
GENERAL NOTICE

NOTICE 1716 OF 2007

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE OF INTENTION TO REVISE DRAFT LICENCE EXEMPT REGULATIONS PUBLISHED IN NOTICE 1114, GOVERNMENT GAZETTE 30280, ON 08 SEPTEMBER 2007.

The Independent Communications Authority of South Africa ("the Authority"), hereby gives notice to revise draft Licence Exempt regulations.

A copy of the revised draft regulations is available on the Authority's website (www.icasa.org.za) and in the ICASA Library at 164 Katherine Street, Pin Mill Farm, First Floor, Block D between 10h00 and 16h30, Monday to Friday.

Interested persons are hereby invited to submit written comments or written representations with regard to the proposed regulations, to be received **by no later than 16h30 on 19 December 2007** by post, hand delivery or facsimile transmission for the attention of:

Mathibela Selepe
Independent Communications Authority of South Africa,
Private Bag X10002
SANDTON
2046

Or
Block A, Pin Mill Farm
164 Katherine Street
SANDTON
2196

Tel: (011) 321 8342
Fax: (011) 321 8547
E-mail: mselepe@icasa.org.za

PARIS MASHILE

SCHEDULE

1. INTERPRETATION

(1) 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 (No. 36 of 2005);

“**Ancillary service**” means a retail service or bundle of retail services which include necessary but ancillary elements of ECS, where such ECS elements do not constitute the major purpose, utility or value of the service, including, but not limited to, tracking, alarm and similar services;

“**Distributor**” means a person whose retail sales to the public may include the sale of items consisting of ECS without any re-branding or re-packaging of same, and without creating any contractual obligations in relation to such ECS services sold to consumers, provided that such distributor is not owned or controlled, directly or indirectly, by any Licensee;

“**ECS**” means electronic communications services;

“**ECN**” means an electronic communications network;

“**ECNS**” means electronic communications network services;

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

“**Small electronic communications network**” means an ECN, the scope of which is limited to equipment physically located on a single piece or contiguous pieces of land owned or controlled by a single person and, where such network uses radio frequency spectrum, where the technical parameters of such spectrum use fall within the radio frequency spectrum licence exemption regulations.

(2) Should any specific provision of these regulations become void or unenforceable as a result of a change in law, or final judgment of a court of competent jurisdiction, all other provisions hereof will continue to remain in force notwithstanding.

2. LICENCE EXEMPTIONS IN GENERAL

(1) Certain ECS and ECNS otherwise requiring a licence in terms of the Act may be provided in terms of a licence exemption as set out below.

(2) Subject to clause 4(2)(a), an organ of state is included in any licence exempt category provided for in these regulations unless:

(a) such an organ of state is:

(i) a company having a share capital;

(ii) duly incorporated in accordance with the company laws of the Republic; and

(b) the Government of the Republic holds, whether directly or indirectly, more than twenty five percent (25%) of the issued share capital of such company,

in which case such a company requires an individual ECS or ECNS licence as required in terms of section 5(3)(d) of the Act.

(3) The Authority, in permitting the provision of ECS or ECNS services in terms of a licence exemption, retains jurisdiction over such services and persons providing same.

(4) A person providing services in terms of a licence exemption remains subject to the provisions of the Act and must comply with the provisions of the Act, including without limitation sections 6, 10 and 12 thereof, and the ICASA Act.

3. ELECTRONIC COMMUNICATIONS SERVICES

(1) A person offering or providing ECS on a non-profit basis may operate in terms of a licence exemption and does not require an ECS licence. Non-profit basis shall be presumed where:

(a) the ECS provider is:

- (i) a registered non-profit organisation in terms of the Non-profit Organisations Act (Act 71 of 1997);
 - (ii) a company registered in terms of Section 21 of the Companies Act (Act 61 of 1973); or
 - (iii) a non-profit organisation established in terms of an Act of Parliament;
- (b) the ECS provider provides ECS without any fee or compensation whatsoever to the public; or
- (c) the ECS provider is also a PECN operator and provides ECS solely within the scope of the internal operations of the PECN operator.
- (2) A Distributor offering or providing ECS services may operate in terms of a licence exemption and does not require an ECS licence.
- (3) A person providing an Ancillary service may operate in terms of a licence exemption and does not require an ECS licence.
- (4) An ECS provider operating in terms of a licence exemption in terms of sub-clauses (1) to (3) must have all necessary radio frequency spectrum and/or ECNS licences, as appropriate.
- (5) All electronic communications equipment and facilities as well as radio apparatus to be used in respect of the services provided in terms of a licence exemption provided for in sub-clauses (1) to (3) must be type-approved in terms of the Act.

4. ELECTRONIC COMMUNICATIONS NETWORK SERVICES

(1) Small electronic communications networks:

(a) A small electronic communications network may be operated in terms of a licence exemption and does not require an ECNS licence.

(b) Where a small electronic communications network communicates with other such networks across the boundaries of the different properties upon which they are installed using only radio equipment operating in radio frequency spectrum bands that are exempt from licensing to form mesh networks, such aggregation of small electronic networks continues to be subject to a licence exemption provided that:

- (i) the provision of ECS over such mesh networks is limited to exempted ECS in terms of clause 3(1); and
- (ii) no capacity on the aggregation of the small electronic networks is sold, leased or otherwise made available to any Licensee.

(2) Private Electronic Communications Networks:

(a) A PECN, including one operated by an organ of state which is a company having a share capital, duly incorporated in the Republic and in which the Government of the Republic holds more than twenty five percent (25%) of the issued share capital, may be operated in terms of a licence exemption and does not require an ECNS licence.

(b) Where a PECN operator referred to in sub-clause (a) resells, leases or otherwise makes available any capacity on its PECN to any third party, such resale or other provisioning of spare capacity is subject to:

- (i) a ceiling on the resale of spare capacity at a maximum of twenty five percent (25%) of the total capacity of the PECN; and

(ii) the terms and conditions set out in clauses 5. to 11. of these regulations.

5. SAFETY MEASURES

A person providing ECS or ECNS in terms of a licence exemption 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 limit exposure to electromagnetic emission, radiation and related risks.

6. PROVISION OF INFORMATION

(1) The Authority may, in the course of carrying out its obligations under the Act, require a person providing ECS or ECNS in terms of a licence exemption to provide information, so as to enable it to:

- (a) monitor and enforce consumer protection, quality of service, competition 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 aggregate information to be used for the purposes of sectoral planning and reporting.

(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 address queries to in the matter concerned.

(3) In respect of PECN operators referred to clause 4(2)(b), such operators are required to provide to the Authority on a bi-annual basis, information detailing the capacity of its PECN and the extent of the spare capacity thereof sold, leased or otherwise made available to third parties, in the previous six months, in a format to be approved by the Authority.

7. PUBLICATION OF TARIFFS AND FEES

(1) A person selling, leasing or otherwise providing spare capacity on a PECN in terms of a licence exemption, may not do so 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 have been made known to the public by:

- (a) making such prices and terms and conditions available for inspection at its offices during business hours;
- (b) providing such details to anyone who requests same at no charge; and
- (c) providing such details on its website, if any.

(2) A person selling, leasing or otherwise providing spare capacity on a PECN in terms of a licence exemption, must provide to the Authority:

- (a) details of the price(s) for its service and other terms and conditions of the provision of such service within 30 days of commencing such service; and
- (b) on a bi-annual basis, a record of the actual services provided and the actual tariffs charged therefor during the previous six months.

8. METERING AND BILLING ARRANGEMENTS

(1) A person selling, leasing or otherwise providing spare capacity on a PECN in terms of a licence exemption shall install and operate metering and billing systems which accurately record the extent of the service(s) provided to any end-user.

(2) A person selling, leasing or otherwise providing spare capacity on a PECN in terms of a licence exemption must provide a detailed and accurate invoice and/or statement of services rendered to any end-user at no charge, except where the end-user is either a Licensee or a provider of services under a licence exemption pursuant to section 6 of the Act.

(3) The invoice and/or statement of services rendered must include information for the entire period covered by such invoice or statement as follows:

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

(b) breakdown of charges associated with such services.

9. CONFIDENTIALITY

Where a person providing ECS or ECNS on the basis of a licence exemption requests confidentiality in respect of the information provided in terms of these regulations, the provisions of section 4D of the ICASA Act shall apply.

10. NOTICES AND ADDRESSES

(1) Any notice or certification given by the Authority or a person providing ECS or ECNS in terms of a licence exemption shall be in writing and:

-
- (a) if delivered by hand to the recipient's address, it shall be deemed, until the contrary is proved, 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 proved, 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 proved.

(2) A person selling, leasing or otherwise providing spare capacity on a PECN in terms of a licence exemption 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. A Licensee shall further notify the Authority in writing of any change in such address, fax and telephone numbers prior to the changes being effected.

11. CONTRAVENTION AND FINES

(1) In terms of section 17E(2)(b) of the ICASA Act, the Authority may impose on a person providing ECS or ECNS in terms of a licence exemption a fine not exceeding Ten Million Rand (R10 000 000) for each contravention of these regulations.

(2) Repeated contraventions of these regulations will be dealt with in terms of the other applicable provisions of the ICASA Act.
