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**GENERAL NOTICE**

**Independent Communications Authority of South Africa**

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# GENERAL NOTICE

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## NOTICE 239 OF 2009



Independent Communications Authority of South Africa  
Pinmill Farm, 164 Katherine Street, Sandton  
Private Bag X10002, Sandton, 2146

### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

#### DRAFT GENERAL LICENCE FEES REGULATIONS

- (1) The Independent Communications Authority of South Africa ("The Authority") hereby, in terms of section 4(7) (a) of the Electronic Communications Act, 2005 (Act No 36 of 2005) ("the Act"), publishes the draft regulations in respect of general licence fees in terms of section 4(1) (c) (iv-v) and 5(7) (a) (iii) of the Act as contained herein.
- (2) A copy of the draft regulation is available on the Authority's website at <http://www.icasa.org.za> and in the ICASA Library at 164 Katherine Street, PinMill Farm, Sandton Block D, between 08h30 and 16h30, Monday to Friday.
- (3) Interested persons are invited to submit written comments or written representations with regard to the draft regulations, to be received **by no later than 16h00 on 20 March 2009** by post, hand delivery, facsimile transmission, or electronically (in Microsoft Word) for the attention of:

**Mr. Thato Mahapa**

**Independent Communications Authority of South Africa**

**Private Bag X10002**

**Sandton**

**2146**

**Delivery address: Block B, Pinmill Farm, 164 Katherine Street, Sandton. Where possible written representations should also be e-mailed to: [tmahapa@icasa.org.za](mailto:tmahapa@icasa.org.za) and/or [smahlawe@icasa.org.za](mailto:smahlawe@icasa.org.za)**

Enquiries can be directed to the Project Leader on:

**Landline: 011 566 3215/ 011 566 3883**

**Fax: 011 566 3216 / 011 566 3884**

- (4) All written representations submitted to the Authority pursuant to this notice will be made available for inspection by interested persons at the Authority's library and copies of such representations will be obtainable on the payment of the prescribed fee.
- (5) At the request of any person who submits written representations pursuant to this notice, the Authority may determine that 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) The final regulation will be published in the government gazette.

**PARIS MASHILE  
CHAIRPERSON**

## Schedule

### 1. DEFINITIONS

In these regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Electronic Communications Act, 2005 (Act No. 36 of 2005) has the meaning so assigned;

**“the Act”** means the **Electronic Communications Act, 2005 (Act No. 35 of 2005)**;

**“Administrative Fees”** means the fees payable in terms of regulation 3(2) and contained in Schedule 1;

**“Annual Licence Fees”** means the fees payable in terms of regulation 3(1) and contained in Schedule 2;

**“Applicable Interest Rate”** means the uniform interest rate set by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act 1 of 1999;

**“BS Licensee”** means broadcasting service licensee ;

**“ECN”** means Electronic Communications Network;

**“ECNS Licensee”** means Electronic Communications Network Service Licensee;

**“ECS Licensee”** means Electronic Communications Service Licensee;

**“Gross Profit”** means total revenue generated from Licensed Services less total costs incurred in the provision of the Licensed Services;

**“Licensed Services”** means ECS, ECNS and BS provided pursuant to a licence issued to a Licensee in terms of Chapters 3 and 9 of the Act.

## 2. PURPOSE OF THESE REGULATIONS

The purpose of these Regulations is to prescribe –

- (a) the administrative fees payable in respect of an application or registration for a licence, amendment, transfer or renewal as contemplated in sections 4(1)(c)(iv) and 4(1)(c)(v) of the Act; and
- (b) The annual licence fees payable by licensees as contemplated in section 5(7) (a) (iii) of the Act.

## 3. APPLICATION

- (1) The annual licence fees prescribed in these regulations and as set out in schedule 2 apply to holders of individual and class ECS licences, individual and class ECNS licences and individual commercial BS licences.
- (2) The administrative fees are as set out in schedule 1 and:
  - (a) The method of payment prescribed in the Process and Procedure regulations published in Notice 398 in Government Gazette 30916 and Notice 397 in Government Gazette 30914 dated 31 March 2008 applies, and.
  - (b) Will be adjusted by a maximum of the Consumer Price Index (CPI) as published by Statistics South Africa or such other lower percentage as the Authority determines. The adjusted Administrative Fees will be published annually in the Government Gazette.

## 4. EXEMPTIONS

The following Licensees are exempt from the payment of annual licence fees:

- (a) Class Licences for Community Broadcasting (Sound and Television);
- (b) Licensees who are granted and issued a licence in terms of the Act where the licensee:
  - (i) satisfies the requirements for classification as a small business as defined in the

National Small Business Act 102 of 1996, as amended: OR

- (ii) Exceeds the turnover threshold for qualifying as a small business as defined in the National Small Business Act 102 of 1996, as amended, but on a three-year-rolling-average turnover, qualifies to be classified as a small business.

## 5. PAYMENT OF ANNUAL LICENCE FEES

(1) Payments in respect of annual licence fees:

- (a) are due annually based on the licensee's financial year;
- (b) are due and payable within 6 months from the end of the licensee's financial year; and
- (c) must be based on the:
  - (i) Audited annual financial statement of the licensee; or
  - (ii) Financial statements signed and sworn to by the accounting officer of the licensee where the licensee is not legally obliged to provide audited financial statements;
- (d) May **only** be paid by way of an electronic transfer or via a direct deposit into the Authority's bank account.

## 6. INTEREST

(1) Interest on all late payments in respect of the annual licence fees is payable in accordance with the manner prescribed in regulation 5 and is to be levied where payment is overdue by:

- (a) 14 (fourteen) days or less, at the applicable interest rate;
- (b) more than 14 (fourteen) days but not more than 28 (twenty eight) days, at the applicable interest rate plus 3% (three percent);
- (c) More than 28 (twenty eight) days, at the applicable interest rate plus 5% (five percent).

(2) Where payment in respect of the annual licence fee is overdue by more than 45 days, a late

payment penalty of 25% of the capital amount due is payable **in addition** to the overdue amount.

#### **7. CONTRAVENTIONS AND PENALTIES**

(1) Upon a determination of non-compliance by the Complaint and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:

- (a) One Million Rands (R1 000 000.00) for contravention of regulations 4, 5(1) (c) and 6(2).
- (b) One Hundred Thousand Rands (R100 000.00) for contravention of all the regulations not specified in regulation 7(1) (a), and
- (c) Additional One Million Rands (R1 000 000.00) for repeated contravention of the regulations.

#### **8. SHORT TITLE AND COMMENCEMENT**

(1) These regulations will come into effect on from 1 April 2009.

(2) Annual Licence Fees and/or "Fixed/Once Off" Licence Fees due and payable in terms of the applicable regulations, existing licences and/or converted licences at the date of publication of these regulations, are pro-rated to 31 March and due and payable by 30 April 2009.

(3) These regulations are called the ICASA General Licence Fees Regulations, 2009.

#### **9. REPEAL AND AMENDMENT**

(1) The regulations set out in Schedule 3 of this regulation are hereby repealed to the extent specified therein.

(2) In the event of any conflict between the provisions of this regulation and the licence terms and conditions which purports to impose Annual and/or Licence Fees, the provisions of this regulation prevail.

**SCHEDULE 1****ADMINISTRATIVE FEES**

The fees payable by applicants and registrants, as the case may be, in respect of applications and registrations respectively are set out below.

**INDIVIDUAL LICENCES****Initial applications for licences:**

Electronic communications network services:	As specified in ITA
Electronic communications services:	As specified in ITA
Broadcasting services:	As specified in ITA

**Applications for amendment of licences:**

Electronic communications network services:	R 50 000.00
Electronic communications services:	R 50 000.00
Broadcasting services:	R 50 000.00

**Applications for renewal of licences:**

Electronic communications network services:	R 5 000.00
Electronic communications services:	R 5 000.00
Broadcasting services:	R 5 000.00

**Applications for transfer of licences:**

Electronic communications network services:	R 50 000.00
Electronic communications services:	R 50 000.00
Broadcasting services:	R 50 000.00

**CLASS LICENCES****Initial registrations:**

Electronic communications network services:	R10 000.00
Electronic communications services:	R10 000.00
Community broadcasting services:	R 3 000.00

**Applications for amendment of licences:**

Electronic communications network services:	R10 000.00
Electronic communications services:	R10 000.00
Community broadcasting services:	R 1 000.00

**Applications for renewal of licences:**

Electronic communications network services:	R 5 000.00
Electronic communications services:	R 5 000.00
Community broadcasting services:	R 1 000.00

**Applications for transfer of licences:**

Electronic communications network services:	R10 000.00
Electronic communications services:	R10 000.00
Community broadcasting services:	R 3 000.00

**Special temporary authorizations**

Applications for every three (3) months:	R 5 000.00
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**SCHEDULE 2****ANNUAL LICENCE FEES**

The Annual Licence Fees payable by Licensees in accordance with these regulations are to be calculated using the formula set out herein, read with the applicable percentages.

$P_a$  = Payable Annual Licence Fee

GP = Gross Profit

TC = Total Costs

GR = Gross Revenue

$P_p$  = applicable percentage in accordance with this schedule read with regulation 3(1).

$$P_a = P_p \times (GP)$$

Where

$$GP = GR - TC$$

Individual Electronic Communications Network Services:	1.5%
Individual Electronic Communications Services:	1.5%
Individual Commercial Broadcasting Services	1.5 %
Class Electronic Communications Network Services:	1.5%
Class Electronic Communications Services:	1.5%

## SCHEDULE 3

## LIST OF REPEALED REGULATIONS

No.	Regulation	Extent of repeal
1.	Temporary Community Broadcasting Licences Regulations, 1994 published under GN R1675 in GG 15999 of 30 September 1994	The whole
2.	Regulations relating to procedures concerning applications for and the granting of temporary broadcasting signal distribution licences for the purposes of the provision of broadcasting signal distribution for holders of temporary community broadcasting licences, published under GN R1676 in GG 15999 of 30 September 1994.	The whole
3.	Temporary Community Licences: Criteria to Measure Support Regulations, 1994 published under GN R1674 in GG 15999 of 30 September 1994	The whole
4.	Private Television Broadcasting Service Licence Fees Regulations, 1997 published under GN 1318 in GG 18271 of 5 September 1997	The whole
5.	Regulations regarding procedures in relation to applications for the granting, issuing, renewal, amendment and transfer of broadcasting signal distribution licences, published in GN r 1315 in GG 16628 of 25 August 1995.	The whole
6.	Regulations relating to the criteria according to which the support for an applicant for a community sound broadcasting licence by the relevant community or by those associated with or promoting the interests of such community shall be measured, published under GN R1388 in GG 18380 of 17 October 1997	The whole
7.	Independent Broadcasting Authority Administrative Procedures Regulations, 1997 published under GN 1540 in GG 18392 of 24 October 1997	The whole
8.	Regulations relating to the payment to the authority of charges and fees in respect of private sound broadcasting licensees including the application for, and issue, amendment and	The whole

	renewal of such licences, published under GN R709 in GG 18017 of 16 May 1997	
9.	Community Sound Broadcasting Services Fees Regulations published under GN R1053 in GG 18187 of 1 August 1997	The whole
10.	Applications for Special Event Licences for Community Broadcasting Services Regulations, 2002 published under GN R485 in GG 23332 of 16 April 2002	The whole
11.	Regulations on Manner in which Applications for Certain Telecommunications Service Licences are to be Made, 2002 published under GN 1334 in GG 23685 of 29 July 2002	The whole
12.	Regulations on Applications for Transfer of Telecommunication Service Licences, 2003 published under GN R1242 in GG 25409 of 28 August 2003	The whole
13.	Regulations on Manner in which Applications for Private Telecommunication Network (PTN) Licences are to be Made, published under GN R1385 in GG 25519 of 1 October 2003	The whole
14.	Low Power Sound Broadcasting Regulations, 2003 published under GN 3162 in GG 25631 of 24 October 2003, as amended by GN 1861 in GG 28118 of 10 October 2005	Regulations 6.1, 6.3, 6.5, 6.6, 6.7, 6.8, 6.9 and 6.10
15.	Public Regional Television Broadcasting Licence Fees Regulations, 2003 published under GN R1740 in GG 25783 of 23 November 1997	The whole
16.	Guidelines to Apply for Low Power Sound Broadcasting Licences published under GN 296 in GG 27308 of 18 February 2005	Regulations 9, 11, 13 and 15
17.	Regulations for Value-Added Network Services, 2005 published under GN R490 in GG 27608 of 20 May 2005	The whole
18.	Subscription Broadcasting Services Regulations, 2006	Regulations 4.1, 4.2,

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	published under GN 152 in GG 28452 of 31 January 2006	4.3
19.	Community Sound Broadcasting Regulations, 2006 published under GN 755 in GG 28919 of 6 June 2006	The Whole
20.	Regulations for Application, License fees and Penalty payable for late payment by Global Mobile Personal Communication by Satellite (GMPCS), published under Gov Notice No. R26 of Government gazette 23012 of 08 January 2002	The whole
21.	Regulations for Administrative Procedures published under Gov notice No. 1540 of Gov Gazette No. 18392 of 24 October 1997	The Whole
22.	Regulations relating to payment of charges and fees i.r.o Broadcasting Signal distribution license including application for the issue, amendment, transfer or other disposal of such licenses published under Notice R1577 of Gov Gazette No. 18463 of 21 November 1997.	The whole

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