

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of Hearing: 18 July 2016

CASE NUMBER 137/2016

IN RE: SBS TELECOMS (Pty) Ltd

PANEL: Prof JCW van Rooyen SC
Councillor Nomvuyiso Batyi
Ms Nomfundo Maseti
Mr Jacob Medupe
Prof Kasturi Moodaliyar
Mr Jack Tlokana
Ms Mapato Ramokgopa

From SBS TELECOMS Seamus O'Brien and Jacobus Erasmus with Accountant D Meyer. From ICASA's Compliance Division (Licences): Mr Hlabioa; In attendance from the Coordinator's Office: Adv. Lwazi Myeza; Acting Coordinator: Attorney Meera Lalla

JUDGMENT

JCW VAN ROOYEN SC

[1] On the 15th January 2009 the Independent Communications Authority of South Africa ("ICASA") issued an Individual Electronic Communications Service

¹ An Independent Administrative Tribunal at ICASA 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. The order of Council is enforceable in terms of section 17H(1)(f) of the ICASA Act.

Licence and an Individual Electronic Communications Network Licence² to SBS Telecoms (Pty) Ltd (“SBS”). The licences indicated the following shareholders: RM Mampeule (51%), E van Rooyen (24.5%) and SA O’Brien (24.5%). ICASA’s Compliance Division (ECS and ECNS licences), which has a delegated monitoring function, referred this matter in 2013 to the Complaints and Compliance Committee at ICASA (“CCC”), alleging that SBS had not filed financial statements for the years (2010-2011), (2011-2012) and (2012- 2013). This should have been done, according to Compliance, in accordance with General Notices³ published in the *Government Gazette* in terms of the September 2011 Regulations regarding Standard Terms and Conditions for Individual and Individual Network Licences.⁴ Furthermore, that no contribution had been made in terms of the Universal Service and Access Fund (“USAF”) Regulations and no licence fees paid in terms of the ICASA General Licence Fees Regulations 2012.⁵

[2] The September 2011 Regulations, in accordance with which Government Notices were issued requiring licensees to file financial statements, do not have retroactive effect and, accordingly, only the financial years 2011-2012 and 2012-2013 are before the CCC. Earlier financial years cannot be part of the alleged contraventions before the CCC, since the earlier Regulations were repealed by the September 2011 Regulations. The Constitution of the Republic of South Africa 1996⁶ does not permit charges to be brought under repealed legislation, unless a charge was initiated while such legislation was still in operation.⁷ The allegation of omissions was sent by Compliance to the CCC Coordinator in 2013, with a copy to SBS. Thus, only the omission to file financial statements for the said financial years are before the CCC.

² Published in Government Gazette numbers 33294 and 33296 of September 2011.

³ Published in Government Gazette 16 September 2011 (Notice 640 of 2011) for the 2010-2011 financial year, 19 December 2012 (General Notice 11042) for the 2011-2012 financial year and 26 April 2013 (Notice 432 of 2013) for the 2012-2013 financial year.

⁴ Individual Electronic Communications Service Licence Regulations and the Individual Electronic Communications Network Service Licence Regulations 2011. See Regulation 9 of each.

⁵ The Regulations are in an Addendum to this judgment.

⁶ 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].

⁷ And it is constitutionally acceptable. Thus, the death penalty could not be imposed for murder committed even before the interim Constitution of the Republic became effective in April 1994.

NON-ACTIVITY

[3] After the first email from the Coordinator was sent to SBS in April 2016 an answer was received from SBS in an email, dated 12 April 2016, from Jacobus Erasmus. It stated that although SBS was still “active” SBS had not provided any services in terms of its licences from 2011 to 2015 – which were indicated at the hearing as being the period from which the licences were issued in 2010. The company was, however, currently negotiating agreements with other service providers and would thus “actively” commence using the licenses in 2016. He pointed out that Eugene van Rooyen had left the company in 2010 and that he (Erasmus) had been appointed as a director of SBS on 7 March 2016. He would update the contact details and submit the necessary form “O” within a week. At the hearing Mr O’Brien also informed the CCC that Mr Van Rooyen had, according to him, disappeared and was probably living in New Zealand. It was also alleged that Mr Van Rooyen had misused investments for his own purposes. Whatever the true position is, the fact is that no financial statements were filed or permission sought from ICASA to not use the licences. On 27 April 2016 Mr Erasmus stated in an email to the Coordinator’s Office that they were investigating the matter of non-submission of financial statements and had contacted the “original” owners to furnish the necessary information. An extension until 4 May was requested. The intention, it was said, was to fully comply with the ICASA regulations. He also mentioned that when SBS stopped operating in 2010, Seamus O’Brien, Niran Singh and Kamal Singh were directors of the company. Mr Erasmus was then working as the CIO. On 11 May 2016 Mr Erasmus indicated in a further email to the Coordinator’s Office that the matter was referred to their auditor in regard to the use of the licences. No details were, however, available as yet and contact had been made with Mr Kamal Singh in this regard.

[4] On the 11th May 2016 a letter was received from An Jansen van Vuuren, the accountant of the company, who was represented at the hearing of this matter by Mr Daniel Meyer, who has been involved with SBS since its inception. It was stated in the letter – and this was confirmed at the hearing of the matter - that no income had been generated from the ICASA licences. After the hearing SBS was also requested, through the office of the Coordinator, to provide the CCC with the names of the companies with which SBS had been doing business and

also whether the companies were licensed by ICASA. The intention with this question was to establish whether SBS had not, indirectly, been using its licences in assisting the said companies. The information received after the hearing on this point was that the companies were indeed licensed by ICASA and that the services were related to assisting these companies as part of the use to which their licences were being put. In a further letter received after the hearing the relationship of SBS with these other companies was also explained. There was nothing in these relationships which, in any manner, compromised SBS in so far as its licences were concerned.

[5] On the 14th July, Seamus O'Brien sent the following plan to the CCC as a result of an undertaking during the hearing to provide more detail of the business plan of SBS:

Comprehensive business plan

Background

SJ Information Technology Professionals Pty (Ltd) and Skystor (Pty) Ltd has been actively involved in providing connectivity services to end users as a reseller for Axxess DSL (Pty) Ltd.

This has been the market strategy to penetrate the market without major capital investment.

However, we have learned through experience that providing a full turnkey solution utilizing the ICASA licence will increase bottom-line profit and allow the flexibility to expand the business.

We are now ready to partner with Tier 1 service providers to utilize their backbone fibre infrastructure as well as fibre to the home infrastructure and set up our own billing engine.

To be able to negotiate to a Tier 1 service provider an ICASA license is required. Furthermore, we are in final stages of negotiation to provide connectivity services to various ABET institutions.

These services to ABET will uplift previous disadvantaged individuals. We have also partnered with SAAB Grintek to resell and on bill their V-Band satellite services nationally. Because we need to provide billing services as well as partnerships with Tier 1 service providers, being licenced is of utmost importance.

Financial viability

We believe our projections is conservative and could more than triple with good market conditions. We also include operational details of IVYWEB that will be incorporated into SBS Telecom. We once again apologise for the non-compliance issues created by our previous financial director who left our services. We believe we have a good future and that non-compliance will never reach these levels again.

Seamus O'Brien

Thereafter updated details of shareholders, contact persons with email addresses and addresses are provided. A detailed sketch is also given of a client, *IVYWEB*, where services under the licence will be made available in the Wifi category.

[6] The failure to file financial statements was, in the light of the non-activity and the problems with one of the directors satisfactorily explained. Other work had to be sought by the company and it had recently realised how the licences could be used so as to provide certain services in what is called Tier1 services – e.g. to *IVYWEB*. In any case, the 2011 and 2012 Government Gazette notices in regards to the filing of financial statements state nothing about licensees which are not active, in so far as the filing of financial statements are concerned. The 2013 Government Gazette, however, states that “if a licensee has not commenced operation, (the) licensee is requested to submit a formal letter stating that they have not commenced operation.” The 2013 Gazette has a bearing on the financial year 2012-2013, which is inter alia before the CCC. The message is clear: the third category need only make a statement that it is not active under its licence.

[7] In the result the CCC came to the conclusion that although SBS had failed to keep ICASA informed, the circumstances under which it happened were satisfactorily explained. There was, indeed, an omission to keep ICASA informed as to its not being active in terms of the licences - but that omission was not referred to the CCC by Compliance. The CCC is not permitted to add to the charges before it. The principle is well illustrated by the judgment of the Supreme Court of Appeal in *Roux v Health Professions Council of SA & Another* [2012] 1 All South Africa Law Reports 49 (SCA). Also compare the CCC judgment in *Integrat* (112/2015), where this principle was applied

[8] SBS has, in fact, given notice to ICASA on 30 November 2015 that it had not yet become active. It is true that this notice was only given after the commencement of these proceedings, but the attitude of the representatives of SBS before the CCC was not only apologetic but also sincere as to their future plans.

FINDING

[9] Since there was no duty on SBS Telecoms to file financial statements, since it had not become active in terms of its licences, no finding is made against SBS Telecoms.

The failure to notify ICASA that it had not become active was not referred to the CCC by Compliance and, accordingly, no finding is made in that regard. It is, however, noted that such a notice was given after the commencement of these proceedings.



PROF JCW VAN ROOYEN SC

CHAIRPERSON

The Members of the CCC agreed with the finding.

ADDENDUM: 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 an Electronic Communications Service;

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

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

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

“PECN” means a private electronic communications network; and

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

2. Notification of licensee details and information

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

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

(d) Notices and addresses

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

3. Licence area

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

4. Duration of the licence

The Licence is valid for fifteen (15) 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 Rand (R1 000 000) for contravention of regulations 2, 4, 5, 7, 8(2), 9 and 10;
 - (b) One Hundred Thousand Rand (R100 000) for contravention of any regulation not specified in regulation 12(1)(a), and
 - (c) One Hundred Thousand Rand (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 Rand (R1 000 000) for contravention of regulations 2, 3, 4, 5, 7, 8(2), 8(3), 9 and 10.
- (b) One Hundred Thousand Rand (R100 000) for contravention of any regulations not specified in regulation 12(1)(a); and
- (c) Additional One Hundred Thousand Rand (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.

ICASA GENERAL LICENCE FEES REGULATIONS, 2012

1. Definitions

In these regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Electronic Communications Act, 2005 (Act No. 36 of 2005) has the meaning so assigned;

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

“Accounting Officer” means the Chief Financial Officer (CFO) or alternatively the executive in charge of financial management of the licensee, or equivalent;

“Administrative fees” means the fees payable in terms of regulation 3(2) and contained in Schedule 1;

“Annual Licence fees” means the fees payable in terms of regulation 3(1) and contained in Schedule 2;

“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;

“Licensed Service” as defined in the Electronic Communications Act under “broadcasting service”, “electronic communications service” and “electronic communications network service”, and as contained in the relevant licence;

“Revenue” means Revenue as defined in terms of the International Accounting Standard 18 and disclosed in the Licensee's audited Annual Financial Statements, i.e. the gross inflow of economic benefits during the period arising in the course of the ordinary activities of the entity when those inflows result in an increase of equity other than increases relating to contributions from equity participants.

2. Purpose of these regulations

The purpose of these Regulations is to prescribe -

- (a) the administrative fees payable in respect of an application or registration for a licence, amendment, transfer or renewal as contemplated in sections 4(1c)(iv) and 4(1)(c)(v) of the Act; and

- (b) The annual licence fees payable by licensees as contemplated in section 5(7)(a)(iii) of the Act.

3. Application

- (1) The annual licence fees prescribed in these regulations and as set out in schedule 2 apply to holders of individual and class ECS Licences, individual and class ECNS Licences and individual commercial BS Licences.
- (2) The administrative fees are as set out in schedule 1 and:
 - (a) The method of payment prescribed in the Process and Procedure regulations as published in the *Government Gazette* 30916 and Notice 397 in *Government Gazette* 30914 dated 31 March 2008 applies; and
 - (b) May be adjusted by a maximum of the Consumer Price Index (CPI) as published by Statistics South Africa, effective on 1 April of each year.

4. Exemptions

The following Licensees are exempt from the payment of annual licence fees:

- (a) Class Licences for Community Broadcasting (Sound); and
- (b) Public Broadcasting Services.

5. Payment of annual licence fees

Payments in respect of annual licence fees are due as prescribed in schedule 2 and 3.

6. Interest

Interest on all late payments in respect of the annual licence fees is payable in accordance with the Public Finance Management Act, Act 1 of 1999, as amended (PFMA), at the applicable interest rate as published by the Minister of Finance.

7. Contraventions and penalties

- (1) Failure to pay the annual licence fees will result in the suspension of the licence issued by the Authority in terms of Chapter 3 of the Act until such time that the annual licence fees, plus interest, are paid in full.
- (2) Failure to comply with any other provision in these regulations will result in a fine not exceeding one million rands (R1 000 000.00).

8. Short title and commencement

- (1) These regulations are called the ICASA General Licence Fees Regulations, 2012.
- (2) These regulations shall come into effect on 1 April 2013.

9. Repeal

- (1) In the event of any conflict between the provisions of this regulation and the licence terms and conditions which purports to impose Annual and/or Licence Fees, the provisions of this regulation prevail.
- (2) The ICASA General Licence Fees Regulations, 2009 are hereby repealed.

SCHEDULE 1

ADMINISTRATIVE FEES

[Schedule 1 substituted by Gen N 151/2016 and duplicated in Gen N 187/2016]

SCHEDULE 2

ANNUAL LICENCE FEES

SCHEDULE 3

PAYMENTS IN RESPECT OF LICENCE FEES