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GENERAL NOTICE

NOTICE 2071 OF 2001



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

Notice in Respect of A Discussion Document on the Continuous Compliance of Telecommunications Equipment

Notice is hereby given that the Independent Communications Authority of South Africa (ICASA) intends to conduct an enquiry under Section 27 of the Telecommunications Act, 1996 (Act 103 of 1996) to explore the possibility of adopting measures to verify compliance of licensed telecommunications equipment and to ensure the continuous compliance of telecommunications equipment.

The relevant topics on which the discussion document is contemplated are published herewith.

Interested persons are hereby invited to submit written comments on or representations with regard to the consultation document, to be received by no later than **16:00 hrs on 8 October 2001** by post or hand delivery preferably with a soft copy in Microsoft Word 97 or higher, for the attention of Mr. Mortimer Hope Pr. Eng., ICASA, Private Bag X10002, Sandton, 2146; or Block A, Pin Mill Farm, 164 Katherine Street, Sandton; or email hopem@icasa.org.za

All representations and documents lodged with ICASA pursuant to this notice shall be open for public inspection by interested parties during the normal office hours of the Authority.

Representations and documents that ICASA considers to be confidential will not be available for public inspection. Persons submitting representations that they believe are confidential should indicate so clearly, together with their reasons for requesting confidentiality. ICASA may, on receiving such requests, determine that such documents shall not be open for public inspection. If a request for confidentiality is refused, the person making the request will be allowed to withdraw the document in question.

Persons making written representations are invited to indicate whether they would like an opportunity to make oral representations.

**MANDLA LANGA
CHAIRPERSON
INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

Independent Communications Authority of South Africa (ICASA)
Discussion Document on the
Continuous Compliance of Telecommunications Equipment

This document is published in terms of section 27 of the Telecommunications Act No.103 of 1996 as amended. ICASA hereby proposes a scheme to verify compliance of licensed telecommunications equipment. This is to ensure that all approved equipment being offered for sale still complies with the relevant standard(s).

Current Situation

In order to be approved for use in South Africa, telecommunications equipment is tested at an accredited test laboratory in order to determine whether it complies with the applicable standard. This is often the only time that the equipment is tested, even though it may undergo various upgrades and design changes over time.

Equipment that meets the technical and administrative requirements is issued with a certificate or licence. A standard condition of this licence is that suppliers are required to inform the Authority in writing of any proposed changes and to seek permission to implement same. Unfortunately, this does not always happen, hence there is no guarantee that a particular piece of equipment being offered for sale is identical to what was approved.

Additionally, some unscrupulous suppliers modify the sample that is submitted for testing to ensure that it complies with the applicable standard(s), without making similar modifications to the units that are sold. The situation then arises where the product is approved based on a test report of a sample that is not representative.

Question:

1. Should ICASA concentrate on Telecommunications Line Terminal Equipment (TLTE) only, or include other licensed equipment e.g. Switching Systems in the Continuous Compliance scheme?

Proposal

The Authority plans to initiate a Continuous Compliance Scheme for Telecommunications Equipment whereby a random sample will be tested to determine whether it still complies with the applicable standard(s).

The sample can be taken from anywhere in the distribution channel, the point of sale or the factory. The standard licence conditions will be amended to allow any ICASA inspector to obtain a sample, at the cost of the supplier or manufacturer, in order to conduct type approval testing. The affected supplier or manufacturer will be issued a receipt for the sample taken for testing.

It is envisaged that Telkom's Telecommunication Peripheral Equipment (TPL) test laboratory and any other South African based ICASA designated test lab will conduct the Continuous Compliance tests.

Funding

Implementation of this scheme will obviously have financial implications. Several models have been considered for funding, some of which are stated below.

1. A levy of several cents per unit manufactured or imported can be charged.
2. The test lab would bear the cost of the test if the tested sample is compliant.
3. The licence holder would be responsible for the cost of testing if the sample is non-compliant. This could be achieved in the following ways:
 - 3.1 A special fund could be set up to pay for compliance testing. Licensees would pay a deposit into the fund to cover the cost of one test.
 - 3.2 ICASA pays the test lab and recovers the test fee from the licensee or from the deposit paid into the compliance testing fund. In the latter case the licensee has to make a new deposit into the fund.
 - 3.3 The licensee pays the test lab directly and provides proof of payment to ICASA.

Questions:

2. Which test labs should perform the compliance tests?
3. How would you propose that ICASA inspectors obtain the test sample? Can the licence conditions be used or is a search warrant necessary?
4. Should licensees be allowed to conduct their own compliance testing and submit the results to the Authority?
5. Would three (3) weeks be enough to conduct the compliance test?
6. What model or combination of those stated above should be used to fund the Continuous Compliance Scheme?
7. Are there any other funding mechanisms to be considered?

Post Test Action

Licensees will be informed in writing of all test results, both for compliant and non-compliant equipment. This will serve as encouragement to those licensees whose equipment is compliant, while it will trigger sanctions against those with non-compliant equipment.

Regulation 346 that was promulgated in terms of section 96 of the Telecommunications Act, 103 of 1996, makes provision for the Authority to impose sanctions for contravention or non-compliance with the provisions of the Act, or terms and conditions of the relevant licence or agreement for the interconnection or provision of telecommunications facilities as contemplated in the Act.

These sanctions include without limitation:

- (a) that a fine not exceeding R500,000 be paid to the Authority;
- (b) revocation of licence;
- (c) 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; and
- (d) 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 Act.

Questions:

8. What would be the appropriate sanction when non-compliant equipment is found?
9. Should the Authority publish the results of all compliance tests?
10. In the case of a repeat offender, should the Authority cancel the licensees other licences also?

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