

**NOTICE 899 OF 2007****NOTICE IN TERMS OF SECTION 4(4) OF THE ELECTRONIC COMMUNICATIONS ACT READ WITH SECTION 44(1) OF THE ELECTRONIC COMMUNICATIONS ACT 36 OF 2005.**

- (1) The Independent Communications Authority of South Africa ("ICASA") hereby gives notice in terms of section 4(4) of the Electronic Communications Act No. 36 of 2005 ("the Act") of its intention to prescribe Facilities Leasing Regulations in terms of sections 44 and 4 of the Act and section 4(3) (j) of the Independent Communications Authority of South Africa Act No. 13 of 2000, as amended ("the ICASA Act").
- (2) Interested persons are invited to submit written representations on the draft Facilities Leasing Regulations set out herein by Monday 03 September 2007, by post, hand delivery, facsimile transmission, or electronically transfer (in Microsoft Word) for the attention of:

Ms N Batyi  
Project Leader, Facilities Leasing Regulations  
ICASA  
Private Bag X10002  
Sandton  
2146

or  
Block A  
Pin Mill Farm  
164 Katherine Street  
Sandton

Fax: (011) 321-8536  
Telephone: (011) 321-8415

E-mail: [nbatyi@icasa.org.za](mailto:nbatyi@icasa.org.za); cc [mnkopane@icasa.org.za](mailto:mnkopane@icasa.org.za)

- (3) Persons making written representations are requested to indicate if they wish to make oral submissions in the event that ICASA decides to conduct oral hearings in terms of section 4(6) of the Act, the estimated duration whereof not to exceed 45 minutes.
- (4) All written representations submitted to ICASA pursuant to this notice will be made available for inspection by interested persons at the ICASA library and copies of such representations will be obtainable on payment of the prescribed fee.
- (5) At the request of any person who submits written representations pursuant to this notice, ICASA will determine whether such representations or any portion thereof is confidential in terms of section 4D of the ICASA Act. If the request for confidentiality is refused, the person making the request will be allowed to withdraw such representations or portion thereof.
- (6) With respect to written representations or portions thereof determined to be confidential in terms of paragraph 5 above, ICASA may direct that the public or any member or category thereof, shall not be present while any oral submissions relating to such representations or portions thereof are being made; provided that interested parties shall have been notified of this intention and allowed to object thereto. The Authority will consider the objections and notify all interested parties of its decision.
- (7) The final regulations will be published in the Government Gazette.

**PARIS MASHILE**  
**CHAIRPERSON**

## FACILITIES LEASING DRAFT REGULATIONS

### Definitions

- 1 (1) In these Facilities Leasing Regulations, any word or expression to which a meaning is assigned in the Act has the meaning assigned to it unless otherwise specified.

**CCC** means the Complaints and Compliance Committee established in terms of section 17A of the ICASA Act.

**EC Act** means the Electronic Communications Act (Act No.36 of 2005).

**ECNS** means an Electronic Communications Network Service as defined in the EC Act.

**ECS** means an Electronic Communication Service as defined in the EC Act

**Facilities Leasing Agreement** means an agreement entered into between or amongst a party providing facilities and a party seeking facilities in relation to the leasing of electronic communications facilities.

**Facilities Leasing Information** means information relevant to facilities leasing that is in the possession or control of the party providing facilities and that may assist the party seeking facilities to:

- (a) formulate a request for facilities; or
- (b) plan, establish, or maintain its ECNS for obtaining facilities leasing.

Facilities Leasing Information includes but is not limited to:

- i. technical specifications of the electronic communications system;
- ii. switching, routing and transmission equipment used in the system;
- iii. signalling protocols used;
- iv. traffic volumes

Facilities Leasing Information also includes any material changes to Facilities Leasing Information that may affect the facilities leasing arrangements or plans of parties seeking facilities or the services such parties provide or intend to provide by means of that facilities leasing.

**ICASA Act** means the Independent Communications Authority of South Act, as amended (Act No.13 of 2000).

**Party providing facilities** means any person providing an ECNS, ECS, or broadcasting service, who is required to provide facilities in terms of section 43(1) of the EC Act.

**Party seeking facilities** means any person seeking to obtain electronic communications facilities from a party providing facilities for use in providing its ECNS, ECS or broadcasting services. .

**Reference Facilities Leasing Offer (RFLO)** means standard contract terms and conditions offered by a party with Significant Market Power (SMP) providing facilities.

### **Purpose of Facilities Leasing Regulations**

- 2 (1) These Facilities Leasing Regulations are intended to facilitate the conclusion of Facilities Leasing Agreements, by stipulating agreement principles, providing for time frames and procedures to be followed by the parties to facilities leasing and the filing of agreements and review thereof by the Authority.
- (2) These Regulations also specify dispute resolution processes by stipulating time frames and procedures to be followed in the event of a dispute.
- (3) These Facilities Leasing Regulations are not intended to limit the matters that may be dealt with in a Facilities Leasing Agreement or prevent or delay parties from negotiating or entering into bilateral or multilateral arrangements that deal with matters not dealt with in these Regulations.

### **Obligation to Lease Facilities**

- 3 (1) All licensees required to lease and provide facilities in terms of section 43 (1) of the EC Act have an obligation to lease and provide facilities to all licensees or persons providing services pursuant to a licence exemption in terms of section 43 (1) of the EC Act, unless such request is unreasonable.
- (2) The Authority may from time to time, exempt licensees from the obligation to provide facilities in accordance with the provisions of section 44(5).

### **Reference Facilities Leasing Offer (RFLO)**

- 4 (1) Following a declaration of SMP in accordance with Chapter 10 of the EC Act, all licensees required to submit a RFLO shall do so within 20 (twenty) days of such SMP declaration.
- (2) RFLOs must include terms and conditions mentioned in Regulation 5 and

abide by these Facilities Leasing Regulations, including the Agreement Principles.

- (3) The Authority must review a RFLO filed with it, within 10 (ten) days, to ensure that it is consistent with the EC Act and these Facilities Leasing Regulations, including the Agreement Principles.
- (4) If the Authority determines that the RFLO is consistent with the EC Act and these Facilities Leasing Regulations, it will approve it and make it publicly available in its library and on its website.
- (5) If the Authority determines that the RFLO or any term or condition thereof is not consistent with the EC Act or these Regulations, the Authority will refer the RFLO back to the licensee submitting such RFLO and direct the licensee to amend the terms and conditions so that they are consistent with the Act and these Facilities Leasing Regulations, within a period determined by the Authority which may not exceed ten (10) days.
- (6) If the Authority determines that the amended RFLO filed with it in terms of Regulation 4 (5) or any term or condition thereof is inconsistent with the EC Act or these Facilities Leasing Regulations, the Authority will impose terms and conditions consistent with the EC Act and these Facilities Leasing Regulations for inclusion in that RFLO within 10 (ten) days.
- (7) If the Authority determines that the amended RFLO is consistent with the Act and these Facilities Leasing Regulations, it will approve it and make it publicly available in its library and on its website within 5 (five) days.
- (8) Following approval by the Authority of a RFLO, within five (5) days, the licensee must make the RFLO publicly available by publishing the RFLO on its website and by providing a copy immediately on request by any party.
- (9) Notwithstanding the approval of a RFLO, if a party is of the opinion at any time that a term or condition of a RFLO is inconsistent with the EC Act or these Regulations, the Authority may review that term or condition.
- (10) A licensee may amend its RFLO from time to time in accordance with the procedure set out in regulation 4 (4) above.

#### **Required terms and conditions of Facilities Leasing Agreements**

- 5 (1) A Facilities Leasing Agreement must deal with the following items, other than where such item is not relevant to the facilities leasing in question as follows:-

(a) Interpretation

- Recitals
- Definitions of terms and abbreviations

(b) Scope of Facilities Leasing

- A description of the purpose of the facilities leasing
- A description of the scope and specifications of the facilities leasing
- Mechanisms for changes to the purpose, scope and specifications of the facilities leasing

(c) Network Changes

- Detail for providing information on planned network changes

(d) Traffic Measurement and Routing

- Detail of traffic measurement responsibilities and procedures

(e) Infrastructure Sharing and Co-location

- Availability
- Sharing of infrastructure and co-location procedures
- Supplementary services, such as power supply
- Physical access to facilities

(f) Billing and Settlement

- Billing procedures
- Payment terms and conditions
- Billing and settlement dispute procedures

(g) Charges

- Detail of components of charging, separately
- Mechanisms for review

(h) Quality of Service/ Service Levels

- Service levels / quality of service obligations
- Penalties
- Testing and maintenance
- Fault reporting

- Service level disputes
- System protection and safety measures

(i) Interchange and Treatment of Information

- Data interchange format
- Data to be exchanged
- Confidentiality
- Confidentiality of customer information

(j) Commencement and Termination

- Date of commencement
- Grounds for termination
- Termination procedures

(k) Other Provisions

- Impossibility of performance
- Assignment
- Cession
- Intellectual Property Rights
- Waivers
- Service of notices
- Applicable laws
- Regulatory approvals
- Dispute resolution procedures
- Breach provisions
- Legal interpretation
- Duration and renegotiation procedures
- Amendments

### **Requests for Facilities Leasing**

- 6 (1) A party seeking facilities must make its request for facilities to a party providing facilities in writing and the request must be dated accordingly.

### **Disputes regarding the reasonableness of requests to Lease Facilities**

- 7 (1) Where a party providing facilities disputes the reasonableness of a request for facilities, that party must notify the party seeking facilities in writing within five (5) days of the request, indicating the reason why it disputes the reasonableness of the request, and why the request is not technically or financially feasible or will not promote the efficient use of ECNS.

- (2) In the event the party providing facilities does not notify the party seeking facilities, as required by Regulation 7(1), the request for facilities may be deemed to be reasonable.
- (3) In case the request for facilities is in respect of the same or substantially similar facilities provided by the party providing facilities to any other party seeking facilities, the request may be deemed to be reasonable.
- (4) If a party providing facilities notifies the party seeking facilities as required by regulation 7 (1), the party seeking facilities may notify the Authority in writing of a reasonableness dispute, within ten (10) days. The notification to the Authority must identify the parties, provide the contact details of the parties, and include a copy of the notification provided by the party providing facilities as required by Regulation 7 (1). The party seeking facilities may also provide any evidence that may be useful to the Authority in making the determination of reasonableness.
- (5) The Authority must, on the papers, determine if the request is reasonable and notify the parties of its determination in writing in accordance with the timeframe set out in section 43 (3) of the EC Act.

#### **Negotiation and conclusion of Facilities Leasing Agreements**

- 8 (1) Where a party providing facilities does not consider a request for facilities to be unreasonable, the party providing facilities must respond to the party seeking facilities within two (2) days of the request for facilities, and propose a reasonable schedule for negotiation and the conclusion of a Facilities Leasing Agreement.
- (2) Where an RFLO is required, there is no obligation on the party seeking facilities to agree to the terms and conditions of the RFLO.
- (3) The parties must negotiate in good faith.
- (4) A Facilities Leasing Agreement must be entered into no later than twenty (20) days after the party seeking facilities makes a request to a party providing facilities.
- (5) If a dispute regarding reasonableness has been notified to the Authority a Facilities Leasing Agreement must be entered into no later than fifteen (15) days after the Authority determines the dispute. The Authority may extend these time periods on request of the party providing facilities on good cause shown, but any request must be made before the expiration of the 20 or 15 days period as the case may be, and any extension must not exceed a total of sixty (60) days from the date of the request for facilities.



**Unwillingness or Inability to Negotiate and Agree**

- 9 (1) Either party may notify the Authority of a dispute within three (3) months of unwillingness or inability to negotiate or agree.
- (2) The dispute notice must indicate who the parties are, their contact details, a statement of the relevant facts in respect of attempts to negotiate and agree, and include any other relevant documents or information. A copy of the dispute notice must be simultaneously provided to the other party or parties
- (3) Within twenty (20) days, the Authority will notify the parties of the action it intends to take, namely whether to –
- (a) Impose terms and conditions of facilities leasing;
- (b) Propose terms and conditions of facilities leasing that the parties must negotiate and agree upon; or
- (c) Refer the dispute to the CCC for adjudication.
- (4) In the event that the Authority intends to impose or propose terms and conditions of facilities leasing, the Authority will notify the parties in writing of the terms and conditions that it intends to impose or propose.
- (5) The parties may provide written representations to the Authority within ten (10) days on the Authority's intention to impose terms and conditions, after which, within twenty (20) days, the Authority may decide to impose or propose the terms and conditions of facilities leasing that the parties must negotiate and agree upon, or refer the dispute to the CCC for adjudication.
- (6) In the event the Authority intends to propose terms and conditions of facilities leasing that the parties must negotiate and agree upon, the Authority will notify the parties in writing of the proposed terms and conditions and afford the parties twenty (20) days to negotiate and agree, after which if there is no agreement, the proposed terms and conditions will be imposed by the Authority.
- (7) In the event that the Authority intends to refer the dispute to the CCC for adjudication, it will allow the party that did not file the dispute with the Authority, an opportunity to make written representations to the Authority within ten (10) days. A copy of the written representations submitted to the Authority must be simultaneously provided to the other party.
- (8) The party not making the written representations must reply within five (5) days. A copy of the written reply submitted to the Authority must be

simultaneously provided to the other party.

- (9) The Authority may refer the matter to the CCC for adjudication in accordance with section 43(5)(c) of the Act.
- (10) The CCC must within twenty one (21) days of receiving the complaint make a decision in terms section 46 of the EC Act.

### **Filing of Facilities Leasing Agreements**

- 10 (1) As soon as is practicable, but no later than five (5) days after the conclusion of a Facilities Leasing Agreement, the parties must file a duplicate original signed Facilities Leasing Agreement with the Authority according to section 45 of the EC Act.
- (2) There can be no claim of confidentiality in the Facilities Leasing Agreement or any part thereof.
- (3) The Facilities Leasing Agreement filed with the Authority must contain all the terms and conditions of the agreement between the parties related to facilities leasing and associated matters, and no amendments or cancellation will be of any force or effect unless they are reduced to writing, signed by the parties and approved by the Authority in terms of the EC Act and these Facilities Leasing Regulations.
- (4) Where applicable, if the Facilities Leasing Agreement differs in any respect from the RFLO of the party providing facilities, the parties to the Facilities Leasing Agreement must simultaneous with the filing of the Facilities Leasing Agreement, file a note detailing how the terms and conditions of the Facilities Leasing Agreement differ from the RFLO.
- (5) Within twenty (20) days of the determination of compliance with these regulations, the parties to the Facilities Leasing Agreement must publish Facilities Leasing Information on their website(s).

### **Review of Facilities Leasing Agreements by the Authority**

- 11 (1) The Authority will review Facilities Leasing Agreements to ensure that they are consistent with the Act and these Facilities Leasing Regulations, including the Agreement Principles.
- (2) If consistent with the Act and these Regulations, within thirty (30) days of the filing of the Facilities Leasing Agreement with the Authority, or such longer period as may be reasonably necessary in the circumstances, the Authority and the parties to the Agreement will publish the approved

Facilities Leasing Agreement on their websites and the Authority will also make copies available in its library.

- (3) Where the Authority determines that the Facilities Leasing Agreement or any term or condition thereof is not consistent with the Act or these Facilities Leasing Regulations, the Authority may direct the parties to the Facilities Leasing to agree on different terms and conditions that are consistent with the EC Act and these Facilities Leasing Regulations, within a period determined by the Authority which may not exceed twenty (20) days.
- (4) Once the Authority has published its determination that the Facilities Leasing Agreement or any term or condition is inconsistent with the EC Act or these Facilities Leasing Regulations, the Facilities Leasing Agreement will be ineffective and unenforceable in terms of section 45(2) of the EC Act.
- (5) If the parties to the Facilities Leasing are unable to agree on different terms and conditions that are consistent with the EC Act and these Regulations within the period specified by the Authority, and the Authority must impose terms and conditions within twenty one (21) days after the inability to agree on the terms.
- (6) If the parties to the Facilities Leasing agree on different terms and conditions within the period specified by the Authority, the parties must before the expiration of the time period file a duplicate original signed Facilities Leasing Agreement in terms of Regulation 10, along with a notice detailing the differences in the terms and conditions from the previously filed Facilities Leasing Agreement, to be reviewed by the Authority in terms of Regulation 11.

### **Implementation of Facilities Leasing Agreements**

- 12 (1) The party providing facilities must implement Facilities Leasing as soon as is practicable, but within a period not exceeding twenty (20) days or such other longer period requested by the party seeking facilities.
- (2) The implementation of Facilities Leasing for a party seeking facilities, including in response to requests for additional facilities in terms of a Facilities Leasing Agreement, must be given priority over the implementation of services to customers or affiliates of the party providing facilities.
- (3) The implementation of Facilities Leasing for a party seeking facilities, including in response to requests for additional facilities in terms of a Facilities Leasing Agreement, must be given priority over the

implementation of Facilities Leasing in response to later received requests for facilities.

### **Contravention of Facilities Leasing Agreements**

- 13 (1) A party to a dispute arising from a Facilities Leasing Agreement that has been filed with the Authority may notify the Authority in writing of the dispute in terms of section 46 (1) of the EC Act, for adjudication. The note must identify the parties, provide their contact details of the parties, and provide a factual description of the dispute and include any relevant evidence or information.
- (2) Within five (5) days of receipt of the dispute notification, the CCC will provide the other party or parties a copy of the dispute notice, and afford the other party or parties the opportunity to make written representations, including any relevant evidence, to the CCC within ten (10) days.
- (3) A copy of the written representations submitted to the CCC must be simultaneously provided to the other party or parties.
- (4) The notifying party may reply in writing within five (5) days, to the other party's or parties' written representations.
- (5) A copy of the written reply submitted to the CCC must be simultaneously provided to the other party or parties.
- (6) The CCC must consider the matter and make a finding and recommendation to the Authority within thirty (30) days, in terms of section 17D of the ICASA Act.
- (7) A party who is seeking to exercise his or her rights under section 46 (1) of the EC Act may, at any time, withdraw the notice in writing.

### **Provision of Facilities Leasing Information**

- 14.(1) In the event of changes to the ECNS, ECS or broadcasting services of a party providing facilities, such party must publish the Facilities Leasing Information on its website at least six (6) months prior to any changes to its ECNS, ECS or broadcasting services that may materially have an impact on the services of parties seeking facilities.
- (2) A party providing facilities must provide additional Facilities Leasing Information to a party seeking facilities within 10 days after such request, unless the Authority determines that the additional Facilities Leasing Information need not be provided at the request of the party providing facilities.

- (3) The party providing facilities may request the Authority in writing to make such a determination, within five (5) days after the request for additional Facilities Leasing Information has been made to it. The request must identify the parties, their contact details, and provide a factual description leading to the request. A copy of the request must simultaneously be provided to the party requesting the additional Facilities Leasing Information. The party requesting the additional Facilities Leasing Information may submit written representations to the Authority in response to the request within five (5) days.
- (4) Within five (5) days after the time periods mentioned in Regulation 14 (3) have lapsed, the Authority may, on the papers, determine whether the additional Facilities Leasing Information need to be provided.
- (5) The Authority cannot determine that the additional Facilities Leasing Information requested need not be provided due to a claim that the Information is confidential or proprietary.

#### **Requests for Additional Facilities Leasing**

- 15 (1) Procedures for dealing with requests for additional facilities in terms of a Facilities Leasing Agreement must be implemented timeously within twenty (20) days after a request for additional facilities was made.

#### **Agreement Principles**

- 16 (1) The following principles must inform the terms and conditions of Facilities Leasing Agreements:

##### *(a) Non- discrimination*

- (i) These non-discrimination principles apply in respect of negotiation and conclusion of Facilities Leasing Agreements, in respect of the terms and conditions of Facilities Leasing Agreements, and in respect of the implementation of facilities leasing.
- (ii) Regulation 15 in no way limits the rights of a party seeking facilities and the obligations of a party providing facilities set out in section 43 (7) of the EC Act.
- (iii) A party providing facilities must treat a party seeking facilities on non-discriminatory basis, and on no less favourable terms than the treatment that the party providing facilities affords itself, its affiliates, and similarly situated parties seeking facilities.

- (iv) A party providing facilities must treat the ECNS, of a party seeking facilities on a non-discriminatory basis, and on no less favourable terms than the treatment that the party providing facilities affords its own ECNS those of its affiliates, and those of similarly situated parties seeking facilities.
- (v) A party providing facilities must treat the customers of a party seeking facilities on a non-discriminatory basis, and on no less favourable terms than the treatment that the party providing facilities affords its own customers, those of its affiliates, and those of similarly situated parties seeking facilities.
- (vi) A request from a party seeking facilities, including requests for additional facilities in terms of a Facilities Leasing Agreement, must be given priority over the requests for services from the customers of the party providing facilities or its affiliates.
- (vii) Requests from parties seeking facilities, including requests for additional facilities in terms of a Facilities Leasing Agreement, must be dealt with in the order in which they are received.

*(b) Quality of Service*

- (i) A Facilities Leasing Agreement must contain service levels regarding, but not limited to, availability, performance, latency, and time to repair and restore, that reflects good facilities leasing practice and provide reasonable remedies and penalties for any failure to meet those service levels.
- (ii) The parties to a Facilities Leasing Agreement must comply with all relevant standards of the International Telecommunication Union, and such other technical standards as the Authority may prescribe from time to time.
- (iii) The facilities required shall be provided in sufficient capacity to enable the efficient transfer of signals between the leased ECNS, to avoid congestion, and to allow parties providing facilities to respond to requests for facilities timeously.

*(c) Pricing*

- (i) Charges for facilities leasing must be cost-based and the structure of charges for facilities leasing must reflect underlying costs, for example –
  - (a) fixed costs must be covered by fixed charges; and

(b) variable costs must be covered by variable charges

- (ii) Charges for facilities leasing must be sufficiently unbundled so that a party seeking facilities does not have to pay for anything it does not require for the requested facilities.
- (iii) Charges for facilities leasing may not exceed retail charges for the provision of substantially similar services.
- (iv) Charges for facilities leasing and billing and settlement procedures must be transparent and fair.

*(d) Principles regarding Co-Location and Sharing of Facilities*

- (i) Where a party seeking facilities requests co-location or the sharing of facilities, such co-location and sharing of facilities must be provided unless it is not technically feasible to do so. In the case of a dispute over the technical feasibility of co-location or the sharing of facilities, a party may notify the Authority of an unwillingness or inability to negotiate or agree dispute in terms of Regulation 9.
- (ii) If the request for co-location or the sharing of facilities is not technically feasible, an alternative location or facilities proximate to the co-located site or shared facilities must be identified and provided by the party providing facilities.

*(e) Confidentiality*

- (i) The principles in respect of confidentiality apply in respect of negotiation and conclusion of Facilities Leasing Agreements and in the implementation of facilities leasing.
- (ii) All confidential information deemed confidential and provided by one party to another party or generated by ECS of a party providing facilities, or gained as a consequence of providing facilities must be kept confidential and may be –
  - (aa) used only in relation to the provision of facilities except where the disclosure is authorised in writing by the other party or authorised or required by law.
  - (bb) disclosed only to employees, agents or advisers and only for the purpose of the provision of facilities or advice thereon.
- (iii) Confidentiality provisions of a Facilities Leasing Agreement may not prevent the public disclosure of a Facilities Leasing Agreement

by the Authority or the parties to it, in terms of the Act and these Regulations.

*(f) Transparency*

After the Authority has determined that a Facilities Leasing Agreement is consistent with these Facilities Leasing Regulations as required by section 45 (5) of the EC Act and these Facilities Leasing Regulations, the Parties to a Facilities Leasing Agreement must, within five (5) days, make the Facilities Leasing Agreement publicly available, including the rates and charges, by publishing the Facilities Leasing Agreement on the concerned parties' websites, and provide a copy immediately to any party on request.

*(g) Termination*

- (i) A party to a Facilities Leasing Agreement may not terminate a Facilities Leasing Agreement or facilities leasing in terms of a Facilities Leasing Agreement unless the termination is by agreement in writing, or is as a result of the liquidation, de-registration or insolvency of one of the parties to the Facilities Leasing Agreement, or is in breach of the Facilities Leasing Agreement or as a result of a violation of any other law for which a licence may be revoked.
- (ii) If the termination is by agreement in writing, the parties to the Facilities Leasing Agreement must provide a duplicate original copy thereof to the Authority within five (5) days.
- (iii) If the termination is as a result of the liquidation, de-registration or insolvency of one of the parties to the Facilities Leasing Agreement, or as a result of a violation of any other law for which a licence may be revoked, the party intending to terminate must give priority written notice of its intention to terminate to the other party or parties, a copy of which must simultaneously be filed with the Authority.
- (iv) If the termination is for a breach of the Facilities Leasing Agreement, the party intending to terminate must give written notice of its intention to terminate to the other party or parties and detail the allegation of the breach, provide a factual description leading to the allegations and include any relevant evidence. The notice must provide the party allegedly committing the breach an opportunity to remedy the breach within a reasonable period of not less than three (3) months.
- (v) If the party allegedly committing the breach has failed to remedy the breach within the period mentioned in Regulation 16 (1) (g) above, the party intending to terminate must obtain the Authority's consent in order to do so.



- (vi) The party intending to terminate, may notify the Authority in writing of its intention to terminate, within ten (10) days after the notice period mentioned in Regulation 16 (1) (g) (iv). The notice to the Authority must identify the parties, their contact details, and a copy of the notice provided to the party allegedly committing the breach and any other relevant evidence or information. A copy of the notice to the Authority must simultaneously be provided to the party allegedly committing the breach. That party allegedly committing the breach may submit written representations to the Authority in response within five (5) days.
- (vii) Thereafter, within ten (10) days, the Authority may, on the papers, determine whether the proposed termination is approved and notify the parties in writing.
- (viii) A party to a Facilities Leasing Agreement may not suspend a Facilities Leasing Agreement or facilities leasing in terms of a Facilities Leasing Agreement unless the suspension is by agreement in writing, or the suspension of facilities leasing is necessary to attend to a material degradation of or threat to ECNS.

*(h) Contravention of Facilities Leasing Regulations*

- (i) A party alleging a contravention of these Facilities Leasing Regulations may notify the Authority of the alleged contravention. The notice must identify the parties, provide the contact details of the parties, and provide a factual description leading to the allegations and include any relevant evidence and/or information .
- (ii) Within five (5) days of receipt of the contravention notification, the Authority will provide the other party or parties a copy of the contravention notice, and afford the other party or parties the opportunity to make written representations, including any relevant evidence, within ten (10) days.
- (iii) A copy of the written representations submitted to the Authority must simultaneously be provided to the other party or parties.
- (iv) The notifying party has five (5) days to reply in writing to the written representations.
- (v) A copy of the written reply submitted to the Authority must simultaneously be provided to the other parties.
- (vi) The Authority will refer the matter to the CCC for adjudication in terms of the ICASA Act.

- (vii) The CCC must consider the matter and make a finding and recommendation to the Authority within twenty (20) days, in terms of section 17D of the ICASA Act.
- (viii) The recommendations of the CCC may include any of those set out in section 17E (2) of the ICASA Act. A fine may not exceed R1 000 000 or ten (10) percent of person's annual turnover for every day or part thereof during which the contravention continued, whichever is more.
- (ix) The Authority must make its decision and order within twenty (20) days of receiving a recommendation from the CCC.
- (x) The decision and order is in all respects effective and binding and must be implemented unless and until a court of competent jurisdiction grants an order setting the decision and order aside.

### **Offences and Penalties**

- 17 (1) A licensee who fails to comply with an order made by the CCC in terms of section 46 of the EC Act, may be brought before the CCC in terms of section 17B(a) of the ICASA Act for a finding and a recommendation to the Authority in terms of the ICASA Act. The procedural rules of the CCC will apply to such a complaint. If found by the CCC to have been in contravention of such an order, the CCC may recommend to the Authority that such person pay a fine not exceeding R1000 000 or ten (10) per cent of the licensee's annual turnover for every day during which the contravention continues.
  - 17 (2) A party who fails to comply with an order of the Authority in terms of section 17E of the ICASA Act shall be subject to a court of law in terms of section 17H of the ICASA Act. On conviction by the court such a person is liable to a fine not exceeding R1 000 000 or to imprisonment not exceeding five years.
-