
GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. R. 886

6 October 2010



Independent Communications Authority of South Africa
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Ref. No: 2/13/7/32

REGULATIONS GOVERNING ASPECTS OF THE PROCEDURES OF THE COMPLAINTS AND COMPLIANCE COMMITTEE OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

I, Dr SS Mncube, the Chairperson of the Independent Communications Authority of South Africa, (the Authority) hereby publish regulations in the attached Schedule, made and approved by the Authority under section 4 of the Electronic Communications Act (Act 36 of 2005) read together sections 4(3)(j) and 17C(5) of the Independent Communications Authority of South Africa Act 13 of 2000.

A handwritten signature in black ink, appearing to be 'SS Mncube', written over a horizontal line.

Dr SS Mncube

CHAIRPERSON

Date: 01/10/2010

REGULATIONS GOVERNING ASPECTS OF THE PROCEDURES OF THE COMPLAINTS AND COMPLIANCE COMMITTEE OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

Purpose of the Regulations

- (a) To provide details of procedures to be followed by the Complaints and Compliance Committee;**
- (b) To provide for a procedure whereby urgent matters will be dealt with;**
- (c) To provide for an ad hoc appointment by Council of the Chairperson where he or she is unable to sit in a hearing or a meeting and appointment of an ad hoc member where it is impossible to constitute a quorum; and**
- (d) To provide guidance as to pre-hearing conferences**

1 DEFINITIONS

In these regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Independent Communications Authority Act (Act 15 of 2000) or the Electronic Communications Act (Act 36 of 2005) shall have that meaning and

"Act" means the Independent Communications Authority of South Africa Act, 13 of 2000;

"Chairperson" means the chairperson of the CCC contemplated in section 17A of the Act;

"Complaint" means any complaint alleging non-compliance by a licensee with the terms and conditions of its licence, this Act or the underlying statutes;

"Complainant" means any person who has lodged a complaint with or referred a dispute to the Authority or the CCC, and includes an inspector appointed in terms of section 17F of the Act, Council, and any committee established under the Act;

"CCC" means the Complaints and Compliance Committee established in terms of section 17A of the Act;

"Co-ordinator" means a full-time employee of the Authority who is the administrative manager to the CCC;

"Day" means a calendar day;

"Deliver" means serve a document on all the other parties to the complaint and then file such document, together with proof of service on the other parties, with the CCC;

"Dispute" means any dispute contemplated in sections 25(8), 37(4)(c), 40, 43(5)(c) or 46(1) of the ECA;

"ECA" means the Electronic Communications Act 36 of 2005;

"Election Rules" means the rights and duties contained in sections 57, 58 and 59 of the ECA, any determinations made by the Authority in terms thereof and includes regulations relating to elections;

"licensee" means a person licensed in terms of the Broadcasting Act 4 of 1999, the ECA or licensed or registered in terms of the Postal Services Act, and includes a person who is exempted in terms of section 6 of the ECA;

"urgent matter" means a matter which has been determined to be urgent by the chairperson in terms of regulation 6;

"vexatious complaint or dispute" is a complaint or dispute filed by a person who has persistently and without any reasonable ground filed a complaint or dispute with the CCC or the Authority against a licensee, whether against the same licensee or against different licensees.

2. FILING OF COMPLAINT/REFERRAL OF DISPUTE

A complaint is brought to the attention of the CCC by lodging it with the co-ordinator and may be supported by an affidavit: provided that the co-ordinator may require more details from the complainant by way of an affidavit or otherwise before she or he refers the matter to the chairperson: provided further, that in the case of a dispute the complaint shall be filed in the form of an affidavit and this procedure also applies to the answer and, if applicable, to the reply by the complainant.

3. REJECTION OF COMPLAINT BY CCC

- (1) If the CCC is of the view that the purported complaint or the purported dispute falls outside its jurisdiction, then it must reject the complaint or dispute.
- (2) If the CCC is of the view that the purported complaint or the purported dispute is vexatious or frivolous or insufficient attempts were made at settling the complaint, then it may reject the complaint or dispute.
- (3) If the CCC rejects the complaint, it must advise the complainant thereof in writing and provide brief reasons for such rejection.
- (4) In so far as the exercise of its discretion in terms of this regulation is concerned, the co-ordinator provides the CCC with her or his advice as well as the result of the investigation by the inspector in terms of section 17F of the Act.

4. DOCUMENTS IN COMPLAINT OR DISPUTE

- (1) The co-ordinator must provide the licensee or the person against whom a dispute is declared with a copy of the complaint or the affidavit in the case of the declaration of a dispute within 5 days of receipt of the complaint or the dispute by the CCC, and must notify the licensee or that party in writing that it has 15 days within which to deliver an answering affidavit thereto.
- (2) If the complainant wishes to deliver a replying affidavit, the complainant must do so within 10 days of receipt of the answering affidavit.

5. HEARINGS AND PRE-HEARINGS

- (1) The co-ordinator must give the parties to the complaint or the dispute at least 20 days notice in writing of the date, time and venue of the hearing: provided that if the chairperson decides that the matter is urgent he or she may set a shorter time period.
- (2) The powers of the CCC at a pre-hearing conference are set out in the Schedule to these Regulations.

6. URGENT MATTERS

- (1) A complainant may request that the complaint or dispute be dealt with on an urgent basis, and must motivate why.
- (2) Upon receipt by the CCC of a complaint or dispute in which the complainant requests that it be dealt with on an urgent basis, the chairperson must provide the licensee against whom the complaint is made or the party against whom the dispute is declared an opportunity to respond in writing to the request that the matter be dealt with on an urgent basis: provided that the chairperson may require that affidavits be filed to substantiate or deny allegations of urgency.
- (3) Complaints in terms of the Election Rules are deemed to be urgent unless the chairperson determines otherwise.
- (4) If the chairperson determines that the matter is urgent, the chairperson advises the parties of the procedure and time periods to be followed.

7. QUORUM AND PLACE OF HEARINGS

- (1) The seat of the CCC is Johannesburg. The chairperson of the CCC may, however, on good cause, decide to hold a hearing at any other place in the Republic of South Africa.
- (2) A quorum for a hearing or meeting of the CCC is the majority of members in office at the time.

- (3) Where the chairperson is unable to preside, the Council appoints a duly qualified person, who may also be one of the members of the CCC, to chair the hearing or meeting and any hearings or meetings which follow upon it.
- (4) Where a quorum cannot be constituted for a hearing or meeting of the CCC, the Council appoints a duly qualified person to sit as a member for that hearing or meeting and any hearings or meetings which follow upon it.
- (5) Members of the CCC are appointed for a term of three years.

8. CONDONATION FOR FAILURE TO COMPLY WITH THE RULES

The CCC, on good cause shown in writing, may condone a party's failure to comply with the time periods in these Regulations or time periods set in terms of these Regulations.

9. REPEAL OF REGULATIONS

The following Regulations are repealed on the date when these Regulations come into operation:

- (a) Regulations for the establishment and constitution of the Broadcasting Monitoring and Complaints Committee of the Independent Communications Authority of South Africa, published in Government Gazette No. 22919, Notice 2355 on 5 December 2001.
- (b) The Regulations on the Procedures to be followed by the Monitoring and Complaints Unit and the Broadcasting Monitoring and Complaints Committee of the Independent Communications Authority of South Africa, published in Government Gazette No. 23444, Notice 779 on 22 May 2002.

SCHEDULE**PRE-HEARING CONFERENCE**

In the pre-hearing conference, the CCC may –

- (a) attempt to resolve any preliminary points which any party intends to take;
 - (b) direct that any points of law which it would be practical to resolve before proceeding with the hearing, be argued on a date determined by the chairperson;
 - (c) seek to clarify and simplify the issues;
 - (d) give directions in respect of –
 - (i) obtaining admissions of particular facts and/or documents;
 - (ii) the manner in which any documents additional to those already filed ought to be dealt with;
 - (iii) witnesses to be called;
 - (iv) procedures to be followed at the hearing;
 - (v) date, time and schedule for the hearing;
 - (vi) any other means by which the proceedings may be shortened; and
 - (e) attempt to mediate a settlement between the parties of the complaint or dispute.
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