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GENERAL NOTICE

NOTICE 1207 OF 2008

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 declares its intention, in terms of section 4(4)(a) of the Electronic Communications Act, 2005 (Act No 36 of 2005) ("the Act"), to make the regulations published herewith in respect of general licence fees in terms of section 4(1)(c)(iv-v) and 5(7)(a)(iii) of the Act.

(2) A copy of the proposed 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) In view of the awaiting applications for new licences (including registrations), amendments and transfers or shareholder changes which cannot be processed in the absence of licence fees regulations, as well as Industry's need for a comprehensive licence fee framework to be incorporated into their business plans and processes, the Authority is compelled to expedite the formulation of these regulations.

(4) In accordance with section 4(7)(b) of the Act and in order to fast-track the finalization of these regulations, the period for submission of comments is set at **20 days** and **not** the statutory **30 days** period.

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(5) Interested persons are invited to submit written comments or written representations with regard to the proposed regulations, to be received **by no later than 16h00** on **22 October 2008** 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: smahlawe@icasa.org.za **or** tmahapa@icasa.org.za

Enquiries can be directed to the Project Leader on:
Landline: 011 566 3883 / 011 566 3215
Fax: 011 566 3884 / 011 566 3216

(6) 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.

(7) 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.

(8) Parties who submit written comments or written representations must indicate whether they intend to make oral submissions in the event that the Authority decides to convene hearings.

(9) With respect to written representations or portions thereof determined to be confidential in terms of paragraph 6 above, the Authority may direct that the public or any member or category thereof not be present while any oral submissions relating to such representations or portions therefore are being made; provided that interested parties will have been notified of this intention and allowed to object thereto. The Authority will consider the objections and notify all interested parties of its decision.

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BACKGROUND

As part of the license conversion process undertaken in terms of section 93 of the ECA, the Authority conducted a workshop on 11 October 2007 wherein the Authority initiated discussions with and solicited opinions from industry players regarding the relevant principles to be considered in the formulation of license fees.

A comprehensive discussion yielded a set of principles which the Authority considered when revising/formulating the various fees. These "various fees" include:

- The applicable fees itemised in schedule 1 of the draft licensing procedure regulations contained in Government Gazette number 30363 of 9 October;
- The variable annual license fee payable by the licensees; and
- The determination of a once-off fee payable by licensees when a new license is granted.

In order to formulate a policy framework to guide the Authority, additional research was conducted and comprised an international benchmarking exercise as well as an analysis of the current licensing environment in South Africa.

LICENCE FEE FRAMEWORK

The Authority thereafter adopted the following framework for the formulation of the licence fees regulations attached hereto:

I. Licensees in possession of an individual licence should pay a larger portion of their revenues towards fees as compared to those in possession of Class licences, in view of the wider scope of operation permitted by their licence;
II. The duration of the licence should be recognised as a significant factor when determining the value of the licence;
III. Licensees with revenue below a certain threshold, for example R1 000 000.00 per annum, should pay marginal annual licence fees as a measure to support start ups and SMME's;
IV. At minimum, the licence fees need to cover the cost of regulating the market;
V. The licence fee should be structured in a manner that promotes a competitive ICT sector, and should not constitute a barrier to market entry;
VI. The licence fees should facilitate the establishment of an environment conducive to network investments;

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VII. The administrative fee structure should be as simple as possible.

VIII. the licence fees should be calculated in a transparent manner; and

IX. The licence fees should be offset against commitments to construct ECN and provide ECS in rural and under-serviced areas.

Previously licence fees were based on either Gross Revenue or Net Operational Income. Whilst Gross Profit is internationally the more common definition, and encourages cost savings and effectively rewards efficiency, the Authority proposes using adjusted Gross Revenue to allow for the necessary deductions in the different licence categories.

ANNUAL LICENCE FEES:

The licence fee formula proposed in the attached regulation is based on a flat rate as a percentage of revenue.

The Authority's Operating expenses are projected to increase at a rate of 24% p.a for the first five years. Thereafter, the rate of increase is reduced to 8% p.a for the remaining five years (supported by historical figures and implementation of the Electronic Communications Act, in particular Chapter 10).

ADMINISTRATIVE FEES:

The Authority considered activity based costing in the formulation of the administrative fees, inflation, the new competitive framework provided by the ECA and other relevant factors.

PARIS MASHILE
CHAIRPERSON

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1. DEFINITIONS

Terms used in these regulations have the same meaning as defined in the Electronic Communications Act, 2005 (Act 36 of 2005), unless the context indicates otherwise:

"**Adjusted Gross Revenue**" means the gross revenue less allowable deductions;

"**Administrative Fees**" means the fees payable in terms of regulation 3(3);

"**Agency Fees**" means the percentage of fixed fees due to the agent;

"**Allowable Deductions**" means the types and amounts of money that a licensee is allowed to deduct from the Gross Revenue prior to the calculation of the amount payable towards the recurring licence fee as provided in these regulations;

"**Annual Licence Fees**" means the fees payable in terms of regulation 3(1);

"**Applicable Interest Rate**" means the prime interest rate adopted by the main commercial banks;

"**BS Licensee**" means broadcasting service licensee;

"**ECN**" means Electronic Communications Network;

"**ECNS Licensee**" means Electronic Communications Network Service Licensees;

"**ECS Licensee**" means Electronic Communications Service Licensees;

"**Fees**" means the applicable fees as set out in schedules 2 and 3

"**Gross Revenue**" means revenues generated from licensed activities, including but not limited to the following, where applicable:

(a) Services provided
(b) Leasing of infrastructure

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(c) Installations charges
(d) Call charges
(e) Late fees
(f) Hand sets
(g) Band width
(h) Income from Value Added Services
(i) Supplementary Services
(j) Interconnection Fees
(k) Facilities leasing
(l) Sale of Set Top Boxes
(m) Application Fees

"**Leased Lines**" means a dedicated circuit, complying with ITU recommendations, leased from a licensee as authorised by the Authority, for the purpose of carrying electronic communications traffic.

"**Licensed activity**" means activity which is necessary for rendering a service for which the licence was granted.

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2. PURPOSE OF THESE REGULATIONS

(1) The purpose of these Regulations is to prescribe –

(a) the fees payable in respect of an application or registration for a licence, amendments, transfers or renewals as contemplated in sections 4(1)(c)(iv) and 4(1)(c)(v); and

(b) the annual licence fees payable by licensees as contemplated in section 5(7)(a)(iii) of the Act.

3. APPLICATION AND EXEMPTIONS

(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) ECNS Licensees who are granted and issued a licence in terms of Chapter 3 of the Act will be:

(a) exempt from paying the annual licence fee for the first three (3) years from the date on which the licence is issued where they undertake to roll-out ECN in areas identified by the Authority at the time of issuing of the licence in terms of the Act.; and

(b) required to pay the annual licence fee on the revenue generated from the fourth (4^{th}) year from the date on which the licence is issued.

(3) 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 increased by the Consumer Price Index (CPI) as published by Statistics South Africa or such other percentage as the Authority determines. The adjusted Administrative Fees will be published annually in the Government Gazette.

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

(a) Class Licences for Community Broadcasting (Sound and Television); and

(b) Individual Licences for Public Broadcasting (Sound and Television).

4. PAYMENT OF FEES

(1) Payments in respect of annual licence fees:

(a) are due quarterly based on the licensee's financial year;

(b) are due and payable within 45 calendar days from the end of the relevant quarter/period; and

(c) are to be adjusted immediately on receipt of the audited annual financial statement of the licensee which must be submitted within three months from the financial year end;

(d) may **only** be paid by way of an electronic transfer or via a direct deposit into the Authority's bank account.

5. ALLOWABLE DEDUCTIONS

(1) In determining the Adjusted Gross Revenue, an ECS Licensee is allowed to deduct the following costs from the Gross Revenue generated from licensed activity, where applicable:

(a) Value Added Tax (VAT);
(b) discounts granted in relation to revenue generated from licensed activities; and
(c) interconnection charges.

(2) In determining the Adjusted Gross Revenue, an ECNS Licensee is allowed to deduct the following costs from the Gross Revenue generated from licensed activity, where applicable:

(a) Value Added Tax (VAT);
(b) discounts granted in relation to revenue generated from licensed activities;
(c) facilities leasing charges; and
(d) leased line costs.

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(3) In determining the Adjusted Gross Revenue, a BS Licensee is allowed to deduct the following costs from the Gross Revenue generated from licensed activity, where applicable:

(a) Value Added Tax (VAT);
(b) discounts granted to subscribers and customers in relation to revenue generated from licensed activities;
(c) agency fees and commissions actually paid; and
(d) up to a maximum of 20% of levies actually paid to the following institutions:
(i) South African Advertising and Research Foundation;
(ii) South African Music Rights Organization;
(iii) The South African Music Performance Rights Association; and
(iv) Other institutions as prescribed by the Authority from time to time.

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 4 and is to be levied where payment is overdue by:

(a) 7 days or less, at the applicable interest rate;

(b) more than 7 days but not more than 14 days, at the applicable interest rate plus 3%;

(c) more than 14 days, at the applicable interest rate plus 5%;

7. CONTRAVENTIONS AND PENALTIES

(1) Where payment in respect of the annual licence fee is overdue by more than 21 days, a late payment penalty of 25% of the capital amount due is payable in addition to the overdue amount.

(2) In terms section 17E (2)(b) of the ICASA Act, the Authority may impose a fine not exceeding:

(a) One Million Rands (R1 000 000.00) for contravention of regulations 3(2), 4(1)(c),5 and 6(2).

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(b) One Hundred Thousand Rands (R100 000.00) for contravention of 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) Subject to regulation 8(2) and (3), these regulations are effective from the date of publication thereof in the Government Gazette.

(2) Schedule 2 of these regulations will come into effect on 1 April 2009.

(3) Notwithstanding the provisions of regulation 8(1), Licensees who, in terms of the existing licences and applicable regulations, had licence fees due and payable are required to pay such licence fees until 31 March 2009.

(4) These regulations are called the ICASA General Licence Fees Regulations, 2008.

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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 250 000.00
Electronic communications services:	R 250 000.00
Broadcasting services:	R 250 000.00

Applications for renewal of licences:

Electronic communications network services:	60% of the application fee applicable at time of submission of renewal.
Electronic communications services:	60% of the application fee applicable at time of submission of renewal.
Broadcasting services:	60% of the application fee applicable at time of submission of renewal.

Applications for transfer of licences:

Electronic communications network services:	R 250 000.00
Electronic communications services:	R 250 000.00
Broadcasting services:	R 250 000.00

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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 3 000.00

Notifications of renewal of licences:

Electronic communications network services:	60% of the registration fee applicable at time of submission of renewal.
Electronic communications services:	60% of the registration fee applicable at time of submission of renewal.
Broadcasting services:	60% of the registration fee applicable at time of submission of renewal.

Applications for transfer of licences:

Electronic communications network services:	R10 000.00
Electronic communications services:	R10 000.00
Broadcasting services:	R 3 000.00

Special temporary authorizations

Applications for every three (3) months:	R 5 000.00

Notifications for Licence Exemptions: R 1000.00

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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
GR_a = Adjusted Gross Revenue
AD = Allowable Deductions
GR = Gross Revenue
P_p = applicable percentage in accordance with this schedule read with regulation 3(1).

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

where

$$GR_a = GR - AD$$

Individual Electronic Communications Network Services:	3%
Individual Electronic Communications Services:	3%
Individual Commercial Broadcasting Services	2.5%
Class Electronic Communications Network Services:	1.5%
Class Electronic Communications Services:	1.5%

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