

Q&A

Electronic Communications Licensing

How is the provision of electronic communications networks or services regulated?

Electronic communications networks and services are primarily regulated by ICASA in terms of the ECA. However, the Minister is responsible for making policy and issuing policy directions to ICASA and for making key regulatory decisions, such as when new individual ECNS may be licensed.

Is a licence required to install or operate electronic communications networks or provide services over them?

The provision of ECNS, ECS and broadcasting services (BS) requires either an individual or class licence or must be exempt from licensing. ECNS, ECS and BS licences are either be individual or class.

Those licensees that are individual include ECNS of national or provincial scale, and voice telephony ECS that use numbers allocated by ICASA. Licence applications for individual licences may only be made in response to an invitation and in respect of individual ECNS licences, only after a policy direction issued by the Minister.

Class licences include ECNS of municipal scale, data ECS and voice ECS where numbers are sub-allocated by licensees. ICASA must act on applications within 60 days and if it fails to do so, there will be a deemed class licence registration.

ICASA has prescribed that certain services may be exempt from licensing, including non-profit ECS, resellers of ECS and private ECNS; however, service providers must nonetheless apply for the right to provide exempt services in terms of ICASA regulations.

Is the provision of electronic communications networks or services open to competition in South Africa?

There currently exists some competition in the provision of services. However, SA is still in the process of transitioning from a statutorily protected monopoly for the provision of public switched telecommunication services (PSTS) and duopoly for the provision of mobile cellular telecommunications services (MCTS). A second PSTS provider and third MCTS provider were licensed (in addition to Sentech) under the now repealed Telecommunications Act. Those licensees as well as hundreds of former value added network service licensee have been issued individual ECNS and ECS licences in the licence conversion process. However, the establishment and implementation of a regulatory framework effectively facilitating competition largely is absent.

What other requirements, permits or approvals must be met or obtained before networks may be installed or operated and services provided?

In addition to service licensing, if a service provider intends to use spectrum, that provider must obtain the required radio frequency spectrum licence. All equipment used by licensees must be type approved by ICASA and all technical standards prescribed must be followed.

May licences be transferred and if so under what conditions?

No individual or class licence may be assigned, ceded or transferred without the prior permission of ICASA.

What fees and levies are payable and to whom with respect to the grant of a licence for the installation or use of network infrastructure or the provision of services?

ICASA may prescribe regulations establishing application and registration fees, licence fees (taking into account any policy direction issued by the Minister), numbering allocation fees, and contributions to the Universal Service and Access Fund.

No licence or application fees have been prescribed by ICASA in terms of the EC Act. ICASA has promulgated regulations requiring all licensees to pay 0.2 percent of annual turnover related to the licensed activity to the USAF.

Q&A

Access - Interconnection and Facilities Leasing

Are interconnection and facilities leasing mandated?

Every licensee must interconnect and every ECNS licensee must provide facilities, on request, on terms negotiated, unless the request is unreasonable. ICASA must determine whether a request is unreasonable, ie, whether the request is technically and financially feasible, and will promote the efficient use of communications networks and services.

ICASA may exempt licensees from the obligation to interconnect and provide facilities, but only if ICASA has not found such licensees to have significant market power (SMP) in the relevant market. ICASA has proposed to exempt all ECNS licensees from the obligation to provide facilities pending a determination on the issue of SMP.

How are interconnection and facilities leasing agreements determined?

The parties must negotiate agreements in line with regulations made by ICASA. All regulations made by ICASA in terms of the Telecommunications Act remain in force until amended or repealed by ICASA in terms of the ECA. There are existing interconnection and facilities leasing regulations that apply in respect of interconnection to PSTS licensees.

ICASA published for public comment new draft interconnection and facilities leasing regulations in terms of the ECA, but has not finalised those regulations

How are interconnection or facilities leasing disputes resolved?

If the parties are unable to agree on terms for interconnection or facilities leasing, and the dispute is referred to ICASA by one of the parties, ICASA may do one of three things:

- Impose terms;
- Propose terms and instruct the parties to re-negotiate; or
- Refer the matter to the Complaints and Compliance Committee (CCC).

The CCC must hear the matter and then make a recommendation to ICASA as to the appropriate action, which could include, if the licensee has repeatedly been found guilty of violations, suspension or revocation of its licence.

Either party to an agreement may notify the CCC of a dispute in respect of the implementation of interconnection or the provision of facilities. The CCC must hear and decide the dispute on an expedited basis in accordance with regulations to be prescribed by ICASA.

Are charges for interconnection and facilities leasing subject to price or cost regulation?

ICASA may prescribe regulations establishing a framework of wholesale interconnection and facilities leasing rates taking into account the provisions of the ECA that deal with competition matters.

The existing regulations made under the Telecommunications Act set up a discriminatory pricing regime in favour of Telkom and the mobile cellular licensees. However, now that the licence conversion process has been completed, the regulations can no longer be applied because the licence types mentioned in the regulations no longer exist.

In ICASA's draft regulations on interconnection, pricing regulation will apply to no one unless and until ICASA makes a determination on SMP. Once that is done, LRIC will apply but only after twelve months, and only after 24 months if the licensee in question does not have to file regulatory accounts. Similarly, in respect of facilities leasing, ICASA has proposed that LRIC will apply but only after 24 months if the licensee in question does not have to file regulatory accounts. FAC is meant to apply in the meantime.

Q&A

Electronic Communications Spectrum Licensing

How is the use of radio frequency spectrum regulated?

Spectrum is regulated by ICASA in terms of the ECA. However, the Minister has certain regulatory authority, including the obligation to approve (or disapprove) the band plan and to decide whether and how the migration of users that are government entities or organisations, is permitted.

Is a licence required to use radio frequency spectrum?

Unless the use is exempted, a spectrum licence is required. In addition, an ECNS licence (or exemption) is required.

Spectrum licences are awarded consistent with the radio frequency band plan. The band plan indicates which spectrum is designated for use for which type of service. ICASA has recently published a proposed new band plan for public comment.

How is the use of radio frequency spectrum licensed?

Spectrum licences allowing an entity to use certain spectrum are awarded by ICASA. Applications are made on application forms made available by ICASA and are currently considered on an ad hoc basis.

ICASA may make regulations and criteria for awarding spectrum licences for competing applications or in instances where there is insufficient spectrum available to accommodate demand. ICASA has concluded an enquiry into the criteria and process for awarding spectrum licences for use of available 2.5-2.6 GHz and 4-3.6 GHz spectrum. ICASA has indicated that it will draft regulations that will create a two stage process for awarding licences, involving a pre-qualification phase designed to ensure that the spectrum is awarded to entities owned by historically disadvantaged individuals (HDIs), followed by an auction.

Can the use of radio frequency spectrum be made licence-exempt?

ICASA may exempt certain uses of spectrum from the licensing requirement, and prescribe the conditions under which unlicensed use may take place. It has prescribed certain spectrum licence exemptions, for example, for the use of the 2.4 - 2.483 GHz band for wide band wireless systems, WLANs, wideband data transmission applications with a maximum 100 mW eirp, and the 5.470 - 5.725 GHz band for wireless access systems and radio wireless access networks (indoor and outdoor) with a maximum 1 W eirp.

May radio frequency spectrum licences be transferred and if so under what conditions?

Spectrum licences may be transferred in terms regulations made by ICASA, but only twelve months after the date of issue or in the case of commercial operations, twelve months after the facilities are operational. These regulations were made under previous regulatory regimes but remain in effect until amended or repealed by ICASA.

What fees are payable with respect to the grant of a licence for the use of radio frequency spectrum?

The specific amounts of application and licence fees for the various uses of spectrum have been prescribed by ICASA under previous regulatory regimes, which remain in effect until amended or repealed by ICASA.

Q&A

Numbering Regulation

This is the fourth week of this new feature, Q&A. We would like to hear your thoughts on whether it is useful to you. We also would like to receive your questions or topics you would like addressed in future ICT Weekly Update issues. Send comments or questions to info@thornton.co.za.

How are numbers and network identifying codes allocated and by whom?

ICASA must prescribe a numbering plan for the efficient use and allocation of numbers, to accommodate the various protocols used and services provided, and to transform the numbering plan to a non-geographic numbering system utilising electronic numbering allowing the interoperation between telephone numbers and the Internet domain name system.

ICASA has not prescribed numbering plan regulations in terms of the EC Act; however, there are numbering plan regulations that ICASA made in terms of the Telecommunications Act, which are still in force. In terms of those regulations, the use of numbers must be authorised by ICASA upon application submitted in terms of the regulations.

The Electronic Communications and Transactions Act established the .za Domain Name Authority to assume responsibility for the .za domain name space.

Are there any special rules which govern the use of numbers?

The specific rules that govern the use of numbers are located in the numbering plan regulations and in numbering allocations made by ICASA.

How are numbers made available for use by customers?

There are rules in the numbering plan regulations regarding the issuance of numbers to customers, including, inter alia, that the allocation must be controlled by the original applicant even though sub-allocations are allowed; the number must be used for the purpose stated in the original application and in accordance with any conditions imposed by ICASA; and licensees must configure their networks to ensure that the numbering plan allocations are complied with.

What are the rules applicable to number portability?

ICASA is required by the EC Act to prescribe regulations to ensure that number portability was introduced in 2005. To date, however, ICASA has not prescribed number portability regulations in terms of the EC Act. However, there are number portability regulations that ICASA made in terms of the Telecommunications Act, dealing with number portability between PSTS licensees on the one hand and MCTS licensees on the other.

The implementation of number portability is dependent on ordering system specifications to be negotiated between operators and published by ICASA for public comment. This process has not been completed in respect of geographic number portability. Mobile number portability, on the other hand, is currently being implemented. Portability between geographic services on the one hand and mobile services on the other, have not been required as yet.