



1 September 2014

**The Director-General, Department of Telecommunications and Postal Services**

**For attention: Dr Mashilo Boloka**

Director: Broadcasting Industrial Development, SOEs Oversight and Enterprise

Per email: [ictsmmes@doc.gov.za](mailto:ictsmmes@doc.gov.za)

Dear Sir

**SUBMISSIONS IN RESPECT OF THE REQUEST FOR INFORMATION FROM SMMEs IN THE ICT SECTOR**

1. The Internet Service Providers' Association (ISPA) refers to the Notice requesting information on ICT SMMEs for the purpose of developing and promoting SMMEs in the ICT sector, published in the Government Gazette at the instance of the Minister of Telecommunications and Postal Services ("the Minister").

**INTRODUCTORY REMARKS**

2. The focus of the new Minister and Department on SMMEs in the ICT sector and the fact that the publication of the questionnaire was one of the first acts of the Minister is most heartening. ISPA recognises the priorities placed on SMME development by the President in his latest State of the Nation Address and Cabinet realignment and in the National Development Plan and that the questionnaire should be viewed in this context. ISPA is aware of the potential SMME development has in bridging the gap between the first and the second economy through poverty reduction, employment creation, economic empowerment and innovation.
3. Notwithstanding the above, it is clear from the Notice that there is a great deal more that can be done, specifically within the ICT sector. ISPA has noted the figures provided in the Notice to the effect that ICT SMMEs formed only approximately 1.6% of the total number of formal small enterprises in South Africa in 2008.
4. ISPA does not seek to make representations as an SMME – and therefore is not directly responding to the information requested – but as an industry association many of whose members are SMMEs.
5. ISPA's comments are specific to and limited to the telecommunications and Internet industries within the ICT sector and not the sector as a whole. ISPA recognises that there are broader public interventions relating to, amongst others, taxation and skills development which do impact upon the ICT sector. ISPA notes, however, that this process is rooted in the objects of the Electronic Communications Act of 2006 and as such is directly relevant to services licensed under that Act.

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**ISPA Management Committee:**

Ant Brooks\*, Graham Beneke, Marc Furman, Jenny King,  
Duncan Martin, Mohammad Patel, Mike Silber, Warrick Ward-Cox, Elaine Zinn\* (\*ex officio)

## ABOUT ISPA

6. ISPA is a South African Internet industry body not for gain. Established on 6 June 1996, the Association currently represents more than 170 Internet Service Providers and related entities with a diverse range of services and target markets.
7. A significant number of ISPA's members are SMMEs and a significant number of SMMEs are recipients of services provided by ISPA members.
8. ISPA is entirely funded by the members. A website is maintained at <http://www.ispa.org.za> where a list of the members can be found. While ISPA members themselves decide whether they wish to be small, medium and large members, these categories can be used as a rough-and-ready guide to the relative sizes of members. ISPA assists SMMEs by allowing them to select a membership category that is affordable – monthly membership fees are R500 for members in the “small” category – and which allows them to enjoy the benefits of ISPA membership as set out below.
9. The Minister of Communications formally recognised ISPA as an Industry Representative Body (IRB) in terms of section 71 of the Electronic Communications and Transactions Act, 2002 (“the ECT Act”) on 20 May 2009. ISPA submits an annual report to the Minister of Communications on its activities as an IRB.
10. Successes and milestones achieved by ISPA include the following:
  - 10.1. ISPA has played an instrumental role in promoting fair competition within the industry through complaints laid with ICASA (inter alia, in respect of Internet access) and with the Competition Commission in respect of anti-competitive conduct by Telkom. This has resulted in the creation of greater opportunities for competition by ISPA members and resulting benefits to consumers in terms of price and choice.
  - 10.2. ISPA's Teacher Training programme<sup>1</sup> has seen close to 3 000 teachers in rural schools trained in ICTs and education. Since 2004 ISPA and Uniforum SA have been awarding a [Super Teacher of the Year award](#) to the educator who has best imparted their newly-acquired IT knowledge to the learners and the local community after participating in ISPA's nationwide teacher training programme. A list of schools which have benefited from this demand-side initiative is set out at <http://ispa.org.za/social-development/superteacher-schools/>.
  - 10.3. ISPA has established and maintains Internet Exchange Points in Johannesburg (JINX), Cape Town (CINX) and Durban (DINX). These IXPs are used by members and non-members and have been extremely successful in promoting better and more affordable Internet access by South African consumers through encouraging the local routing of Internet traffic not destined for international locations.<sup>2</sup>
  - 10.4. ISPA has previously provided an entrepreneur's training course for historically disadvantaged individuals looking to enter into the industry.
  - 10.5. ISPA is an established stakeholder in the industry and recognised for its participation in policy, legislative and regulatory processes.
11. ISPA is currently finalising its registration as a Non Profit Company (NPC) under the Companies Act 2008.

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<sup>1</sup> <http://ispa.org.za/social-development/>

<sup>2</sup> See <http://ispa.org.za/inx/>

## EXISTING MEASURES

12. As a starting point it is instructive to set out the current mechanisms applicable to SMME development in the Internet access, telecommunications and licensed services sector in which ISPA's members operate.
13. ISPA is aware of the ICT SMME Enterprise Development Strategy (2008) but submits that there is little evidence of the implementation of this Strategy. It is ISPA's view that the excerpt from this Strategy set out in the Notice continues to reflect the current position in 2014, i.e. that SMMEs operating in the ICT sector are not as productive and competitive as they should be.
14. ISPA reiterates that it is aware of general measures aimed at incentivising SMME development, but agrees that there is a lack of policy governing SMME development and a lack of measures targeting SMME development in the Internet access and telecommunications services sectors of the ICT industry.
15. It is in fact more accurate to state that – particularly as regards regulatory compliance obligations – SMMEs in these sectors are currently actively disincentivised.
16. This is particularly curious in that the ICT sector as a whole appears to be the optimal context for the development of a successful SMME market component. Technology and its rapid advancement provide massive opportunities for disruption and transformation of the sector.

## ICASA

17. In order to provide licensed services in South Africa an entity is required as a precondition to obtain appropriate licensing from the Independent Communications Authority of South Africa (ICASA). A table setting out ISPA's understanding of the applicable service licensing framework is set out as Annexure A to this submission.
18. ISPA refers to the two broad categories of service licences available under Chapter 3 of the ECA: individual licences authorise national service provision and are therefore generally not required by SMMEs, while class licences authorise service provision in a district or metropolitan area and are therefore generally more likely to be registered for by SMMEs.
  - 18.1. ISPA recognises that the creation of a class licensing system under the ECA of itself lowers the barrier to entry into the provision of licensed services for SMMEs. These licences are relatively inexpensive to obtain (ZAR 10 400 per licence) and ICASA generally turns around registrations in 3-5 weeks.
  - 18.2. Given that class licences were designed to cater for SMME operators serving a limited geographical area, it makes sense that they are cheaper and easier to obtain than individual licences, which grant greater rights in terms of national operation and access to numbering resources.
  - 18.3. The distinction between class and individual licences is not, however, reflected in the way in which ICASA treats those who hold the different forms of licence. ICASA's compliance regime in particular fails to distinguish between these licences in terms of the number and scope of reporting and compliance obligations imposed on licensees. As will be demonstrated below these are particularly onerous for smaller licensees.
  - 18.4. A full table of these compliance obligations is set out as Annexure B. This indicates that all licensees – irrespective of whether class or individual – are required to comply with the following:

- 18.4.1. Annual Licence Fees
- 18.4.2. Universal Service and Access Fund (USAF) Contributions
- 18.4.3. Compliance with Standard Terms and Conditions Regulations, including submission of sectoral planning information on a quarterly basis
- 18.4.4. Compliance with E-Rate Regulations
- 18.4.5. Compliance with Disability Regulations
- 18.4.6. Compliance with the Code of Conduct Regulations
- 18.4.7. Compliance with the quality of service provisions of the End-User and Subscriber Service Charter Regulations
- 18.4.8. Register of Complaints
- 18.4.9. Tariff Reporting
- 18.5. This does not include frequency ad hoc requests for information from ICASA and participation in other regulatory processes.

19. ISPA notes that the only concession currently given to licensees by ICASA with specific regard to their SMME status is a graduated annual licence fee linked to the size of the licensee's turnover, as per the table and formula below.

Formula:  $P_a = R \times B$ : where,

$P_a$  = Payable Annual Licence Fee

$R$  = Revenue from licensed services

$B$  = applicable percentage per table below dependent on licensed revenue in accordance with this schedule read with regulation 3(1).

<b>License Revenue (R) (Rand)</b>	<b>Percentage applied (B) (%)</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 +	0.35

20. Even this, however, is an imperfect mechanism in that the first break is set at ZAR50million, i.e. it does not really focus on SMMEs or provide sufficiently nuanced incentives which recognise that the SMMEs with revenue of between one and ten million Rand are those which most require assistance.
- 20.1. Up until 1 April 2012, ICASA had a different approach to annual licence fees in terms of which licensees with a total turnover of less than R13 million were exempted from paying licence fees at all. This threshold of R13 million was based on the turnover threshold as per the requirements for classification as a small enterprise in the Transport, Storage and Communications Sector as defined in the National Small Enterprise Act 102 of 1996, as amended.
  - 20.2. ISPA's smaller members strongly supported the blanket exemption and regarded it as a substantial incentive, in terms of both revenue and time saved.

## **The Film and Publications Board (FPB)**

21. Section 27A of the Film and Publications Act of 1996 as amended establishes a general obligation on ISPs to register with the Film and Publications Board (FPB).
22. Under the Film and Publications Regulations 2014:
  - 22.1. Registration must be submitted on the prescribed form and must be accompanied (a) proof of payment of the prescribed fee (currently R529), (b) an original valid tax clearance certificate and (c) the SA registration number of the business.
  - 22.2. An applicant ISP must further indicate in its application form all measures or steps taken or put in place to ensure that children are not exposed to child pornography and pornography and the FPB may request an ISP to demonstrate that these measures/steps remain effective.
  - 22.3. The regulations explicitly state that “No person may host any website or provide access to the internet as an internet service provider, unless such person is registered with the Board in terms of section 27A of the Act.”
23. The Film and Publications Act contains a definition of “Internet service provider” which is extremely broad and the FPB has adopted an approach of regarding a wide variety of entities such as coffee-shops, restaurants and hotels as falling within this definition and therefore being required to register with it as set out above.
24. ISPA has engaged with the FPB regarding the administrative burden placed on its members by its registration requirements, pointing out that this has a disproportionate impact on SMME ISPs. To date such engagement has not yielded any fruitful response.
25. ISPA submits that multiple registration requirements are unnecessary and burdensome for SMMEs, particularly where it is hard to discern their practical purpose. The requirements of the FPB as regards tax clearance certificates seem particularly onerous and disproportionate.

## **Other obligations**

26. ISPA wishes to note here that the above is not a complete review of legislation and regulation imposing a regulatory burden on ISPs. For the sake of being more comprehensive, ISPA refers further to the obligations which ISPs have (and which are aside from compliance obligations under law of general application):
  - 26.1. To register customers and assist law enforcement authorities with the interception and monitoring of traffic under the Regulation of Interception of Communications and Provision of Communication-related Information Act of 2002.
  - 26.2. To respond to information requests brought by the South African Police Services under the Criminal Procedure Act and the Film and Publications Act.
  - 26.3. To respond to information requests brought by the South African Revenue Services (SARS) and other Government institutions in terms of applicable legislation.
  - 26.4. To assist with requests from the Magistrates Courts under the Protection from Harassment Act.

## **WHAT CAN BE DONE?**

27. ISPA requests that the Minister give due consideration to directing ICASA to review its compliance framework with a view to reducing red tape and the administrative burden on SMME licensees.
28. ISPA further requests that there be rationalisation of the different registration regimes applicable to SMMEs, again with a view to reducing red tape and the administrative burden on SMME licensees and ISPs. ISPA is aware that the ICT Policy Review Panel is seized of this question.
29. Aside from these two specific measures – which ISPA believes to be within the power and competence of the Minister – ISPA notes that SMME development is also constrained by more general legal, regulatory and structural issues which are being addressed in other fora and processes. These include:
  - 29.1. Ongoing delays in the assignment of spectrum into the market;
  - 29.2. Ongoing delays in finalising the proposed guidelines for the rapid deployment of infrastructure.
  - 29.3. The urgent need for the implementation and enforcement of open access as a governing rule to ensure that incumbent operators make services available on a non-discriminatory basis and allowing SMMEs to compete on a services-basis.
30. The resolution of these challenges is critical for the development of an efficient and competitive market which provides opportunity and encouragement for SMMEs to set down roots and grow. It is further the case that resolving these challenges will reduce the cost to communicate in South Africa which of itself will facilitate SMME growth across all industries.

## **CONCLUSION**

31. ISPA reiterates its appreciation for this initiative by the Minister and the Department and pledges that it will do that within its power to ensure the implementation of a legal and regulatory framework which is more conducive to the development of SMMEs in the ICT sector.

PER

DOMINIC CULL

ISPA REGULATORY ADVISOR

(the above intended as an electronic signature)

**ANNEXURE A – SERVICE LICENSING UNDER THE ELECTRONIC COMMUNICATIONS ACT**

<p><b>ELECTRONIC COMMUNICATIONS NETWORK SERVICES (ECNS) LICENCES</b></p>	<p><b>Individual ECNS</b></p>	<p>This allows the holder to roll out and operate an electronic communications network nationwide or across a province.</p>
	<p><b>Class ECNS</b></p>	<p>A class ECNS licence allows the holder to roll out its own network in a district or local municipality. In other words, the licensee will choose to operate in a municipal area and provide access services to consumers in that area.</p> <p>This is the form of licence required by operators wanting to set up their own network focusing on a smaller area.</p> <p>South Africa has 48 district municipalities and 231 local municipalities as well as 7 metropolitan municipalities.</p>
<p><b>ELECTRONIC COMMUNICATIONS SERVICES (ECS) LICENCES</b></p>	<p><b>Individual ECS</b></p>	<p>This licence allows the holder to provide services to customers over the network of an ECNS licensee, including voice or VoIP services which use numbers taken from the National Numbering Plan. Examples of other services that can be provided include:</p> <ul style="list-style-type: none"> <li>• Internet access</li> <li>• Protocol conversion</li> <li>• Virtual Private Networks (VPN)</li> <li>• Multi-Protocol Labeling Systems (MPLS)</li> </ul> <p>The National Numbering Plan is a document drawn up by ICASA setting out all the different kinds of numbers used in South Africa. A distinction is drawn between geographic – where the number is linked to a specific location, e.g. 011 566 3000 – and non-geographic – where the number is mobile, e.g. 083 000 0000.</p>
	<p><b>Class ECS</b></p>	<p>This licence allows the holder to provide the same services as the Individual ECS licence except for voice services requiring numbers from the national numbering plan. Subsequent to 21 May 2014 CECS licenses are limited in scope to a district or metropolitan municipal area. CECS licenses issued before this date are national in scope.</p> <p>A CECS licensee will need to enter into commercial arrangements with one or more ECNS licensees who have the networks to carry services to the customer.</p>

**Table: Licensing under the Electronic Communications Act 36 of 2005**

## ANNEXURE B – ICASA COMPLIANCE OBLIGATIONS

The ICASA Compliance Manual Regulations set out the different reports which the holders of electronic communications services (ECS) and electronic communications network services (ECNS) licences are required to submit in order to ensure compliance with the terms and conditions of their licences.

Below is a table setting out the different reports and deadlines for submission – note this is based on a licensee which has 28 February as its financial year-end.

<b>Deadline for submission</b>	<b>Compliance Report</b>	<b>Reporting Period</b>
31 January	Sectoral Planning	1 Oct to 31 Dec of previous year
28 February	Code of Conduct	1 Sept of previous year to end Feb
	Disabilities	1 March of previous year to end Feb
31 March	EUSSC Report	1 Sept of previous year to end Feb
	Complaints	1 Sept of previous year to end Feb
	E-Rate	1 Oct of previous year to 31 March
	Standard Terms and Conditions	1 April of previous year to 31 March
	Numbering Audit (if applicable)	Ongoing
30 April	Tariff	1 Oct of previous year to 31 March
	Sectoral Planning	1 January to 31 March
	Licence Fee Forecast Report	1 March of previous year to end Feb
	Universal Service and Access Obligations (if applicable)	1 Oct of previous year to 31 March
31 July	Sectoral Planning	1 April to 30 June
31 August	Licence Fee Report	1 March of previous year to end Feb
	Financial Report – USAF	1 March of previous year to end Feb
	Code of Conduct	1 March to 31 August
30 Sep	EUSSC Report	1 March to 31 August
	Complaints	1 March to 31 August



	E-Rate	1 April to 30 September
31 October	Tariff	1 April to 30 September
	Sectoral Planning	1 July to 30 September
	Universal Service and Access Obligations (if applicable)	1 April to 30 September