

COMPLAINTS AND COMPLIANCE COMMITTEE

Date of Hearing: 19 November 2015

CASE NUMBER 124/2015

IN RE: SATINLINK WIRELESS (PTY) LTD

CHAIRPERSON'S SUMMARY

BACKGROUND

[1] On 28 May 2009 Satinlink (Pty) Ltd ("Satinlink") was issued with an Individual Electronic Communications Network Licence and an Individual Electronic Communications Service Licence by ICASA. These licences replaced a previous licence. ICASA's Compliance Division (ECS and ECNS licences), referred this matter in June 2013 to the CCC, alleging that Satinlink had not filed financial statements from the time when a licence, preceding 2009, was issued to it. With that, no contributions were made to the Universal Services Access Fund ("USAF").

[2] Only contraventions after 10 February 2011 concerning non-payment of USAF contributions and only contraventions concerning non-filing of financial statements after 12 September 2011 are before the CCC. This is so since the relevant regulations replaced earlier regulations and contraventions of the older regulations may not, constitutionally, be brought before the CCC, unless they were referred to the CCC earlier – which was not the case here.

[3] Whilst it is clear that Satinlink should have filed financial statements, showing a nil activity under the licenses as from the year ending 2012,¹ there is no indication in the 2013 Gazette that it could amount to a contravention if a licensee has not become operational. A formal letter should, however, be filed. In fact we have been informed in a previous matter² that the Division does not regard it as a contravention of the Regulations if a licensee has *halted* its operations. A formal letter would, once again, have to be filed.

FINDING ON THE MERITS

[4] The CCC's finding on the merits is as follows:

¹ Given the fact that earlier financial statements fell under repealed legislation, which is not before the CCC.

² See the CCC judgment in *Corpco* (Case 112/2015)

(a) Satinlink was in contravention of the 2011 September Regulations read with Government Gazettes of 2011 and 2013 by not having filed financial statements for the years 2012, 2013, 2014 and 2015.

(b) Given the nil turnover for the said years, no obligation arose in regard to USAF payments and there was, accordingly, no contravention of the February 2011 USAF Regulations.

RECOMMENDATION TO COUNCIL AS TO SANCTION

[5]The CCC noted the wide-ranging efforts - mostly directed at providing electronic links to less privileged communities and schools - which Satinlink, through its Director Ms De Jongh, have taken over a number of years. Although there was some success before 2009, the operation failed as a result of financial constraints. Thereafter her efforts failed, mostly as a result of difficulties in drawing in partners and finding capital. We have no reason to believe that these efforts were not *bona fide*. Ms De Jongh is presently involved in a project which, on her evidence, has true potential. She, however, believes that her present licence would have to be transferred to a new company, which she has set up with new partners. If the matter cannot be addressed by way of agency or a subsidiary, then that seems the only solution. In any case, that is a matter for her to decide on. This background reference, however, serves as a particularly extenuating factor in deciding on what sanction to recommend to Council. This is not a case where a fine would be appropriate. The imposition of a fine would not accord with the genuine efforts to activate her licence.

Accordingly the CCC recommends as follows:

That Council orders, in terms of section 17E(2)(a) of the ICASA Act, that Satinlink desists from, in future, not filing its financial statements, even when it is not active.

Whether this is still a real sanction while Satinlink will probably cease to exist is, of course, a question. On the other hand, it will serve as guidance for Ms De Jongh in her future endeavours within this sphere.

J. C. W. van Rooyen

COMPLAINTS AND COMPLIANCE COMMITTEE³

Date of Hearing: 19 November 2015

CASE NUMBER 124/2015

IN RE: SATINLINK WIRELESS (PTY) LTD

PANEL: Prof JCW Van Rooyen SC
Prof Kasturi Moodaliyar
Clr. Rubben Mothlaloga
Mr Jack Tlokana
Ms Mapato Ramokgopa

Ms Audrey de Jongh (Director) represented SATINLINK WIRELESS (PTY) (LTD)

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

In attendance from the Office of the Coordinator of the CCC: Adv. TP Mtolo

JUDGMENT

JCW VAN ROOYEN SC

BACKGROUND

[1] On 28 May 2009 Satinlink (Pty) Ltd ("Satinlink") was issued with an Individual Electronic Communications Network Licence and an Individual Electronic Communications Service Licence

³ 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. In such a case the judgment on the merits is referred to Council for noting. 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 and published on the ICASA website. 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 as to sanction by the Complaints and Compliance Committee, further reasons are not issued in regard to sanction. The final judgment is, on application, subject to review by a Court of Law.

by the Independent Communications Authority of South Africa (“ICASA”). These licences replaced a previous licence. ICASA’s Compliance Division (ECS and ECNS licences), which has a delegated monitoring function, referred this matter in June 2013 to the Complaints and Compliance Committee (“CCC”), alleging that Satinlink had not filed financial statements since a licence, preceding 2009, was issued to it. With that, no contributions were made to the Universal Services Access Fund (“USAF”).

[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 published in the Government Gazette No. 31499, dated 10 October 2008. These regulations included sanctions which could be imposed by the ICASA Council on the recommendation of the CCC. The 2008 Regulations were, however, repealed in 2011 and substituted by a new set of regulations on the 10th February 2011. That means that only omissions to pay the USAF levy as from 10 February 2011 are 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 1996⁴ does not permit charges to be brought under repealed legislation, unless a charge was initiated while such legislation was still in operation.⁵ The allegation of omissions to contribute was sent by the CCC Coordinator to the licensee in 2015. Thus, only contraventions as from 10 February 2011 are, constitutionally, before the CCC.

[3] The same issue arises in regard to the filing of financial statements. Regulations, in accordance with which the filing of annual financial statements were made obligatory after notice was given thereof, were provided for in the Standard Terms and Conditions published in Notice 1138 of 30 November 2007 in the Government Gazette No. 30530. These Regulations were repealed on 12 September 2011 when new Regulations became operational. These regulations contain a provision that authorises ICASA to request particulars in the execution of its functions. Notices requiring financial statements to be filed were published in the

⁴ 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].

⁵ And the legislation is constitutionally acceptable. Compare the judgment of the Constitutional Court on the constitutional validity of the death sentence - *Sibiya and Others v Director of Public Prosecutions, Johannesburg, and Others* 2005 (5) SA 315 (CC).

Government Gazette in 2011 and 2013. Once again, only contraventions of Regulations from 12 September 2011 may, constitutionally, be adjudicated by the CCC.⁶

[4] It is noted that Mr Moulana, Manager of the Compliance Division, sent an email to Ms De Jongh in September 2012, reminding her that Satinlink had not filed Financial Statements in terms of the relevant regulations since its inception under the pre-2009 licence. In the same letter the Manager requested Satinlink to inform the Division if it had not been operational. If so, it should “kindly furnish the Authority with the audited financial statements to support that you were not in operation.”

[5] In a letter dated 15 May 2013 Satinlink informed the Division’s Mr Nkosinkulu that it had not been operational since 2009. It had ceased earlier operations due to financial constraints. There was further correspondence between Ms De Jongh and the Division about having a different company exercise the rights under the licence. However, the Division pointed out to her that this could only take place if a transfer of the licence was approved by ICASA. It should be mentioned that the two present licenses both provide that an agent or contractor may exercise the rights under the licences, provided that Satinlink takes full responsibility for it in its relationship with ICASA. A further provision in the licence provides that: “the licensee and any or all of its subsidiaries shall be entitled by virtue of the Licence to provide all or any of the Services together with all or any other rights granted to it under this licence.” These alternatives are, accordingly, available to Satinlink. However, we gained the impression from Ms De Jongh that these alternatives would not suit her new colleagues in a company which has – and there is no reason to doubt her word on this – real prospects for delivery in Matatiele and surrounding areas in the Eastern Cape.⁷ It should be mentioned that Ms De Jongh provided the CCC with an informative sketch of how problematic it could be to finance this kind of operation. In any case, in contrast to previous efforts, it would seem that the present plan would work if the licence could be transferred to a new company. Given the high costs of setting up the present project it would, she informed the CCC, be quite problematic to finance the transfer of the licence.

⁶ See notes 4 and 5 above.

⁷ Matatiele is a mid-sized town serving the farming and trading communities of East Griqualand in the foothills of the western Drakensberg, Eastern Cape, South Africa, on the border with KwaZulu-Natal and 20 km from the southern frontier of Lesotho. Dairy farming is the principal activity. Good trout fishing is to be had in the numerous streams of the area. As a town, Matatiele is the reference point for all of the northern Transkei (Source : Wikipedia)

FINDING ON THE MERITS

[6] Returning to the two complaints before us: in September 2011 ICASA issued a General Notice in the Government Gazette 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 USAF 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 their accounting officers for the 2012-2013 compliance assessment term. In the 2013 Gazette the following was added: “If [a] licensee has not commenced operation, Licensee is requested to submit [a] formal letter stating that they have not commenced operation.”

[7] Satinlink filed neither Annual Financial Statements nor contributed to USAF. It also did not inform ICASA that it had stopped operating by 2009.

[8] Whilst it is clear that Satinlink should have filed financial statements – showing a nil activity under the licenses – as from the year ending 2012,⁸ there is no indication in the 2013 Gazette that it could amount to a contravention if a letter is not sent in regard to not having become operational. In fact we have been informed in a previous matter⁹ that the Division does not regard it as a contravention of the Regulations if a licensee has halted its operations. A formal notice should just be sent.

[9] Our finding on the merits is, accordingly, as follows:

(a) Satinlink was in contravention of the 2011 September Regulations¹⁰ read with Government Gazettes of 2011 and 2013 by not having filed financial statements for the years 2012, 2013, 2014 and 2015.

⁸ Given the fact that earlier financial statements fell under repealed legislation, which is not before the CCC.

⁹ See the CCC judgment in *Corpco* (Case 112/2015)

¹⁰ See the Addenda

(b) Given the nil turnover for the said years no obligation arose in regard to USAF payments and there was, accordingly, no contravention of the February 2011 Regulations.

(c) The non-payment of USAF contributions for the period before 2009 is not before the CCC, since the relevant regulations were repealed in February 2011 and the CCC does not have jurisdiction over contraventions of regulations which have been repealed.¹¹

As an aside it should be mentioned that the duty to pay USAF contributions for the active period of Satinlink before 2009 has, probably, become prescribed and cannot be enforced at this stage.¹² Of course, this being a civil claim, it does not fall under the jurisdiction of the CCC.

RECOMMENDATION TO COUNCIL AS TO SANCTION

[10] The CCC noted the wide-ranging efforts - mostly directed at providing electronic links to less privileged communities and schools - which Satinlink, through its Director Ms De Jongh, have taken over a number of years. Although there was some success before 2009, the operation failed as a result of financial constraints. Thereafter her efforts failed, mostly as a result of difficulties in drawing in partners and finding capital. We have no reason to believe that these efforts were not *bona fide*. Ms De Jongh is presently involved in a project which, on her evidence, has true potential. She, however, believes that her present licence would have to be transferred to a new company, which she has set up with new partners. If the matter cannot be addressed by way of agency or a subsidiary, then that seems the only solution. In any case, that is a matter for her to decide on. This background reference, however, serves as a particularly extenuating factor in deciding on what sanction to recommend to Council. This is not a case where a fine would be appropriate. The imposition of a fine would not accord with the genuine efforts to activate her licence.

Accordingly we recommend as follows:

¹¹ See notes 2 and 3 above.

¹² Compare *MAIZE BOARD v EPOL (PTY) LTD* 2009 (3) SA 110 (D); *HOLENI v LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA* 2009 (4) SA 437 (SCA); *COMMISSIONER OF CUSTOMS AND EXCISE v TAYOB AND OTHERS* 2002 (6) SA 86 (T); *THE MASTER v I L BACK & CO LTD AND OTHERS* 1983 (1) SA 986 (A); *COMMISSIONER OF CUSTOMS AND EXCISE v TAYOB AND OTHERS* 2002 (6) SA 86 (T).

That Council orders, in terms of section 17E(2)(a) of the ICASA Act, that Satinlink desists from, in future, not filing its financial statements, even when it is not active.

Whether this is still a real sanction while Satinlink will probably cease to exist is, of course, a question. On the other hand it will serve as guidance for Ms De Jongh in her future endeavours within this sphere.



29 November 2015

PROF JCW VAN ROOYEN SC

CHAIRPERSON

The Members of the CCC, who were involved in this hearing, concurred with the findings on the merits and proposed sanction.

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.