



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 433

Pretoria, 16 July 2001
Julie 2001

No. 22462



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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General Notice

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GENERAL NOTICE

NOTICE 1649 OF 2001



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE OF INTENTION TO REPEAL THE EXISTING SECTION 100 REGULATIONS (REGULATION NO. R346 PUBLISHED ON THE 06TH OF MARCH 1998) PUBLISHED IN TERMS OF SECTION 96 OF THE TELECOMMUNICATIONS ACT REGARDING THE MANNER OF INVESTIGATION AND ADJUDICATION OF A CONTRAVENTION OF OR FAILURE TO COMPLY WITH THE TELECOMMUNICATIONS ACT, 1996, (ACT 103 OF 1996), OR A LICENCE, OR AN AGREEMENT CONTEMPLATED BY THE ACT, OR ANY DIRECTION MADE IN TERMS OF THE ACT

The Independent Communications Authority of South Africa hereby gives notice that it intends making the regulations in the Schedule in terms of section 96 read with section 88 of the Telecommunications Act, 1996 (Act No. 103 of 1996).

Interested persons are hereby invited to submit written comments or written representations with regard to these proposed regulations, to be received by no later than 16h00 on 10th of October 2001 by post, hand delivery, facsimile transmission or by an electronic version in Microsoft Word 6.0 or lower (madyibis@icasa.org.za), for the attention of Mr Siyabonga Madyibi, c/o ICASA, Private Bag X10002, Sandton, 2046; Block B, ICASA, Pin Mill Farm, 164 Katherine Street, Sandton; Facsimile (011) 321 8582.

MANDLA LANGA
Chairperson, ICASA

SCHEDULE

Definitions

1. Any expression or word in this schedule shall have the same meaning ascribed to it in the Telecommunications Act, 1996 (Act 103 of 1996) unless the context indicates otherwise;

"complaint" includes a matter initiated by or submitted to the Authority, in respect of an alleged contravention or failure to comply as contemplated in paragraph 3.1 or any failure or contravention by anyone providing a telecommunication service;

"day" means a calendar day excluding SA public holidays, and when any particular number of days is prescribed for the doing of any act, the number of days must be calculated by excluding the first day and including the last day;

"deliver" means to serve on all other parties and to file with the Authority;

"inspector" means a person appointed as such in terms of Section 98 of the Telecommunications Act;

"notice" means a written notice, and **"notify"** means to notify in writing;

"party" means any party to proceedings before the Authority and includes a person representing a party in such proceedings;

Office hours and address of the Authority

2. (1) The office of the Authority is at -
Pin Mill Farm
Block B
164 Katherine Street
Sandton

- (2) The office of the Authority will be open every Monday to Friday, excluding public holidays, from 08:30 to 13:00 and from 14:00 to 16:00 for the purpose of filing any documents on the Authority.
- (3) Notwithstanding provision 2(2) above, in exceptional circumstances and with the prior approval of the Authority or any appropriately delegated person, the Authority may accept documents for filing on any day and at any time.

Application of these regulations

3. These regulations shall be applicable to all complaints as envisaged in paragraph 4(1) hereunder. Any other complaints which are less formalistic in nature and do not fall within the parameters of paragraph 4(1) shall be dealt with by the Authority in a separate document to be issued by the Authority.

Notice of complaint

4. (1) Any party ("**the complainant**") aggrieved by an alleged failure by a licensee or any other provider of a telecommunication service to comply with a provision of the Telecommunications Act and the prescribed regulations, the relevant licence, or any relevant agreement for the interconnection or provision of telecommunication facilities may lodge a complaint ("**the complaint**").
- (2) The complaint shall be lodged and served by the complainant upon all parties who have an interest in the matter and the complainant must thereafter serve with the Authority proof of such service.
- (3) All complaints served with the Authority shall be addressed to or served for the attention of the Complaints Registrar at the address listed in paragraph 2 (1) above. Complaints to be served on the

Authority outside Gauteng shall be addressed to the Regional Manager responsible for that particular regional office of the Authority. These regional offices are located in Cape Town, Port Elizabeth, Durban and Bloemfontein.

- (4) The complaint shall contain the following information:
- (a) Details of the alleged non-compliance by the licensee
 - (b) the relief sought;
 - (c) an address at which the complainant will accept notices and service of all documents in the proceedings; and
 - (d) a notice advising the party against whom the complaint is directed ("**the respondent**") that if it intends opposing the matter; it must deliver an answering affidavit to the notice.
- (5) The complaint shall be supported by a founding affidavit together with any further affidavits upon which the complainant intends to rely. A copy of any document referred to in an affidavit must be attached thereto.
- (6) The founding affidavit shall clearly and concisely set out:
- (a) the names, descriptions and addresses of all parties to the matter;
 - (b) a statement of the material facts, in chronological order, on which the complaint is based, which statement must be sufficiently particular to enable any other party to reply thereto;

- (c) a statement of the legal issues that arise from the material facts, which statement must be sufficiently particular to enable any other party to reply thereto; and
- (d) the relief sought.

Answering affidavit

5. (1) If a respondent intends to oppose the relief sought in the complaint or if any other party wishes to place relevant material before the Authority, such respondent or other party shall deliver one or more answering affidavits within 14 days from the date on which the complaint was served on the respondent or other party. Subject to such changes as may be indicated by the context, answering affidavits shall be in the same form and shall contain the same information as is stipulated in paragraph 4 above.

Replying affidavit

6. (1) The complainant may deliver one or more replying affidavits within 7 days from the date on which any answering affidavits were delivered.
- (2) The replying affidavits may only address those issues raised in the answering affidavits and may not introduce any new issues of fact or law.

Action initiated by the Authority

7. (1) Where the Authority suspects that any contravention as set out in paragraph 4 (1) is taking place the Authority may itself investigate

the matter in any lawful manner and may for that purpose have regard to the contents of paragraph 10 hereunder in as far as they would be applicable to an action instituted by the Authority.

- (2) In the event that the Authority determines that the alleged contravention or failure merits adjudication the Authority shall have regard to the contents of paragraph 4 (2), (4), (5) and (6) set out above in as far as they may be applicable to an action instituted by the Authority.

Service of documents

8. (1) A document that is required to be served on any person in terms of these regulations may be served in any one of the following ways, namely:
- (a) by handing a copy of the document to the party concerned;
 - (b) by leaving a copy of the document at the party's place of residence or business with any person who is apparently 16 years of age or older and in charge of the premises at the time;
 - (c) by faxing a copy of the document to the party;
 - (d) by handing a copy of the document to the party's attorneys of record;
 - (e) if the party has chosen an address for service, by leaving a copy of the document at the address with any person who is apparently 16 years of age or older and in charge of the premises at the time;
 - (f) by sending a copy of the document by registered post to the last known address of the party, and, unless the contrary is

proved, it will be presumed that service was effected on the 7th day following the day on which the document was posted;

- (g) if the party is a company or other body corporate, by serving a copy of the document on an employee of the company or body corporate at its registered office or its principal place of business, within the Republic, or, if there is no employee willing to accept service, by affixing a copy of the document to the main door of the office or place of business as the case may be;
- (h) if the party is a municipality, by serving a copy of the document on the town clerk, assistant town clerk or any other person employed in that office;
- (i) if the party is statutory body, by serving a copy of the document on the secretary, chief executive officer, member of the executive committee or board, or any other person acting on their behalf;
- (j) if the party is the national government or a provincial government, by serving a copy of the document on an employee in the relevant government department or any office of the State Attorney; or
- (k) by any other means authorised by the Authority.

(2) Service may be proved in any one of the following ways, namely:

- (a) by an affidavit of the person who effected service;
- (b) if service was effected by fax, by an affidavit of the person who transmitted such fax, together with proof of the correct fax number and confirmation that the whole of the transmission was successfully completed;

- (c) by a signed acknowledgement or receipt by the person on whom the document was served, together with the date and time of service, and the full names and capacity of that person; or
- (d) if service was effected by registered post, by an affidavit of the person who posted the document, together with the certificate issued by the post office for the posting of the document.

Filing of documents

9. (1) A document may be filed with the Authority in any one of the following ways, namely:
- (a) by handing the document to an employee of the Authority at the address of the Authority;
 - (b) by sending the document to the Authority by registered post; or
 - (c) by faxing the document to the Authority.
- (2) A document will have been filed with the Authority:
- (a) on the date on which the document is handed to the Authority and stamped by an employee of the Authority;
 - (b) if the document was sent by registered post, on the date on which the document was received by the Authority; or
 - (c) if the document was sent by fax, on the date on which the fax transmission was successfully completed.

- (3) The original document must be lodged with the Authority. If the document was sent by fax, the original document must be lodged within 7 days of its having being faxed.

Investigation

10. (1) Within 7 days of delivery of the replying affidavit or, if no replying affidavit has been delivered, within 14 days of delivery of the answering affidavit, the Authority may;
 - (a) issue one or more notices in terms of section 97 of the Telecommunications Act; and/or
 - (b) appoint one or more inspectors in terms of section 98 of the Telecommunications Act to investigate the matter.
- (2) The written report of the inspectors shall be made available to the parties.
- (3) Upon receipt of any inspectors' report and after due consideration of all the papers that have been filed, the Authority or any appropriately delegated person shall determine whether the matter requires a formal hearing. If it does not merit a formal hearing, the Authority or such delegated person/s shall advise the parties concerned of its determination and proceed to decide the matter summarily on consideration of only the written representations before it. If it merits a formal hearing, the Authority shall determine the date, time and place where the formal hearing will be held and advise the parties thereof.
- (4) Where the Authority determines that the complaint lodged is of an urgent nature the Authority may issue a notice requiring the respondent to respond to the complaint lodged within a reasonable period lesser than fourteen days.

Pre-hearing meeting

11. (1) In the event that the Authority determines that a formal hearing will be held in the matter and at the discretion of the Authority the parties shall be directed to attend a pre-hearing meeting on a date and at a time and place to be determined by the Authority. The parties will be given at least 14 days' notice of such meeting.
- (2) The meeting shall be chaired by a councillor of the Authority, assisted by one or more members of the Authority's staff.
- (3) At the meeting, the parties must attempt to reach consensus on inter alia the following:
- (a) any means by which the matter may be settled;
 - (b) the issues that the Authority is required to decide
 - (c) the relief sought;
 - (d) the preparation of an indexed and paginated set of papers;
 - (e) the matter in which documentary evidence is to be dealt with, including any agreement on the status of documents;
 - (f) the facts that are common cause;
 - (g) the facts that are in dispute;
 - (h) subject to 11.4 below, whether there are any disputes of fact that are not capable of being resolved on the affidavits filed;
 - (i) which party must begin;
 - (j) any preliminary points that are apparent from the affidavits filed;

- (i) any other means by which the proceedings may be shortened; and
 - (ii) an estimate of the time required for the hearing.
- (4) If there are any disputes of fact that are not capable of being resolved on the affidavits filed, the parties must:
 - (a) identify such disputes; and
 - (b) identify the witnesses, from amongst the deponents to the affidavits filed, who will be called to give oral evidence at the formal hearing on one or more of such disputes.
- (5) The Authority must ensure that a minute of the meeting, agreed to by all parties therein present, is delivered within 7 days of the conclusion of the meeting.
- (6) The Authority shall also ensure that all hearings contemplated in these regulations are recorded and transcripts of such recordings shall be made available to the parties on payment of the prescribed fee.

Formal hearing

- 12. (1) Oral evidence shall be permitted at the formal hearing only in respect of those disputes of fact, identified at the pre-hearing meeting, that are not capable of being resolved on the affidavits filed.
- (2) Subject to 12 (3) and 12 (4) below, only deponents to the affidavits filed shall be permitted to give oral evidence.
- (3) In the event of a party being in possession of relevant facts that were not available to the party when its affidavits were filed, such

party will be permitted to lead oral evidence of such facts, provided that:

- (a) such evidence relates to one or more of those disputes of fact, already identified at the pre-hearing meeting, that are not capable of being resolved on the affidavits filed;
 - (b) the party wishing to lead such evidence, at the earliest possible opportunity, files with the Authority an affidavit dealing with the circumstances in which the party first came to know of such facts and the reasons why such facts were not included in the affidavits filed; and
 - (c) the evidence is contained in one or more affidavits, delivered not less than 3 days before the start of the hearing.
- (4) The committee hearing the matter may, on good cause shown, dispense with the requirements of 12 (3) (c) above and permit the affidavits referred to therein to be delivered at any time during the hearing.
- (5) Any witness who presents oral evidence at the hearing may be cross-examined by any other party on such issues and to such extent as permitted by the committee hearing the matter.

Heads of argument

13. (1) In the event of there being no disputes of fact that are not capable of being resolved on the affidavits filed, the parties must, not less than 3 days before the hearing, deliver heads of arguments on the main points that they intend to argue.
- (2) In the event of oral evidence being led at the formal hearing, the parties must, not more than 3 days after the conclusion of such

evidence, deliver heads of arguments on the main points that they intend to argue.

- (3) The heads of argument must:
- (a) include a chronology of the material facts that are submitted to have been proved;
 - (b) include a list of the authorities referred to therein;
 - (c) in the first reference to a text book, specify the author, title, edition and page number in that, and;
 - (d) in the first reference to a reported case, contain the full name of the case, the year, volume, commencement page, division of the court, and page and margin reference to which specific reference is made.

Determination of the matter

14. The committee hearing the matter shall determine the matter in accordance with its delegated powers, these regulations, and the requirements of administrative justice and the decision of that committee shall be the decision of the Authority.
15. In determining the matter the committee may issue an appropriate directive including without limitation
- (a) Making orders and determinations or issuing directives contemplated in sections 5 (2) (b), 36 (1) (d), 43 (1) (c), 43 (4), 43 (5), 44 (7), 53 and 100 of the Telecommunications Act;
 - (b) that a fine not exceeding R500 000 be paid to the Authority;

- (c) where applicable, any monies (plus interest thereon, calculated at the prevailing prime rate), or benefits which unduly accrued to the licensee, be refunded or returned to the payer thereof;
- (d) an order to reimburse the Authority for costs and expenditure incurred by the Authority utilising the services of an expert or professional person as the case may be.

Condonation and variation

16. The Authority may, on good cause shown and in writing:

- (1) condone any non-compliance with the provisions of these regulations;
- (2) vary any procedure set out in these regulations; and
- (3) make any ruling that is necessary for the just and proper determination of a complaint, in respect of any matter that is not otherwise governed by these regulations.

Penalty

17. Any contravention or failure to comply with the provisions of this regulation or of an order, determination or directive issued pursuant to clause 15 hereof shall constitute an offence. Any person found guilty of this offence shall on conviction be liable to a fine not exceeding the amount of R500 000 (five hundred thousand rand) or imprisonment for a period not exceeding six months.

Title and commencement

18. The above regulations shall be known as the ICASA Complaints regulations and shall operate from the date on which they are approved and published by the Minister in the Government Gazette.