

ICT Weekly Update

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Legal, regulatory and policy developments in the ICT industry

Prepared by Lisa Thornton Inc for clients and colleagues

NEW FINDINGS, JUDGMENTS AND ANNOUNCEMENTS

Icasa

- Icasa published a position paper on licence fees and a third set of draft regulations for comment, due **20 March 2009**.

Minister of Communications

- Icasa published amended regulations on broadcasting and elections.
- Icasa published e-rate regulations.
- The SABC will appear before the CCC on a complaint filed by FXI, 11-12 March 2009.

Minister of Trade and Industry

- The Minister received a report on the state of affairs at the SABC.

Minister of Trade and Industry

- The Minister published new merger thresholds.
- The Minister published new fees for filing merger notices.

.za Domain Name Authority

- The Authority has ordered the domain suncityshuttle.co.za transferred to Sun International.

LTI

- LTI will present a paper at the Broadband Summit scheduled for 25-27 March 2009. If you would like to attend the event at a 20% discount as a client of LTI, please send a request to info@thornton.co.za.

NEW PROCEEDINGS

None

PENDING PROCEEDINGS - REPRESENTATIONS DUE

Icasa

- Licence fee regulations. Comment is due **20 March 2009**.

- Regulations setting out minimum standards for end-user and subscriber service charters. Comment is due **20 March 2009**.

- Broadcasting advertising regulations and a supplementary code of practice. Comment is due **27 March 2009**.

- Licence conversions. Service licences converted but not yet issued must submit licensee information to Icasa by **26 May 2009**.

Minister of Science and Technology

- Regulations in terms of the Astronomy Advantage Areas Act. Comments are due **6 March 2009**.

.za Domain Name Authority

- Deletion of certain dormant or unsustainable domains. Comment is due **13 March 2009**.

Dept of Environmental Affairs and Tourism

- Environmental impact assessment regulations. Comment is due **16 March 2009**.

PENDING PROCEEDINGS - OUTCOME AWAITED

Parliament

- * Broadcasting Amendment Bill
- * Films and Publications Amendment Bill

Minister of Communications

- * Study on the trends of digital local content and uptake rates
- * International peer benchmarking study on the costs to communicate
- * Guidelines for the rapid deployment of electronic communications facilities (re undersea cables)
- * ICT Charter regarding BEE

Department of Communications / Icasa

- * Under-serviced area licences (second and third rounds)
- * GMPCS licences

ICASA

[Pending decisions about individual licenses and complaints have not been included in this list]

- Code of conduct for broadcasters.
- Carrier pre-selection regulations
- Terrestrial broadcasting frequency band plan relating to digital migration
 - * Regulations relating to the commissioning of independently produce South African programming.
 - * Digital broadcasting Migration Regulations
 - * Radio frequency band plan
 - * Findings in enquiry on interpretation of under serviced areas in the Cell C licence
 - * Must Carry Obligations
 - * Schedule for periodic review of relevant markets
 - * Regulations for monitoring and investigating anti-competitive behavior
 - * Significant market power determinations

- * Pro-competitive licence terms and conditions
- * Methodology to determine effectiveness of competition
- * Methodology to define and identify relevant markets
- * Technical standards for power line communications
- * Technical standards for electronic communications equipment
- * Interconnection Regulations
- * Facilities Leasing Regulations
- * Essential Facilities Regulations
- * Regulations with regard to functional specification for geographic number portability
- * Findings in section 27 enquiry into a satellite licensing framework
- * Findings in respect of the Discussion Paper on the Review of Community Sound Broadcasting Policy
- * Radio regulations regarding new standards for telecommunications equipment
- * Regulations with regard to telecommunications equipment approval
- * Regulations in respect of standards for analogue terminal equipment
- * Regulations regarding amateur radio
- * Regulations regarding local television

USAASA

- * Recommendations on definitions of universal service, universal access, under serviced areas, and needy persons.

South African Law Reform Commission

- * Report on Privacy and Data Protection Bill

Department of Science and Technology

- * National Space Science and Technology Strategy

Minister of Justice and Constitutional Development

- * Ratification of Council of Europe's Convention on Cyber crime (dealing with computer-related fraud and forgery and infringement of copyright). An additional protocol regarding racist and xenophobic acts committed through computer systems has yet to be signed by South Africa.

.za Domain Name Authority

- * Memorandum and Articles of Association
- * .za Domain Policy and Procedure

Website Use Policy

This policy, developed in line with South African law, is for sale. If you would like to purchase it, please send a request to info@thornton.co.za.

Communications Systems Use Policy

This policy for employee and consultants' use of employers' communications systems, has been developed in line with South African law. If you would like to purchase the policy, please email a request to info@thornton.co.za.

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.

LISA THORNTON INC PUBLICATIONS

International Comparative Legal Guide (IPLG)

The Global Legal Group has published the International Comparative Legal Guide to Telecommunications Law and Regulations 2009 (2nd edition). You may access the South African chapter at www.iclg.co.uk/index.php?area=4&country_results=1&kh_publications_id=86&chapters_id=2297.

Telecommunications Law in South Africa

If you would like to purchase Telecommunications Law in South Africa, edited by L Thornton, et al, please contact STE publishers at angela@ste.co.za. It is available online at www.idrc.ca/en/ev-87910-201-1-DO_TOPIC.html, and link.wits.ac.za/papers/tele-download.

Email Compliance

If you would like a copy of A Guide to Achieving Email Compliance - a South African perspective, please contact info@thornton.co.za.

Protecting Minors from Harmful Content via Mobile Phones

This report is available online at lhr.org.za/news/2007/protecting-minors-harmful-content-mobile-phones.

The State of Competition in the Telecommunications Sector in South Africa

This report is available online at internationalcompetitionnetwork.org/media/library/conference_5th_capetown_2006/AppendixIII.pdf.

World Communications Regulation Report

BNA International has published a series of articles by Lisa Thornton Inc on South African ICT issues

- Numbering Plans and Number Portability, March 2009.
- Court Rulings, Licence Conversion, and the Future of Electronic Communications in South Africa, Dec 2008
- Radio Frequency Spectrum, October 2008
- High Court Ruling Paves the Way for Competition, Sept 2008
- Recent Legal Challenges, May 2008
- Update on the Licence Conversion Process, April 2008
- A New Broadband Infrastructure Company, Feb 2008.
- Regulation of Submarine Communications Networks, November 2007.
- Interception of Electronic Communications, October 2007.
- The Minister's Policy and Policy Directions, September 2007.
- How the Communications Regulator exercises its Powers and Functions, July 2007.
- The Making of subordinate Legislation, May 2007.
- Rights of Way, April 2007.
- Competition Matters, March 2007.
- Universal Service, Feb 2007.
- The Regulation of Broadcasting Services, Dec 2006.
- Interconnection and Facilities Leasing, November 2006.
- The Powers of the Minister and of the Independent Regulator, October 2006.
- The Electronic Communications Act, Sept 2006.

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Lisa Thornton Inc
PO Box 1377, Saxonwold, 2132,
South Africa

