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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. R. 574

25 June 2010



REGULATIONS CONCERNING CERTAIN PROCEDURES FOR ICASA INSPECTORS

I, Paris Mashile, the Chairperson of the Independent Communications Authority of South Africa, (the Authority) hereby publish regulations in the attached Schedule, made and approved by the Authority under section 4 of the Electronic Communications Act (Act No.36 of 2005) read with sections 4(3)(j) and 17F(6) of the ICASA Act.



PARIS MASHILE
CHAIRPERSON
ICASA

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**REGULATIONS CONCERNING CERTAIN PROCEDURES FOR ICASA INSPECTORS**

Under the powers conferred on the Authority in terms of section 4 of the Electronic Communications Act, Act 36 of 2005, read with section 4(3)(j) and 17F(6) of the Independent Communications Authority of South Africa Act, (Act No. 13 of 2000), the Authority adopts the Regulations set out in the Schedule -

SCHEDULE**1. DEFINITIONS**

In these Regulations, unless stated otherwise or unless the context otherwise indicates a word or expression defined in the Act or the ECA has the meaning so assigned, and -

“**Act**” means the Independent Communications Authority of South Africa Act, (Act No. 13 of 2000);

“**CEO**” means the chief executive officer of the Authority appointed by the Council in terms of section 14 of the Act and, where applicable -

- (a) the person to whom the powers conferred on the Authority by section 32 of the ECA are delegated in terms of section 4(4)(e)(iii) of the Act and subject to section 4(4)(e) of the Act; or
- (b) the person to whom the power conferred on the Authority to monitor the electronic communications sector in ensuring compliance with the Act and underlying statutes in terms of section 4(3)(b) of the Act is delegated, in terms of section 4(4)(a)(iii) of the Act and subject to section 4(4)(e) of the

Act in so far as criminal offences in terms of the Act or underlying statutes are concerned;

"ECA" means the Electronic Communications Act, (Act 36 of 2005);

"inspector" means a person appointed by the Authority in terms of section 17F of the Act.

2. PURPOSE OF THESE REGULATIONS

The purpose of these Regulations is to prescribe the procedures to be followed by inspectors in relation to-

- (a) section 32 of the ECA; and
- (b) criminal offences committed in terms of the Act and underlying statutes.

3. PROCEDURES IN RESPECT OF THE POSSESSION OF RADIO APPARATUS

- (1) For the purposes of section 32(2) of the ECA, an inspector may exercise the powers conferred on inspectors by section 17G (2) of the Act.
- (2) Sections 17G (1), (3), (4), (5), (6) and (7) of the Act apply, with the necessary changes, to any entry of premises by an inspector in terms of section 32(2) of the ECA read with sub-regulation (1) for the purpose of conducting an inspection of radio apparatus.
- (3) Where a person is in contravention of section 32(1) of the ECA, the inspector must take that course of action, as specified in sections 32(3)(a) or (b) of the ECA, as is reasonable in the circumstances to ensure that the apparatus is not continued to be possessed in

contravention of section 32(1) of the ECA.

- (4) Where radio apparatus of a person described in sub-regulation (3) of these regulations has been seized in terms of section 32(3)(b) of the ECA and that person fails to apply for a requisite radio frequency spectrum licence within thirty (30) days from when the radio apparatus was seized or is not successful in obtaining the requisite radio frequency spectrum licence within ninety (90) days from the date on which the radio apparatus was seized, the Authority may make application to a court for an order directing that the radio apparatus in question -

- (a) be sold by the Authority to a holder of a radio frequency spectrum licence, if type approved by the Authority in terms of sections 35 and 36 of the ECA, and the proceeds of the sale, less any costs incurred by the Authority in holding the apparatus, be paid to the person from whom such apparatus was seized;
- (b) be returned to the person from whom it was seized and either sealed or altered and a permit issued in the manner contemplated in section 32(3)(a) of the ECA;
- (c) be declared forfeited to the Authority to be dealt with by the Authority as directed by the court.

4. PROCEDURES TO BE FOLLOWED BY INSPECTORS WHERE AN OFFENCE HAS BEEN OR IS BEING COMMITTED

- (1) Where an inspector, who is authorised to exercise the power conferred on the Authority in terms of section 4(3)(b) of the Act, is

of the *prima facie* view that a person has committed or is committing an offence, the inspector must, as soon as possible, prepare a report containing such details as are in the possession of the inspector with regard to the offence in question

- (2) The report contemplated in sub-regulation (1) of these regulations must be submitted to the CEO who must -
 - (a) determine on the basis of the information provided to him or her whether, in his or her *prima facie* view, an offence has been or is being committed; and
 - (b) where he or she is also of the *prima facie* view that an offence has been or is being committed, submit the report to the Council; provided that the CEO may, where appropriate having regard to the nature of the offence, elect to submit any such reports to the Council periodically.
- (3) The Council considers any report contemplated in sub-regulation (2)(b) of these regulations and the views of the CEO and decides whether to file a charge with the appropriate law enforcement agency against the person who allegedly committed or is committing the offence.
- (4) Where the alleged offence or offences by a person as contemplated in sub-regulation (3) of these regulations is in respect of a contravention, which is also a matter which inspectors may investigate and in respect of which the Authority may make an order, as contemplated in section 17E(2) of the Act, the Council may elect either to refer the matter back to an inspector for investigation in terms of section 17F(5)(c) of the Act or, where

applicable, refer the matter to the Complaints and Compliance Committee in terms of section 17C(1)(b) of the Act.

5. SHORT TITLE AND COMMENCEMENT

These regulations are called the ICASA Inspectors' Procedures Regulations, 2010, and comes into operation on the date of publication in the Gazette.
