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**ECS/ECNS (Telecoms/ISPs)
Compliance Report
2017/2018**

**(Assessment for the 2016/2017
Financial Year)**

N.B: The information contained in this report is based purely on the compliance submissions of licensees at the time of writing this report.

Date: 11 May 2018

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A: Acronyms

Acronym	Description
CCA	Compliance and Consumer Affairs division
CCC	Complaints and Compliance Committee
CSR	Corporate Social Responsibility
CPMR	Compliance Procedure Manual Regulations
DoC	Department of Communications
DTPS	Department of Telecommunications and Postal Services
ECA	Electronic Communications Act No. 36 of 2005
ECS	Electronic Communications Service
ECNS	Electronic Communications Network Service
E - Rate	In accordance with section 73 of the ECA, it is a 50% discount rate at which internet services are provided to public health institutions, public and private schools, colleges, further education and training institutions and higher education institutions.
EUSSCR	End User and Subscriber Services Charter Regulations, 2016
GLFR	General Licence Fees Regulations, 2012
HDG	Historically Disadvantaged Groups
ICASA Act	Independent Communications Authority of South Africa Act, 2000
ICT	Information and Communications Technology
IP	Internet Protocol
ISP	Internet Service Provider
ITA	Invitation to Apply
LSEN	Learners with Special Educational Needs
MSISDN	Mobile Station International Subscriber Directory Number
UMTS	Universal Mobile Telecommunication System
USAF	Universal Service and Access Fund
USO	Universal Service Obligation
PTN	Private Telecommunications Network
PSTN	Public Switched Telecommunications Network
QOS	Quality of Service
SIP	Session Initiation Protocol

1. Introduction

This report is published for purposes of providing an insight into the compliance analysis and evaluation with respect to the 2016/2017 financial year period. Compliance assessment is conducted against the prescribed licence terms and conditions¹ of each licensee, the Regulations and related Statutes. The process is conducted over a twelve² months period by analysing and assessing compliance information submitted by the ECS/ECNS licensees.

The ECS/ECNS Compliance Unit conducts ad-hoc compliance functions which include the general monitoring of compliance, execution of projects, processing of various notifications from licensees for change of details on the licence, requests for extensions with respect to the commencement date of operations as well as general assistance to licensees with compliance matters.

The analysis and assessment process for compliance is done with respect to financial compliance (i.e. submission of financial information /reports and payments of annual licence fees and USAF contributions). Also, for consideration are the submission by licensees of the prescribed Forms as per the Compliance Procedures Manual Regulations (CPMR), the assessment of the information given on universal service obligations, interconnection and facilities leasing agreements and other regulatory aspects.

Upon finalising the assessment for compliance, the ECS/ECNS Compliance Unit will consult with non-complying licensees to guide the licensee with the view to comply accordingly. However, should the licensee still fail to comply with the respective legislative and/or regulatory requirements the matter will be referred to the CCC for adjudication. The Regions Division will in some instances be requested to assist with the monitoring and enforcement of compliance.

¹ Per the Regulations on Standard Terms and Conditions for Individual licences, 2010 as amended and Regulations on Standard Terms and Conditions for Class licences, 2010, as amended.

² The twelve months' period refers to 1 April of the previous year to 31 March of the current financial year. However, the period being analysed is the preceding financial year i.e. 2016/2017. Due to different financial year end periods between the Authority and that of the licensees, some information (for licensees) may not be complete at the time of finalising the Authority's Compliance Report by 31 March of any year.

This report gives an account of the compliance 'status'³ for licensees listed in the table below, following the end of their respective financial year, with the report herein being for 2016/2017 financial year.

1.1 Table 1: Assessed licensees:

#	Licensee	Licence Type	Individual / Class
1	Adv Reliable e-Solutions Africa (Pty) Ltd	ECS & ECNS	Class
2	Afloat Inv CC t/a Biztec Consulting	ECS	Class
3	Airpark Beaufort West	ECS & ECNS	Individual
4	Airtelecoms CC	ECNS	Class
5	Altech Fleet Call (Pty) Ltd	ECS & ECNS	Individual
6	Amobia Communications (Pty) Ltd	ECS & ECNS	Individual
7	Ask Internet Technologies CC	ECS	Class
8	Bloomberg Value Added Network Services (VANS) (Pty) Ltd	ECS & ECNS	Individual
9	Border Internet (Pty) Ltd	ECS & ECNS	Individual
10	Broadband Infracore SOC Ltd	ECNS	Individual
11	BT Communications SA (Pty) Ltd	ECS & ECNS	Individual
12	Bushguru CC	ECNS	Class
13	Cape PC Services CC	ECS	Class
14	Cell C Ltd	ECS & ECNS	Individual
15	Centracom (Pty) Ltd	ECS	Class
16	China Telecom South Africa (Pty) Ltd	ECS	Class
17	CMC Networks (Pty) Ltd	ECS & ECNS	Individual
18	Community Monitoring Services (Pty) Ltd	ECS	Class
19	Compatel Africa (Pty) Ltd	ECS & ECNS	Individual
20	Conekt Business Group (Pty) Ltd	ECS & ECNS	Individual
21	Connect First Telecoms (Pty) Ltd	ECS & ECNS	Individual
22	Connection Telecoms (Pty) Ltd	ECS & ECNS	Individual
23	Continuity SA (Pty) Ltd	ECNS	Individual
24	Crazyweb Tech CC	ECS & ECNS	Individual
25	C-Way Computers CC	ECS	Class
26	Dark Fibre Africa (Pty) Ltd	ECS & ECNS	Individual
27	Databridge Networks CC	ECS & ECNS	Individual
28	Desmond Bailey Ramsay	ECS & ECNS	Individual
29	Digital Dynamix CC	ECS & ECNS	Individual
30	DMR Networks (Pty) Ltd	ECS	Class
31	Dube Trade Port Corporation	ECS & ECNS	Individual
32	Easycoms Communications (Pty) Ltd	ECS & ECNS	Individual
33	Edelnet CC	ECS	Class
34	Eden Island Trading 589 CC	ECS	Class
35	e-Networks (Pty) Ltd	ECS & ECNS	Individual
36	EOH Mthombo (Pty) Ltd	ECS & ECNS	Individual
37	FibreCo Telecommunications (Pty) Ltd	ECS & ECNS	Individual
38	Firstnet Technologies Services (Pty) Ltd	ECS & ECNS	Individual
39	Future Perfect Corporation CC	ECNS	Class

³ It is noteworthy that the compliance function with respect to regulatory requirements, is broader than what the ECS/ECNS Compliance Unit may conduct compliance on, annually.

#	Licensee	Licence Type	Individual / Class
40	Gateway Communications (Pty) Ltd	ECS & ECNS	Individual
41	Gigabug / Rd Solutions (Pty) Ltd	ECS & ECNS	Class
42	Green Flash Trading 72 (Pty) Ltd	ECNS	Individual
43	GVSC Communications SA (Pty) Ltd	ECS & ECNS	Individual
44	Huge Connect (Pty) Ltd	ECS & ECNS	Individual
45	Hymax Talking Solutions (Pty) Ltd	ECS & ECNS	Individual
46	IDH Web CC	ECS	Class
47	Infovan (Pty) Ltd	ECS & ECNS	Individual
48	Infostream Technologies CC	ECS & ECNS	Class
49	Internet Solutions Holdings Ltd	ECS & ECNS	Individual
50	Internet Uncapped CC	ECNS	Class
51	ISpace (Pty) Ltd	ECS & ECNS	Individual
52	JSDAAV ZA Telecoms (Pty) Ltd	ECS & ECNS	Individual
53	KAB Technologies CC	ECS	Class
54	Kaltrade 407 (Pty) Ltd	ECS & ECNS	Individual
55	KCS Group CC	ECNS	Class
56	Kliq (Pty) Ltd	ECS & ECNS	Individual
57	Kosh Communication Services CC	ECS & ECNS	Individual
58	KWN Networks CC	ECS	Class
59	L Com Corp CLO 2686 CC	ECS & ECNS	Class
60	Lanlink Networks (Pty) Ltd	ECS	Class
61	LBJ Groenewald (My WiFi Installations)	ECS	Class
62	Letaba Wireless CC	ECS	Class
63	Liquid Telecommunications Operations SA (Pty) Ltd	ECS & ECNS	Individual
64	Link Africa Network (Pty) Ltd	ECS & ECNS	Individual
65	Marinus Robert Aling	ECS	Class
66	Metro Fibre Network (Pty) Ltd	ECS & ECNS	Individual
67	MTN (Pty) Ltd	ECS & ECNS	Individual
68	My VoIP Communications CC	ECS & ECNS	Individual
69	Mzansi Liseta Media & Printing CC	ECS & ECNS	Individual
70	Neotel ⁴ (Pty) Ltd	ECS & ECNS	Individual
71	Network for Next Generations (Pty) Ltd	ECS & ECNS	Individual
72	Newwave Communications (Pty) Ltd	ECS & ECNS	Individual
73	Nexus Online (Pty) Ltd	ECS & ECNS	Individual
74	Ohren Telecoms CC	ECS & ECNS	Individual
75	Orange Business Services SA (Pty) Ltd	ECS & ECNS	Individual
76	Rainbow Networks (Pty) Ltd	ECS & ECNS	Individual
77	Rose Courtz Trading (Pty) Ltd t/a Bitco	ECS & ECNS	Individual
78	Rubicon CC	ECS & ECNS	Individual
79	Seacom South Africa (Pty) Ltd	ECS & ECNS	Individual
80	Sentech SOC Ltd	ECS & ECNS	Individual
81	Sevenstone Investment 108 (Pty) Ltd	ECS & ECNS	Individual
82	Skygistics (Pty) Ltd	ECS & ECNS	Individual
83	Swiftnet (Pty) Ltd	ECS & ECNS	Individual

⁴ Prior to the acquisition of Neotel by Liquid Telecom Holdings Limited (and for purposes of the Financial year 2016/2017 herein), a legal entity/licensee called Liquid Telecom Holdings was in existence already. Hence the reference to Liquid Telecom and Neotel separately under numbers 70 and 63, respectively.

#	Licensee	Licence Type	Individual / Class
84	Switch Telecoms (Pty) Ltd	ECS & ECNS	Individual
85	Syrinx Communications International (Pty) Ltd	ECS & ECNS	Individual
86	Telemedia (Pty) Ltd	ECNS	Individual
87	Telkom Soc Ltd	ECS & ECNS	Individual
88	Transnet Freight SOC Ltd	ECS & ECNS	Individual
89	Tribal Zone Telecoms CC	ECS & ECNS	Individual
90	True Technologies CC	ECS & ECNS	Individual
91	Vangibuzz (Pty) Ltd	ECNS	Class
92	Verizon Communications SA (Pty) Ltd	ECS & ECNS	Individual
93	Vodacom (Pty) Ltd	ECS & ECNS	Individual
94	Vox Telecom (Pty) Ltd	ECS & ECNS	Individual
95	Vumatel (Pty) Ltd	ECS	Class
96	Wild Peach Trading 52 (Pty) Ltd	ECS	Class
97	WIOCC South Africa (Pty) Ltd	ECS & ECNS	Individual
98	Xlink Communications (Pty) Ltd	ECS	Class
99	Xnet Internet Services (Pty) Ltd	ECS & ECNS	Individual
100	Zomerlust Systems Design CC	ECS & ECNS	Class

1. 2 **Table 2: Financial Year Ends (FYE):**

FYE	Number of licensees
February	49
March	29
April	4
June	2
July	3
August	0
September	4
December	9

Table 2 above, together with the figure (1) below, shows the spread of the months in which each of the 100 licensees that have been assessed 'fall' under. February is the most common financial year end month, followed by March with the least common months being November, September, August and May. The financial year end influences licence fee and USAF contribution collection as well as the conclusion of compliance assessment by the Authority.

Further, the financial year end month is relevant for financial forecasts by the Authority for purposes of calculations of expected licence fees and USAF contributions, therefore some assessments can only be concluded in the Authority's next financial year.

The financial forecasts will later be checked against the actual finalised financials (where applicable audited) when all that is ready and available to the Authority as per the requirements of the General Licence Fees Regulations, 2012.

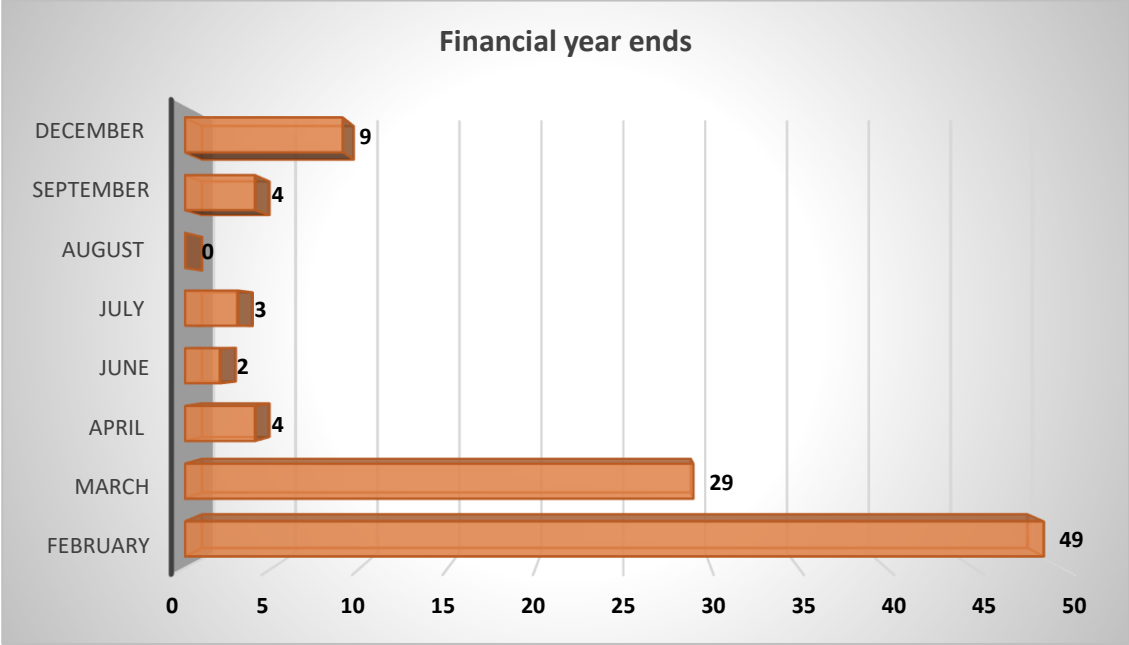


Figure 1: Licensees financial year ends

2. Legislative and Regulatory Considerations

All ECS/ECNS licences are granted and issued under chapter 3 of the ECA on standard terms and conditions. However, there are exceptions such as Universal Service Obligations (USO) as will be explained, later.

To achieve the overall objectives of both the ECA and the ICASA Act, the Authority through its Compliance and Consumer Affairs Division endeavours, to ensure compliance by the ECS/ECNS licensees with their legislative and regulatory obligations. Below is a list of the main legislative and regulatory tools used for the compliance assessment.

1. Independent Communications Authority of South Africa Act, 2000 'ICASA Act' (Act No. 13 of 2000), as amended.
2. Electronic Communications Act, 2005 'ECA' (Act No. 36 of 2005), as amended.
3. ICASA General Licence Fees Regulations, 2012.
4. Compliance Procedure Manual Regulations, 2011 (CPMR).
5. Call Termination Regulations, 2014

6. Electronic Communications Facilities Leasing Regulations, 2010.
7. End User and Subscriber Service Charter Regulations, 2016.
8. Interconnection Regulations, 2010.
9. Regulations on Standard Terms and Conditions for Individual licences, 2010 as amended.
10. Regulations on Standard Terms and Conditions for Class licences, 2010, as amended.
11. Processes and Procedures Regulations Individual licences, 2010.
12. Processes and Procedures Regulations Class licences, 2010.
13. Universal Service and Access Fund Regulations, 2011.

2.1 ECS/ECNS Licences

In accordance with chapter 3 of the ECA, ECS and ECNS licences are categorised into two, i.e. **Individual** and **Class** licences. An Individual licence is one that applies/operates on a 'national'⁵ scale and a Class licence is a geographically restricted licence. The procedure to issue an Individual licence is that the Minister (of Telecommunications and Postal Services), will issue an invitation to apply (abbreviated as ITA). Whereas with a Class licence, an application is made directly to the Authority, for registration of the licence.

The number of Individual and Class licences is broken down below (see figure 2). It is noteworthy that in some instances there will be licensees that hold more than one licence. There are entities that operate within the ICT industry that do not require licences i.e. the legislative framework provides for what is referred to as a "reseller"⁶.

⁵ The implication being that the licensee can operate throughout the country without restriction.

⁶ "means a person who-

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

Resellers are required to apply for an exemption, as they operate slightly differently from other ECS providers, hence the different categories.

Licensees provide voice, data and network services both at wholesale and retail levels. Except for Telkom however, most licensees provide wireless based networks.

Six⁷ of the main individual licensees provide mobile voice services as their core business and most of the other licensees providing data services as ISP's (internet service providers).

Only a few licensees use the high demand spectrum for wireless coverage i.e. Telkom, Vodacom, Cell C, MTN, Liquid Telecom (formerly Neotel) and WBS. The rest of the licensees use the ISM Band spectrum leading to congestion in that band.

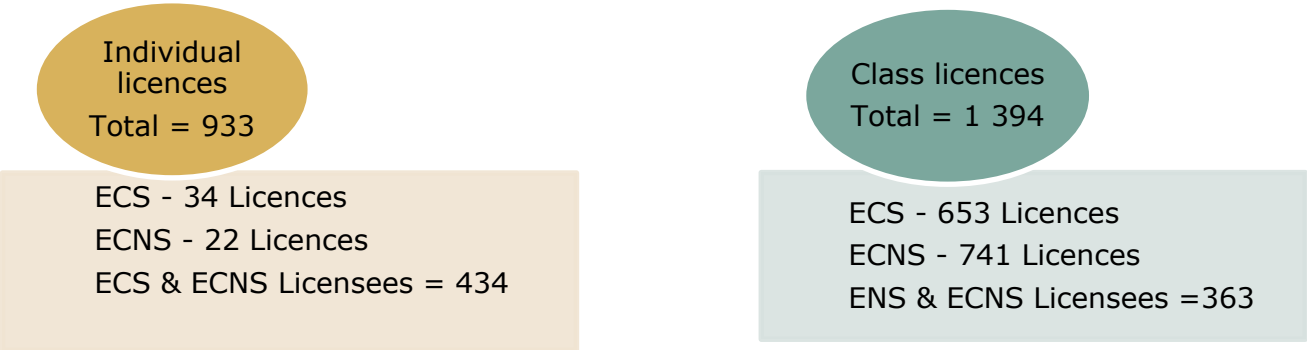


Figure: 2 Individual & Class licences

3. Compliance Findings

Compliance assessment for purposes of the 2016-2017 period was done on a sample of the 100 licensees listed in table 1 above. The sample is representative of a myriad of licensees, e.g. small, large, medium, major, top earners, those who are consistently compliant and those that are not fully compliant. It is worth mentioning that overall compliance by licensees is gradually improving over the years.

The notable improvement in compliance is partly because staff in the ECS/ECNS Compliance Unit actively keep informing and consulting licensees on compliance

⁷ Cell C, MTN, Liquid Telecom (formerly Neotel), Telkom, Vodacom and WBS.

aspects and regularly remind licensees on due dates for submission of different compliance requirements and the related reports. For further illustration of the improving compliance by licensees, see figure 3 below, for a graph illustrating the increase in the licensees assessed for compliance.

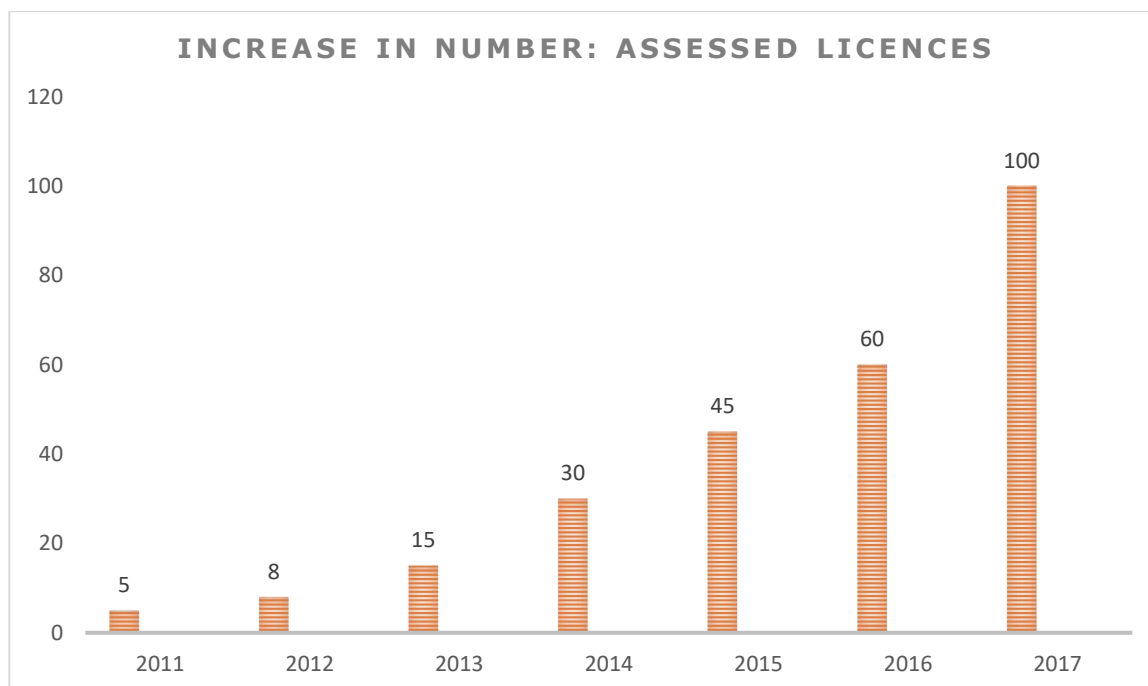


Figure 3: Shows increase in number of licensees assessed to date.

3.1 General Licence Fees Regulations, 2012⁸ (GLF)

The GLF Regulations provide a framework wherein licensees are charged a percentage of revenue generated from licensed activities in accordance with a sliding scale (see below)⁹:

Table 3: Extract from GLF Regulations¹⁰

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

Pa is the general licence fee payable by the licensee

$$\mathbf{Pa = R \times B}$$

⁸ ICASA General Licence Fees Regulations, 2012 published in Government Gazette No. 36323 dated, 28 March 2013

⁹ Per Schedule 2 of ICASA General Licence Fees Regulations, 2012.

¹⁰ *Ibid.*

The GLF Regulations require that licensees submit their financial statements and make payments by no later than six months after their financial year end.

The financials must either be audited or be signed off by their Accounting Officer¹¹. The financials are then analysed within the ECS/ECNS Compliance Unit against the GLF Regulations prior to being submitted to the Finance Division for invoicing. Where licensees fail to pay within the prescribed time, interest is levied on the amount due.

Figure 4 below shows the GLF figures paid by different licensees, ranging from the highest being more than R 170,000,000.00 to less than R 100.00 as the lowest. As mentioned above, the GLF regulations do not exempt any licensee hence even a payment of less than R100.00. With respect to licensees assessed for the current period, many licensees fall within the 0.15% range.

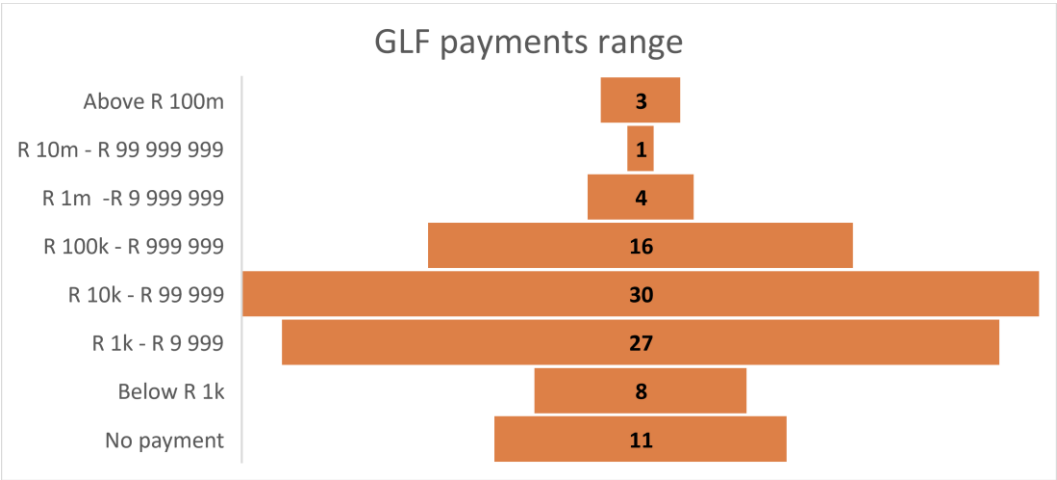


Figure 4: GLF Payments Range

With respect to the licensees assessed, it is worth noting that at the time of finalisation of this report, 4 licensees did not pay GLF, 3 not having submitted their financials yet and 1 whose financials are not due as yet. Additionally, 3 of the assessed licensees did not generate any revenue, hence their zero contribution.

3.2 Universal Service and Access Fund (USAF) Regulations, 2011

The USAF Regulations¹² prescribe that licensees must pay an annual contribution of 0.2% of its annual turnover to the fund. USAF calculations and payments are similarly

¹¹ Per Schedule 3 of ICASA General Licence Fees Regulations, 2012.

¹² USAF Regulations, 2011 published in Government Gazette No. 34010, dated 10 February 2011.

required to be done within six month of the financial year end of each licensee. Where licensees fail to pay within the prescribed time, interest is also levied on the amount due.

On the other hand, with respect to USAF Regulations, the amounts paid range from more than R 75,000,000.00 as the highest with the lowest being less than R 120.00.

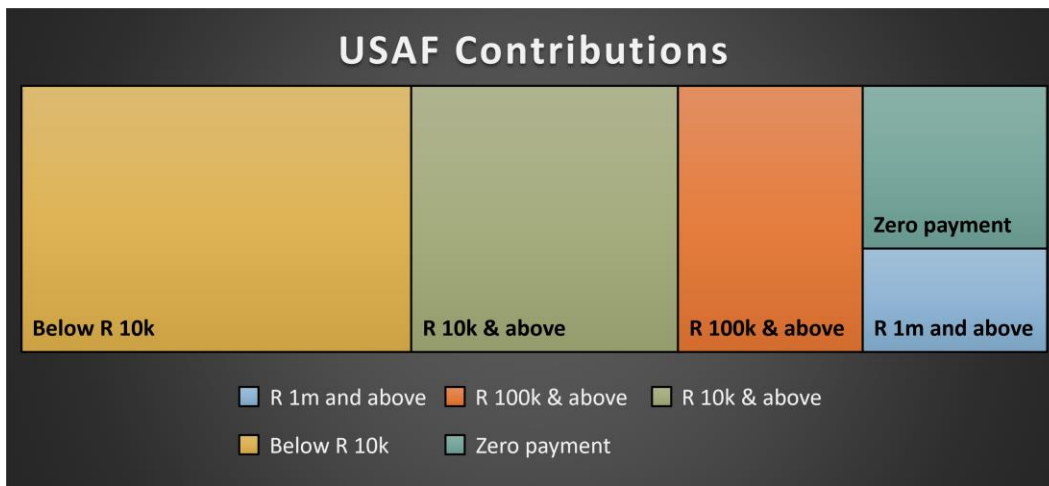


Figure 5: USAF Contributions

Similarly, for the GLF, with respect to the USAF contributions, 4 licensees did not pay their USAF contributions, 3 have not submitted their financials yet and the financials for 1 licensee, are not due yet. Additionally, 3 of the assessed licensees did not generate any revenue, hence a zero-contribution shown against each of them.

3.2.2 Total Fees Collected for the 2016/2017 Financial Year

Fees	Amount
ALF	R 485 220 758.54
USAF	R 219 959 150.97
Spectrum Fees	R 725 966 101.00
Total Fees Collected	R 1 431 146 010.51

3.3 Universal Service Obligation (USO)

Only seven¹³ licensees have USO's as part of their licence conditions. These obligations are imposed with the view to ensure access to ICT services to communities that are

¹³ They are: Cell C, Liquid Telecom (formerly Neotel), MTN, Vodacom, Telkom, Sentech and Rain (formerly WBS)

previously disadvantaged, in rural and/or remote areas, low income areas or those in need, one way or the other.

The USO's as amended¹⁴ further oblige the licensees to provide internet connectivity to the identified and selected school or community area, for the duration of their licence period, with the requirement to rollout the USOs over a period of 5 years, since 2014.

Licensees that are currently busy with their USO roll-out in schools, are Cell C, Liquid Telecom (formerly Neotel) MTN and Vodacom.

USO obligations of Telkom, Sentech and Rain (formerly WBS), in affected communities and public institutions, are still being reviewed by the Authority. Licensees that are busy with the roll-out are required to update/report twice a year to the Authority (at the end of April and end of October), on the progress and status of their USO implementation.

Below is a figure showing details of USO rollout in schools, by 4 of the licensees, to date.

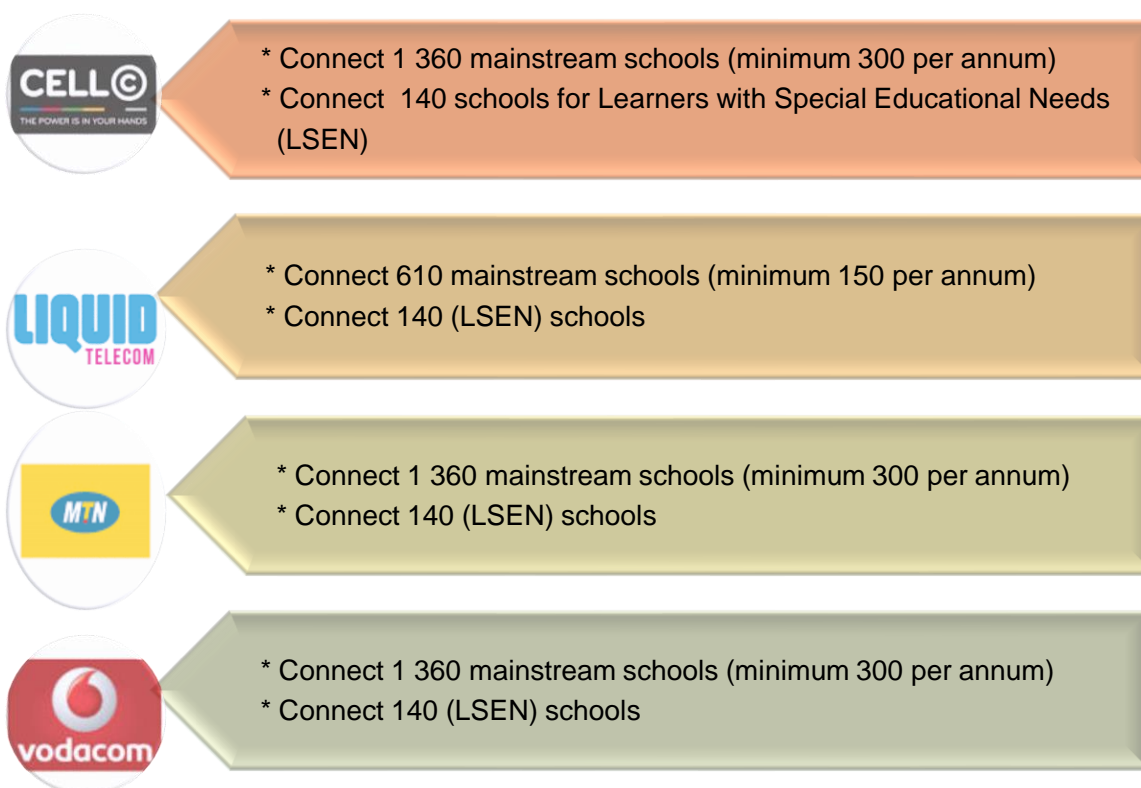


Figure 6: Details of for USO rollout for each licensee

¹⁴ Amended by the Authority on 18 March 2014 and effective from 1 April 2014.

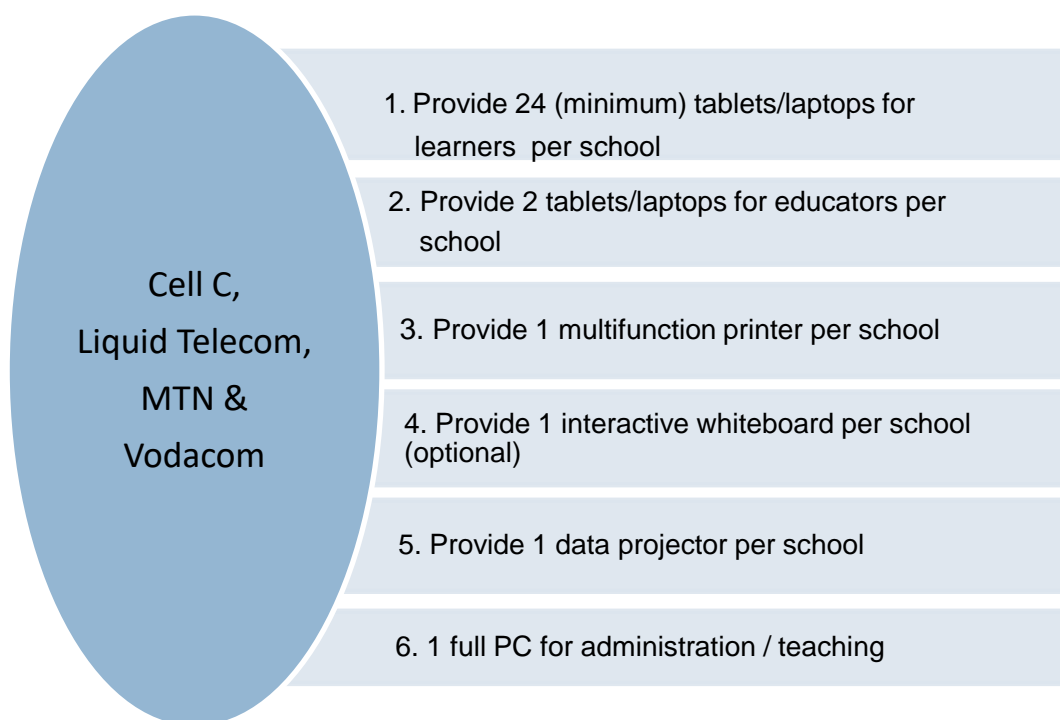


Figure 7: USO Rollout requirements of Cell C, Liquid Telecom, MTN and Vodacom

3.3.3 Connectivity: Mainstream Schools

N.B. *The information herein, is purely based on what Vodacom (and all other licensees), have reported on in their various compliance submissions and as signed off by the principals of the relevant schools.*

For illustrative purposes, we take one example, being Vodacom to show the type of service and some of the consequent factors and impact that the USO project has had in the underservices areas.

Vodacom commenced the roll-out in 2014 (as per the amended conditions) and they have a total of one thousand two hundred and fifty-one (1251) schools connected to date and of which twenty-four (24) are schools for LSEN¹⁵. Vodacom is currently connecting the remaining schools in the North-West Province and the Western Cape.

¹⁵ Learners with Special Educational Needs

The highest number of schools connected by Vodacom are in the Eastern Cape and the least connected schools are in the Western Cape.

In accordance with the Vodacom feedback 90% of the connected schools have a very good high speed 3G coverage. Vodacom reported that an average speed of 1.5Mb/s were experienced across all connected schools with an average of 98.06% being experiences on the cells serving the attached MSISDNs.

Figure 8 below shows Vodacom’s connected Schools Coverage & Service Speed.

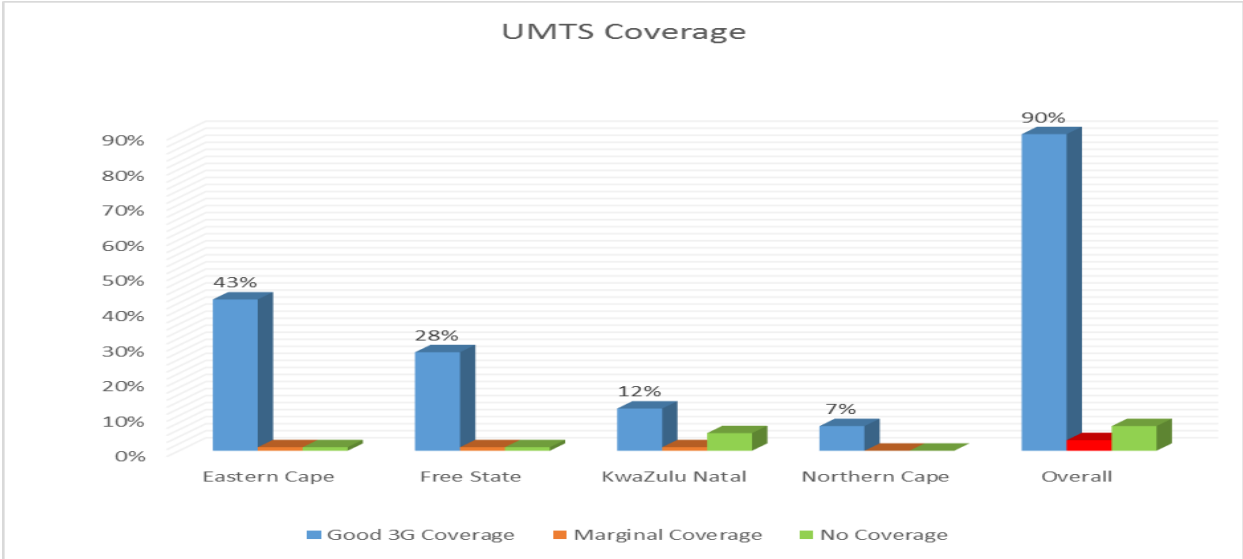


Figure 8: Vodacom UMTS Coverage

Eastern Cape has the highest 3G coverage of the Universal Mobile Telecommunications System (UMTS), coverage at 43%. The province had the highest number of schools and the marginal / no coverage of 3G, is therefore insignificant.

Free State also has 3G coverage at 28% and has the same marginal / no coverage of 3G as Eastern Cape.

On the other hand, **Kwa-Zulu Natal** has 3G coverage of 12% and the percentage of schools with no coverage is slightly higher than those in the Eastern Cape, Free State and Northern Cape.

Northern Cape has a coverage of 7% and minimal or no 3G coverage is the same as for the Eastern Cape and Free State.

Free State and Kwa-Zulu Natal have 98.48% and 98.36% average of 2G Uptime and they have the lowest 2G Downtime of 1.52% and 1.64% respectively. Eastern Cape and Northern Cape have 97.26 and 97.37% average of 2G Uptime respectively. Eastern Cape has the highest number of schools connected and it has the highest 2G Downtime. Therefore, the number of schools may/not necessary determine an average of uptime or downtime. The two figures (9) & (10) below, shows Vodacom’s 2G & 3G Uptime & Downtime, in areas shown therein.

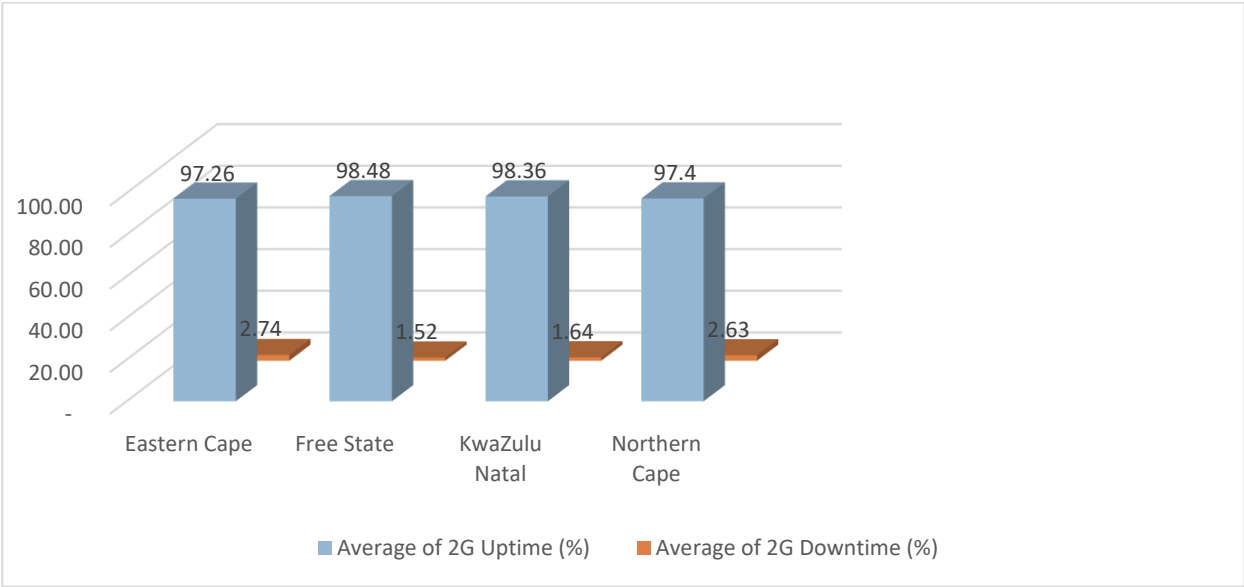


Figure 9: Vodacom 2G Uptime & Downtime

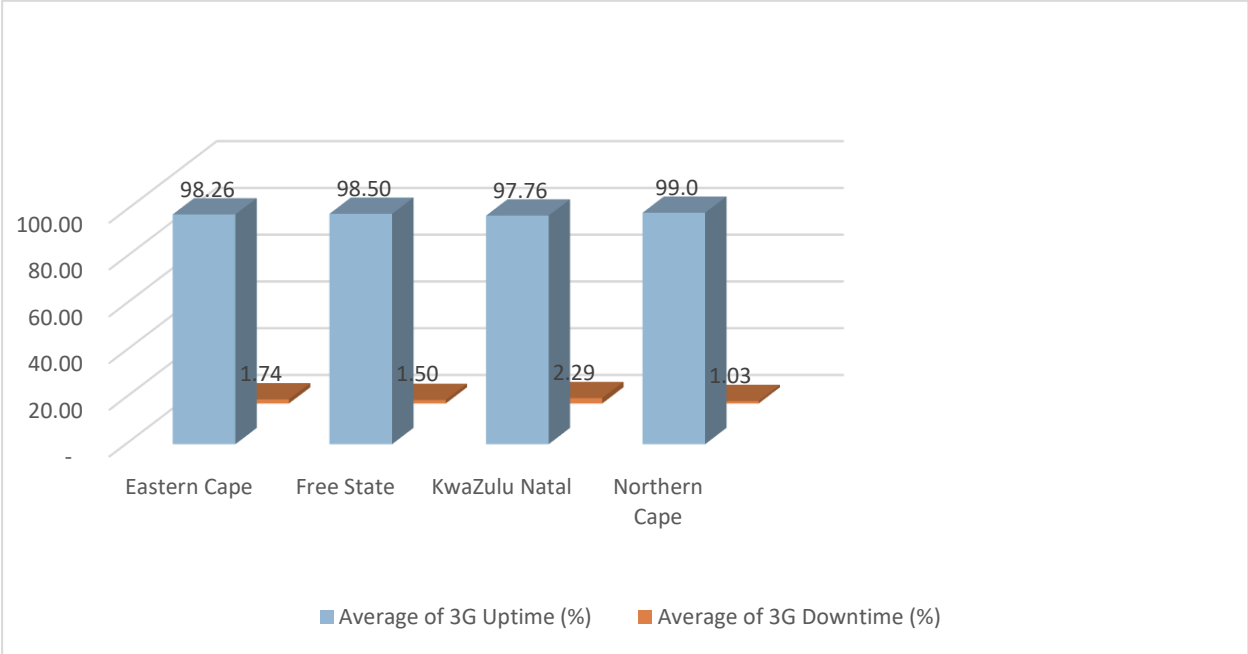


Figure 10: Vodacom 3G Uptime & Downtime

Northern Cape and Free State have 98.97% and 98.50% average of 3G Uptime and they have the lowest 3G Downtime of 1.03% and 1.50% respectively. Eastern Cape and Kwa-Zulu Natal have 98.26% and 97.76% average of 3G Uptime and 1.74% and 2.29% respectively.

The highest average of 3G Uptime for Northern Cape may be due to the number of schools connected. However, Eastern Cape has the highest number of schools connected and the average 3G Uptime is above that of Kwa-Zulu Natal even though KZN has less schools than EC.

MTN commenced its rollout in 2015 (as per the amended conditions) due in part, to delays in their internal procurement processes and the appointment of a service provider for the implementation. To date, MTN has managed to complete the rollout in mainstream schools. Furthermore, MTN managed to connect ten (10) schools for LSEN (Learners with Special Educational Needs).

Cell C commenced implementation in 2016 (as per the amended conditions) and they have a total of nine hundred and two (902) schools connected to date. The highest number of schools connected are in the KwaZulu-Natal province, with the least provinces being in the Western Cape and Free State.

Liquid Telecom as Neotel back then, commenced implementation of its rollout in 2015 (as per the amended conditions) and they have a total of three hundred and seventy-one (371) schools connected to date. This lower number is informed by the lower target that was allocated to the licensee. To date, Liquid Telecom connected schools in KwaZulu-Natal and Western Cape only.

Figure 11 below indicates the total number of schools connected by all licensees in all provinces thus far.

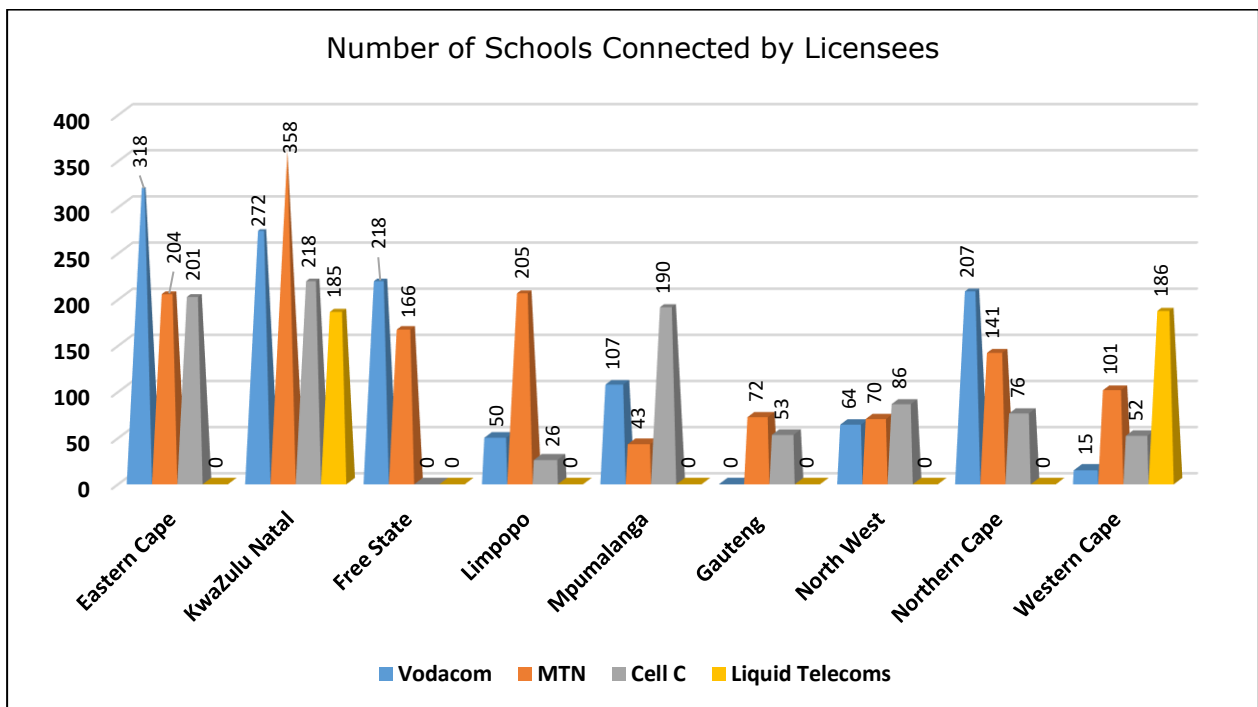


Figure 11: Mainstream schools connected per province

3.3.4 Connectivity: Schools for Learners with Special Educational Needs (LSEN)

The Authority delayed finalising the specifications for Learners with Special Educational Needs (LSEN). In January 2017, the Authority convened a meeting with organisations representing people with disabilities, through the Department of Telecommunications and Postal Services (DTPS) and the Department of Education (DoE), to develop and finalise the specifications for LSEN.

On 01 September 2017, the Authority sent finalised specifications to all four (4) licensees and gave each licensee one (1) school having LSEN, to connect as a pilot project.




Licensees should have finalised connectivity with respect to their allocated school, by end of November 2017. After which they were required to provide feedback by mid-January 2018. The Authority intends to consolidate all inputs into a final specification document and publish the specifications in 2018. However, a few of the licensees have indicated to the Authority difficulties encountered in rolling out the pilot project and that therefore, they could not meet the deadline of November 2017.

The Council Committee that deals with the USO project together with the DTSP and DoE, are currently liaising with the relevant licensees, to discuss a way-forward that may involve an extension of dates (implementation for pilot purposes and finalisation of a specification document), to accommodate the difficulties encountered.

3.3.5 Universal Service Obligations (Other Licensees)

The Universal Service and Access Obligation Committee was constituted in 2016 to amend the USAO for Sentech, Telkom and WBS. On 26 January 2017, the Authority published the Amendment of USAO for Sentech, Telkom and WBS in Government Gazette No. 40575.

Table 4: USO – Other licensees

	<p>Sentech 's USO obligations¹⁶ required it to connect 1 500 (one thousand five hundred) public rural schools and e-Learning Solutions Platforms to all TVET nationally as allocated by the Authority. It has since connected 123 (hundred and twenty three). The Sentech USO obligations are also in the process of being reviewed by the Authority.</p>
	<p>WBS's (now known as Rain), USO obligations¹⁷ required that it provide internet access to no less than 1000 (one thousand) rural and urban public schools. WBS connected 1900 (one thousand nine hundred) schools. The Authority is in the process of reviewing WBS USO obligations.</p>
	<p>Telkom 's obligations were to provide connectivity as follows:</p> <ul style="list-style-type: none"> • Internet access and services to 3 631 (three thousand six hundred and thirty-one) public health institutions allocated (not done yet and forms part of the review process);

¹⁶ Request for Amendment of Sentech SOC LTD Universal Service and Access Licence Obligations, Government Gazette 40575 of January 2017.

¹⁷ Request for Amendment of WBS Universal Service and Access License Obligations, Government Gazette No. 40575 of 26 January 2017.

	<ul style="list-style-type: none"> • 120 000 (hundred and twenty thousand) public payphones, which Telkom installed. <p>The Authority is in the process of reviewing the Telkom USO obligations (i.e. installation of public payphones), emanating from a request from Telkom based on the following factors:</p> <ul style="list-style-type: none"> ✓ changed circumstances in the market i.e. wide prevalence of mobile phones; ✓ vandalism ✓ escalating maintenance costs; ✓ changes in technology making public pay phones less relevant.
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3.4 **Compliance Procedure Manual Regulations (CPMR)**¹⁸

The Regulations were published mainly for purposes of streamlining the submission of compliance information which was consolidated into forms that are periodically completed by licensees. The forms in the CPMR outline requisite compliance information that licensees must provide, to ensure compliance with various regulatory requirements. Forms that apply to ECS/ECNS licence holders, together with their respective requirements are outlined below.

3.4.1 Form 1: Shareholding and Staff component

The purpose of this Form is to solicit a legal entity's (licensee) basic company information and the structure thereof. This enables the Authority to have insight into the layout of the ICT sector with respect to employment/staff and shareholding distribution by race, gender, historically disadvantaged groups (HDGs), youth, people with disabilities and women.

¹⁸ Published in Government Gazette No. 34863, dated 15 December 2011.

HDGs information provides the Authority with a sense of the extent of transformation in the ICT sector for purposes of attaining the 30% shareholding quota, in line with the requirements of section 9 (2) (b) of the ECA.

Further, section 13 of the ECA makes it a requirement that individual licence applications for transfers of shareholding, only be approved where the licensee concerned, meets the 30% minimum shareholding requirement by HDGs.

3.4.2 Form 1 - Findings:

Shareholding: Many licensees historically do not have an HDG shareholding component as that was inherited from the licence conversion process of 2009 (with previous legislation that did not make the HDG component a stringent requirement). Section 92 (1) of the ECA provides that licences had to be converted on no less favourable terms, hence the limitation on the Authority to insist on all licensees, to have the 30% minimum shareholding requirement by HDGs. The focus of the requirement is mainly on new licences and those who may acquire a shareholding in a licensee or where a licensee may be assigned or transferred or ceded or let or sublet to another, in terms of section 13 of the ECA.

It was worth noting that of the 100 licensees assessed, only 28 had HDG ownership, and from that number, only 15 meet the 30% HDG shareholding requirement.

Other licensees have shareholding by HDGs that is below 30%. Though at a very slow pace, HDG ownership by licensees is expected to gradually increase in compliance with the 30% requirement in the ECA with respect to individual licences.

Vodacom does not meet the 30% HDG shareholding minimum requirement, currently being at 17.96%. Telkom SA Limited also falls short of the HDG shareholding requirement which is at 19%. Cell C only recently met the 30% HDG shareholding requirement through their recapitalisation process that occurred in 2017.

Liquid Telecom's recent shareholding changes enabled them to meet the 30% requirement. MTN currently has 38,75% HDG shareholding. The overall HDG shareholding picture among the 5 leading licensees, is per the figure 12 below.

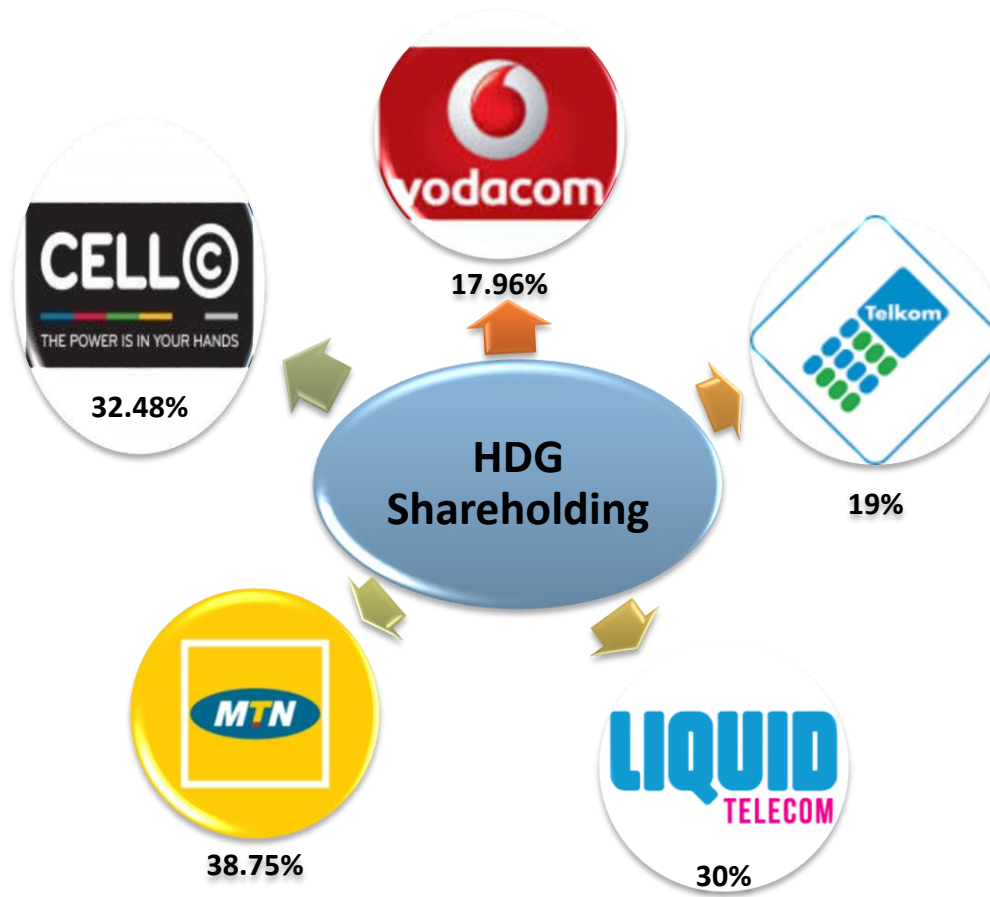


Figure 12: Main players- HDG Shareholding

Of all licensees, only 21 were found to have women in their shareholding. Notably though the shareholding thereof is not in significant numbers.

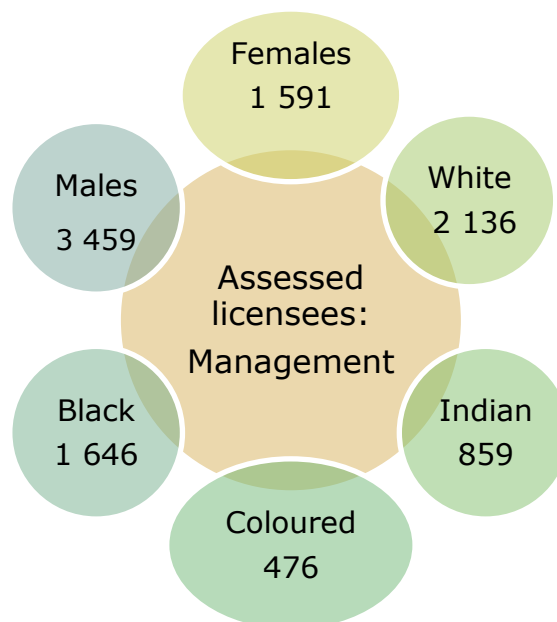


Figure 13: Management distribution

Of all the licensees that were assessed, management is led by men being more than double the number of women.

On the other hand, in terms of race (management) Whites lead, followed by Blacks, Indians and Coloureds being the least represented.

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

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

3.4.4 Form 4: E - Rate

This form requires that relevant licensees provide the Authority with a report with respect to E-rate services provided.

3.4.5 Form 4 – Findings:

Despite the continued roll-out of the Universal Service Obligations by the relevant licensees, due to the shortcomings in relation to the enforcement of the E-Rate Regulations, licensees have not been providing any services as per these USO's but rather as part of their companies' Corporate Social Responsibility (CSR).

The Licensee that has had USOs as a CSR previously, is Vodacom (2013 and 2014), having entered into certain contracts and connected 14 schools. The Authority is not aware that MTN, Cell C and Liquid Telecom have such projects in place.

3.4.6 Other Forms

The other forms that are applicable to ECS/ECNS licensees, are as follows:

- ✚ Form 5: Tariff Report Form (which tariffs are being charged);
- ✚ Form 6A: Sectoral Planning (information in relation to the ICT market, e.g. churn rates, interconnection traffic, number portability etc);
- ✚ Form 7A: Code of Conduct – Consumer (information in relation to consumer information, rights and recourse)
- ✚ Form 7C: Code on people with disabilities (whether licensees put in place relevant facilities for the needs of the disabled)
- ✚ Form 12 A: Complaints report (the extent to which each licensee receives complaints and how they are attended to).

3.4.7 Other Forms – Findings:

The ECS/ECNS Compliance Unit has been receiving the above-mentioned forms from various licensees with the requisite information at various intervals as per the requirements of the CPMR. There are a few however that have not submitted. However, ECS/ECNS Compliance will pursue those licensees to ensure full compliance.

Having said the above, no major issue that raises concern has been picked up to necessitate an inspection of the premises for purposes of ascertaining the contents of the forms.

4. End User and Subscriber Service Charter Regulations, 2009

Licensees are obliged to make submissions in relation to their compliance with The End User and Subscriber Service Charter Regulations, 2009 the 'Service Charter'. The said Regulations were published in Government Gazette No. 32431, dated 24 July 2009. The Service Charter came into force within 30 days from the date of publication i.e. on 01 September 2009. New Regulations were then effective from 01 April 2016 and published in Government Gazette No. 39898.

The total number of submissions received from ECS/ECNS licences at the time of reporting with respect to the End User and Service Subscriber Charter Regulations, was 56. It is apparent from the submissions received that licensees are generally not yet fully geared up in relation to processes/structures to enable fully-fledged reporting as is indicative by the "no info" entry on a number of aspects. This is due to the fact that the Service Charter is fairly new.

ECS/ECNS Compliance is aware that it is important to regularly reinforce the importance of compliance with the End User and Service Subscriber Charter Regulations, in its entirety.

5. Interconnection Agreements

In accordance with section 39 of the ECA, licensees are obliged to submit their interconnection agreements to the Authority within a stipulated time for purposes of

review. The review is done based on the said section together with the Interconnection¹⁹ and Call Termination²⁰ Regulations as amended.

For the financial year under assessment, the Authority received 27 interconnection agreements most of which were Session Initiation Protocol (SIP) agreements, others were standard interconnection agreements and the rest being Internet Protocol (IP) agreements. All due²¹ interconnection agreements have been reviewed and feedback was provided, to respective licensees who submitted the agreements.

In the review through the Interconnection Regulations, the mandate of the Authority is to regulate for instance, financial and technical feasibility, quality of service, non-discrimination and transparency, in the conclusion of those agreements by the interconnection providers.

In the event the Authority may find in the review process, that one or more of the required principles were not adhered to, the Authority will notify the parties to rectify the non-compliance to ensure that the agreement meets the regulatory requirements.

6. Facilities Leasing Agreements

Licensees are obliged in terms of section 43 of the ECA to lease electronic communications facilities to those who may request. For the year under review, the Authority has received 14 facilities leasing agreements from Transnet which however, were found to be non-compliant.

The said facilities leasing agreements did not contain certain requisite regulatory information (e.g. technical feasibility information, quality of service standards, transparency and an indication that they were concluded on non-discrimination basis), as required by regulation 17 of the Facilities Leasing Regulations²².

¹⁹ Interconnection Regulations as published in *Government Gazette* No. 33101 of 9 April 2010.

²⁰ Call Termination Amendment Regulations, 2017 published in *Government Gazette* No. 41132 dated 22 September 2017.

²¹ The Authority has a time frame of 30 business days after receipt to review and approve / approve.

²² Regulation 17 (1) of the Electronic Communications Facilities Leasing Regulations, 2010 the 'Regulations' published in *Government Gazette* No. 33252 and dated 31 May 2010,

The ECS/ECNS Compliance Unit awaits re-submission of the full information by Transnet in that regard, to enable finalisation of same.

7. Extensions and Notifications

Extensions: From time to time, it occurs that licensees are not able to commence operations as per the date set out in their licences. In such instances, licensees are required in terms of the Regulations²³ to notify the Authority and request an extension of commencement period.

The making of the request for extension, will allow the licensee to avoid a possible contravention of the Regulations on Standard Terms and Conditions for both Class and Individual Licences. Commencement periods are 24 months for an ECNS licence and 12 months for an ECS licence. The regulations provide that licensees may only be granted an extension to commence its operations, once.

Notifications: Where licensees change licence information such as an address or contact person, they have a regulatory obligation²⁴ to notify the Authority of such changes and to do so within the stipulated period of 7 days of the occurrence of such a change.

Where an individual licensee intends to significantly change its shareholding/ ownership or transferring control of the licence as provided for in section 13(1) of the ECA, the licensee is obliged to seek authorisation from the Authority prior to such a change taking place.

During 2017 for example, the Compliance and Consumer Affairs (CCA), discovered that 17 licensees did not comply with section 13 of the ECA. There appeared a deliberate attempt to circumvent the Regulations by merely submitting a notification of change of shareholding. What the licensees missed, is that section 13 of the ECA

²³ The Standard Terms and Conditions Regulation for Individual Licences, 2010 published in *Government Gazette* No. 33296, dated 14 June 2010 and as amended in *Government Gazette* No. 39872, published 30 March 2016.

²⁴ The Regulations on Amendment Standard Terms and Conditions for Individual Electronic Communications Network Service, 2015 published in *Government Gazette* no.39875, dated 30 March 2016.

takes precedence and the Regulations they sought to use, would not apply at least not as far change/transfer in shareholding is concerned.

CCA therefore, considered the matter more closely and sought further legal guidance, for full clarification on the practical application and effect of the section. The processing of seventeen of the submissions that were received is being carried out as per the legal opinion that advised in brief, that CCA had to ascertain the extent of the control transferred in respect of each of the transactions.

Further, three (3) of the seventeen are class licences and section 16(6) of the ECA also requires of class licence, to bring those transfers, to the Authority for “prior written approval”. It is for that reason that the same determination will apply with respect to the three.

In instances where transfer of control requirements of section 13(1) and section 16(6) of the ECA have been triggered, those matters will then have to be referred to the CCC for adjudication.

Figure 14 below shows the numbers of requests for extension of commencement of operations received by the Authority during the assessment period.

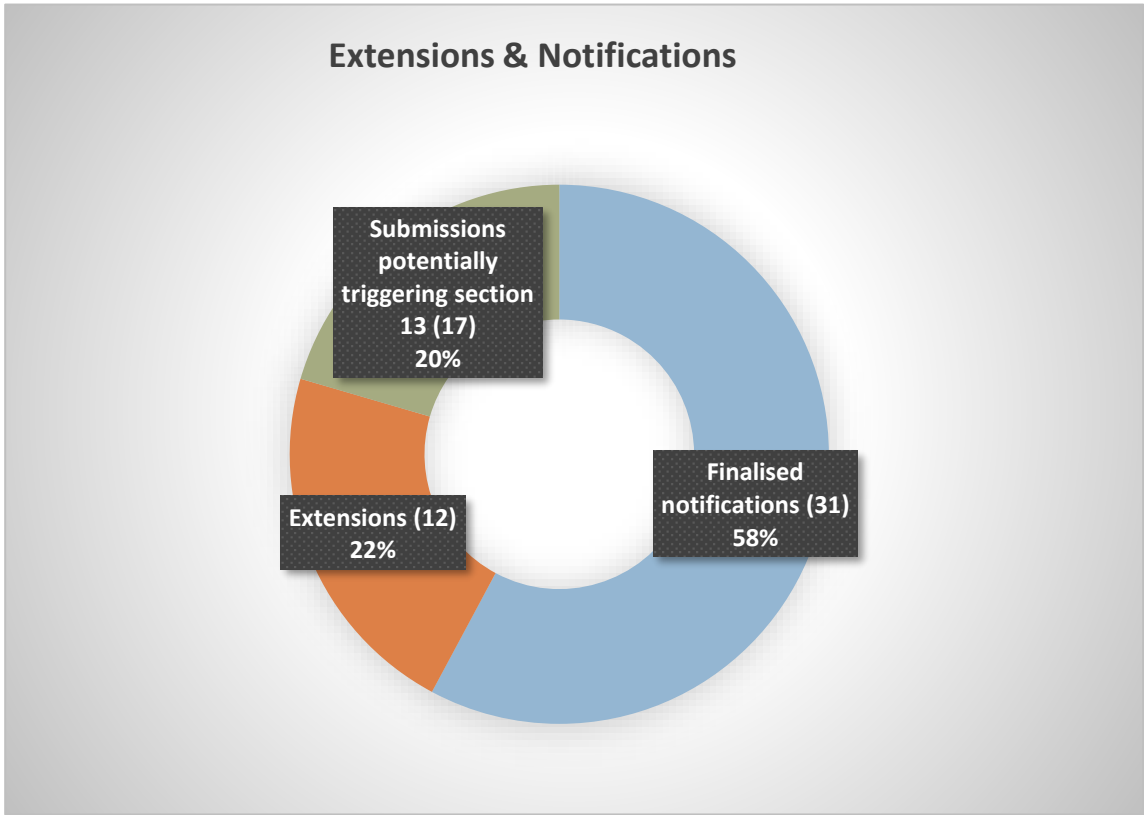


Figure 14: Extensions & Notifications

8. Inspections

Whenever necessary the ECS/ECNS Compliance Unit would seek the assistance and intervention of the Regions Division, to do inspections with respect to any matter as per the End User and Service Subscriber Service Charter Regulations²⁵.

For the year assessed, there were no specific inspections that had to be done as the ECS/ECNS Compliance Unit was attending to compliance aspects that had been flagged in the inspection reports received in the 2015/2016 financial year.

9. Referrals to the Complaints and Compliance Committee (CCC)

In instances where a licensee may fail or refuse to comply with any of the legislative and/or regulatory compliance requirements even after repeated attempts by the ECS/ECNS Compliance Unit, such a licensee would then be referred to the CCC, to hear the matter and make an appropriate determination.

During the year under review the CCC dealt with 19 matters, these matters formed part of the accumulated backlog of referrals since the 2012/2013 period. Therefore, no additional matters were referred to the CCC during the 2016/2017 financial year.

The pie chart below shows the findings by the CCC with respect to the 19 ECS/ECNS matters it has heard and subsequently referred to Council, to approve the recommended outcomes. N.B. The CCC itself reports separately elsewhere, on all matters it has dealt with in any financial year.

²⁵ End User and Subscriber Service Charter Regulations, 2016 per GG Notice No. 38898 of 1 April 2016

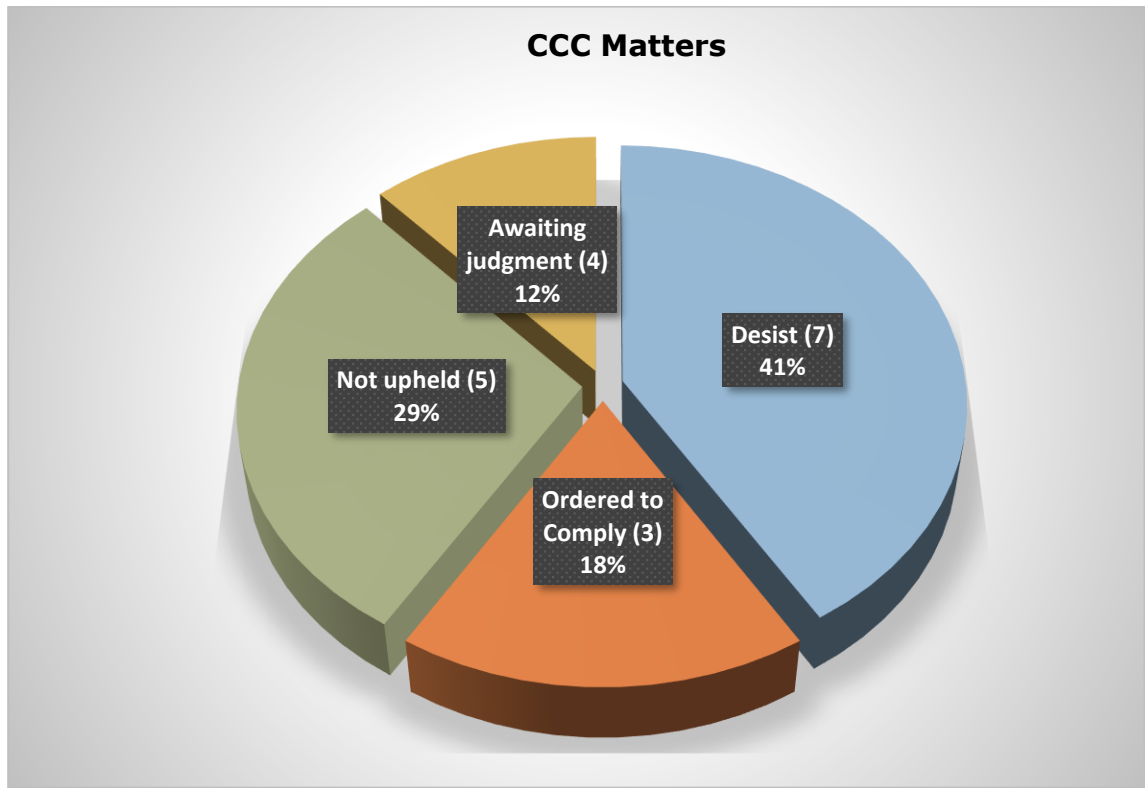


Figure 15: Breakdown of ECS/ECNS Compliance matters before CCC