

COMPLAINTS AND COMPLIANCE COMMITTEE¹

DATE OF MEETING: 24 JUNE 2015

CASE NO: 84/2015/2015

IN THE MATTER OF: DEPARI INVESTMENTS CC T/A DEPARI ONLINE

PANEL: PROF JCW VAN ROOYEN SC

CLR NOMVUYISO BATYI

MR JACOB MEDUPE

PROF KASTURI MOODALIYAR

MS MAPATO RAMOKGOPA

IN ATTENDANCE: Mr Lwazi Myeza 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, but did not indicate that it wished to be present at a hearing.

COORDINATOR: Ms Lindisa Mabulu

JUDGMENT

PROF JCW VAN ROOYEN SC

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.

THE ISSUES

[1] The Complaints, Compliance and Consumer Department referred allegations of contraventions of regulations against a licensee, Depari Investments cc (“Depari”). After investigation by the Coordinator of the CCC, it was clear that the licensee had, *prima facie*, contravened regulations pertaining to the payments to the Universal Service and Access Fund (“USAF”) for the years 2012 and 2013. On inquiry by the office of the Coordinator, the licensee conceded that it has, in the past, been late in the said submissions. It was stated by the licensee in an email of 29 April 2015 that this was not:

“intentionally done, but the result of various factors, the major one(s) being (that) we are a small business and have been facing staffing issues and mounting costs and time involved in keeping up the (sentence not concluded). With additional Regulations, changes in formats and increase in the information required, as well as the requirement in having to engage and involve the auditors in the preparation of the submissions. This month we had to engage an extra staff member just to deal with the overhead of these matters and during the course of this financial year keep up timeously with the licence regulations”.

[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 advise 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 2011.² The effect of this is that only omissions to pay the USAF levy as from 10 February 2011 are before the CCC. The CCC is only legally mandated to act in terms of regulations which existed at the time of the alleged omission. There are two such omissions by Depari after 10 February 2011:

- *2010/2011 Financial Year.* Authority Due Date: 31 August 2011; Licensee Paid on: 14 January 2013
- *2011/2012 Financial Year.* Authority Due Date: 31 August 2012. Licensee Paid on: 14 January 2013

[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.³ Thus, only contraventions of Regulations from 12 September 2011 may be adjudicated by the CCC.⁴

ADDRESSING THE ISSUES

[5] The first issue before the CCC is whether the late filing of financial statements in terms of the 12 September 2011 Regulations could be regarded

² See the Addendum for the full set of USAF Regulations.

³ Regulations for Individual Electronic Communications Services Licences 2010 and Regulations for Individual Electronic Communications Network Services Licences 2010 (both effective from 12 September 2011). Regulation 8 is applicable. See Addenda to this judgment

⁴ 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.

as an omission which may be excused as substantial compliance or whether it should lead to a sanction being imposed by the Council of ICASA.

[6] The second issue before the CCC is whether the omission by Depari to pay USAF fees timeously amounts to a contravention and, if so, what sanction should Council be advised to impose.

[7] 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 date. It also instructed licensees to provide their latest contact details to ICASA.

[8] Whilst in two other matters which we dealt with on the same day as the present matter, the licensee either confirmed that it had complied or immediately complied when informed that they had not complied, Depari Investments has simply put forward administrative pressure and a shortage of staff, apparently as a result of financial problems, as an excuse. This is no legal excuse. When one wishes to become involved in this competitive field where frequency is scarce, one should at the very least be in a position to have financial statements prepared and the necessary payments made. The 2011 payment was more than sixteen months late and the 2012 payment was four and a half months late.

[9] Despite the notices, Depari failed to comply with its USAF duty on 31 August 2011 and only paid in January 2013. Likewise, it failed to comply on 31

August 2012 and only paid on 14 January 2013. The Annual Financial Statements were also substantially late and were filed on the same dates.

[10] We have no doubt that the omissions by Depari were substantial and cannot be excused.⁵ The mere fact that the contributions were ultimately paid does not alter the omission into substantial compliance. Both payments were substantially late and no acceptable reason was provided. A shortage of staff, based on seemingly insufficient funds, is simply not an excuse. 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 February 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.”

[11] In the result the CCC finds that Depari has contravened the Regulations by not paying its USAF fees within the stipulated period in two instances as from February 2011, when the new regulations became operational. For ease of

⁵ 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.”

reference we include copies of the relevant regulations as addenda to this judgment. Late submission of Annual Financial Statements was, likewise, made.

ADVICE TO COUNCIL AS TO SANCTION

[12] The CCC did not get the impression that Depari was motivated by ill-will in its omissions. Staff problems would seem to be the main cause of the omissions. In any case, ultimately, the amounts were paid. This is also a first finding by the CCC against Depari.

[13] In the light of the extenuating circumstances, 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 orders 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.⁶ That should be regarded as an additional warning to the licensee.

⁶ See the attached USAF Regulations:

J. C. W. van Rooyen

JCW VAN ROOYEN SC

10 July 2015

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

SEE ADDENDUM

ADDENDUM: RELEVANT REGULATIONS (as at 30 June 2015)

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.

**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 an 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.