

## COMPLAINTS AND COMPLIANCE COMMITTEE<sup>1</sup>

**Date of Hearing: 30 September 2015**

**CASE NUMBER 97/2015**

**IN RE: NEW AGE HOLDINGS (PTY) LTD**

**PANEL:** Prof. JCW Van Rooyen SC  
Councillor Nomvuyiso Batyi  
Mr Jacob Medupe  
Mr Jack Tlokana

Mr. C Jacobs from Leslie Cohen & Associates, Johannesburg, for New Age Holdings (Pty) Ltd.

From the ICASA's Licensing and Compliance Department: Mr M Nkosinkulu.

In attendance from the Office of the Coordinator: Ms Meera Lalla

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### JUDGMENT

**JCW VAN ROOYEN SC**

#### BACKGROUND

[1] On 13 March 2009 New Age Holdings (Pty) Ltd ("NAH") was issued with an Individual Electronic Communications Services Licence ("I-ECS") and an

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<sup>1</sup> An Independent Administrative Tribunal set up in terms of the Independent Communications Authority Act 13 of 2000. The CCC was recognised as an independent tribunal by the Constitutional Court in 2008. It, inter alia, decides disputes referred to it in terms of the Electronic Communications Act 2005. Such a decision is, on application, subject to review by a Court of Law. The Tribunal also decides whether complaints (or internal references from the compliance division or inspectors at ICASA) which it receives against licensees in terms of the Electronic Communications Act 2005 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, further reasons are not issued. The final judgment is, on application, subject to review by a Court of Law.

Individual Electronic Communications Network Service Licence (I-ECNS) by the Independent Communications Authority of South Africa (“ICASA”). An earlier licence was substituted by these licences. ICASA’s Compliance Division (ECS and ECNS licences), which has a monitoring function, referred this matter to the Complaints and Compliance Committee (“CCC”), alleging that NAH had not made any contributions to the Universal Service and Access Fund (“USAF”) and that no Financial Statements have been filed with ICASA.

[2] 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 Electronic Communications Act 2005 (“ECA”), which became effective in 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, where the CCC had found a contravention of these regulations. The 2008 Regulations were, however, repealed in 2011 and substituted by a new set of regulations on the 10<sup>th</sup> February 2011. That means that only omissions to pay the USAF levy as from 10 February 2011 are before the CCC.

[3] 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 by way of 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.

[4] Notices were published in the *Government Gazette* informing licensees of their duties in regard to the payment of USAF fees as well as the duty to file annual financial statements so as to keep ICASA informed in terms of the Regulations. On 16 September 2011 ICASA issued a General Notice calling upon all licensees to furnish annual financial statements to ICASA and to further provide proof of payment of USAF and general licence fees for the period 2010/11 to enable ICASA to carry out its duties. This notice further informed licensees of the interest and late penalty which would be levied on any payments after the prescribed period. It also instructed licensees to provide

their latest contact details to ICASA. In April 2013 ICASA issued a further General Notice calling upon licensees to submit their audited financial statements or financial statements signed and sworn to by its accounting officer for the 2012-2013 compliance assessment term. There was no reaction from NAH to any of these Notices. These notices were all copied on the website of ICASA.

[5] On the 10<sup>th</sup> May 2013 NAH was informed in an email by ICASA's Licensing and Compliance Division that it had not filed financial statements since 2006. Furthermore, if it had commenced operations at a later date, it should advise ICASA on a formal letterhead when it had commenced operations. In so far as the 2012-13 financial statements were concerned, NAH was requested to provide a financial forecast, if the financial year ended on the following months: October, November, January, February and March.

[6] On the 7<sup>th</sup> May 2015 Ms Meera Lalla, from the Office of the Coordinator at ICASA, emailed the Complaint, which is before us, to NAH. On the 8<sup>th</sup> May 2015 NAH responded in an email and submitted that the "grounds for this complaint are unfounded and lacks the averments to support such a claim." It was further stated that submissions up to 2011 were made. However, that with the promulgation of the new Companies Act, the requirement for an audit for owner managed companies was removed and that they had opted not to audit their financials. Also that NAH had, in May 2011, advised ICASA that it was not engaged in "licence fee drawing activities, as we await ICASA to make a decision on spectrum allocations."

[7] On 22 May 2015 an email, denying any contravention, was received by the Coordinator's Office. There was, once again a reference to the 2011 notice from NAH in which it was indicated that NAH was not involved in "licence fee drawing activities," pending ICASA's decision as to spectrum, which had been applied for. Since no answer was forthcoming, NAH was unable to use the licence. Ultimately NAH submitted that the referral to the CCC "was procedurally unfair and not in line with the spirit of empowering Wholly Black Owned Companies.... We contend that, had ICASA telephoned us on the matter prior to the referral (to the CCC), the matter would have been instantly resolved."

## ADDRESSING THE ISSUES

[8] NAH, with respect, has an erroneous perception of what the two licences, issued to it, mean. The USAF regulations are clear: where a licence is not made operational within twelve months (or six months in the case of an ECS) the following USAF regulation applies:

### 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.** (emphasis added)
- (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.

[9] The high fine which may be imposed by ICASA demonstrates the importance of these Regulations:

### 7. Contraventions and penalties

- (1) Upon a determination of non-compliance by the Complaints and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:
  - (a) One Hundred Thousand Rands (R100, 000. 00) for contravention of regulations 3, 4(2) **and 5.** (emphasis added)
  - (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.** (emphasis added)

[10] The CCC's initial thinking, after the hearing of this matter, was that NAH has no future in relation to the ECS and ECNS licences as such and that it might as well advise Council to issue a declaratory order that its licences have expired as a result of non-user.<sup>2</sup> However, in the light of the reasoning related to the

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<sup>2</sup> A declaratory order is impliedly mandated: since Council has the authority to *grant* a licence it may also declare it to no longer be operative where the facts justify such a decision. One of the conditions is that such a licence must be operational within a certain prescribed period. If permission for more time is not sought from the Authority, the licence falls away. Where a licensee is able to show that it was bona fide involved in working towards the ultimate goal, such a declaratory order would not be appropriate. Compare the matter of *Twin*

application for spectrum, during the hearing of this matter, it was decided to grant NAH a further opportunity to apply for the retention of these licences. Of course, the CCC has no evidence in relation to the viability of waiting for the granting of spectrum and can, in any case, promise nothing in this regard. However, the two licences granted to NAH do not, for purposes of their viability, depend on spectrum granted to NAH.

[11] NAH was grossly negligent in not keeping ICASA informed as to what was happening to the company and not filing financial statements. The omission was a radical one and not one which one could simply, in the words of NAH, have been addressed by way of a phone call. At the hearing of this matter, we were provided with a statement signed by an auditor that for the 2012 financial year there was no income related to the exercising of the rights in terms of the licences. This, at least, accords with what was conveyed to the CCC at the hearing of this matter. Of course, as will be advised to Council, we will also have to be provided with a statement by the auditor that this is presently still the case.

**We have asked the Coordinator to immediately inform NAH that by 31 March 2016 a confirmation by an auditor or a sworn and signed confirmation by an accountant will be required to be filed with her as to the financial years 2013, 2014, 2015 and, obviously, for 2016 when it is ready in the ordinary course. The auditor or accountant will have to confirm that NAH is not exercising its rights in terms of the licences and that no income is derived from the said two licences. This condition will also be part of our recommendation to Council.**

#### **FINDING ON THE MERITS**

[12] The CCC has come to the following conclusion on the merits of the matter:

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*Peak Technologies* (Case 114/2015) where such an order was not made; contrast, however, *Netvoip* (case 121/2015) and *Ukhahlamba* (case 119/2015). It should be mentioned that a *withdrawal* of a licence, as a sanction, is only authorised by the ICASA Act after *repeated* contraventions have been found, which is not what has happened in these cases, since there were no earlier contraventions on the licensee's record. See section 17E (2)(d) of the ICASA Act. A declaratory order is, accordingly the only remedy, where it is deemed fitting as was the case in *Netvoip* and *Ukhahlamba*.

(a) That NAH has contravened the September 2011 regulations, as quoted above and repeated in the Addenda to this judgment, by not applying for authorisation to commence with the licences at a later stage. Contraventions of the regulations before September 2011 are not before the CCC. This is so since a contravention of a regulation which has been repealed cannot, after its repeal, be a basis for an investigation by the CCC. The Constitution of the Republic of South Africa<sup>3</sup> does not permit charges to be brought under repealed legislation, unless a charge was initiated while such legislation was still in operation.<sup>4</sup> The allegation of a contravention was sent by the CCC Coordinator to the licensee on the 7th May 2015. Thus, only contraventions as from the relevant dates of the regulations in 2011 are before the CCC.

(b) That NAH has further contravened the September 2011 Regulations in accordance with which ICASA required licensees to file annual financial statements. A 2012 NAH financial statement by the auditors was filed at the hearing. The statement shows no activity in terms of the licences. No USAF fees are, accordingly, payable. This is, however, no excuse. Financial statements must be filed even if there was no activity in terms of the licences. There is no other means by way of which ICASA is able to determine what has occurred financially with a licensee. This very late filing in 2012 can, however, hardly, be regarded as substantial compliance, which would have exonerated NAH.<sup>5</sup> A confirmation by the auditor for the years 2013, 2014 and 2015 must, in any case, still be filed as indicated above.

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<sup>3</sup> See section 35(3)(l). Cf. *Masiya v DPP, Pretoria (Centre for Applied Legal Studies, Amici Curiae)* 2007 (5) SA 30 (CC) at para [54]; *Savoi v NDPP* 2014 (5) SA 317 (CC) at para[73].

<sup>4</sup> And it is constitutionally acceptable.

<sup>5</sup> 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.”

## RECOMMENDATION TO COUNCIL AS TO SANCTION

1. For the late filing of financial statements: a fine of Twenty Thousand Rand (R20 000), payable to ICASA on or before 31 March 2016.
2. For not applying to ICASA within the periods stated in the above cited Regulations for authorisation not to operate: a fine of Thirty Thousand Rand (R30 000) payable to ICASA on or before 31 March 2016.
3. NAH is directed to file, before 31 March 2016, a fully motivated application to ICASA in terms of regulation 5 of the September 2011 Regulations for an extension of the period of non-operation of both licences. The Coordinator of the CCC must be copied with such an application.

*The Coordinator of the CCC will inform NAH of the banking details of ICASA and all payments must be copied with the Coordinator.*



7 October 2015

PROF JCW VAN ROOYEN SC

CHAIRPERSON

Councillor Nomvuyiso Batyi, Mr Jacob Medupe and Mr Jack Tlokana concurred with the judgment of the Chairperson.

**See Addenda with Regulations**

## ADDENDA: RELEVANT REGULATIONS

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

#### 1. Definitions

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

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

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

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

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

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

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

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

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

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

#### 2. Notification of licensee details and information

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

- (a) the name of the Licensee;
- (b) contact details;
- (c) shareholder; and
- (d) Notices and addresses



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

### **3. Licence area**

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

### **4. Duration of the licence**

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

### **5. Commencement and operation of service**

(1) A Licensee must commence operation of the ECS specified in the Licence within six (6) months from the effective date, unless the Authority grants, on good cause shown, an extended commencement period on written application, prior to the expiry of the six (6) months.

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

### **6. Services to be provided by the licensee**

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

### **7. Safety measures**

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

### **8. Provision of information**

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

- (a) monitor and enforce consumer protection, quality of service, competition, compliance with licence conditions and other requirements of the Act and related legislation;
- (b) allow for the assessment and allocation of applicable fees and related requirements;
- (c) facilitate the efficient use of scarce resources; and
- (d) collect and compile information to be used for the purposes of sectoral analysis, planning, reporting and conducting inquiries.

(2) In respect of each information request referred to in sub-clause (1), except where otherwise addressed in applicable regulations, the Authority will provide, among other things, detailed specifications of its information request, applicable response times and a contact person to whom queries may be addressed.

(3) The licensee must provide the information in accordance with such format as may be prescribed by the Authority.

## **9. Publication of tariffs and fees**

(1) A Licensee may not provide any service for a charge, fee or other compensation, unless the price(s) for the service and other terms and conditions of the provision of such service:

(a) have been made known to the end-user by:

(i) making such prices and terms and conditions available for inspection at its offices during business hours; and

(ii) providing such details to anyone who requests same at no charge;

(b) have been filed with the Authority at least seven(7) days prior to the provision of the said service. In making such a filing, a Licensee must utilise a format approved by the Authority in writing.

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

## **10. Metering and billing arrangements**

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

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

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

(a) details of services rendered to the end-user;

(b) breakdown of charges associated with services, and

- (c) such other relevant information associated with the end-user's account.
- (4) Upon request by an end-user, the Licensee must provide an itemised bill, which contains a sufficient level of detail to allow verification of charges incurred in using the services provided by the licensee.
  - (a) Each detailed itemised bill shall contain at least the following information in relation to each individual transaction (voice or data call) charge incurred by the subscriber during the relevant billing period:
    - (1) destination,
    - (2) dialled number,
    - (3) date,
    - (4) time,
    - (5) duration, and
    - (6) charge for each individual transaction.
  - (b) The detailed itemised bill must be provided:
    - (i) via post or in an electronic format;
    - (ii) at such a price that takes into account the difference in the mode of delivery.

## **11. Specific terms and conditions**

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

## **12. Contravention and fines**

- (1) Upon a determination of non-compliance by the Complaint and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:
  - (a) One Million Rands (R1 000 000) for contravention of regulations 2, 4, 5, 7, 8(2), 9 and 10;
  - (b) One Hundred Thousand Rands (R100 000) for contravention of any regulation not specified in regulation 12(1)(a), and
  - (c) One Hundred Thousand Rands (R100 000) for repeated contravention of the regulations.

## **13. Notices and addresses**

(1) Any notice or certification given by the Authority or the Licensee shall be in writing and:

(a) if delivered by hand to the recipient's address, it shall be deemed, until the contrary is proven, that it has been received at the time of delivery;

(b) if posted by pre-paid registered post from an address within the Republic of South Africa, it shall be deemed, until the contrary is proven, to have been received on the 14th day after the date of posting; or

(c) if sent by facsimile transmission during normal business hours, proof of successful transmission shall be deemed to be proof of receipt, unless the contrary is proven.

(2) A Licensee shall provide the Authority with an address where it will accept formal service of letters, documents and legal process in this regard as well as a fax and telephone number on which it can be contacted as set out in the Licence.

#### **14. Short title and commencement**

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

#### **15. Repeal of regulations**

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

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

### **1. Definition**

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

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

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

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

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

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

**“Licensee”** means the person named in Licence and issued with a licence to provide services in terms of [Chapter 3](#) of the Act;

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

## **2. Notification of licensee details and information**

- (1) A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes in its licence:
  - (a) the name of the Licensee;
  - (b) contact details;
  - (c) shareholding; and
  - (d) Notices and addresses.
  
- (2) Any change or transfers of shares undertaken in terms of 2(1)(c) above must comply with all licence terms and conditions and the Act.

## **3. Licence area**

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

## **4. Duration of the licence**

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

## **5. Commencement and operation of service**

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

## **6. Services to be provided by the licensee**

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

## **7. Safety measures**

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

## **8. Provision of information**

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

## **9. Publication of tariffs and fees**

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

## **10. Metering and billing arrangements**

- (1) A Licensee shall install and operate metering and billing systems which accurately record the extent of the service(s) provided to any end-user.
- (2) A Licensee must provide an accurate invoice with a detailed statement of services rendered to any end-user at no charge.
- (3) The invoice must include information for the entire period covered by such invoice as follows:
  - (a) details of services rendered to the end-user;
  - (b) breakdown of charges associated with services, and
  - (c) such other relevant information associated with the end-user's account.
- (4) Upon request by an end-user, the Licensee must provide an itemised bill, which contains a sufficient level of detail to allow verification of charges incurred in using the services provided by the licensee.

- (a) Each detailed itemised bill shall contain at least the following information in relation to each individual transaction (voice or data call) charge incurred by the subscriber during the relevant billing period:
  - (1) destination,
  - (2) dialled number,
  - (3) date,
  - (4) time,
  - (5) duration, and
  - (6) charge for each individual transaction.
- (b) The detailed itemised bill must be provided:
  - (i) via post or in an electronic format; and
  - (ii) at such a price that takes into account the difference in the mode of delivery

#### **11. Specific terms and conditions**

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

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

#### **12. Contravention and fines**

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

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

#### **13. Notices and addresses**

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

#### **14. Short title and commencement**

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

#### **15. Repeal of regulations**

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

## **USAF REGULATIONS 2011**

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

#### **1. Definitions**

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

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

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

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



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

**“BS Licensee”** means broadcasting service licensee;

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

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

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

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

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

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

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

## **2. Object of the regulations**

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

## **3. Contributions to the universal service and access fund**

- (1) Every holder of a licence granted in terms of [Chapters 3, 4](#) and/or [9](#) or converted in terms of [Chapter 15](#) of the Act, must pay an annual contribution of 0.2% of its Annual Turnover to the Fund.
- (2) A BS licensee who has paid an annual contribution to the MDDA must set off that contribution against its USAF Contribution, provided that the MDDA contribution and the USAF contribution against which it is set off are for the same financial year.

## **4. Payment of contributions**

- (1) Where a legal entity holds any combination of a BS Licence, ECS Licence and/or ECNS Licence, such entity may calculate the USAF contribution based on the Annual Turnover from aggregated revenue generated from the combined licences.

- (2) Payments in respect of contributions to the Fund:
- (a) are due annually based on the licensee's financial year;
  - (b) are payable within 6 months from the end of the licensee's financial year; and
  - (c) May only be paid by way of an electronic transfer or via a direct deposit into the Authority's bank account, and
  - (d) must be based on the:
    - (i) Audited annual financial statement of the licensee; or
    - (ii) Financial statements signed and sworn to by the accounting officer of the licensee where the licensee is not legally obliged to provide audited financial statements.

**5. Interest**

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

**6. Amendment or repeal**

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

**7. Contraventions and penalties**

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

**8. Short title and commencement**

- (1) These regulations will be effective from the date of publication in the Government Gazette.
- (2) These regulations will be called the USAF Regulations, 2011.