

(27 August 2008 - to date)

## **ELECTRONIC COMMUNICATIONS ACT 36 OF 2005**

*(Gazette No. 28743, Notice No.364 dated 18 April 2006. Commencement date: 19 July 2006) [Proc. No. R29, Gazette No. 29044]*

## **INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

### **ICASA LICENCE EXEMPTION REGULATIONS, 2008**

*General Notice 912 in Government Gazette 31289 dated 29 July 2008. Commencement date:*  
*27 August 2008*

I, Paris Mashile, Chairperson of the Independent Communications Authority of South Africa ("the Authority") acting on behalf of the Council of the Authority, hereby approve and publish regulations in the schedule prescribed in terms of section 4 read with section 6 of the Electronic Communications Act, 2005 (Act No. 36 of 2005).

**PARIS MASHILE**

**Chairperson**

### **SCHEDULE**

1. DEFINITIONS
2. LICENCE EXEMPTION IN GENERAL
3. ELECTRONIC COMMUNICATIONS SERVICE
4. ELECTRONIC COMMUNICATIONS NETWORKS AND ELECTRONIC COMMUNICATIONS NETWORK SERVICES
5. RESTRICTION ON THE PROVISION OF LICENCE EXEMPT SERVICES
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12. SHORT TITLE AND COMMENCEMENT

#### **1. DEFINITIONS**

In these Regulations, any word or expression has the meaning assigned to it in the Electronic Communications Act, 2005 (Act No. 36 of 2005), unless the context indicates otherwise—

Prepared by:

**"Act"** means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

**"Ancillary service"** means a retail service or bundle of retail services which do not amount to an Electronic Communications Service and includes necessary but incidental elements of ECS, where such ECS elements do not constitute the major purpose, utility or value of the service, including but not limited to, tracking, alarm and similar services;

**"ECN"** means electronic communications network;

**"ECNS"** means electronic communications network service;

**"ECS"** means electronic communications service; and

**"PECN"** means private electronic communications network;

**"Small electronic communications network"** means an ECN that lies within a limited spatial area, used by a specific user group, has a specific topology and is not an ECNS of national, provincial, district or local municipal scope, but may be connected to one which is licensed or licence exempt. For example Local Area Network (LAN) or wireless LAN (WLAN).

## **2. LICENCE EXEMPTION IN GENERAL**

ECS, ECN and ECNS that may be provided or operated in terms of a licence exemption are as set out in regulation 3 and 4 herein.

## **3. ELECTRONIC COMMUNICATIONS SERVICE**

- (1) A person who provides ECS on a non-profit basis is licence exempt and may include, but not limited to:
  - (a) a non profit organization registered in terms of the Non-Profit Organizations Act, 1997 (Act No.71 of 1997);
  - (b) a company registered in terms of section 21 of the Companies Act, 1973 (Act No.61 of 1973);
  - (c) a non-profit organization established in terms of any other Act of Parliament; or
  - (d) an entity that provides ECS to the public for free.
- (2) A Reseller that provides ECS duly obtained from a licensee licensed in terms of Chapter 3 of the Act or a licence exempt entity is not required to hold an ECS licence.

- (3) A person that provides an Ancillary service is licence exempt.

#### **4. ELECTRONIC COMMUNICATIONS NETWORKS AND ELECTRONIC COMMUNICATIONS NETWORK SERVICES**

- (1) A small electronic communications network is licence exempt.
- (2) A small electronic communications network must use frequencies which are licence exempt in accordance with the radio frequency spectrum licence exemption regulations published by the Authority in terms of section 6 read with section 31(6) and technical parameters falling within the limits prescribed therein.
- (3) A PECN in terms of section 6(2)(c) of the Act is licence exempt.
- (4) Where a PECN resells, leases or otherwise makes available any spare capacity on its network to a third party, such resale, lease or other provisioning of spare capacity is subject to:
  - (a) using a cost recovery pricing model to be prescribed by the Authority; and
  - (b) The regulations 5 to 11 of these regulations.

#### **5. RESTRICTION ON THE PROVISION OF LICENCE EXEMPT SERVICES**

- (1) Licence exempt services are not absolved from:
  - (a) Having all the necessary radio frequency spectrum and ECNS licences, as appropriate; and
  - (b) Ensuring that all electronic communications equipment and facilities as well as radio apparatus to be used in respect of the services provided in terms of the licence exemption is type approved.

#### **6. SAFETY MEASURES**

A person that provides ECS or ECNS in terms of a licence exemption must, in respect of all apparatus, equipment, facilities and installations that it owns, leases or uses, take such safety measures as may be prescribed and in any event, such reasonable and necessary safety measures to safeguard life or property and limit exposure to electromagnetic emissions, radiation and related risks.

#### **7. PROVISION OF INFORMATION**

- (1) The Authority may, in the course of carrying out its obligations under the Act, require a person providing ECS and/or ECNS in terms of a licence exemption to provide information so as to enable the Authority to:
  - (a) monitor and enforce consumer protection, quality of service, competition and other requirements of the Act and related legislation;
  - (b) allow for the assessment and allocation of applicable fees and related requirements;
  - (c) facilitate the efficient use of scarce[sic] resources; and
  - (d) collect and compile aggregate information to be used for the purpose of sectoral planning and reporting.
- (2) In respect of each information request referred to in regulation 7(1), except where otherwise addressed in applicable regulations, the Authority will provide, among other things, detailed specifications of its information request, applicable response times and identify a contact person to address queries to in the matter concerned.

## **8. PUBLICATION OF TARIFFS AND FEES**

- (1) A person selling, leasing or otherwise providing spare capacity on a PECN may not do so for a charge, fee or other compensation, unless the price(s) for the service and other terms and conditions of the provision of such service have been made known to the public by:
  - (a) making such prices and terms and conditions available for inspection at its offices during business hours;
  - (b) providing such details to anyone who requests same at no charge; and
  - (c) providing such details on its website, if any.
- (2) A person selling, leasing or otherwise providing spare capacity on a PECN in terms of a licence exemption must provide to the Authority:
  - (a) details of the price(s) for its service(s) and other terms and conditions for the provision of such service within 30 days of commencing such service;
  - (b) on a bi-annual basis, a record of the actual services provided and the actual tariffs charged during the previous six months;
  - (c) such other information as may be specified by the Authority from time to time.

## **9. METERING AND BILLING ARRANGEMENTS**

- (1) A person selling, leasing or otherwise providing spare capacity on a PECN in terms of a licence exemption must:
  - (a) install and operate metering and billing systems which accurately record the extent of the service(s) provided to any subscriber; and
  - (b) provide a detailed and accurate invoice and/or statement of services rendered to any subscriber at no charge, except where the subscriber is a licensee or a provider of services on a licence exempt.
- (2) The invoice and/or statement of services rendered must include information for the entire period covered by such invoice or statement detailing:
  - (a) services rendered to the subscriber; and
  - (b) the breakdown of charges associated with such services.

## **10. NOTICES AND ADDRESSES**

- (1) Any notice or certification given by the Authority or a person providing ECS or ECNS in terms of a licence exemption must be in writing and, unless and until the contrary is proven:
  - (a) If delivered by hand to the recipient's address, it will be deemed as received at the time of delivery;
  - (b) If posted by pre-paid registered post from an address within the Republic, it will be deemed to have been received on the 14th day after the date of posting;
  - (c) If sent by facsimile/electronic mail transmission during normal business hours, proof of successful transmission will be deemed to be proof of receipt.

## **11. OFFENCES AND PENALTIES**

- (1) A person who intentionally or negligently contravenes or fails to comply with these regulations, is guilty of an offence and is, on conviction by a court of law, subject to a fine not exceeding R30 000.
- (2) Any person who is aggrieved by the failure of a person who provides a licence exempt service contemplated in terms of section 6 of the Act to comply with these regulations may lodge a complaint with the Authority for investigation and if appropriate, adjudication by the Complaints and Compliance

Committee in terms of section 17B and C of the ICASA Act, 2000 (Act No. 13 of 2000) and the imposition of a sanction by Council in terms of section 17E of the ICASA Act, 2000 (Act No. 13 of 2000).

## **12. SHORT TITLE AND COMMENCEMENT**

These regulations are called the ICASA Licence Exemption Regulations, 2008 and will come into effect 30 days from the date of publication in the *Government Gazette*.