thereof during the previous six months.

10. Metering and billing arrangements

- (1) A Licensee shall install and operate metering and billing systems which accurately record the extent of the service(s) provided to any end-user.

- (2) A Licensee must provide an accurate invoice with a detailed statement of services rendered to any end-user at no charge.
- (3) The invoice must include information for the entire period covered by such invoice as follows:
 - (a) details of services rendered to the end-user;
 - (b) breakdown of charges associated with services, and
 - (c) such other relevant information associated with the end-user's account.
- (4) Upon request by an end-user, the Licensee must provide an itemised bill, which contains a sufficient level of detail to allow verification of charges incurred in using the services provided by the licensee.
 - (a) Each detailed itemised bill shall contain at least the following information in relation to each individual transaction (voice or data call) charge incurred by the subscriber during the relevant billing period:
 - (1) destination,
 - (2) dialled number,
 - (3) date,
 - (4) time,
 - (5) duration, and
 - (6) charge for each individual transaction.
 - (b) The detailed itemised bill must be provided:
 - (i) via post or in an electronic format; and
 - (ii) at such a price that takes into account the difference in the mode of delivery

11. Specific terms and conditions

The Authority may impose additional terms and conditions upon the Licensee in terms of section 9(7) of the Act and the ICASA Act. These specific terms and conditions will be contained in the Schedule and may include but are not limited to:

- (a) Licence area;
- (b) ownership and control structures of the Licensee;
- (c) requirements for ownership and control by persons from historically disadvantaged groups in respect of the Licensee, in addition to any prescribed by the Authority;
- (d) human resources training and skills development undertaken by the licensee;
- (e) service requirements and quality standards; and
- (f) universal service and access obligations, including without limitation, detailed roll-out obligations and incentives for the provision of ECNS in rural and under-served areas, imposed by the Authority in addition to the payment of the prescribed contribution to the Universal Service and Access Fund.

12. Contravention and fines

Upon a determination of non-compliance by the Complaint and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:

- (a) One Million Rands (R1 000 000) for contravention of regulations 2, 3, 4, 5, 7, 8(2), 8(3), 9 and 10.
- (b) One Hundred Thousand Rands (R100 000) for contravention of any regulations not specified in regulation 12(1)(a); and
- (c) Additional One Hundred Thousand Rands (R100 000) for repeated contraventions of these regulations.

13. Notices and addresses

- (1) Any notice or certification given by the Authority or the Licensee shall be in writing and:
 - (a) if delivered by hand to the recipient's address, it shall be deemed, until the contrary is proven, that it has been received at the time of delivery;
 - (b) if posted by pre-paid registered post from an address within the Republic of South Africa, it shall be deemed, until the contrary is proven, to have been received on the 14th day after the date of posting; or
 - (c) if sent by facsimile transmission during normal business hours, proof of successful transmission shall be deemed to be proof of receipt, unless the contrary is proven.
- (2) A Licensee shall provide the Authority with an address where it will accept formal service of letters, documents and legal process in this regard as well as fax and telephone numbers on which it can be contacted as set out in the Licence.

14. Short title and commencement

These regulations are called the Standard Terms and Conditions for Individual Electronic Communications Network Service 2010, and will come into operation by notice in the gazette.

15. Repeal of regulations

These regulations repeal Government Gazette No. 30530 containing the Standard Terms and Conditions for Individual licences published in Notice 1138 of 30 November 2007 in its entirety.

USAF REGULATIONS 2011

Applicable from 10 February 2011 (Regulations published in Government Notice 1270 of Government Gazette No. 31499 dated 10 October 2008 repealed)

1. Definitions

In these regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned.

“Act” means the Electronic Communications Act, 2005 (Act No. 36 of 2005, as amended)

“Agency fees” means the percentage of fixed fees due to the agent;

“Annual Turnover” means total revenue generated from Licensed Activity per annum less service provider discounts, agency fees, interconnection and facilities leasing charges, government grants and subsidies;

“Applicable Interest Rate” means the uniform interest rate set by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act 1 of 1999;

“BS Licensee” means broadcasting service licensee;

“ECNS Licensee” means Electronic Communications Network Service Licensee;

“ECS Licensee” means Electronic Communications Service Licensee;

“Fund” means the Universal Service and Access Fund established in terms of section 87(1) of the Act;

“Licensed Services” means ECS, ECNS and BS provided pursuant to a licence issued to a Licensee in terms of Chapters 3, 4 and 9 of the Act.

“the MDDA” means the Agency established in terms of the Media Development and Diversity Agency Act No. 14 of 2002;

“Service provider discounts” means financial incentives offered to service providers by licensees for the purpose of subscriber base improvement;

“USAF Contribution” means the payment due to the Fund in terms of these regulations.

2. Object of the regulations

- (1) These regulations seek to:
 - (a) prescribe the annual contributions to be paid to the Universal Service and Access Fund (“the Fund”) by persons issued with licences in terms of chapters 3 and 9 of the Act;
 - (b) specify the date when such contributions to the Fund become payable and the manner in which they must be paid.

3. Contributions to the universal service and access fund

- (1) Every holder of a licence granted in terms of Chapters 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.

- (2) A BS licensee who has paid an annual contribution to the MDDA must set off that contribution against its USAF Contribution, provided that the MDDA contribution and the USAF contribution against which it is set off are for the same financial year.

4. Payment of contributions

- (1) Where a legal entity holds any combination of a BS Licence, ECS Licence and/or ECNS Licence, such entity may calculate the USAF contribution based on the Annual Turnover from aggregated revenue generated from the combined licences.
- (2) 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; and
 - (c) May only be paid by way of an electronic transfer or via a direct deposit into the Authority's bank account, and
 - (d) must be based on the:
 - (i) Audited annual financial statement of the licensee; or
 - (ii) Financial statements signed and sworn to by the accounting officer of the licensee where the licensee is not legally obliged to provide audited financial statements.

5. Interest

Interest on all late payments in respect of contributions to the Fund is payable at the Applicable Interest Rate and in accordance with the manner prescribed in regulation 4 where payment is overdue.

6. Amendment or repeal

Government Notice 1270 of Government Gazette No. 31499 dated 10 October 2008 is hereby repealed.

7. Contraventions and penalties

- (1) Upon a determination of non-compliance by the Complaints and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:
- (a) One Hundred Thousand Rands (R100, 000. 00) for contravention of regulations 3, 4(2) and 5.
 - (b) Fifty Thousand Rands (R50, 000. 00) for contravention of all the regulations not specified in regulation 7(1)(a), and
 - (c) Additional One Hundred Thousand Rands (R100, 000. 00) for repeated contravention of the regulations.

8. Short title and commencement

- (1) These regulations will be effective from the date of publication in the Government Gazette.

(2) These regulations will be called the USAF Regulations, 2011.