



Independent Communications Authority of South Africa

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ECS/ECNS (Telecoms)

Compliance Report

2014-2015 Period

Assessed during the 2015-2016 Financial year

Disclaimer: The information contained in this report is as at the time of writing this report, based on the submissions from Licensees.

Date: May 2016.

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i. ACRONYMS

Acronym	Description
ADR	Alternative Dispute resolution
CCC	Complaints and Compliance Committee
CAP	Consumer Advisory Panel
CPA	South African National Consumer Protection Act No 68 of 2008
CPMR	Compliance Procedure Manual Regulations
CRASA	Communications Regulators Association Southern Africa
DoC	Department of Communications
DTPS	Department of Telecommunications and Postal Services
ECA	Electronic Communications Act No. 36 of 2005
ECNS	Electronic Communications Network Service
ECS	Electronic Communications Service
E-Rate	50% discount rate at which internet services are provided to public health institutions, public and private schools, collages, further education and training institutions and higher education institutions, as per section 73 of the ECA.
GLF	General Licence Fee
HDG	Historically Disadvantaged Groups
ICASA Act	Independent Communications Authority of South Africa Act No. 13 of 2000
ICT	Information and Communications Technology
IP	Internet Protocol
ISP	Internet Service Provider
PAIA	Promotion of Access to Information Act No. 2 of 2000
PAJA	Promotion of Administrative Justice Act No. 3 of 2000
POPI	Protection of Personal Information Act No. 4 of 2013
PLMN	Public Land Mobile Network
PSTN	Public Switched Telecommunications Network
PTN	Private Telecommunications Network
QoS	Quality of Service
SADC	Southern African Development Countries

Acronym	Description
SAPO	South African Post Office
SIP	Session Initiation Protocol
SWOT	Strengths, Weaknesses, Opportunities and Threats
UNGCP	United Nations Guidelines for Consumer protection
VANS	Value Added Network Service

1. Introduction

The purpose of the report is to advise on the compliance analysis and evaluation done during the 2015/2016 financial year regarding the performance of ECS/ECNS licensees during the 2014/2015 financial year. The compliance assessment is conducted through compliance monitoring against prescribed Regulations and related Statutes.

The process is conducted over a twelve¹ months period by analysing and assessing compliance information submitted by ECS/ECNS licence holders.

Analysis and assessment for compliance were done with respect to financial compliance (i.e. submission and payments for service licence fees and USAF contributions), Forms submitted in terms of the Compliance Procedures Manual Regulations (CPMR) and assessment of the information given on universal service obligations and others.

Upon conclusion of assessment for compliance, the ECS/ECNS Compliance unit will engage non-complying licensees in order to ensure that they comply with the requirements. If the licensee fails to comply with the requirements the matter is referred to the CCC for hearing and determination thereafter.

This report gives an account of the compliance 'status'² for licensees for the 2014/2015 financial year. The licensees covered in this report are:

- | | |
|---|--|
| (1.) Ares Africa | (10.) Sevenstone Investment |
| (2.) Vox Telecoms | (11.) ENetworks |
| (3.) Seacom | (12.) Mzansi Lesetta Media |
| (4.) MTN | (13.) KCS Group |
| (5.) Orange Business Services
SA (Pty) LTD | (14.) DMR Networks |
| (6.) Cell C | (15.) JSDAAV ZA Telecoms |
| (7.) Level 3 Communications
South Africa (Pty) Ltd | (16.) Rose Courtz Trading (Pty)
Ltd |
| (8.) AT&T South Africa (Pty) Ltd | (17.) Conekt Business Group
(Pty) Ltd |
| (9.) Telemedia | (18.) Olive Tree Technologies CC |

¹ The twelve-month period is the timeline from 1st April to 31 March of the following year which is the financial period of the Authority. Due to difference in the financial period between the Authority and Licensees some information (for licensees) will not be complete at the time of finalising the Authority's Compliance Report by 31 March.

² Compliance with regulatory requirements is broader than what is currently assessed by ECS/ECNS Compliance, due to capacity and structural issues not all aspects of compliance are assessed hence compliance 'status' referred in this case is mainly with regard to compliance requirements confined to the Regulations in the purview of ECS/ECNS.

- | | |
|---|---------------------------------------|
| (19.) Biztec Consulting | (37.) Neotel |
| (20.) Vangibuzz Pty Ltd t/a True
Communications | (38.) Sentech |
| (21.) Kliq (Pty)Ltd | (39.) Broadband Infracore |
| (22.) Digital Dynamix CC | (40.) Swiftnet |
| (23.) KWN networks | (41.) LinkAfrica |
| (24.) C-Way Computers cc | (42.) Connection Telecom |
| (25.) Connectnet | (43.) Hymax Talking Solutions |
| (26.) Desmond Bayley Ramsay
t/a JBJ internet cc | (44.) Edelnet |
| (27.) Altech technology | (45.) BushGuru |
| (28.) Airband High Speed
Internet (Pty) Ltd | (46.) Dark Fibre Africa (Pty) Ltd |
| (29.) Alternative Renewable
Energy Solutions (Pty) Ltd
(AReS) | (47.) Centracom |
| (30.) Wireless Business Solutions
(Pty) Ltd | (48.) WIOCC SA (Pty) Ltd |
| (31.) Huge Telecoms (Pty) Ltd | (49.) Inforstream Technologies |
| (32.) Tribal Zone
Telecommunications CC | (50.) Workonline |
| (33.) iSpace (Pty) Ltd | (51.) Telkom |
| (34.) Easycoms Communications
(Pty) Ltd | (52.) Connect first |
| (35.) EOH Mthombo | (53.) LPD t/a Maxwell |
| (36.) Vodacom | (54.) Snowball Effect |
| | (55.) Xlink |
| | (56.) Xtranet |
| | (57.) Amobia |
| | (58.) Skygistics |
| | (59.) Continuity SA |
| | (60.) Zomerlust Systems designs
cc |

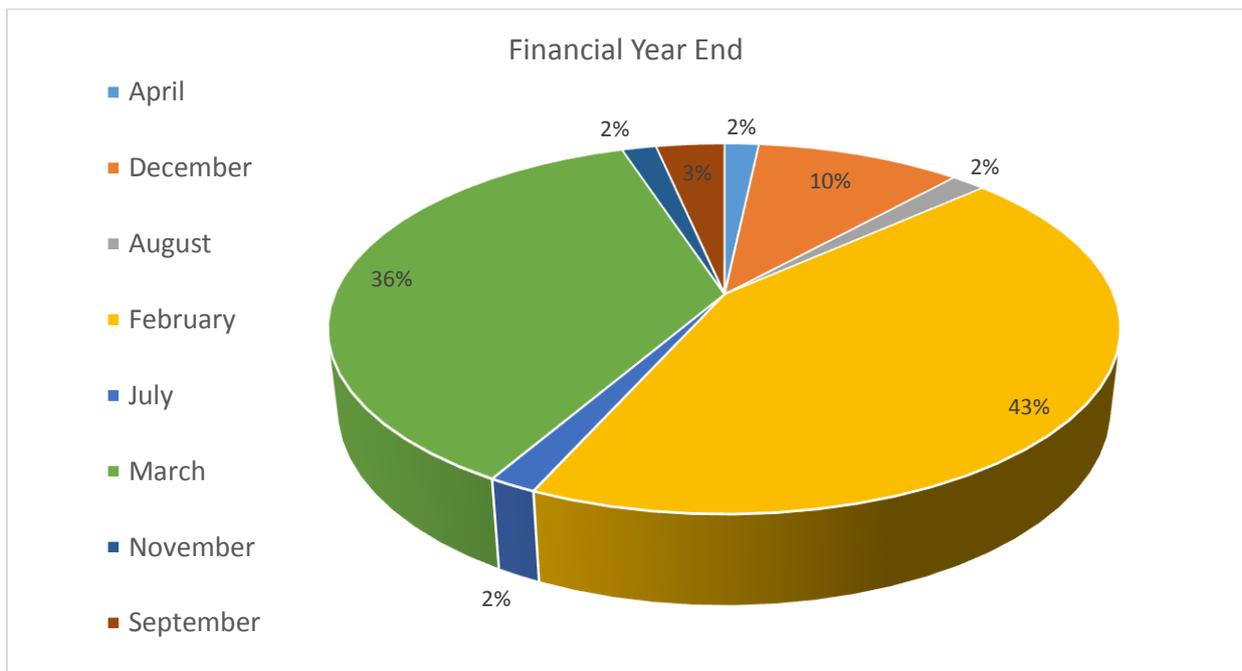
The licensees listed above are assessed based on their compliance submissions which they submit based on prescribed regulatory timelines and their financial year end see **Appendix A, page A**, of the appendices **Annexure A**.

Table 1: Financial Year Ends

FYE	# of Licensees
April	1
August	1
December	6
February	26
July	1
March	22
November	1
September	2

Above table 1 and below figure 1 shows the spread of the months in which each of the 60 licensees under assessment 'fall'. The financial year end has an effect on licence fee collection and conclusion of compliance assessment for the Authority. The Authority has to resort to accepting financial forecast for the purpose of licence fee collections and some assessments are only concluded in the Authority's next financial year.

Figure 1: Financial Year End



2. Legislative Considerations

The following is a breakdown of the licences at the Authority as of 1st of April 2015. All the ECS/ECNS licenses are granted and issued under chapter 3 of the ECA, following the legislated processes as per the ICASA Act. All the ECS/ECNS licences have the same licence terms and conditions.

2.1. ECS/ECNS Licence Holders 2015-2016

As per Chapter 3 of the ECA there are two categories of ECS/ECNS licences: **Individual** and **Class** licences. The Individual licence is the 'national'³ licence whilst the Class licence is a geographically restricted licence. The Individual licence requires the Minister of Telecommunications and Postal Services to issue an ITA⁴ and the Class licence can be applied for directly from the Authority. The ECNS licence permits entities to build, operate and sell communication network services, whilst the ECS licence permits entities to make available communication services for retail directly to the customer/end-user.

It is illegal to provide services without a licence, however the ECA provides for exemptions i.e. resellers can provide services without a licence. The Authority is yet to determine the extent or prevalence of resellers in the market. Section 3.2 below gives an outline of ECS and ECNS licences and licensees in the market.

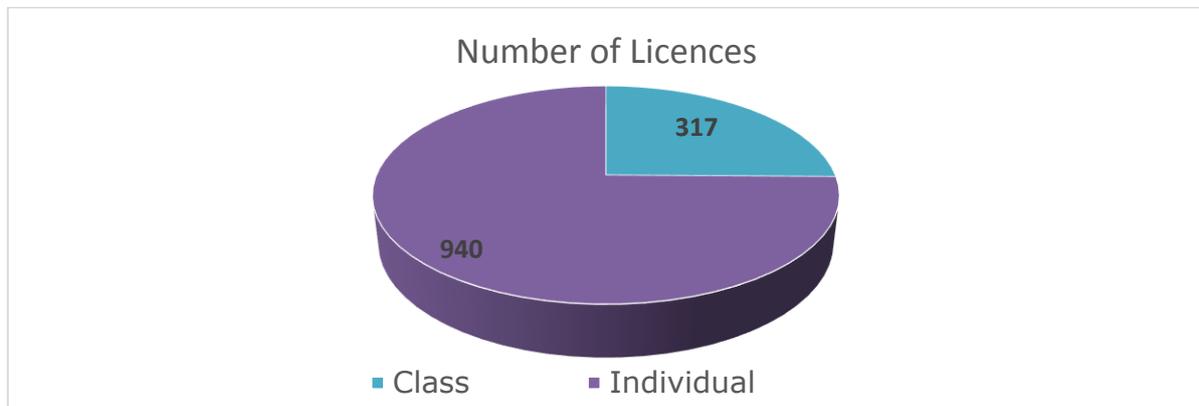
2.2. Individual Licences and Licensees

The Authority converted former PLMN, VANS and PSTN licences issued in 2009 for Individual ECS and ECNS licences based on the licence holder's choice. The said licence conversions were made on no less favourable terms in order to align licences with the ECA. The conversion led to an influx of licences in this category. Figure 2 below shows the number of licences currently in the market.

³ National means the licence holder can operate across the country without restriction.

⁴ ITA means Invitation to Apply

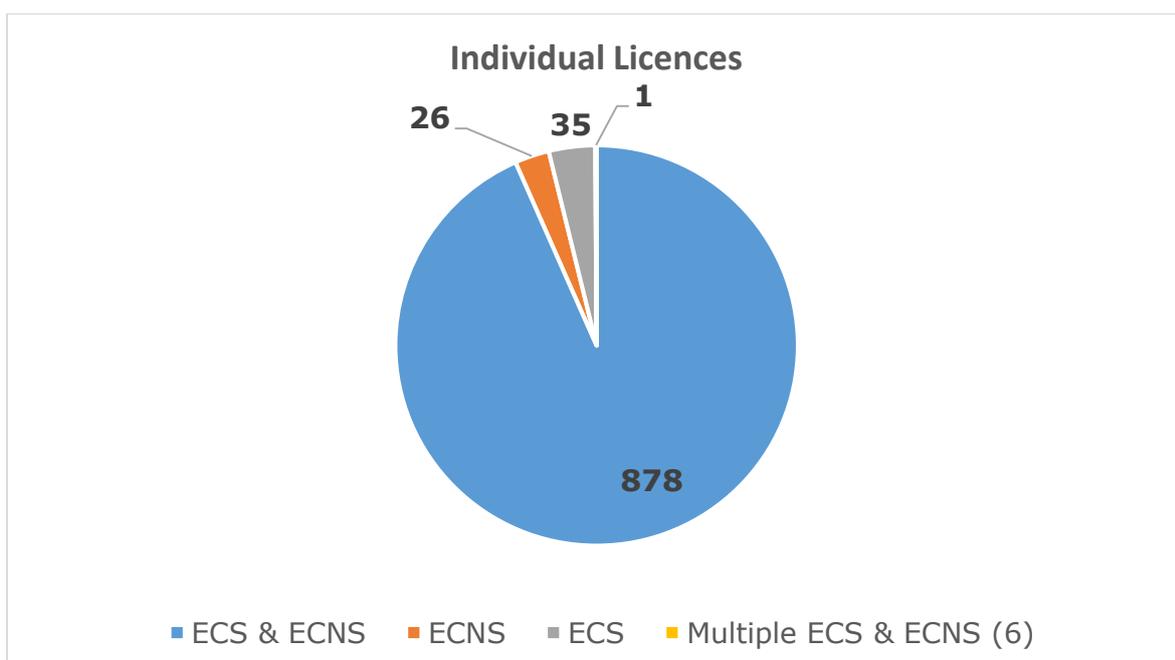
Figure 2: *Number of Licences*



2.3. Licences

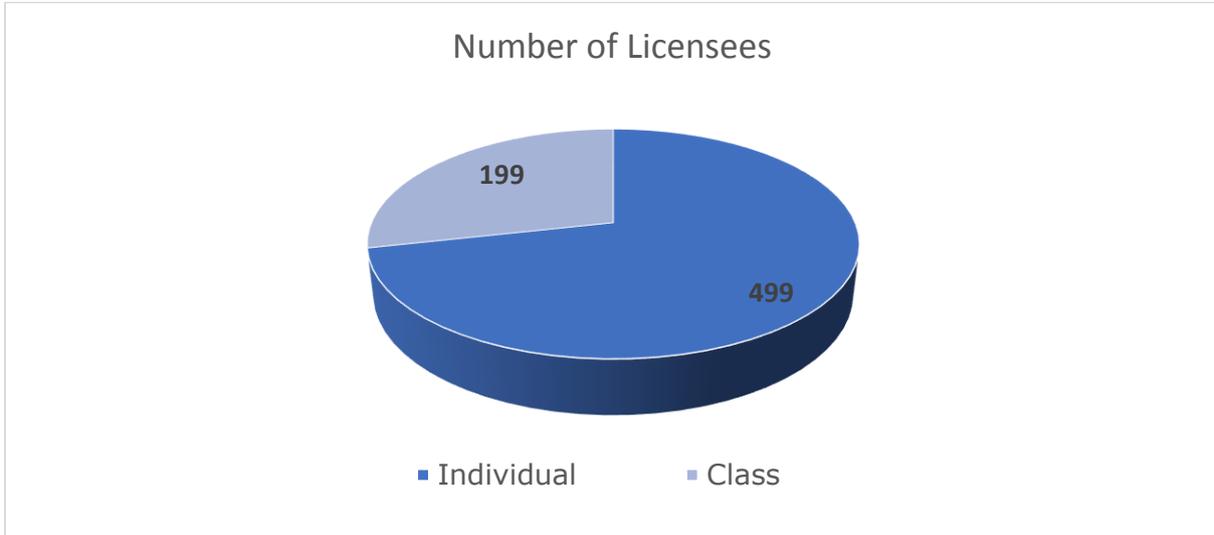
Figure 3 below shows the number of individual licences in the market and it says there are 878 ECS and ECNS licences held by the same entity. Only 35 and 26 entities hold each an ECS or an ECNS licence respectively. However, one licensee may hold an ECNS licence only e.g. Broadband Infracore. Whereas one entity may hold up to 6 ECS and ECNS licences, the reality is that most entities hold licences that they do not necessarily require or even use effectively yet the additional licences by one entity, does increase the Authority's scope of work with regards to monitoring and enforcing compliance. For some or most of the said licences that are not in use however, the Authority is still required on a regular basis to monitor the said licences.

Figure 3: *Individual Licences*



2.4. Licensees

Figure 4: *Number of Licensees*



The figure above shows the number of licensees in the market currently as of end of 2015. The number of licensees is less than that of licences in the market since some entities hold one or more licences and some even multiple licences.

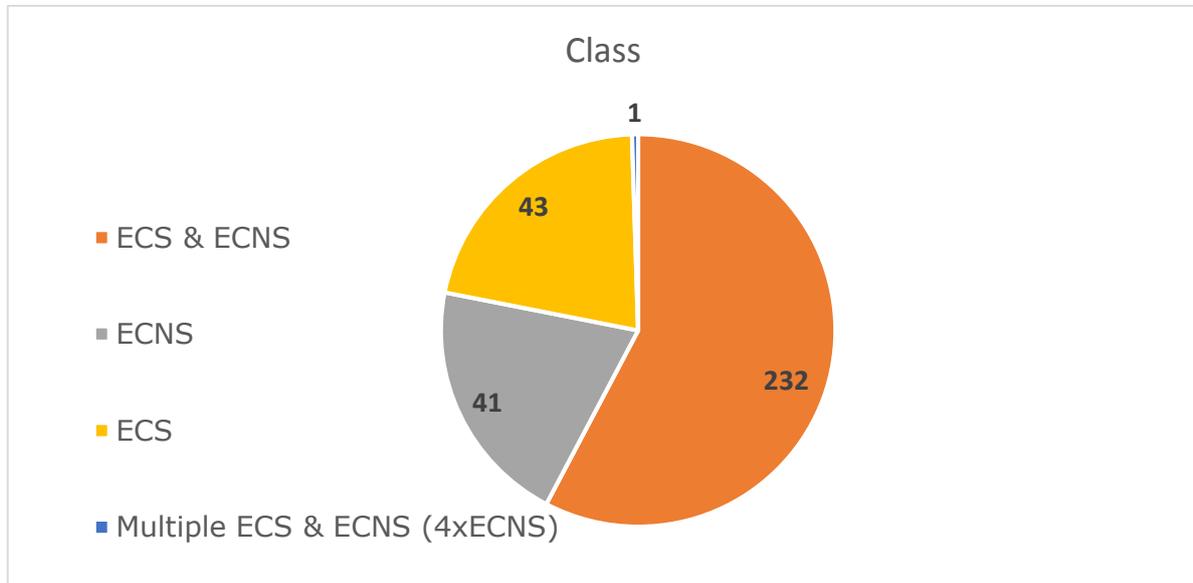
2.5. Class Licences and Licensees

The 2009 conversion of VANS and PTN licences was also done with licences being converted to Class licences. Most small regional players in the market opted for this licence.

Hence most of the licence holders for Class are mainly found and operate within a given province. The Class licence is mainly Local and District Municipality restricted. That means entities that are issued with this licence can only operate and build a network within the defined area. However, the Class ECS was issued previously as a national licence but the Authority has since rectified the anomaly and all Class ECS licences issued currently, are restricted to specific areas. The applicant for the Class Licence is the one that specifies the area of operation.

2.6. Licences

Figure 5: *Number of Class Licences*



Most entities hold both ECS and ECNS licences with a few holding only one of the two. Only one has multiple ECS and ECNS licences. Whilst holding multiple licences in the Class Licence category it is more often than not that most of the licences are not in use. A large number of entities do not require the licences since they operate as resellers.

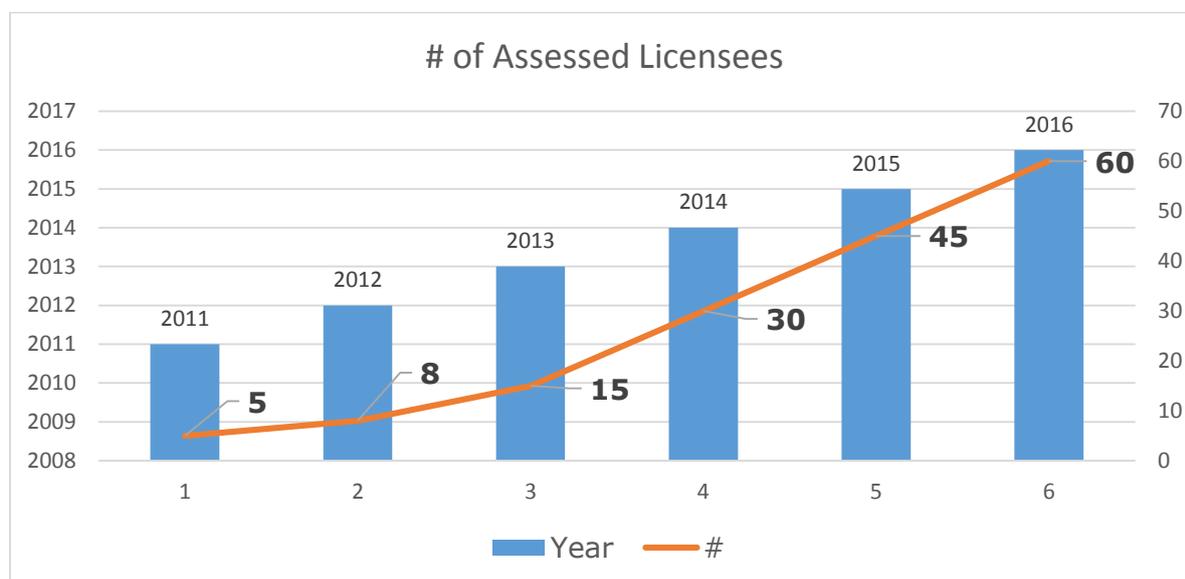
2.7. Licensees

Figure 4 above shows the number of Class Licensees in the market, there are 199 class licensees in the market holding 317 licences (figure 5).

3. Compliance Findings

The 2015-2016 compliance assessment was conducted on a sample of sixty (60) licensees listed above in section 1, Introduction. These include the top earners in the market and licensees that have regularly submitted compliance information. The number of licensees assessed for compliance has increased significantly over the last five years (*see figure 6 below*).

Figure 6: # of licensees assessed



The number of licensees making submissions has equally increased over the five-year period. The licensees assessed provide network services and voice and data service at wholesale and retail level. With the exception of Telkom, all licensees operate wireless based networks. Six of the licensees provide mobile voice services as their core business and all licensees provide data services with most operating as ISP⁵. Only a few licensees use the high demand spectrum for wireless coverage namely Telkom, Vodacom, Cell C, MTN, Neotel and WBS. The rest of the licensee use the ISM Band spectrum for service provision, which has resulted in a lot of congestion. Paragraphs 5.1 – 5.7 below outline the licensees of compliance with the stated regulation.

3.1. General Licence Fees Regulations (GLF)

The calculation formula for GLF is based on a percentage of revenue generated from licensed activities. The applicable percentage ranges from 0.15% – 0.35% with a sliding scale of revenues from R0 – R50 000 to over R 1billion respectively (see table 2 below). The regulation does not have any exemptions for ECS and ECNS licence holders with regard to payment of licence fees.

Licensees are required to calculate the licence fee amounts they are liable to pay. The calculation must be supported by audited financial statements or financial statements signed off by an Accounting Officer of the licensee. The calculations

⁵ ISP is an internet service provider

and the statements are reviewed and analysed by ECS/ECNS Compliance to ensure correctness of the calculation and adherence to the requirements. Licensees must make payment of their fees within six months of their financial year end.

Table 2: Applicable Percentage

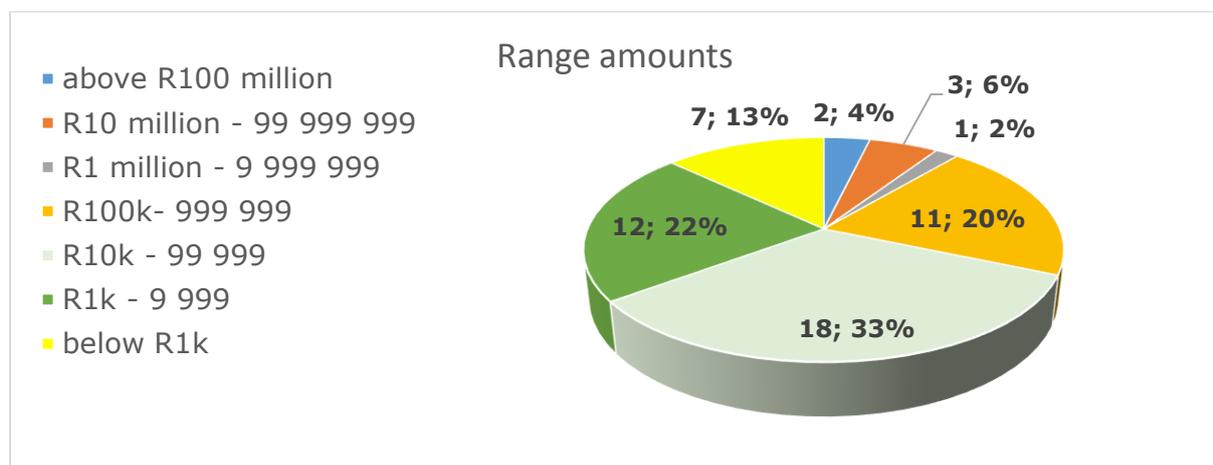
License Revenue	Percentage
R	B
0 -50 000 000	0.15%
50 000 001 -100 000 000	0.20%
100 000 001 -500 000 000	0.25%
500 000 001 -1 000 000 000	0.30%
1 000 000 001 -and above	0.35%

$$Pa = R \times B$$

Pa is the general licence fee payable by the licensee.

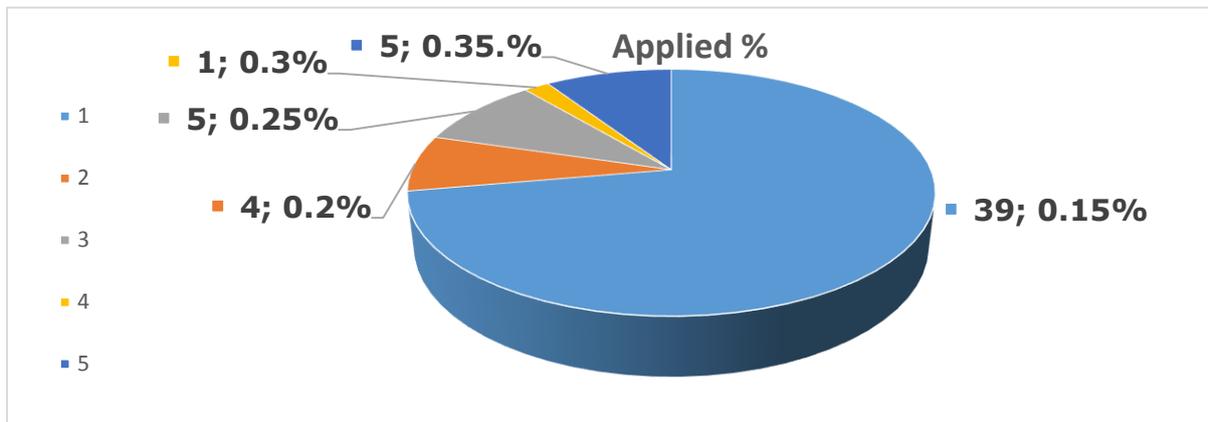
Appendix B in Annexure A shows the GLF paid by each of the 60 licensees under assessment. Note the names of the licensees have been removed to protect their confidentiality with regard to financial information. The highest GLF paid is over R154million whilst the lowest is R21.60. The GLF regulation does not have exemption hence the low GLF paid by the lowest licensee. There are seven ranges of the GLF paid as shown in figure 7 below. Most of the licensees, 33%, paid in the range of R10 000 – R99 999, with only two licensees paying over R100 million.

Figure 7: Range of GLF paid



At the time of writing this report 54 licensees had paid their GLF and three licensees were due to pay their GLF at the end of February, March and April. Most licensees applied the 0.15% figure, see figure 8 below, meaning their licensed revenues are below R50million.

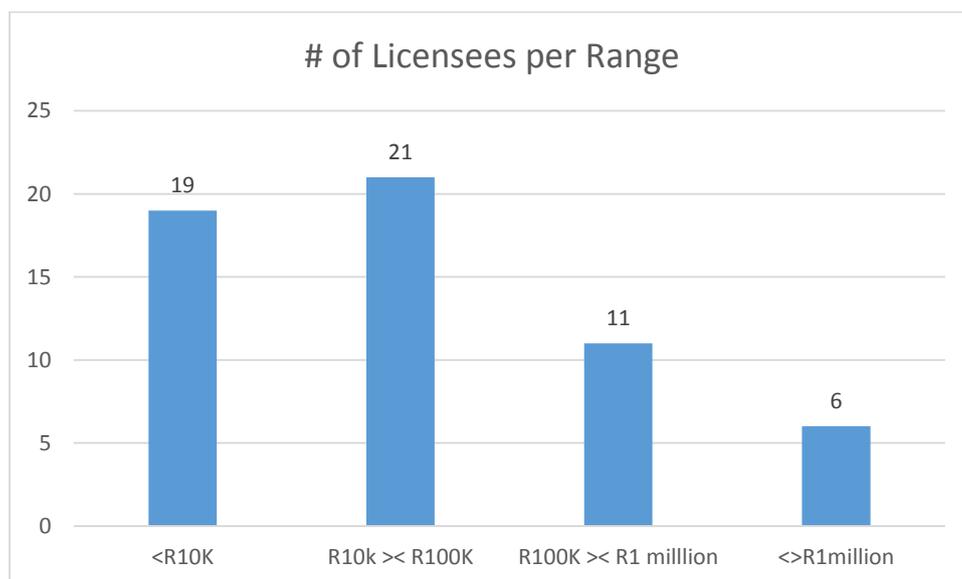
Figure 8: % applied



3.2. Universal Service Access Fund (USAF)

In terms of the Regulations on contribution to the USAF, published in 2009, licensees are required to make contributions of 0.2% of their turnover into the USAF. Licensees must make payment of their fees within six months of their financial year end. Most licensees made contributions of between R10k and below R100k and approximately an equal number of licensees made payments below R10k, see figure 9 below.

Figure 9: Number of Licensees per Range



At the time of writing this report 55 of the 60 licensees had made payment towards the USAF. The remainder are still to make payment which will be due at the end of February, March and April.

3.3. Universal Service Obligation (USO)

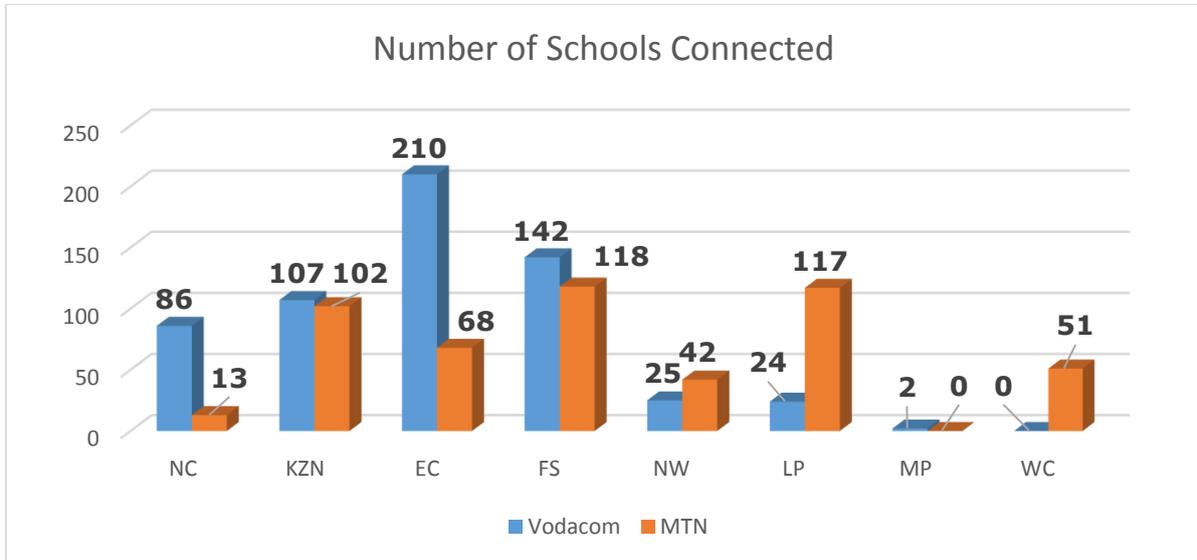
Of the sixty licensees only seven have USO's, four of the Licensees USO were amended with effective implementation date of 1st April 2014. The four licensees are Cell C, Neotel, MTN and Vodacom. The Telkom, Sentech and WBS USOs are currently under review. The amended USO for the four is as follows:

- (i) Connect 300 schools (Neotel 150) per year (minimum);
- (ii) Connect 1 500 schools (Neotel 750) within five years;
- (iii) Provide minimum 24 tablets for students per school;
- (iv) Provide Laptops for Educator per school;
- (v) Provide 1 printer per school;
- (vi) Connectivity for access to internet;
- (vii) Report twice a year, at the end of April and October, on the progress and status of USO implementation; and
- (viii) Provide connectivity to the schools for the duration of their service licence.

3.3.1. Vodacom

Vodacom commenced its USO roll-out in 2014 and had a total of 596 schools connected as of December 2015. Their highest number of schools is in the Eastern Cape followed by the Free State with the least number of schools in the Mpumalanga provinces.

Figure 10: *USO Schools Connected for Vodacom and MTN*



3.3.2. MTN

MTN commenced its USO rollout in 2015 due in part to internal procurement processes and appointing of service provider for the implementation. However, MTN has managed to connect a total of 511 schools by December 2015. MTN is also planning to connect a further 183 schools by March 2016 or exceed the number. The highest number of schools connected by MTN is in the Free State, Kwa Zulu Natal and Limpopo with the least number of schools in the Northern Cape (see figure 10 above).

3.3.3. Cell C

Cell C commenced USO implementation in 2016. Cell C has confirmed that it plans to roll-out 200 schools by March 2016 and a further 200 schools by April 2016. At the time of writing this report no further information with regard to the implementation was provided. Cell C is expected to make further submissions in this regard during 2016/2017 financial year.

3.3.4. Neotel

Neotel will commence its USO roll-out in 2016 as per its submission. Neotel plans to roll-out 185 schools by March 2016. At time of writing this report, Neotel did not provide further information with regards to the implementation.

3.4. Compliance Procedure Manual Regulation (CPMR)

The Compliance Procedure Manual Regulations were promulgated to streamline the submission of compliance information. Compliance information was

consolidated into Forms which the licence holder must complete to reflect adherence to the compliance requirements as per the regulations.

The CPMR is composed of Forms based on existing regulations, Form 2 is based on the General Licence Fees Regulations and Universal Service and Access Fund Regulations, Form 7A, 7C and 12A are based on the Code of Conduct, Code on People with Disabilities and the End User and Subscriber Services Charter Regulations, respectively.

3.4.1. Form 1

This Form requires the Licensee to provide the Authority with basic company /licensee information in terms of the structure of the company. Information on staff distribution by race and gender, to inform the Authority how the sector is structured in terms of people employed. Licensees provide information on the shareholding structure percentages held by HDG, youth, people with disabilities and women.

The information on HDG is significant because it gives the Authority a sense whether the industry is transforming in order to achieve government quotas of 30% HDG ownership.

3.4.2. Form 4

This Form requires the Licensee to provide a report on any services it may provide at E-Rate. However, due to the current short comings of the E-Rate Regulations, licensees do not provide any services at E-Rate.

3.4.3. From 7A & 7C

The Form 7A requires the Licensee to provide information with regard to meeting the minimum standards with regards to the Code of Conduct by licensees. Form 7C requires the Licensee to provide information relating to how licensees observe and meet the needs of people with disabilities in the course of providing services to the public.

3.4.4. From 12

The Form requires the licensee to provide reports on the complaints which the licensees may have received in the assessment period. The complaints received would be only those which have been reported to the Licensee by the customer

but would not have been resolved. The licensee is given a limited number of days to resolve the complaint.

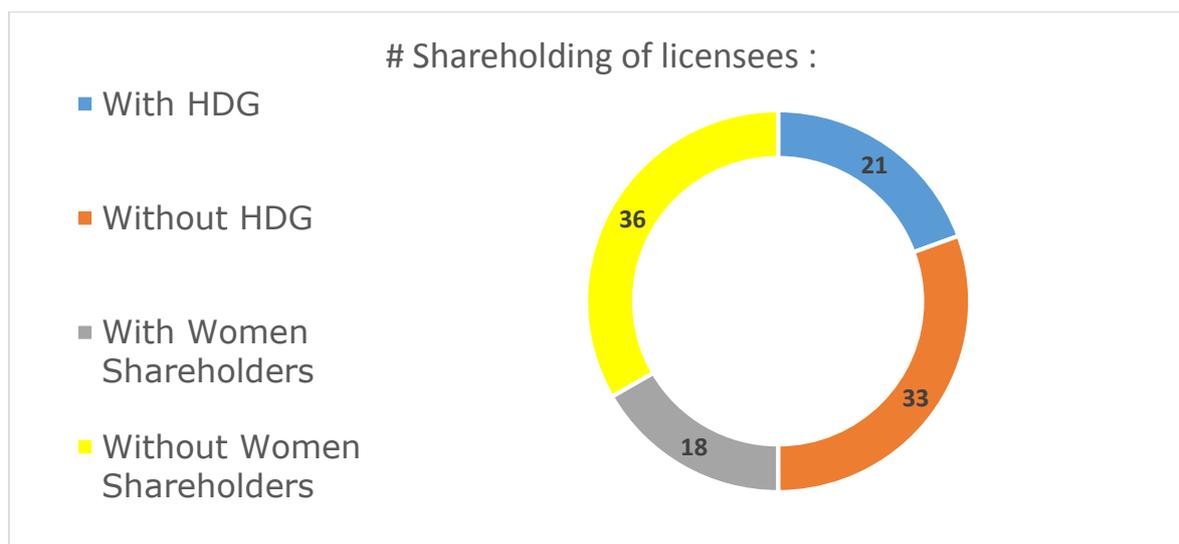
3.5. CPMR Findings

3.5.1. Form 1 - Shareholding

Licensees are required to have shareholding held by HDG of no less than 30%. However, most of the licences came about as a result of the licence conversion process of 2009. Licensees provide information on the shareholding structure which details the percentage of shareholding, held by HDG, youth, people with disabilities and women. The information on HDG is significant because it gives the Authority a sense of whether the industry is transforming in order to achieve the national transformation objectives.

In the process of addressing the transformation gap, the Authority has since issued a government gazette⁶ stating that all individual licence transfers will not be approved if the licensee does not meet the minimum 30% HDG requirement. Figure 11 below shows the breakdown with regards to the shareholding held by the 60 licensees assessed.

Figure 11: *Number of Licensees with Shareholding*



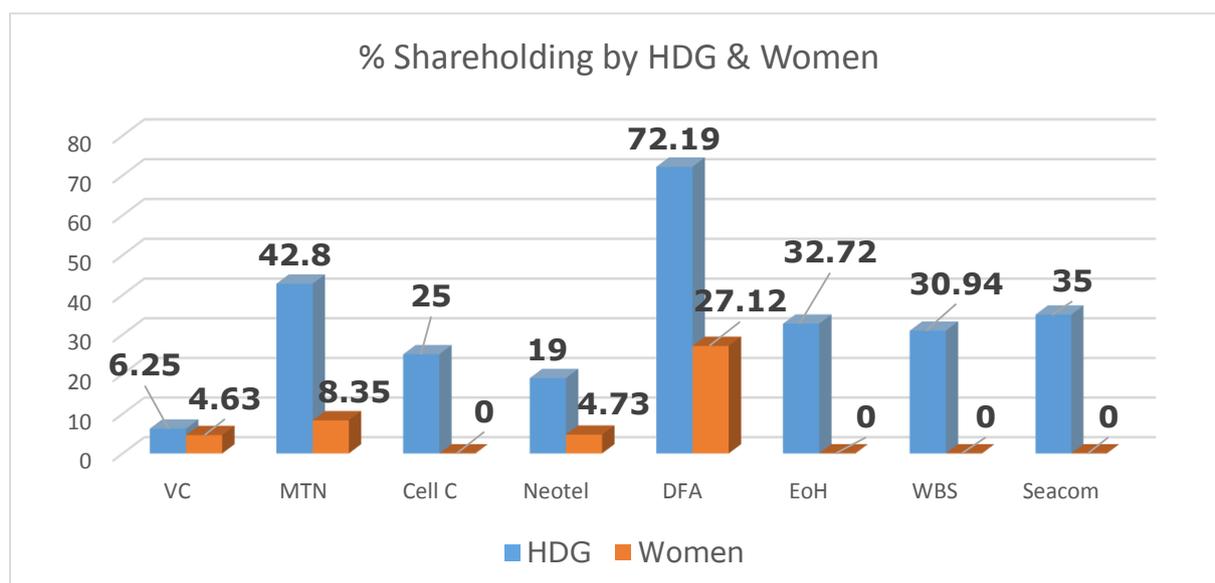
There are 36 licensees with shareholders as women with only 21 licensees with HDG shareholding. However, the number does not necessarily mean they all meet the 30% requirement. Only 13 of the 21 meet the 30% HDG requirement. Thirty-

⁶ No. 38087 dated 10 October 2014.

three of the 60 licensees do not have HDG shareholding and 18 of the licensees have no women shareholders.

A comparison was made for the following licensees Cell C, EoH, DFA, MTN, Vodacom (VC), Neotel, WBS and Seacom with regards to HDG and Women shareholders. Figure 12 below shows the shareholding of the licensees with DFA having the highest HDG shareholding and Vodacom having the lowest HDG shareholding (below the 30% requirement). Cell C, Vodacom and Neotel do not meet the 30% HDG requirement, whilst the rest exceed the requirement. All the licensees have fairly low women shareholding representation with the exception of DFA that has 27%.

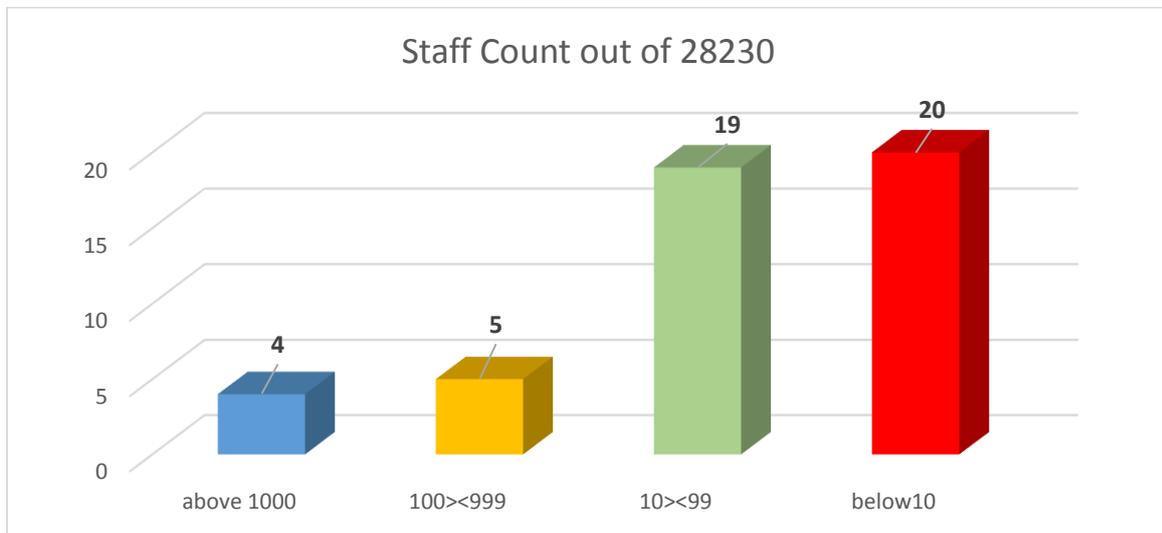
Figure 12: Shareholding by HDG & Women



3.5.2. Staff Distribution

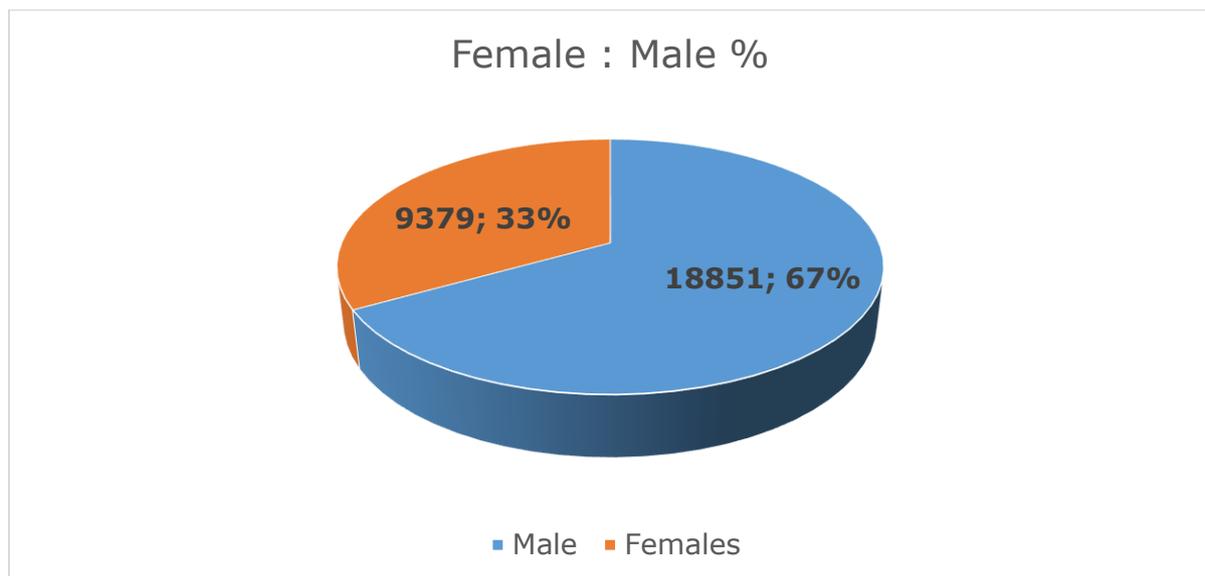
The staff distribution is not a compliance obligation on the part of Licensees, however this information is important to the Authority in order to understand the sector employment numbers. The staff count for the 60 licensees is a total of 28 230. Only four licensees have staff in excess of 1000. More than two thirds of the 60 licensees have a staff count of below 99, see figure 13 below.

Figure 13: Staff Count



Telkom has the highest number of staff at 18 286⁷ compared to all other 59 licensees. The staff distribution by gender is 67% males and 33% females. See figure 14 below.

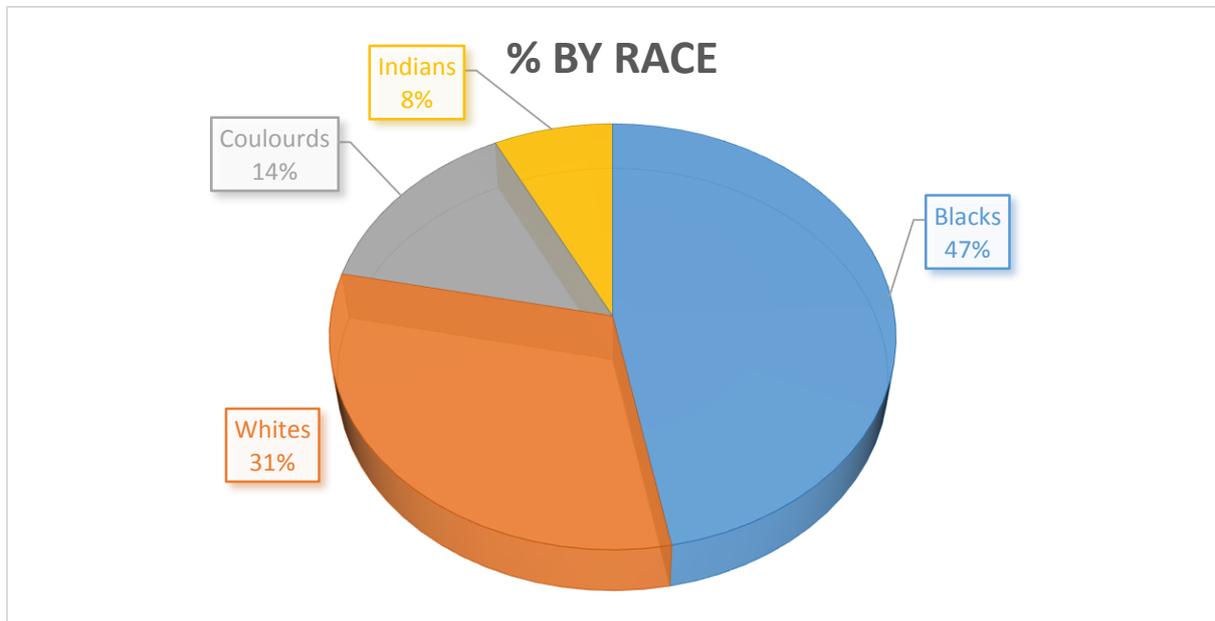
Figure 14: Staff by Gender



The figure below shows staff distribution by race for the 60 licensees:

⁷ The figures are based on the submission made by Telkom, hence these are based on the information submitted by Telkom at the time of writing this report.

Figure 15: Staff by Race



There are more Black people at 47% compared to the rest of the races, with Indians at 8%.

3.5.3. Management Distribution

Telkom has the highest number of staff in management compared to the other 59 licensees. In fact, the ratio for staff to management for Telkom is almost 1:1. A comparison has been made similar to the staff distribution in terms of race and gender. Figure 16 below shows the distribution of management by gender, there are twice as many male managers compared to females. Of note is that the number of managers in Telkom is approximately 10 times higher than the sector standard.

Figure 16: Management by Gender

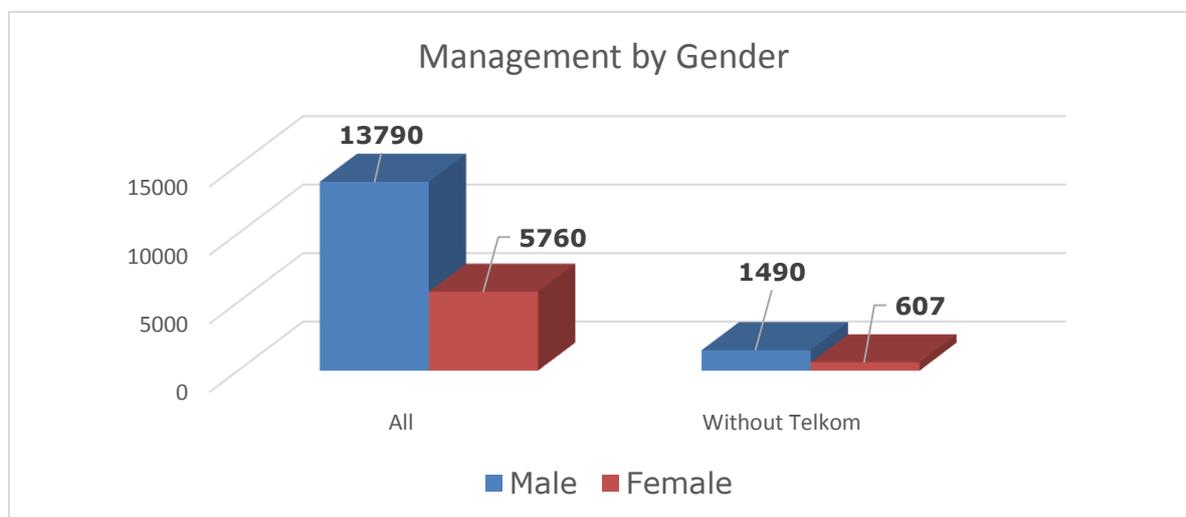
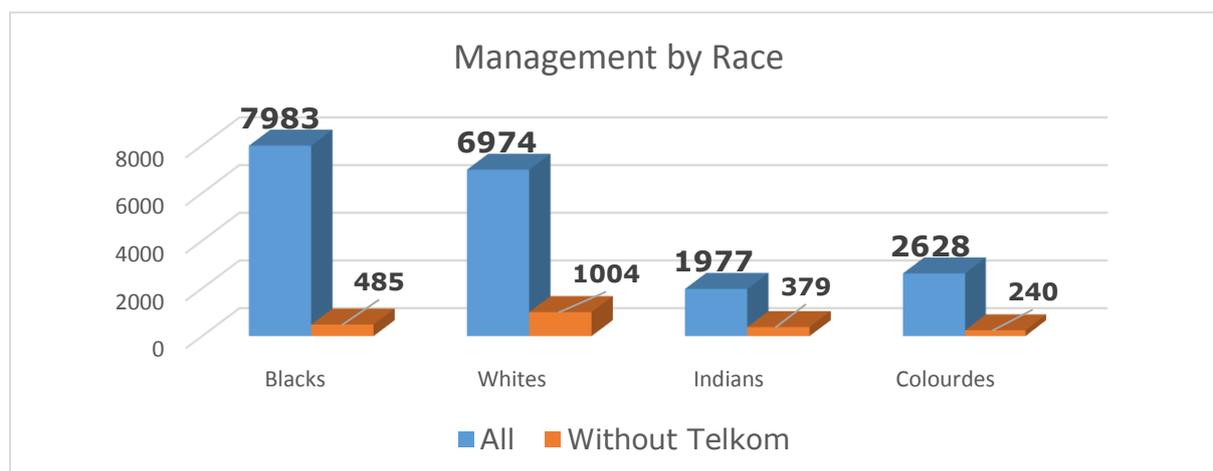


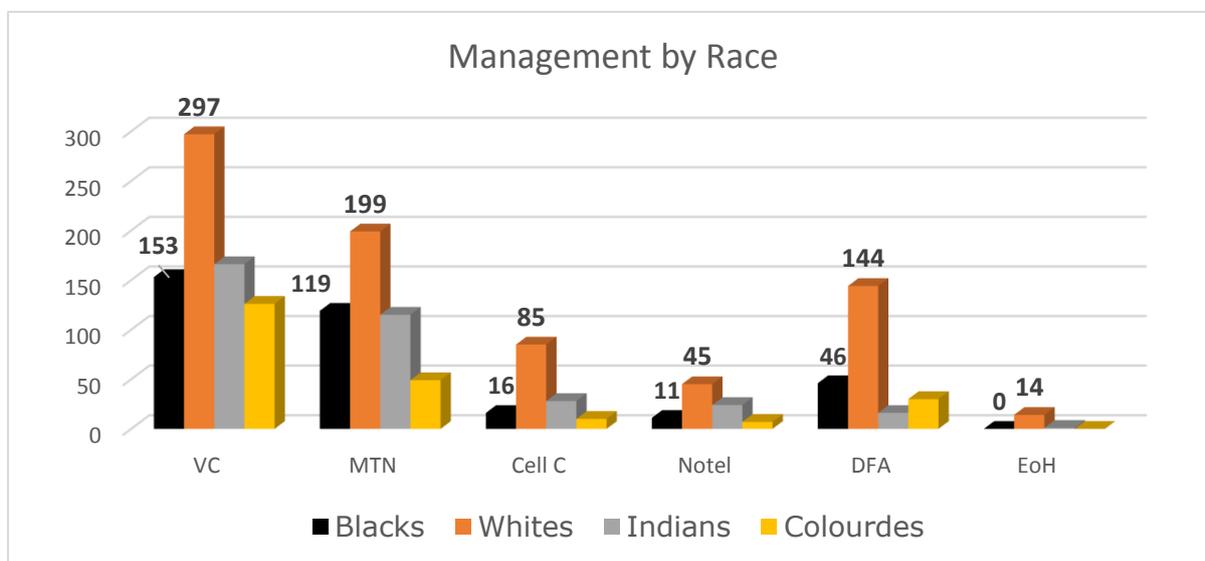
Figure 17 below shows management by race.

Figure 17: Management by Race



Management by race is a complete opposite to staff distribution by race for the 60 licensees. Including Telkom, Black employees make the highest number of staff in management, however excluding Telkom, White people are twice as many in management compared to Black people, who are three times more than Indians and four times more than Colouredes in management, see figure 18 below.

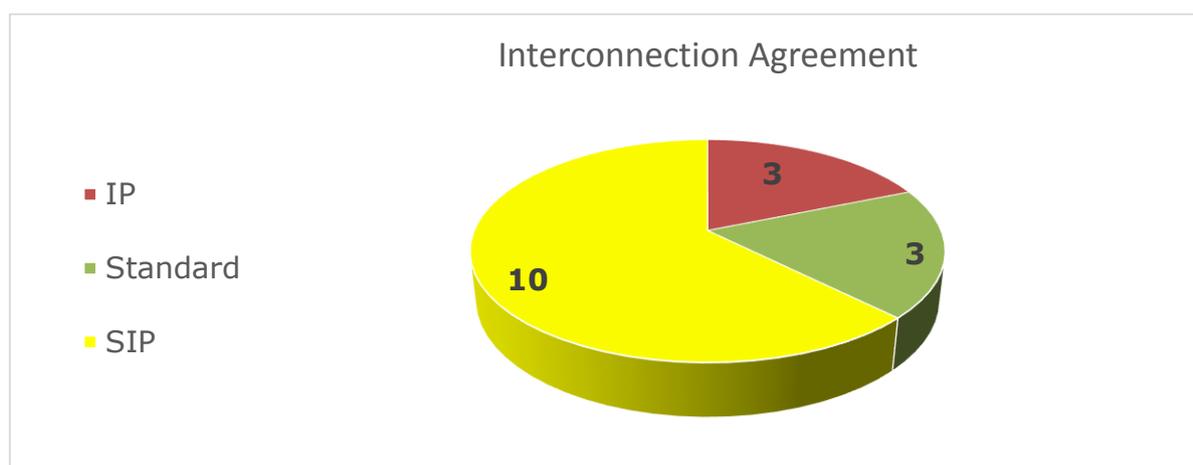
Figure 18: Management by Race



3.6. Interconnection Agreements

At the time of writing this report ECS/ECNS had assessed a total of 16 interconnection agreements from licensees in the 2015 – 2016 financial year. Of the 16 agreements, 10 were Session Initiation Protocol (SIP) agreements and the remainder IP and standard interconnection (i.e. voice) agreements.

Figure 19: Interconnection Agreements



3.7. ECS/ECNS Inspections

As an extension of compliance monitoring the Authority’s Regional Offices conducts inspections to compliment the licensee submissions made on an annual basis.

The inspections for ECS/ECNS are done at the head office of the licensee concerned with persons that have access to the information under inspection.

The outcome of the inspections is used by ECS/ECNS Compliance and Regional Offices for further investigation on issues of non-compliance.

At the time of writing this report the Regional Offices had begun conducting their inspections hence the outcome will be communicated in the next reporting period.

The impact of the inspection is two fold; increased awareness and visibility of the Authority amongst licence and non-licence holders; increased awareness regarding compliance requirements.

3.8. Code of Conduct Inspections

The Authority's Regional Offices have commenced inspections of retail outlets that sell any electronic communications services. The inspections are conducted in line with the Code of Conduct for ECS/ECNS Licensees⁸ requirements. Each player in the market must be in a position to provide services meeting the minimum requirements as stated in the regulation. The issues covered by the inspections are consumer related matters, which in part are due to an increase in the number of complaints received by the Authority from consumers. One of the reasons for such complaints is that most retail outlets are unaware of regulatory requirements when dealing with consumers. A report on these inspections has been published on the ICASA website.

4. Notifications and Extensions

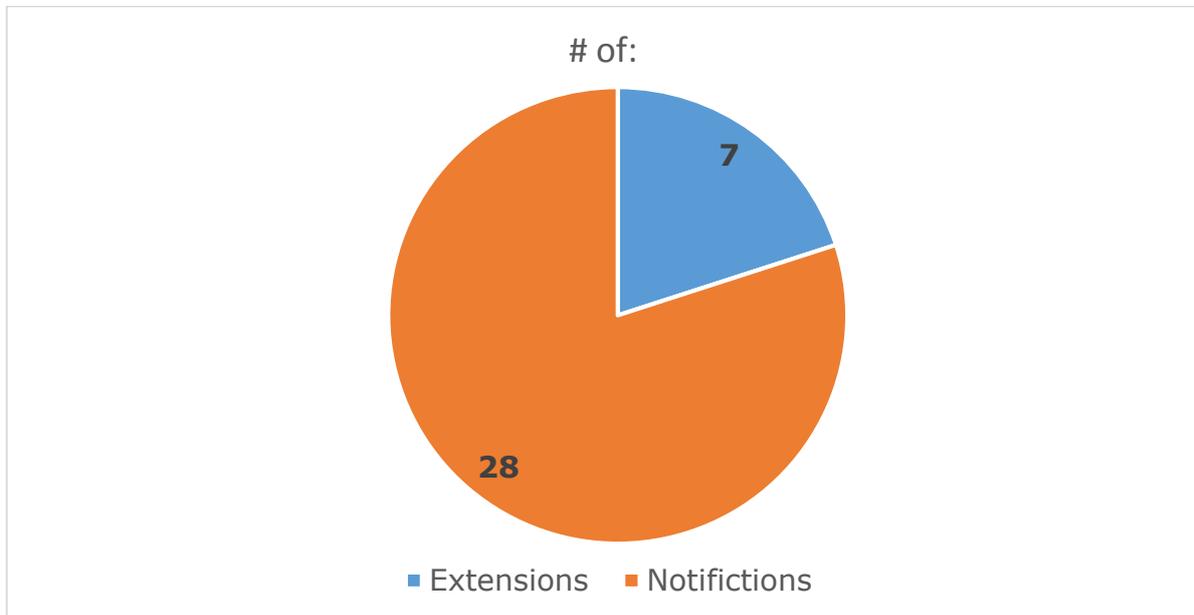
Licensees from time to time request changes to their licences with regards to name on the licence, physical and postal address, contact details and shareholding. In terms of the Standard and Terms Regulations for Class and Individual Licensees, 2010⁹ licensees are required to notify the Authority within seven days of the change. Compliance has to verify and ensure adherence to the requirements and process the said changes. Class and Individual ECS/ECNS Licensees are also required to request for extension if they fail to commence operations within 12 and 6 months for the ECNS and ECS licences respectively. In the period 2015 –

⁸ Published in government gazette number 30553 dated 7 December 2007.

⁹ Published in government gazettes numbers 33294 & 33296 both dated 14 June 2010.

2016 ECS/ECNS Compliance attended to notification and extensions as shown in figure 19 below.

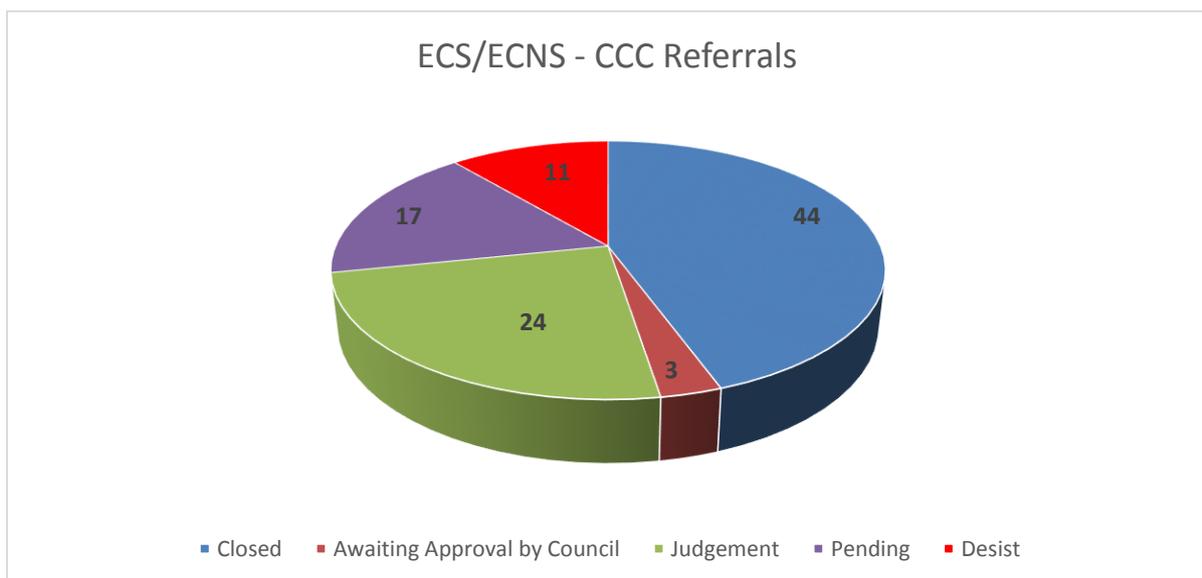
Figure 20: *Notifications and Extensions*



5. Referrals to CCC

Licensees that fail to comply with regulatory requirements are referred to the CCC as alleged non-compliance until their case is heard before the CCC. ECS/ECNS Compliance referred licensees for non-compliance and the cases were heard at the CCC in the period 2015-2016. The breakdown of the cases is as shown below figure 20.

Figure 21: *CCC Referrals*



Of the cases heard by the CCC, 44 have been closed with 24 judgements ratified by Council. Eleven licensees have been cautioned to desist from committing the same offence in the future. Seventeen cases are pending for hearings whilst three are awaiting ratification by Council. The CCC will commence public hearing of cases as of April 2016, reporting on the outcome will be in the next phase.