

TELECOMMUNICATIONS LAWS OF THE WORLD

South Africa



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SOUTH AFRICA



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OVERVIEW OF LEGAL LANDSCAPE

The licensing framework for telecommunications is contained in the Electronic Communications Act, 2005 ('ECA'). Licences are required for the provision of electronic communications network services ('ECNS') and electronic communications services ('ECS') as well as for the use of radio frequency spectrum.

Telecommunications services in South Africa are regulated by the Independent Communications Authority of South Africa ('ICASA') which was established in terms of the Independent Communication Authority of South Africa Act, 2000 ('ICASA Act').

ICASA is an independent regulator charged with regulating the telecommunications, broadcasting and postal industries in the public interest and with ensuring the availability of affordable services of a high quality for all South Africans. It is responsible for licensing of services, prescribing regulations and for enforcing compliance with rules and regulations, protecting consumers from unfair business practices and poor quality services. Its mandate includes conducting inquiries and adjudicating disputes and complaints brought against licensees. ICASA has concurrent competition jurisdiction with the Competition Commission, a body established in terms of the Competition Act, 1998. In most instances, ICASA's competition jurisdiction is secondary to that of the Competition Commission. However, in terms of section 67 of the ECA, ICASA is specifically authorised to define markets and impose appropriate pro-competitive licence conditions on licensees which it determines have significant market power.

The function of the Minister of Communications ('Minister') is to develop legislation and to make policies on matters of national policy applicable to the ICT sector that are consistent with the objects of the ECA and related legislation. ICASA is obliged to consider, but not necessarily implement, Ministerial policies in executing its regulatory mandate.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The ECA

The ECA provides for the regulation of electronic communications in the public interest based on a technologically neutral licensing framework. The primary policy imperative underlying the ECA is the facilitation and implementation of a simplified, flexible regulatory regime which recognises and accommodates the convergence of new technologies, platforms and services and promotes the development of interoperable and interconnected networks.

The ECA delineates the respective roles of ICASA and the Minister. It contains provisions broadly governing: licensing; access to facilities; infrastructure rights such as way-leaves; the management and assignment of radio frequency; markets and competition; interconnection; facilities leasing; type approvals; consumer protection; and promotion of universal service and access.

Regulations prescribed by ICASA pursuant to the provisions of the ECA cover: facilities leasing; interconnection; call termination rates; type approvals; numbering; number portability; labelling of equipment; license fees; consumer protection, ownership and control of licences; standard terms and conditions; and procedures for applying for licences and for licence exemptions.

The ICASA Act

The object of the ICASA Act is to establish an independent authority for the regulation of broadcasting, electronic communications and postal services for the public benefit. As an independent regulator, ICASA is subject only to the Constitution of South Africa and is required to perform its functions without fear, favour or prejudice, free from political or commercial interference.

The ICASA Act enumerates the powers and functions of ICASA and its chairperson. It also delineates the respective roles of ICASA and the Competition Commission. The ICASA Act permits ICASA to hold inquiries into matters within its remit and sets out the procedures for conducting these inquiries. The ICASA Act also establishes the Complaints and Compliance Committee ('CCC'). The CCC is an independent body tasked with dealing with matters referred to it by ICASA and with complaints.

The *ICASA Compliance Procedure Manual Regulations, 2011* ('Compliance Procedure Manual Regulations') prescribed in terms of the ICASA Act impose extensive reporting obligations on licensees. In terms of the Compliance Procedure Manual Regulations, licensees must submit prescribed reports on compliance with regulations relating to universal service, E-rates, tariffs, and codes of conduct for customers and persons with disabilities. Licensees are also required to submit annual financial statements to ICASA.

Other relevant legislation

Other legislation which it is relevant to the telecommunications sector includes:

- **The Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 ('RICA')**: RICA sets out a lawful intercept regime and details the obligations of electronic communications service providers in relation to cooperating with law enforcement authorities and the storage of traffic data. Electronic communication service providers are required to verify the identity of the consumer prior to providing services. Consumer information and documents must be retained by the service provider for the periods specified in RICA.
- **The Electronic Communications and Transactions Act, 2002 ('ECT Act')**: The ECT Act exempts any person who provides information system services from liability for damages if that person acts as an mere conduit, caches data, or provides hosting services, if the applicable provisos contained in the ECT Act are met.
- **The Competition Act 89, 1998**: The Competition Act legislates against anti-competitive practices such as collusion and cartels. The Commission, established in terms of the Competition Act, enforces the provisions of the Competition Act. ICASA and the Competition Commission have concurrent jurisdiction in the telecommunications sector. Subject to ICASA's section 67 powers, the Competition Commission has primary authority to detect and investigate past or current commissions of alleged prohibited practices in the communications sector and to review mergers within the sector. ICASA may not take any action where a matter has already being dealt with by the Competition Commission. On 29 August 2019, ICASA and the Competition Commission signed a Memorandum of Agreement ('MOA') setting out the principles of cooperation and interaction when dealing with complaints, mergers and when making determinations regarding the effectiveness of electronic communications markets and significant market power in those markets. Where a merger requires the approval of both the Competition Commission and ICASA the MOA requires that the Competition Commission and ICASA consult with each other and that they each make independent determinations based on their respective legislative mandates.
- **The Films and Publications Act, 1996**: This Act requires internet service providers ('ISPs') and others to register with the Films and Publications Board ('FPB'). ISPs are required to take reasonable steps to prevent the use of their services for the hosting or distribution of child pornography. An amendment to the Films and Publications Act in October 2019, effective from 1 March 2022 imposed new obligations on persons providing child orientated services via mobile cellular phones or the internet and controversially places an obligation on service providers to prohibit the distribution through any medium of any film, game or publication, which amounts to propaganda for war, incites imminent violence or advocates hate speech.

- **The Consumer Protection Act, 2008 ('CPA')**: The CPA is applicable to the telecommunications sector as it does not include electronic communications services among the categories of services that are exempted from its application. For the purposes of the CPA a 'consumer' includes natural persons and juristic persons with an asset value or turnover which equals or exceeds a threshold of ZAR 2 million. The CPA recognises the role of regulators in promoting and safeguarding consumer interests. To this end, the CPA authorises the National Consumer Commission ('NCC') to enter into agreements with regulatory authorities such as ICASA. In terms of a Memorandum of Understanding concluded in 2016, the NCC and ICASA have agreed to liaise on matters of common interest.
- **Cybercrimes Act, 2020 ('CCA')** : The CCA creates cybercrime as a criminal offence under South African law, and defines a number of specific types of cybercrime. The CCA places an obligation on the holders of ECNS and ECN licences to report any cybercrimes committed via their network or services, to the South African Policer Services.

REGULATORY BODIES OR AUTHORITIES

ICASA

Physical Address:

350 Witch-Hazel Ave, Eco-Park Estate, Centurion, 0144

Postal Address:

Private Bag X10, Highveld Park, 0169

Telephone:

+27 (0)12 568 3000/3001

Email:

General enquiries: info@icasa.org.za

Consumer complaints: consumer@icasa.org.za

International relations: international@icasa.org.za

Website:

www.icasa.org.za

COMPETITION COMMISSION

Physical Address:

The DTI Campus, Mulayo (Block C), 77 Meintjies Street, Sunnyside, Pretoria

Postal Address:

Private Bag x23, Lynwood Ridge, 0040

Telephone:

+27 (0)12 394-3200 / 3320

Email:

ccsa@compcom.co.za

Website

www.compcom.co.za

NATIONAL CONSUMER COMMISSION

Physical Address:

Building C - South African Bureau of Standards Campus (SABS), 01 Dr. Lategan Road, Groenkloof, Pretoria

Telephone:

NCC Call Centre: 012 428 7000

Email:

Enquiries: Enquiries@thencec.org.za

New complaints: Complaints@thencec.org.za

Website:

www.thencec.gov.za

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

Licences are required to provide ECS and ECNS unless an exemption applies.

Facilities leasing and interconnection agreements between licensees are subject to regulatory requirements and approval by ICASA.

A radio frequency spectrum licence is required to make use of radio frequency spectrum. Type approval is required for electronic communications facilities and equipment. Numbers from the national numbering range are managed and allocated by ICASA.

Further particulars regarding these regulatory requirements are set out below.

Electronic Communications Network Services

The ECA defines ECNS as a service whereby a person makes available an electronic communications network ('ECN'), whether by sale, lease or otherwise:

- for that person's own use for the provision of an electronic communications service or broadcasting service;
- to another person for that other person's use in the provision of an electronic communications service or broadcasting service; or

- for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated by the Act.

An ECN is defined in the ECA as being a system of electronic communications facilities and, in line with the technologically neutral licensing framework, there is no restriction on the types of facilities and systems that can be used for the conveyance of electronic communications. These may include, but are not limited to, satellite systems, fixed and mobile systems, fibre-optic cables, and electricity cable systems.

Electronic Communications Services

The ECA defines ECS as any service provided to the public, sections of the public, the State, or the subscribers to such service, which consists wholly or mainly of the conveyance by any means of electronic communications over an ECN, but excludes broadcasting services. An operator who holds an ECS licence may provide services to customers over its own or a third party's network.

It is helpful to consider the following fundamental distinctions between these ECS and ECNS types:

- **Wholesale vs. retail:** An ECNS licensee wholesales network capacity to ECS licensees or other ECNS licensees for resale, but it does not deal with the public. An ECS licensee, on the other hand, offers retail services to the public (and may also provide wholesale services for resale to third parties).
- **Physical vs. virtual networks:** An ECNS licensee operates physical networks made of facilities such as fibre or base stations. An ECS licensee operates virtual networks such as VPNs and MPLS networks.

Radio Frequency Spectrum

The ECA vests the control of radio frequency spectrum in ICASA. Unless exempted, no person may make use of radio frequency spectrum without a licence. *The National Radio Frequency Plan, 2021* ('National Radio Frequency Plan') allocates the electromagnetic spectrum to radio services in the frequency bands between 8.3 kHz and 3000 GHz. All frequency assignments must be in accordance with the current version of the national radio frequency plan. Only ECNS licensees may apply for a radio frequency spectrum licence in terms of the Radio Frequency Spectrum Regulations. The National Radio Frequency Plan takes into account the International Telecommunications Union ('ITU') spectrum allotments for radio frequency spectrum use.

Radio Apparatus

Unless exempted, no person may possess radio apparatus without a radio frequency spectrum licence. This applies to all persons and not just to licensees and exempted persons. Apparatus that have low power applications are generally exempted from the radio frequency spectrum licence requirement.

Type Approval and Labelling

No person may possess, use, supply, sell or lease any type of electronic communications equipment, facility, or radio apparatus used (or to be used) in connection with the provision of electronic communications unless that equipment, facility or radio apparatus has been type approved by ICASA. in accordance with the *Type Approval Regulations, 2013* ('Type Approval Regulations'). These regulations apply to all persons (including retailers and importers) and not just to electronic communication service providers and exempted persons. Guidelines relating to type approvals have also been published in the Government Gazette.

ICASA is authorised by the ECA to prescribe the types of equipment, facilities and radio apparatus and the circumstances in which type approval is not required. In this regard, low power devices operating on FM Band II are exempt from licensing and type approval.

ICASA generally recognises type approval given by international standards organisations such as the European Telecommunications Standards Association.

All equipment that has been type approved and received type approval certificate must have a label permanently affixed thereto reflecting ICASA's logo and the type approval reference number. Electronic labels may also be installed in products with a built-in display which is integral to the equipment. The labelling requirements set out in the *Labelling Regulations, 2013*. New regulations were published in March 2022, which are not in force yet.

Number Allocation

The ECA requires that ICASA maintain and manage a national numbering plan consisting of geographic and non-geographic numbers. Only individual ECS licensees may apply for numbers from the national numbering plan for use in conjunction with mobile, fixed line and VoIP voice services. Numbers are regarded as a national resource and are not owned by a licensee. Conditions apply to the allocation of numbers. These conditions as well as application procedures are set out in the *Numbering Plan Regulations, 2016*.

Number Portability

ICASA introduced number portability as a consumer protection initiative in 2005. The *Number Portability Regulations, 2005*, were published under the Telecommunications Act in 2005 as were the *Functional Specifications for Mobile Number Portability*. The *Functional Specifications for Geographic Number Portability* were published in 2007.

New regulations, namely the *Number Portability Regulations, 2018* and the *Ordering System Specification for Number Portability, 2019* have been gazetted and these replaced and repealed the existing regulations on 7 March 2022.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Service Licences

Unless exempted, no person may provide ECS or ECNS without a licence. Depending on the scope of the services, either an individual or class service licence will be required. Applications for licenses will not be considered unless the applicant is a South African citizen (in the case of a natural person) or a juristic person registered in South Africa and which has its principal place of business in South Africa.

The ECA requires that ICASA must, in granting any service licence, ensure that the services, viewed collectively, are provided by persons or groups of persons from a diverse range of communities in South Africa. ICASA is also required to promote broad-based black economic empowerment when considering licence applications.

An application for an individual licence may only be made in response to an Invitation to Apply ('ITA') issued by ICASA. ICASA may only issue an ITA pursuant to a Ministerial policy direction. It is unlikely that an ITA will be issued for either individual ECS or individual ECNS in the foreseeable future.

Applicants for individual licences must demonstrate to ICASA that at least 30% of the applicant is owned by historically disadvantaged individuals. The term "historically disadvantaged individuals or groups" is not defined in the ECA or the ICASA Act or any regulations but it is taken to include black people, women, the youth and people with disabilities.

The processes and procedures applicable to individual ECNS licence applications are contained in the *Regulations regarding the Processes and Procedures for Applications for an Individual Licence to Provide Electronic Communications Network Services, Electronic Communications Services and Broadcasting Services and for Temporary Special Authorisations and Matters Pertaining Thereto, 2008*.

The standard terms and conditions applicable to individual ECNS licensees are contained in the *Regulations Regarding Standard Terms and Conditions for Individual Licences, 2010*. An individual licence endures for twenty years and the licence may be renewed upon application to ICASA. ICASA may refuse to grant the application for renewal if the ownership and control of the applicant by historically disadvantaged persons is less than 30%.

A class licence may be obtained by registration and application can be made at any time. The processes and the procedures applicable to the registration of class licences are contained in *Processes and Procedures for Applications for an Individual Licence to Provide Electronic Communications Network Services, Electronic Communications Services and Broadcasting Services and for Temporary Special Authorisations and Matters Pertaining Thereto, 2008*. ICASA is required to process the application within 30 days unless it notifies the applicant otherwise. The standard terms and conditions applicable to class licences are set out in the *Regulations Regarding Standard Terms and Conditions for Class Licences, 2010*. A class licence endures for ten years and a licensee can apply to have its licence renewed upon application. ICASA's decisions are not contingent upon ownership by historically disadvantaged persons.

The requirements for individual and class service licences are elaborated upon below:

- **Individual ECNS licence (issued for 20 years):** An individual ECNS licence is required for ECNs of provincial and national scope operated for commercial purposes.
- **Class ECNS licence (issued for 10 years):** A class ECNS is required for ECNS of district municipality or local municipal scope operated for commercial purpose South Africa has 48 district municipalities and 231 local municipalities as well as 7 metropolitan municipalities.
- **Individual ECS (issued for 20 years):** An individual licence is required to provide ECS that consists of voice telephony utilising numbers from the national numbering plan. An individual service licensee may provide all forms of electronic communications in addition to voice telephony and there is no restriction on the geographical scope of the services. It is the use of numbers from the national numbering plan that triggers the individual licence requirement. An individual ECS licensee can make use of its own ECN if it holds the requisite ECN licence or it can enter into agreements with third party ECNS licensee to carry the services to the customer.
- **Class ECS (issued for 10 years):** A class licence is required to provide ECS that does not make use of numbers from the national numbering plan. This licence allows the holder to provide the same services as those authorised in terms of and individual ECS licence, including voice services. As is the case with individual ECS licensees, a class ECS licensee can make use of its own ECN if it holds the requisite licence or it can enter into agreements with third party ECNS licensees to carry the services to the customer.

Radio Frequency Spectrum Licences

Absent an exemption, no person may make use of the radio frequency spectrum without a licence issued by ICASA. The Radio Frequency Spectrum Regulations, mentioned above, are applicable.

A standard application procedure is applicable to radio frequency spectrum used for the services listed in annexure C to the Radio Frequency Spectrum Regulations. These include amateur radio, frequencies above 40 GHz, microwave point to point, citizen band radio and satellite bands direct links.

An extended application procedure is required for all other radio frequency spectrum licences and for frequency bands which are the subject of an ITA. An ITA will be published where ICASA determines that the radio frequency spectrum concerned is insufficient to meet demand.

Radio frequency spectrum licences that are the subject of an ITA are awarded on a competitive basis. An applicant for a radio frequency spectrum licence that is the subject of an ITA will be disqualified unless it can show that it has a minimum 30% equity ownership held by persons from historically disadvantaged groups or is a level 4 Broad-Based Black Economic Empowerment contributor.

Service Licence Exemptions

The ECA permits ICASA to prescribe regulations regarding the types of ECNS, ECNs, and ECS that may be provided without a licence. ICASA may also prescribe the radio frequency spectrum that may be used without a licence.

In terms of the *Regulations Regarding Licence Exempt ECN, ECNS and ECS, 2008*, ('Licence Exemption Regulations') the following persons providing ECS may apply for a licence exemption:

- persons providing ECS on a non-profit basis;
- resellers of ECS obtained from a licensed ECS; and
- persons providing an ancillary service (i.e. a retail service which incorporates ECS elements that do not constitute the major purpose, utility or value of the retail services, for example, tracking, alarm and similar services).

In terms of the Licence Exemption Regulations, the following ECNs are exempt from licensing:

- small electronic networks, provided that small electronic networks must use frequencies that are licence exempt; and
- private electronic networks.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

The ECA requires that applicant for a licence in terms of the ECA must show that it is a South African citizen (in the case of a natural person) or that it is registered in South Africa with its principal place of business located within South Africa. If a foreign entity wishes to apply for a licence it will, at the very least, need to incorporate a local entity in South Africa. There are however provisions in the ECA and its regulations that effectively prevent foreign entities from acquiring ownership and control of more than 70% of an individual licensee.

If a foreign entity wishes to apply for an individual licence, that foreign entity must, in addition to incorporating a local company, ensure that at least 30% of the local company is owned and controlled by historically disadvantaged individuals or groups. This shareholding requirement also will apply if a foreign owner wishes to take transfer of an existing individual licence.

If a foreign entity's acquisition of shareholding in an individual licensee results in a change of control of that licence, ICASA will need to be satisfied that 30% of the licensee is still owned and controlled by historically disadvantaged individuals if permission for the transfer is to be granted. If the acquisition of equity in an individual licence does not result in a change of control then ICASA need only be notified of the change in shareholding after the transaction has been concluded. ICASA may however require a copy of the shareholder agreement and affidavits from the parties to satisfy itself that the acquisition did not in fact amount to a change of control.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection Regulations

ECNS and ECS licensees must, upon request, interconnect to any other ECA licensee and to exempted persons requesting interconnection. The processes for requesting, negotiating and enforcing interconnection agreements are contained in ICASA's pro-competitive *Interconnection Regulations, 2010* ('Interconnection Regulations'). In general, interconnection must be provided on a non-discriminatory basis as between comparable types of licences and must be of the same standard and quality as provided by a licensee to itself. All interconnection agreements concluded pursuant to the Interconnection Regulations are filed with ICASA and are available for public inspection. An interconnection agreement does not become binding until approved by ICASA. ICASA is empowered to adjudicate interconnection agreement disputes that are referred to it in terms of the Interconnection Regulations.

Call Termination

The *Call Termination Regulations, 2014* ('Call Termination Regulations') are aimed at remedying market failure in the wholesale call termination markets. Following a review of the fixed and mobile wholesale call termination markets ICASA has imposed procompetitive conditions on Telkom SA SOC Limited ('Telkom') in the fixed termination markets and on both MTN (Pty) Ltd ('MTN') and Vodacom (Pty) Ltd ('Vodacom') in the mobile termination markets.

In terms of the Call Termination Regulations, Telkom, MTN and Vodacom are required to publish a reference interconnection offer that complies with the requirements set out in the Call Termination Regulations. These licensees are also subject to cost-based pricing control. The maximum termination rates are specified in the regulations. Between 1 October 2019 and 30 September 2020, Telkom may charge no more than R0.07 for termination to a fixed location and Vodacom and MTN may charge no more than R0.10 for termination to a mobile location. From 1 October 2020, Telkom may charge no more than R0.06 and Vodacom and MTN may charge no more than R0.09 for termination to a mobile location. ICASA is required to review the effectiveness of the procompetitive terms as well as the prescribed termination rates when it deems necessary but may not do so before 1 October 2021.

Call termination rates aside, tariffs are not tightly regulated. It is a requirement that all licensees lodge their tariffs with ICASA prior to offering a service and that the tariffs be made known to the public. Only Telkom's year on year increases are limited by regulation.

Roaming

Roaming is not defined in the ECA although it does fall within the definition of ECNS. There are no regulations directly applicable to roaming or to the conclusion of roaming agreements. In practice, roaming agreements are concluded between the ECNS service providers on commercial terms and payment is made by one network operator to the other network operator for the services utilised by its subscribers. Roaming agreements are not subject to regulatory approval and are not made publicly available.

Facilities Leasing

In terms of the ECA, ECNS licensee must, on request lease electronic communications facilities to any other person licensed or exempted in terms of the ECA. The *Electronic Communications Facilities Leasing Regulations, 2010* ('Facilities Leasing Regulations') prescribe, in terms very similar to those in the Interconnection Regulations, the processes for requesting, negotiating and enforcing facilities leasing agreements. The Facilities Leasing Regulations require that facilities leasing be provided on a transparent and non-discriminatory basis. Facilities leasing agreements only become enforceable when approved by ICASA. Facilities leasing agreements are made publicly available. ICASA is empowered to adjudicate facilities leasing agreement disputes that are referred to it in terms of the Facilities Leasing Regulations.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

One of the primary objects of the ECA is to promote and safeguard the interests of consumers with regard to price, quality and variety of licensed services. In furtherance of this objective and as required by the ECA, ICASA has published a number of regulations aimed at advancing and protecting the rights of consumers. These include:

- **Regulations Drafted in Terms of Section 4 Read with Section 76, 2008:** These are more commonly known as the known as the 'Emergency Call Regulations'. Amongst other things, provision is made for a 112 emergency call centre in these regulations.
- **Carrier Pre-selection Regulations, 2010:** The ECA requires that ICASA prescribe carrier pre-selection regulations and these regulations were accordingly prescribed in 2010. Carrier pre-selection has not however been implemented in South Africa.

- **End User and Subscriber Service Charter Regulations, 2016:** These regulations impose a wide range of obligations on licensees that are aimed at ensuring that consumer rights are protected. In addition to satisfying the requirements of these regulations, licensees must file periodic reports with ICASA to show continued compliance with the regulations
- **Regulations in Respect of the Code of Conduct for Electronic Communications and Electronic Communications Network Services Licensees, 2007:** Licensees are required, amongst other things, to develop a code of conduct intended to safeguard and promote the interests of consumers. The code of conduct must include the key commitments enumerated in the regulations and must be displayed at the licensee's business premises and on its website. In addition to complying with the requirements of these regulations, licensees must file periodic reports with ICASA to show continued compliance.
- **Code on People with Disabilities, 2007:** These regulations set out the basic standards applicable to licensees in order to ensure that their services are accessible and available to people with disabilities. Licensees are required to file periodic reports with ICASA to show compliance with these regulations.
- **Regulations in Terms of Section 4 read with Section 73 of Electronic Communications Act in Respect of E-Rate, 2009:** These regulations are more commonly known as the e-rate regulations. These regulations oblige licensee to provide internet services to schools at discounted rates. Annual compliance reports must be filed with ICASA.
- **Number Portability Regulations:** ICASA, as required by the ECA, prescribed number portability regulations in 2005. As mentioned above, new regulations came into force in March 2022.

In addition to the above regulations, ICASA has established a Consumer Advisory Panel to advise it on matters relating to consumer issues. Consumers may also lodge complaints against licensees with the CCC.

The Consumer Protection Act is applicable to the provision of telecommunications services. Complaints regarding the provision of services licensed under the ECA can be lodged with either ICASA or the NCC.

REGULATORY TAXES AND FEES

Annual licence fees are payable in accordance with the terms of the *ICASA General Licence Fee Regulations, 2013*.

Annual service licence fees for both class an individual service licensees are calculated using the following formula:

$$P_a = R \times B$$

Where:

P_a = payable annual licence fee

R = revenue from licence services

B = applicable percentage as set out in the following table:

Licence Revenue (R)	Percentage applied (B)
0 -50 000 000	0.15%
50 000 001 -100 000 000	0.20%
100 000 001 -500 000 000	0.25%
500 000 001 -1 000 000 000	0.30%
1 000 000 001 -and above	0.35%

Revenue is defined in terms of international accounting standards. The calculation of the amount due must be supported by audited financial statements (Fees can be paid quarterly or annually, and late payments are subject to stringent interest penalties and fines for non-compliance.

Licencees are further required to pay an annual contribution to the Universal Service and Access Fund - an entity set up by Government to fund development of services in rural areas - amounting to 0.2% of annual turnover derived from licensed services.

The following fees are payable in respect of initial licence applications, applications to amend or renew or transfer licences. The fees applicable to applications to transfer a licence are also applicable to applications for approval for a change of control of a licensee.

APPLICATION TYPE	FEE (ZAR)
INDIVIDUAL ECS AND ECNS LICENCES	
Initial applications for licences	As specified in the ITA
Applications for the amendment of licences	ZAR 69,409
Applications for renewal of licences	ZAR 6,941
Applications for transfer of licences	ZAR 69,409
CLASS ECS AND ECNS LICENCES	

Initial applications for licences	ZAR 13,881
Applications for the amendment of licences	ZAR 6,941
Applications for renewal of licences	ZAR 6,941
Applications for transfer of licences	ZAR 6,941

Application fees for radio frequency spectrum licences are specified in the Radio Frequency Spectrum Regulations. Application fees for radio frequency spectrum that is the subject of an ITA will be specified in the ITA. Other fees, including annual fees, are specified in the Radio Frequency Spectrum Licence Fee Regulations, 2010.

Fees for type approvals and numbers are specified in the applicable regulations.

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

The CCC is required, in terms of the ICASA Act, to investigate, and hear (if appropriate), and make findings on: all matters referred to it by ICASA; complaints received; and allegations of non-compliance with applicable law. Once the CCC has made a finding, ICASA may, based on the recommendations made by the CCC, impose fines and issue directions to the licensee.

If the licensee has been found to be repeatedly in violation of ECA, applicable regulations or its licence conditions, ICASA may revoke or suspend its licence.

Most of the regulations that require compliance on the part of licensees make provision for penalties and fines. In most instances, a maximum fine is specified and ICASA has the discretion to impose a lesser fine or no fine at all. Certain contraventions are treated as offences which may result in imprisonment.

Presently, the highest maximum fines that are contained in the Call Termination Regulations and the End-User and Subscriber Service Charter Regulations. These regulations allow ICASA to impose a maximum fine of ZAR 5 million or 10% of the licensee's annual revenue for every day of non-compliance with the regulations, whichever is greater.

In terms of the Type Approval Regulations any person that offers for sale or possesses, with the intention to sell, any equipment (including but not limited to radio apparatus) that is not type approved is guilty of an offence and is subject to imprisonment of 6 months and/or is liable to a fine not exceeding ZAR 1 million.

In terms of the Radio Frequency Spectrum Regulations, which postdate the Type Approval Regulations, a person who is in possession of radio apparatus may be found guilty of an offence and, upon conviction, may be imprisoned for not less than 6 months but no more than 24 months and/or be held liable to a fine of not less than ZAR250,000. A person found in unauthorised possession of a radio blocking device may be subject, on conviction, to imprisonment of not less than 12 months and/or liable to a fine of not less than ZAR 250,000 but not exceeding ZAR 5 million. Any person that contravenes the terms and conditions of their radio frequency licence is subject to a fine not exceeding ZAR 5 million.

Failure to comply with the provisions of the Interconnection Regulations or the Facilities Leasing Regulations may result in a fine of up to ZAR 500,000.

Failure to comply with certain provisions of the RICA Act may result in fines of up to ZAR 5 million and to imprisonment of up to 10 years, as well as licence revocation.

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