

NOTICE 903 OF 2011

Independent Communications Authority of South Africa
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EXPLANATORY NOTE
COMPLIANCE PROCEDURE MANUAL REGULATIONS

The Authority hereby publishes the attached explanatory note to contextualize the content required to complete the Forms contained in the Compliance Procedure Manual Regulations as published in the Government Gazette.



Dr SS MNCUBE
CHAIRPERSON

INTRODUCTION:

The Authority recognises that the current Regulations referred to in this Compliance Manual may be revised from time to time. However, it is unlikely that the content of the revised Regulations will change substantially. Therefore, the manner of reporting in terms of the Compliance Manual will remain the same.

The Authority may review the Compliance Manual periodically following the promulgation of any new Regulation so as to ensure that it remains consistent with obligations that Licensees must comply with.

In terms of the Forms, the Authority's Financial year end is 31 March.

FORM 1: STANDARD TERMS AND CONDITIONS

Applicable to: ECNS, ECS and BS

Section 8 (1) of the ECA states that the Authority must prescribe standard terms and conditions to be applied to individual and class licensees. The terms and conditions may vary according to the different types of individual and different types of class licences. The Regulations regarding the Standard Terms and Conditions for Individual licences and the Regulations regarding the Standard Terms and Conditions for Class Licensees, set out the standard terms and conditions that licensees must comply with. The Authority has developed a compliance form (Form 1: Standard Terms and Conditions Form) to monitor licensees' compliance with the Standard Terms and Conditions. Following is an explanation of each part of the Standard Terms and Conditions Form for ease of reference:

General Information and Licensee Details

Applicable to: ECNS, ECS and BS

The Licensee is required to provide its licensee details to the Authority on an annual basis. The licensee must duly inform the Authority of any changes thereto within seven (7) days of the change.

The information required includes the:

- a) Board of Directors;
- b) Licensee's name;
- c) Shareholder information;
- d) Shareholder's agreement or any other similar agreement which governs the operations or affairs of the Licensee; and
- e) Financial year end.

Commencement of Operations

Applicable to: ECNS, ECS and BS

Licensees are required to begin operating within a prescribed period, in accordance with the applicable Standard Terms and Conditions. An extension for the commencement of services may be granted by the Authority if the licensee can demonstrate good cause thereof.

Application would have to be made to the Authority prior to the expiry of the given period within which services must commence. Services in respect of the following licence categories must commence within the following periods:

- a) I-ECNS: 12 months from the effective date;
- b) I-ECS, C-ECS, and C- ECNS: 6 months from the effective date;
- c) Community Sound, Television, low power sound, low power subscription and free to air sound BS: 6 months from the effective date; and
- d) Free to air television BS and Subscription BS: 12 months from the effective date.

Ownership and Control Structures

Applicable to: ECNS, ECS

Licensees with an obligation relating to the above must, on an annual basis, provide additional information in respect of ownership, in respect of participation by Historically Disadvantaged Individuals (“HDIs”), Women and People with Disabilities. The Authority furthermore seeks to be informed on the advancement and inclusion of HDIs, women and people with disabilities in aspects of management in the prescribed format for Licensees with such an obligation.

Applicable to: BS:

(a) Limitation of foreign ownership of commercial broadcasting services

Section 64 of the ECA prescribes restrictions in respect of ownership and control by foreigners in commercial broadcasting services. No foreigner may:

- exercise control over a commercial broadcasting licensee;
- have a financial interest or an interest either in voting shares or paid-up capital that exceeds 20%; and
- hold more than 20% of board positions at a broadcasting service licensee.

This section must be completed by all Individual Broadcasting Service Licensees

(b) Limitation on control of commercial broadcasting services

Individual control over commercial television broadcasting licences is restricted to one licence only. No person may be a director at more than one licensee nor may one person be a director at a company that could have control over more than one commercial broadcasting licence.

The above would equally be applicable to commercial sound broadcast licences in the same licence area or licence areas that substantially overlap. In respect of the FM sound broadcast service licences – ownership and control is limited to one station, whereas, AM radio control would be limited to two.

This section must be completed by all Individual Broadcasting Service Licensees

(c) Limitations on cross-media control of commercial broadcasting services

The ECA in section 66(1) prohibits the ownership of a controlling interest in more than one broadcast medium, such as, the print media, television or sound broadcast. However, where an exemption was granted, the licensee has to notify the Authority of same.

Training and Skills Development

Applicable to: I-BS

Broadcast service licences include a standard provision which requires the development of skills and expertise of HDIs in all aspects of broadcast, including management, on-air presentation, news gathering and production, technical, sales and marketing, advertising.

Licence Area

Applicable to: ECNS, ECS and BS

Licence area refers to geographic coverage, i.e. the footprint where services may be provided. The licensee may provide services within a specific geographic area in terms of its licence – this may be regional, provincial or national. Information in respect of the Licensee's coverage area is to be provided on an annual basis in a spatial format as part of its annual compliance report.

FORM 2: BASIC FINANCIAL REPORTING FORM

Applicable to: ECNS, ECS, BS and RPS

Financial reporting is an essential part of regulation. Relevant, reliable and timely regulatory financial information is fundamental to the effective regulation of the electronic communications, broadcasting and postal sectors.

The Authority requires basic regulatory financial information in order to monitor and enforce various obligations that are placed on all licensees, such as contributions to the USAF and payment of licence fees.

The Authority has determined the formula for the payment of Licence Fees as contained in Government Gazette No 32804 published on 1 April 2009. Licence fees payable after 1 April 2009 are subject to this formula.

Licensees must annually submit Audited Financial Statements or annual Financial Statements signed by an Accounting Officer.

FORM 3: UNIVERSAL SERVICE AND ACCESS OBLIGATIONS

Applicable to: ECNS, ECS, BS and RPS

Where a licensee has a universal service obligation, it is required to complete Form 3.

FORM 4: E-rate

Applicable to: i-ECNS, i-ECS and c-ECNS and c-ECS

E-rate means a discount of no less than 50% of applicable tariff to public schools or further education and training colleges, or any independent schools, or private further education and training colleges as may be declared to be entitled to a discount for utilising internet services provided by the Licensee. Licensees must provide internet access at E-rate to all schools defined in the Public Schools Act, Further Education and Training institutions ("FETS") and training colleges as defined in the FETS and Training Colleges Act. The discount is applicable to inter alia:

- connectivity charges for accessing the internet;
- equipment required to connect to the internet; and
- all calls made to an Internet Service Provider ("ISP").
- Licensees must keep the following records for at least 3 years:
 - signed contracts;

- ISP bills to schools;
- details of services and locations where it has been provided;
- effective date for service provision; and
- resumption date if services were cancelled.

In order to demonstrate the above Form 4 must be completed.

FORM 5: TARIFF REPORTING FORM

Applicable to: i-ECNS, i-ECS and c-ECNS, c-ECS, i-BS, c-BS and RPS

NOTE: The example made on this form is only an illustration. Other service offerings such as fixed, VoIP, Broadband etc should be addressed. Therefore a licensee is supposed to report on the services it offers.

This form should be submitted in accordance with the Standard Terms & Conditions for Individual/Class regulations published in terms of section 8(1) of the Act.

According to the Standard Terms & Conditions for Individual/Class regulations, Licensees may not provide any service for a charge, fee or other compensation without first making the price and other terms and conditions available to the public.

Licensees must:

- a) File their services and terms and conditions at least 7 days prior to the provision of the said service;
- b) Provide to the Authority on a bi-annual basis, a record of the actual services provided and the actual tariffs charged for the preceding six (6) months. This is provided for through the Tariff Reporting Form 5.

FORM 6A and 6B: SECTORAL PLANNING DATA

Applicable to: i-ECNS, i-ECS and c-ECNS, c-ECS, i-BS and c-BS

This form should be submitted in accordance with the Standard Terms & Conditions for Individual/Class regulations published in terms of section 8(1) of the Act.

The Authority is responsible for regulating the communications sector in the public interest. Achieving this objective requires detailed knowledge of developments within the electronic communications, broadcasting and postal sectors.

This is intended to minimise the impact of information asymmetry between the Authority and operators on the effectiveness of proactive regulation of the communications sector. It is also meant to enhance the Authority's ability to monitor and provide regular updates on communications market developments and trends in the behaviour of various market participants as well as provide information on the performance of the communications sector.

The information gathered will be used to inform the Authority's regulatory making process and will also serve as a tool for determining the effectiveness of the regulations which the Authority has published.

FORM 7A: CODE OF CONDUCT

Applicable to ECS and ECNS

Section 69(1) of the ECA states that the Authority must prescribe regulations setting out a code of conduct for licensees. The Regulations on the Code of Conduct for ECS and ECNS licensees published in December 2007 in Government Gazette 30553 set out the minimum acceptable standard in terms of the code of conduct by licensees in respect of consumers, and protects the rights of consumers in the electronic communications sector. The code of conduct is intended to safeguard and protect the interests of consumers by regulating the conduct of persons engaged in the supply of goods or services to consumers and requires:

- the development of a Code of Conduct for each licensee; and
- a revision of each licensee's Service Charter and billing, collection and credit practices.

These Regulations are applicable to all ECS and ECNS licensees to the extent that they deal with consumers (i.e. natural persons including end-users who use and/or receive for their own use the service and/or products of a licensed service).

In order to ensure that licensees are compliant and develop their own Code of Conduct, ICASA has developed Form 7 A and requires affected licensees to submit their Code of Conduct to the Authority bi-annually.

FORM 7B: CODE OF PRACTICE FOR POSTAL SERVICES

Applicable to Postal Services

The Code is set to codify and strengthen relationships between the Independent Communication Authority of South Africa (ICASA) and Postal Operators. The Code is applicable to the reserved as well as the unreserved Postal Operators. It is a guide for the determination of common values, principles and commitments that shape the postal service's future. The Code shall be a tool for intensifying the working relations among the relevant stakeholders within the industry.

The Code, whilst setting the minimum standards of conduct within the postal industry, shall take into account the provisions of the Postal Services Act 124 of 1998 ("the Act") and other relevant legislation and regulations governing the Postal Industry.

FORM 7C: CODE ON PEOPLE WITH DISABILITIES

Applicable to: I-ECS, C-ECS, I-ECNS, C-ECNS, c-BS and i-BS

The Authority has provided a framework for Licensees to develop a Code on People with Disabilities in terms of Section 70 of the ECA. All Licensees are required to comply with the provisions on service requirements for People with Disabilities as contained in Government Gazette 30441, November 2007. Licensees are required to report to the Authority annually on their progress in respect of implementation.

Ensuring accessibility to People with Disabilities in terms of the Code addresses three elements, viz.

- accessibility and availability of services
- text telephones;
- public access devices (public payphones and community service telephones); and
- information.

Licensees must report annually to the Authority on the progress made in respect of the achievements of compliance with targets as stipulated above and as set out in Form 7C.

FORM 8 and 9: BROADCASTING

Applicable to I-BS and C-BS

Each licensee must keep a log of information in respect of its broadcasts which must be submitted to the Authority quarterly in respect of Individual Licensee's and monthly in respect of Class Licensee's. Information to be recorded would include logs of:

- all advertisements broadcast;
- the percentage of advertisements broadcast per hour;

- sponsorships received for programmes, news, games shows, welfare activities or similar programming together with details of payment, financial or otherwise received as sponsorship; and
- all programmes broadcast.

In addition to the Standard Terms and Conditions for Individual Broadcast Service (I-BS) licensees, further obligations may be imposed in terms of section 9(7) of the ECA.

Form 8 and 9: Programme Record seeks to assist licensees to comply with this requirement.

FORM 10: GENERAL LOGSHEET

Applicable to Public Radio

The format for Broadcast Service is outlined in the specific terms and conditions of the licence or the Licence Schedule ("the Schedule"). The Schedule contains a formula for the type of content to be broadcast. It may, for example, be divided into 40% of music and 60% talk programmes. The Licensee's daily broadcasts must be reflective of the formula contained in the licence and must be reported in the format set out in Form 10.

FORM 11: JUDGEMENT FORM

Applicable to I-BS and C-BS

The licensee must inform the Authority in writing of any judgments given in a court of law against it within 14 days of such. The Authority must further be notified of any convictions of Directors or Senior Managers relating to offences of dishonesty. The licensee must on an annual basis submit a record of all judgments and supporting documentation.

This information must be submitted in line with Form 11.

FORM 12A: COMPLAINTS REPORT

Applicable to ECS, ECNS and BS

Form 12 is founded on the principles entrenched in The End User and Subscriber Service Charter Regulations and the Code of Conduct.

The End User Subscriber Service Charter Regulations outlines the complaint procedure for subscribers.

The End User Subscriber Service Charter Regulations and the Code of Conduct are there to ensure that consumers are protected and to ensure that the Authority is able to ensure that Licensees offer the best customer service to consumers.

Licensees are compelled to report to their Industry Representative Body, where they are a member, all the complaints received, pending and those that have been escalated to the Authority.

Form 12 A is therefore essential in monitoring compliance with the Code of Conduct and the End User Subscriber Service Charter.

FORM 12B: COMPLAINTS REPORT

Applicable to Postal Services

Form 12 B is founded on the principles entrenched in the Code of Practice for the Postal Services Industry and Customer Care Standards Regulations which outline the complaint procedure for customers.

The Regulations are there to ensure that consumers are protected and to ensure that the Authority is able to ensure that Licensees/Registrants offer the best customer service to consumers.

Licensees/Registrants are compelled to report to the Authority on all the complaints received, pending and resolved.

FORM 13: CUSTOMER CARE STANDARDS

Applicable to Reserved Postal Services

The purpose of the Customer Care Standards is to prescribe the minimum customer care standards applicable to the Postal Services Licensees. Postal Service Licensee's are therefore required to complete Form 13.

FORM 14: COURIER UNDERTAKING

Applicable to Unreserved Postal Services

In terms of Section 22(d) of the Postal Services Act 124 of 1998, as amended:

"Any person may not be registered to provide a courier service in terms of this section unless that person undertakes:

- (i) To receive, collect and deliver items contemplated in terms of 1(b) of the schedule;*
- (ii) To track and trace the whereabouts of any item received or collected for delivery by such person, business undertaking;*
- (iii) To deliver items within a definite time, in the case of deliveries across international borders;*
- (iv) To deliver items within the Republic at the latest by 13:00 on the first working day after receipt thereof; and*
- (v) To clear items through customs, where applicable".*

In order for the Authority to ensure compliance with Section 22(d) of the Postal Services Act, courier companies are required to complete Form 14.