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GENERAL NOTICE

NOTICE 887 OF 2012 DRAFT GENERAL LICENCE FEES REGULATIONS

1. The Independent Communications Authority of South Africa has, under sections 4(1)(c)(iv-v) and 5(7)(a)(iii) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), made the regulations in the schedule.
2. A copy of the draft amendment regulations 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, within **thirty (30) days** of publication of this notice by post, hand delivery, facsimile transmission, or electronically (in Microsoft Word) for the attention of:

**Godfree Maulana
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: ecsecns.compliance@icasa.org.za.

Enquiries can be directed to the Project Leader on:

Landline: 011 566 3215

Fax: 011 566 3216

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 regulations will be published in the government gazette.
 7. These regulations will come into effect on 1 April 2013.
 8. The General Licence Fees Regulations, 2009 are hereby repealed.



DR STEPHEN MNCUBE
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. 36 of 2005);

"Accounting Officer" as stated in section 60 of the Close Corporation Act 69 of 1984;

"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(1Xb) of the Public Finance Management Act 1 of 1999;

"BS Licensee" means broadcasting service licensee;

"ECNS licensee" means Electronic Communications Network Service Licensee;

"ECS licensee" means Electronic Communications Service Licensee;

"Licensed Service" as defined in the Electronic Communications Act under "broadcasting service", "electronic communications service" and "electronic communications network service"; and

"Turnover" means income generated from the provision of licensed services.

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 as published in the Government Gazette applies, and
 - (b) Will be adjusted by a maximum of the Consumer Price Index (CPI) as published by Statistics South Africa or such other percentage as determined by the Authority.

4. EXEMPTIONS

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

- (a) Class Licences for Community Broadcasting (Sound and Television);
- (b) Public Broadcaster; and
- (c) Licensees who are granted and issued a licence in terms of the Act where the

License satisfies the turnover threshold as per the requirements for classification as a small enterprise in the Transport, Storage and Communication Sector as defined in the National Small Enterprise Act 102 of 1996, as amended.

(d) Licensees will be exempted from paying Annual Licence fees in the first three (3) years of generation of revenue from licensed services.

5. PAYMENT OF ANNUAL LICENCE FEES

Payments in respect of annual licence fees are due as prescribed in schedule 2 and 3.

6. INTEREST

Interest on all late payments in respect of the annual licence fees is payable in accordance with the PFMA, at the applicable interest rate as published by the Minister of Finance.

7. CONTRAVENTIONS AND PENALTIES

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

- (a) (5%) five percent of quarter (1) one turnover of licensee's preceding financial year from date of non-compliance for contravention of regulation 5 and 6.
- (b) Two Million Rands (R2 000 000.00) for contravention of regulation 4.

8. SHORT TITLE AND COMMENCEMENT

(1) These regulations are called the ICASA General Licence Fees Regulations, 2012

9. REPEAL AND AMENDMENT

(1) 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 52 000.00
Electronic communications services:	R 52 000.00
Broadcasting services:	R 52 000.00

Applications for renewal of Licences:

Electronic communications network services:	R 5 200.00
Electronic communications services:	R 5 200.00
Broadcasting services:	R 5200.00

Applications for transfer of Licences:

Electronic communications network services:	R 52 000.00
Electronic communications services:	R 52 000.00
Broadcasting services:	R 52 000.00

CLASS LICENCES:

Initial registrations:

Electronic communications network services:	R10 400.00
Electronic communications services:	R10 400.00
Community broadcasting services:	R 3 120.00
Low Power Commercial Sound Broadcasting:	R 5 200.00
Low Power Community Sound Broadcasting:	R 1 040.00
Special Event Broadcasting Licences:	R 520.00

Applications for amendment of Licences:

Electronic communications network services:	R10 400.00
Electronic communications services:	R10 400.00
Community broadcasting services:	R 1 040.00
Low Power Commercial Sound Broadcasting:	R 2 080.00
Low Power Community Sound Broadcasting:	R 1 040.00

Applications for renewal of Licences:

Electronic communications network services:	R 5 200.00
Electronic communications services:	R 5 200.00
Community broadcasting services:	R 1 040.00
Low Power Commercial Sound Broadcasting:	R 5 200.00
Low Power Community Sound Broadcasting:	R 3 120.00

Applications for transfer of Licences:

Electronic communications network services:	R10 400.00
Electronic communications services:	R10 400.00
Community broadcasting services:	R 3 120.00
Low Power Commercial Sound Broadcasting:	R 2 080.00
Low Power Community Sound Broadcasting:	R 1 040.00

SPECIAL TEMPORARY AUTHORIZATIONS:

Applications for every three (3) months:	R 5 200.00
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SCHEDULE 2
ANNUAL LICENCE FEES

- (1) 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.

Pa = Payable Annual licence Fee

T = Turnover due to licensed activities

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

$$Pa = Pp \times (T)$$

Individual Electronic Communications Network Services:	0.75%
Individual Electronic Communications Services:	0.75%
Individual Commercial Broadcasting Services	0.75%
Class Electronic Communications Network Services:	0.75%
Class Electronic Communications Services:	0.75%

SCHEDULE 3
PAYMENTS IN RESPECT OF LICENCE FEES

(1) FORMAT FOR SUBMISSION OF FINANCIAL STATEMENT FOR THE PURPOSE OF
LICENCE FEES CALCULATION

Company Name		
Financial Year End		
Financial Year		
Auditing Firm /Partner		
Accounting Officer	Name:	Signature:
Company CFO/ Accounting Officer	Name:	Signature:

Total Revenue Generated	R '000	As per AFS
Total Non-Licensed Revenue	R '000	
Total Licensed Revenue	R '000	

Revenue from Licensed services (see examples below)	R '000	
1. Voice	x xxx	
2. Data	xx xxx	
3. Roaming	xx xxx	
4. Interconnection	xx xxx	
5. Other licensed services	x xxx	
Total Revenue from Licensed services		xxx xxx

(2) I,, in my capacity as..... hereby
verify that the information provided is true and correct and have been reviewed by an Auditor/
Accounting Officer.

Signature..... Designation..... Date.....

SUBMISSION OF FINANCIAL STATEMENTS

- (3) All licence holders must:
- a. submit audited Annual Financial Statements within six (6) months of their financial year end, or;
 - b. submit 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;
- (4) Community Broadcasters must submit the following within six (6) months of their financial year end:
- a. annual financial statements signed off by the accounting officer; and
 - b. provide a list of all donors and amounts donated and details of all financial and non-monetary donations.

PAYMENT OF ANNUAL LICENCE FEES

- (5) Where a legal entity holds any combination of a BS Licence, ECS Licence and/or ECNS Licence, such entity must calculate the licence fee based:
- (a) on the firm's turnover based on the audited annual financial statements of that firm; or
 - (b) 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;
- (6) Unless expressly authorized by the Authority, all payments in respect of licence fees are due annually.
- (7) Annual Payments
- (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;
 - (c) may only be paid by way of an electronic transfer or via a direct deposit into the Authority's bank account; and.
 - (d) 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;
 - (e) are to be adjusted immediately on receipt of the applicable annual financial statement of the licensee which must be submitted within 6 (six) months from the financial year end;

- (f) must be submitted as in schedule 3 (1) of the regulations and must be submitted as an annexure to the annual financial statement and be subject to audit;
- (g) which are estimates must be submitted as in schedule 3(1), these must be used for the purposes of comparison to the final submission of the annual payments.

General Notice - Explanatory Memorandum for the Draft General License Fees Regulation, 2012

Introduction

In 2009, the Independent Communications Authority of South Africa (the Authority) published in Government Gazette No 32084 the General Licence Fees Regulations (the Regulations). The purpose of the Regulations was to prescribe (1) administrative fees payable to apply, register, renew, amend or transfer a licence and (2) annual licence fees payable. The Authority now intends reviewing the Regulations due to certain administrative hurdles associated with their implementation.

Discussion

The Authority took a position at the time that despite the new legislative framework ushered in by the introduction of the Electronic Communications Act No 36 of 2005 (the ECA), the levying of annual licence fees remained relevant and justifiable. Nonetheless, two principles should guide the levying of annual licence fees in the new legislative environment: The first principle is that annual licence fees may only be imposed on the licensed activities. Secondly, annual licence fees may be levied on a number of different financial measures, such as on gross profit or gross revenue. In adopting the Regulations, the Authority took a position that annual licence fees should be levied on gross profit due to the fact that, among other things:

- (1) Only profitable entities will pay fees, thus giving a regulatory holiday to unprofitable entities.
- (2) Levying fees based on a percentage of gross profit is competition-neutral in the sense that it treats different entities differently.
- (3) The methodology takes into account the impact of economic cycles on profitability.
- (4) The methodology is easy to administer.

Three years of implementing the Regulations have brought to the fore certain administrative challenges relating to collecting annual licence fees. Section 1 of the Regulations defines Gross Profit as total revenue generated from licensed activities less total costs directly incurred in the provision of such services. Whilst the intention of the Regulations was to levy annual licence fees on profitable entities only, the reality of the matter is that this definition has led to regulatory arbitrage where certain operators subtract from their revenues all manner of costs, so as to declare as minimal a profit as possible or in extreme cases to declare a loss. The Authority has not been able to verify that the fees collected are indeed what were due. This has led to a qualified audit opinion against the Authority during the 2011/2012 financial years and has implications for prior year records as well. At the centre of the qualification is the fact that there is no way of verifying the accuracy of costs. The financial statements submitted by operators are not disaggregated to the level of identifying direct costs incurred in providing licensed activities. Due to information asymmetry the Authority has been at the mercy of operators in terms of interpreting what direct costs entail. The idea of providing a guideline on calculating direct costs may not be a viable option since licensed activities differ from one operator to the other.

It is for this reason that the Authority is proposing to amend the base upon which annual licence fees are calculated. The proposal is to levy annual licence fees based on annual turnover derived from licensed activities, as outlined in Schedule 2 and 3 of the draft regulations.

Conclusion

The attached draft regulations propose an administratively simpler method of calculating annual licence fees than the current Regulations. The public is therefore invited to make comments on the draft regulations. The rest of the current Regulations remain unchanged apart from consequential changes brought about as a result of the change in the formula. In order to encourage entry or to lower entry barriers into the market, the Authority is proposing a regulatory holiday for new entrants, in terms of which they are only required to pay annual licence fees after 3 years of starting operations and generating an income.

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