

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of Hearing: 18 July 2016

CASE NUMBER 148/2015

IN RE: UMZANZI AFRICAN 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

Ms Lee Schultz from Schultz and Associates on behalf of the licensee
From Compliance (ECS and ECNS) Mr A Hlabioa
In attendance from the Office of the Coordinator: Ms Meera Lalla
Coordinator: Ms Lindisa Mabulu

JUDGMENT

JCW VAN ROOYEN SC

[1] On 16 January 2009 UMZANZI AFRICAN TELECOMS (PTY) LTD trading as National Samsung (“UMZANZI”) was issued with an Individual Electronic

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.

Communications Service Licence and an Individual Electronic Communications Network Service Licence by the Independent Communications Authority of South Africa (“ICASA”). As shareholders were mentioned Raymond McLuckie (70%) and Clever Chakanyuka (30%). In this process a 2006 Value Added Network Service Licence was converted in terms of the Electronic Communications Act 2005 (“ECA”). 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 (“CCC”), alleging that UMZANZI had not filed financial statements for the financial years 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013. This should have been done in accordance with General Notices published in the Government Gazette in terms of the September 2011 Regulations.² Furthermore, that no contribution had been made in terms of the Universal Service and Access Fund (“USAF”) Regulations 2011 and no licence fees paid in terms of the ICASA General Licence Fees Regulations.

[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, the 2007-2008, 2008-2009, 2009-2010, 2010-2011³ financial statements cannot be part of the alleged contraventions before the CCC. The earlier Regulations were substituted by the September 2011 Regulations. The Constitution of the Republic of South Africa⁴ 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 was copied to the licensee by Compliance in 2013.⁶ Thus, only omissions to file financial statements for the years 2011-2012 and 2012-2013 are before the CCC.

[3] On 13 October 2015 the Coordinator of the CCC was copied with an email, dated 9 September 2015 by Mr Nkosinkulu from Compliance. The latter email

² Individual Electronic Communications Service Licence Regulations and the Individual Electronic Communications Network Service Licence Regulations 2011, which replaced earlier regulations with similar provisions as to the request for information. See the Addenda to this judgment for the 2011 Regulations.

³ As well as 2009 and 2010 year end statements.

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 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.

⁶ The specific date is not included in the notice.

related to a name change to the “Office Guru”. This name would replace the earlier application to a name change to “Legadima.” The email requested that Compliance inform Ms Lee Schulz whether the Office Guru, the licensed ECS and ECNS holders, were compliant at that point in time. On the same day a letter to ICASA was sent by SC Dent (Group Financial Director of Centracom) stating the following:

“ We refer to the application submitted by Centracom to take transfer of the ECS and ECNS licences of Legadima Communications CC. We hereby confirm that this transfer application will be substituted with another applicant namely Office Guru, as the transaction with Legadima Communications CC was cancelled.

We hereby grant Schultz and Associates Incorporated (represented by Candice Schultz and or Lee Schultz) the authority to represent us at ICASA in relation to the aforesaid substitution process...”

[4] On the 18th September 2015 reference is made by Ms Lee Schultz to a letter to Mr Maulana from Compliance, dated 8 May 2014, which read as follows:

“ ANNUAL FORECAST OF LICENCE FEES 2014/2015 – THE OFFICE GURU

1. There is no material change in the operations of The Office Guru.
2. No revenue is derived from licensable services.
3. All revenue is generated from Sales and Customer premises equipment.
4. The projected annual forecast of licence fees for the year 2014/2015 is zero.

(Signed) Candice Schultz ”

On 19 October 2015 the following email was sent by Ms Lee Schultz to Mr Maulana from Compliance:

“APPLICATION FOR CONDONATION – THE OFFICE GURU

Herewith an official application for condonation in respect of commencement of operations for The Office Guru, our client. Our client dearly apologizes for not being able to notify ICASA and request for an extension within the prescribed time. Please accept their sincere apologies and their application for condonation.”

On the same date the Office Guru sent the following letter to Mr Maulana:

“Umzansi African Telecoms (Pty) Ltd t/a The Office Guru was in the process and final infrastructure decisions during 2014 to fully utilize the ECNS licence agreement and add the value to the telecoms sector as the strategy demanded.

The company Director of Operations, Mr Raymond McLuckie, was the driving force and the intellectual person making these comprehensive strategic decisions.

Unfortunately and suddenly, early December 2014, the company suffered the sudden passing of Mr McLuckie and the rollout of the relevant project came to an abrupt halt given the CEO's realm of expertise.

The project has since stood still and we have taken an executive decision to transfer the agreement to Centracom (Pty) Ltd who have an existing service in place. Centracom...will fulfil the terms and conditions of the licence and add value to the market sector.

Please accept our sincere apologies for the delays and grant us an extension to commence with the transfer application with Centracom (Pty) Ltd.”

[5] On the 8th December 2015 Ms Candice Schultz was informed by the CCC that proceedings against UMZANZI were being instituted by Compliance at the Complaints and Compliance Committee at ICASA. The core of the reference was that UMZANZI had failed to submit audited financial statements for the 2009-2013 periods despite numerous requests and demands made to the company. The failure to pay annual license fees and make USAF contributions for the said periods, was included. In reaction to this letter, Lee Schultz responded and pointed out that no revenue had been generated in terms of the licences. It was also stated that financial statements had been submitted to ICASA “over the years”. A list of twenty communications between Schultz and Associates and ICASA with dates from 6 November 2012 up to 14 December 2015 was attached.

[6] In an email dated 7 January 2016 Ms Meera Lalla from the Coordinator's Office pointed the following out to Schultz and Associates' Mss Lee and Miss Candice Schultz:

(1) That pending approved transfer Umzanzi is the Respondent in the proceedings before the CCC.

(2) That actual correspondence as listed in paragraph [5] be made available to the Coordinator's Office.

(3) Proof that Annual Financial Statements were submitted for the years 2009 to 2013.

(4) Proof of payment of Annual Licence fees and/or USAF contributions.

This had to be done by 15 January 2015.

[7] On 15 January 2016 Ms Lee Schultz answered that the actual correspondence and proof that annual financial statements were submitted was attached. No payment of licence fees and USAF contributions were owed as a result of non-activity under the licences. In so far as name changes had taken place, the changes amounted to a mere amendment of the name of the holder of the licences and no transfer had taken place. All the entities still traded under the same registration number.

[8] A survey of the documentation demonstrates that the name change was communicated to ICASA on 29 October 2013 by way of the form prescribed for this purpose.

THE MERITS OF THE ALLEGED CONTRAVENTIONS

[9] The charge before the CCC is that financial statements were not filed. As explained above, the financial years before 2011-2012 are not validly before the CCC, since the earlier regulations were repealed in September 2011 and substituted by a new set of regulations. Accordingly, the omission to file the 2011-2012 and 2012-2013 financial statements is before the CCC. The two first sets of September 2011 Regulations as set out in the Addendum to this judgment regulate this omission by the licensee. According to these Regulations ICASA has the right to require certain information from licensees. The Regulations provide that fines may be levied for not providing this information – see Regulation 12 of both sets of Regulations. We will refer only to the most recent Government Gazette Notice⁷ pertaining to the financial year 2012-2013 (the latest one before us in this matter). The Notice reads as follows:

2. In terms of the Regulations regarding Standard Terms and Conditions for Individual and Class licences, Government Gazette number 33294 and 33296 respectively, [t]he Regulation provides amongst others the following:

- (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 compliance with license conditions and other requirements of the Act and related legislation.

⁷ Government Gazette of 16 September 2011 Notice 640 of 2011

(b) allow for the assessment and allocation of applicable fees and related requirements.”

3. All licensees are requested to submit within six months of their financial year end:

- (a) Audited Annual Financial Statements; or
- (b) Financial Statements signed by [the] accounting officer of the licensee, for 2012-2013 compliance assessment period; and
- (c) If [the] licensee has not commenced operation,[the] Licensee is requested to submit [a] formal letter stating that they have not commenced operation.”

There is no clear mention in the Government Gazette notice of ICASA, as quoted above, that financial statements must be filed even if a licensee is not operational. The above 2013 Government Gazette merely mentions that “if a licensee has not commenced operation, (the) licensee is requested to submit a formal letter stating that they have not commenced operation.” This is stated as a third category after reference to the duty to file financial statements and pay fees. Thus, even if Umzanzi was not operational under the licences, there was nevertheless a duty on it to inform ICASA as to the situation.

[10] A licensee should at least obtain legal advice as to the effect of the Regulations published in September 2011.⁸ A high standard of compliance is expected from a licensee. In *S v Waglines Pty Ltd and Another*⁹ Judge Didcott held that “ignorance of or mistake about the law is cognisable by the courts only if that excuse is an acceptable one. The answer would depend on the care he took or did not take to acquaint himself with the true legal position. That person has a duty to acquaint himself with the true legal position, *particularly when he is engaged in a trade, occupation or activity which he knows to be legally regulated.*” To ensure consistency and orderly management within the licensing regime, negligence (*culpa*) would generally suffice. Compare *S v Longdistance Natal Pty Ltd*¹⁰ where Nicholson, Acting Judge of Appeal, stated as follows at 284:

⁸ See the first two Addenda to this judgment.

⁹ 1986(4) SA 1135(N) and regulation of the Standard Terms and Conditions for Individual Electronic Communications Network Service 2010 – both came into operation on 11 September 2011.

¹⁰ 1990 (2) SA 277 (A).

“*Mens rea*¹¹ in the form of *culpa*¹² is sufficient for convictions under para (a) or (b) of s 31(1) of the Act. Accused No 4 and the corporate accused were engaged in the specialised field of road transportation, which is strictly controlled by an Act of Parliament and regulations made thereunder. It was plainly their duty to take all reasonable care to acquaint themselves with what they were permitted and what they were not permitted to do. (Cf *S v De Blom* 1977 (3) SA 513 (A) at 532G.)

[11] The problem in the present case is that UMZANZI was not referred to the CCC by Compliance for not informing ICASA that it was not operational. And, as has previously been held by the CCC, the CCC is not permitted in law 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.

[12] On the facts before us, a very clear picture was drawn by Schultz and Partners, as mandated by Umzanzi, of the history of the company. It is clear that when the driving force in the company passed away suddenly, the planning came to an abrupt standstill. However, it is also clear from the well-tabulated correspondence that audited financial statements were issued, but that the licences were not used by Umzanzi. Of course, as required by the relevant regulations, there is a duty to inform ICASA if a license is not used – in the one case within six months and the other twelve months. After the present matter was initiated, Umzanzi apologized for not having filed statements or kept ICASA abreast of its not having utilised the licences. The financial statements which were included in the documentation at the hearing of this matter were also confirmed by the company’s auditors as not having included income from the use of the licences. The unforeseen death of Mr McLuckie, it was explained, was the main reason why the process of activating the licences was slowed down substantially. It was, however, made clear that the company was planning to use the licences within the not so distant future.

[13] At the hearing of this matter a number of questions could not be answered by Ms Lee Schultz. She explained that Ms Candice Schultz was the employee from their firm (which advises the licensee) who was tasked to deal with this account and that she (Ms Lee Shultz) had merely assisted administratively. As a

¹¹ Translated: “a guilty mind”.

¹² Translated: negligence.

result of a postponement of the date of this hearing, Ms Candice Schultz was not available to argue the matter before the CCC, since she could not cancel an overseas engagement which overlapped with the date to which this matter was postponed. Ms Schultz was granted 21 calendar days to provide answers to the CCC: the questions related especially to the question whether the company was indeed not active in terms of its licences. Financial statements for five years (2010-2015), as agreed, were received and in each case an Auditor confirmed that there had been no activity under the licences.

FINDING ON THE MERITS

[14] As pointed out earlier in this judgment, the ICASA notice in the Government Gazette of 29 April 2013 clearly distinguishes between active and non-active licensees. The latter are simply called upon to inform ICASA if they have not become active under the licences. This omission was not included in the charge before us and, as pointed out, the CCC is not permitted in law to add to the charges before it.

The finding is, accordingly, that the omission to file financial statements was not relevant for the charge against UMZANZI. What was relevant, was the omission to inform ICASA that the licences had not been activated. However, since this was not included in the charge before the CCC, no finding against UMZANZI may be made.

The finding is, accordingly, that Umzanzi African Telecoms (Pty) Ltd has not contravened the relevant regulations since it had not been charged for not having informed ICASA of its not having commenced operations in terms of its licences. [However: it is noted that the necessary notice as to non-activity has, after the commencement of the proceedings in 2013, been filed with ICASA. Financial statements were also filed from 2010 to 2015, as agreed, after the hearing and the auditors have vouched that there had been no activity under the licences since the time they were issued]

J. C. W. van Rooyen

15 August 2016

The Members agreed with the finding.

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 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 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.

ICASA GENERAL LICENCE FEES REGULATIONS 2012

Section 7(1): 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 rand (R1 000 000.00).