

Full title	Payment of Annual Licence Fees by ECNS and ECS Licensees
Status	Into force on 1 April 2009
Applies to	All licensees
Source	Electronic Communications Act (36/2005): General Licence Fee Regulations General Notice 345, GG 32084, 1 April 2009 http://www.ellipsis.co.za/general-licence-fee-regulations/
Note	This advisory is intended as regulatory advice and not accounting advice.

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Overview

The General Licence Fee Regulations (“the Regulations”) set out various fees payable to ICASA, the most important of which is the annual licence fee payable by holders of IECNS and IECS licences. The Regulations do not cover annual fees payable in respect of other licences or permits, including radio frequency spectrum licences.

The Regulations apply for the period from 1 April 2009 and the method of and basis for calculating annual licence fees is different from that which applied to holders of VANS licences.

Calculation of annual licence fees

Holders of ECNS and ECS licences are, subject to the exemption set out below, obliged to pay annual licence fees to ICASA.

The formula to be employed in calculating your annual licence fees is the following:

Licence Fee payable = 1.5% of Gross Profit

where Gross Profit is defined as “revenue generated from Licensed Services less total costs directly incurred in the provision of such services”

The Regulations state that any legal entity which holds both an ECNS and/or an ECS licence may calculate the licence fee based on the firm’s Gross Profit as reflected in the audited annual financial statements / sworn financial statements of that firm.

This Advisory cannot set out a list of costs which are “directly incurred” in the provision of ECS and ECNS, but these would include:

- The cost of leasing lines, fibre capacity or other facilities, including high site and other collocation costs;
- The cost of self-providing facilities;
- Hardware costs relating to equipment used in the provision of services, such as servers and routers;
- Bandwidth costs; and
- Compliance costs.

This is of course a far from complete list, and there are many cost items which are not so clear-cut. As a general point of departure you should include anything which is a cost related to the provision of licensed services. Updates will be published from time to time in this regard.

Note:

1. There is an exemption from the obligation to pay annual licence fees in respect of licensees which satisfy 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”.
2. This threshold is currently set at R13 million, i.e. if the licensee’s annual turnover is less than R13 million they do not have to pay annual licence fees.
3. It is important to remember that this exemption applies in respect of total turnover and not turnover which is derived from Licensed Services, i.e. it applies to your entire business and not just that part of it which provides licensed services.

What are Licensed Services?

The Regulation simply defines “licensed services” as ECS and ECNS provided pursuant to a licence issued under Chapter 3 of the ECA and there is, unfortunately, no clear answer to this.

Under the Telecommunications Act ICASA regarded the following as VANS:

- Internet access including leased lines and dial-up access;
- Managed Data Network Services; and
- Subletting of telecommunication facilities as per the Ministerial Determination as published in GG 26763 of 7 September 2004. This would include sale of bandwidth.
- Electronic mail (e-mail) services: revenue from e-mail services should only be included where the telecommunication facility over which the service is being provided is registered in the name of the person providing the e-mail service.
- Web hosting services: revenue from web-hosting services should only be included where the telecommunication facility over which the service is being provided is registered in the name of the person providing the web hosting service.

It is reasonable to assume that the above, together with the provision of voice services, would be regarded as services licensed by an ECS licence.

An ECNS licence authorises two main types of service: (a) leasing of network capacity and facilities and (b) entering into agreements with third party resellers for the resale of that network capacity.

Deadline for payment

Licence fees must be paid annually in arrears, unless otherwise agreed in writing with ICASA. Should a licensee wish to pay quarterly in arrears it is possible to apply to ICASA for its written authorisation to do so.

Where paid annually, licence fees are payable within 6 months of the licensee's financial year end.

Where paid quarterly, licence fees are payable quarterly based on the licensee's financial year and are due within 45 calendar days from the end of the relevant quarter. Quarterly payments are required to be adjusted immediately the licensee obtains the relevant annual financial statement.

Manner of payment

At the time of making the payment the licensee must also submit a copy of their audited financial statements for the financial year in question. Where a licensee is paying quarterly the audited financial statements must still be submitted within 6 months of that licensee's financial year end.

Note: If a licensee is otherwise not legally obliged to have annual audited financial statements drafted, then they must submit financial statements signed and sworn to by their accounting officer.

Note: If a licensee falls within the exemption from the obligation to pay annual licence fees as set out above, it is still necessary to submit the required financial statements – this would be analogous to filing a “zero return” with the South African Revenue Services.

Payments must be made by electronic transfer or direct deposit into ICASA's bank account.

Bank: Nedbank
Branch: CCS - Pretoria
Branch Code: 146245
Account no: 1462 002 927
Type of account: Deposit account
Reference: Licensee name + ANN VANS LIC FEE

Transitional provisions

Unless a licensee's financial year end is 31 March, the fact that the Regulations came into force on 1 April 2009 will require, for the 2008/09 or 2009/10 financial year, that a licensee use the old method of calculating licence fees for any period before 1 April 2009 and the new method under the General Licence Fee Regulations for any period after 1 April 2009.

Examples:

Licensee A had its financial year end in respect of the **2008/2009 financial year** end on 30 June 2009. The licensee will need to calculate

- Annual licence fees for the period 1 July 2008 to 31 March 2009 under the old method used for VANS licences (even though that licensee may have held an ECS and/or ECNS licence during this period).
- Annual licence fees for the period 1 April 2009 to 30 June 2009 under the new method, as set out in this Advisory.

The resulting annual licence fee will have been payable by no later than 31 December 2009.

Licensee B had its financial year end on 28 February 2009. In respect of its **2009/2010 financial year** this licensee will need to calculate:

- Annual licence fees for the period 1 March to 30 March 2009 under the old method used for VANS licences (even though that licensee will have held an ECS and/or ECNS licence during this period).
- Annual licence fees for the period 1 April 2009 to 28 February 2010 under the new method, as set out in this Advisory.

The resulting annual licence fee will be payable by no later than 31 August 2010.

Interest

ICASA will charge interest in respect of any overdue payments in accordance with the table below.

The interest rate is set with reference to “the uniform interest rate set by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act 1 of 1999”. This is currently set at 14%.

Payment over due by	Applicable interest rate
14 days or less	14%
More than 14 days, less than 28 days	17%
More than 28 days	19%

Where a payment is more than 45 days overdue, a late payment penalty of 25% of the capital amount due will be payable in addition to the overdue amount.

Penalties for non-compliance

Where a possible breach of the Regulations by a licensee is referred to the ICASA Complaints and Compliance Commission (CCC) and determined by that body to be valid, ICASA may impose the following maximum fines:

- R1 000 000 for a failure to pay annual licence fees in the prescribed manner
- R1 000 000 for failure to pay the late payment penalty of 25% of the capital amount where an annual licence fee payment is more than 45 days overdue
- R100 000 for a contravention of any other regulation not listed above

ICASA may also impose additional R1 000 000 fines where it is found that a licensee has repeatedly contravened the Regulations.

ICASA Contacts

The following can be contacted if you have queries:

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Version history

Date	Document	Revisions
	Version 1.0	