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## GENERAL NOTICE

### NOTICE 1811 OF 1997

#### SOUTH AFRICAN TELECOMMUNICATIONS REGULATORY AUTHORITY



#### NOTICE IN RESPECT OF REGULATORY FRAMEWORK, VANS AND PTN'S SRF-0001

By virtue of the powers vested in the South African Telecommunications Regulatory Authority ("Authority") in terms of sections 34 and 96 of the Telecommunications Act, 1996 (Act No. 103 of 1996) ("Act"), the Authority hereby gives notice of its intention to make a regulation, which from 1 March 1998 shall govern the provision of Value Added Network Services ("VANS") and Private Telecommunications Networks ("PTN's").

Applications for VANS and PTN's licences by persons deemed to be licence holders in terms of sections 40 (1) (b) and 41 (1) (c) of the Act, and by Interim Licence holders shall be governed by this proposed regulation.

All interested persons are hereby invited to submit written representations on this intended regulation to the Authority not later than 16:00 on Friday, 20 February 1998. Persons who would like to make oral representations should state so in their written representations. Oral representations will be held on 23 and 24 February 1998 from 10:00 to 16:00 at Block B, Pin Mill Farm, 164 Katherine Street, Sandton.

Written representations may be posted, or hand delivered or telefaxed for the attention of Ms Elize van der Walt to—

SATRA  
Private Bag X1  
Marlboro  
2063

OR SATRA  
Block B  
Pin Mill Farm  
164 Katherine Street

OR SATRA  
Fax No.: (011) 448-2499  
+27(11)448-2499

Copies of representations submitted will be available to public during the normal hours of business of the Authority (Monday to Friday, except public holidays from 08:30 to 16:30) at a cost of R0,50 a page.

Persons who make representations may request that their representations not be made available to public, whereafter the Authority shall determine whether the submitted representation complies with the statutory provisions relating to confidentiality and shall inform such a person of its determination. Where the Authority determines that such representation does not justify confidentiality, the person that made such representation shall be entitled to withdraw such representation if (s)he does not agree with the Authority's determination.

Under both sections A (VANS section) and B (PTN's section) of this proposed regulation, paragraphs 1, 2 and 3 set out the particulars that the Authority requires from applicants in order to process applications.

## **SECTION A: VALUE ADDED NETWORK SERVICES (VANS)**

### **1. PARTICULARS OF THE APPLICANT**

The juristic nature and the particulars of the applicant shall be fully disclosed.

1.1 With respect to natural persons, the following particulars shall be disclosed:

- 1.1.1 The fact that the applicant is a natural person;
- 1.1.2 citizenship;
- 1.1.3 full names and surname;
- 1.1.4 sex;
- 1.1.5 identity number reflected in the identity document issued to such person by the responsible Government authority of the Republic of South Africa;
- 1.1.6 date of birth;
- 1.1.7 race;
- 1.1.8 business, residential and postal address;
- 1.1.9 address at which all legal processes are to be served; and
- 1.1.10 telephone and fax numbers.

1.2 The Authority shall be entitled to request written proof for any of the personal particulars disclosed.

1.3 With respect to juristic persons, the following particulars shall be disclosed:

- 1.3.1 The nature of the juristic person, i.e. whether company [in which event it should be disclosed whether it is a private, public or a company incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973)], or a close corporation, or a trust, or a partnership;
- 1.3.2 the personal particulars (as required under paragraph 1.1) of each shareholder, member, sponsor of a trust, trustee, a beneficiary of a trust, or partner;
- 1.3.3 the particulars of all holding or subsidiary companies, if any, should also be disclosed.
- 1.4 Limitation or the ownership and control of telecommunication services, if any, will be governed by the results of a separate public enquiry process prescribed in terms of section 52 of the Telecommunications Act, 1996 (Act No. 103 of 1996) ("Act"). The results of the said process shall be incorporated herein.

### **2. DESCRIPTION OF SERVICE**

- 2.1 It will suffice for an applicant to state that (s)he/it intends to conduct any or all of the services set out in section 40 (2) of the Act and under the definition of the VANS in the Licence issued to Telkom SA Limited in terms of section 40 of the Act.

- 2.2 Without limiting the generality of the definition set out in the said Telkom Licence, VANS shall mean any telecommunication service, other than the Public Switched Telecommunications Services and the Mobile Telecommunications Services, in respect of which conveyance of signals is no more than incidental to, and necessary for, the provision of that service and shall *inter alia* include—
- ☐ electronic data interchange;
  - ☐ electronic mail;
  - ☐ protocol conversion;
  - ☐ access to a data base or a managed data network service;
  - ☐ voice mail;
  - ☐ store-and-forward fax;
  - ☐ videoconferencing;
  - ☐ telecommunication related publishing and advertising services, whether electronic or print; and
  - ☐ electronic information services including, but not limited to, the Internet service provision.
- 2.3 Special regulatory framework for the peering by Internet access service providers will be governed by the results of a separate public enquiry process to be conducted in terms of section 27 of the Act. The results of the said process shall be incorporated herein.

### 3. TECHNICAL INFORMATION

- 3.1 The configuration and description of all technical aspects of the proposed VANS as well as the equipment to be used, should be fully disclosed. Without in any way limiting the generality of the foregoing, the disclosure in this respect should include the following:
- 3.1.1 The configuration of the proposed network;
  - 3.1.2 the description of all interfaces within the network;
  - 3.1.3 equipment not supplied by the Public Switched Telecommunications Network ("PSTN") operator which will be used;
  - 3.1.4 "Statement of Compliance", from a recognised approval house, to the effect that the equipment can be connected to the PSTN as well as a "Type Approval Licence" issued by the Authority in respect of such equipment; and
  - 3.1.5 infrastructure and equipment to be provided by a PSTN operator.

### 4. FEES AND CONTRIBUTIONS TO FUNDS

- 4.1 The amount of application fees to be charged will be made public after the Authority has completed the costing exercise, and such amount will be incorporated herein.
- 4.2 The amounts, the terms and manner of payment, as well as the period for which, licence fees will be payable, shall be governed by the results of a separate public process enquiry conducted in accordance with section 27 of the Act. The results of such a process will be incorporated herein.
- 4.3 The basis and manner of determination of contributions to the Universal Service Fund and to the Human Resource Development Fund as well as the dates when and manner in which such contributions shall become payable, shall be governed by the results of a separate public process enquiry conducted in accordance with section 27 of the Act. The results of the said enquiry shall be incorporated herein.

### 5. OBLIGATIONS OF THE VANS LICENCES

- 5.1 All persons licensed to provide VANS shall, until a date fixed by the Minister by notice in the *Gazette*—
- 5.1.1 provide the service in question by means of facilities obtained from Telkom SA Ltd ("Telkom");
  - 5.1.2 not be entitled to cede or assign rights to use facilities by means of which VANS are provided, nor sublet or part with control or otherwise dispose of the said facilities;
  - 5.1.3 not resell any capacity or any telecommunication facilities;
  - 5.1.4 not permit any VANS provided by it to be used for the carrying of voice; and
  - 5.1.5 interconnect only with Telkom.



- 5.2 Licensees shall be entitled to determine the content and format of its bills to its clients provided that such bills accurately reflect the types of services rendered, the units and the charge per unit made. The Licensee shall also be obliged to retain records and the basis thereof, which records may from time to time be inspected by the Authority.
- 5.3 Licensees shall establish procedures in terms whereof its clients can be assisted and complaints can be dealt with.
- 5.4 Licensees shall in consultation with the Authority, and within six months after obtaining a licence, prepare and publish a Code of Practice which will incorporate a set of guidelines intended to explain to the clients of the licensee, the manner and procedures in terms whereof complaints will be dealt with by the licensee.
- 5.5 The provisions of fair trading set out in clause 8 of the VANS licence issued to Telkom shall to the extent possible be applicable to all licences issued to other VANS operators.
- 5.6 Licensees shall provide the Authority with any relevant information or reports requested by the Authority, from time to time, for the purposes of exercising its powers, duties and functions under the Act.

## 6. OBLIGATIONS ON TELKOM

- 6.1 Telkom may submit a copy of terms and conditions intended to be used for all VANS operators who will require facilities from Telkom for an endorsement by the Authority that such proposed terms and conditions are not in conflict with the Act, and are not unreasonable.
- 6.2 In the event of Telkom not submitting its intended standard terms and conditions as contemplated in 6.1 herein, any of the parties (i.e. Telkom or the VANS operator) shall notify the Authority whenever a request for facilities is made, and the provisions of section 44 (3) of the Act shall be applicable. The guidelines contemplated under sections 44 (5) and 44 (6) shall be prescribed shortly.
- 6.3 Telkom shall—
  - 6.3.1 maintain accounting records that sufficiently show and explain transactions of its VANS activities separately from its PSTN activities, i.e. Telkom's VANS activities shall be subject to the so-called "COA/CAM" regime ("Chart of Accounts" and "Cost Allocation Manual");
  - 6.3.2 set up mechanisms to the satisfaction of the Authority that any of its employees, agents or representatives do not monitor or disclose any information, including traffic information, of the VANS operators who are its client for any purpose other than for the provision of service to that particular VANS operator or in accordance with the provisions of clause 3 of the VANS licence issued to Telkom;
  - 6.3.3 ensure that all VANS operators have equal access to its facilities. To this end Telkom shall, within one calendar month after these regulations become effective, file with the Authority—
    - 6.3.3.1 the manner and format in which Telkom wishes applications for facilities to be made to it;
    - 6.3.3.2 the period considered by Telkom to be a reasonable period within which each of the facilities requested, can be made available; and
    - 6.3.3.3 a tariff, and the period within which, Telkom intends to make such tariff applicable for each of the facilities that may be requested by the VANS operators.
- 6.4 The Authority shall thereafter request representations and comments from interested persons on such proposed manner and format of applications, the period within which facilities can be provided as well as on the applicable tariffs, whereafter the Authority shall decide upon and publish guidelines in this regard.
- 6.5 Failure by Telkom to comply with such guidelines will constitute cause for the Authority to make orders contemplated under section 44 (7) of the Act.

## **7. AMENDMENT OF A LICENCE**

- 7.1 A VANS licence can only be amended by the Authority on a written notice to a licensee wherein the proposed amendment together with the reasons therefor, are specified. Licensees shall be entitled to make representations with regard to the proposed amendments.

## **8. REVOCATION**

- 8.1 The Authority may revoke a licence on 90 (ninety) calendar days' notice in writing under any of the following circumstances:
- 8.1.1 Where the licensee agrees in writing with the Authority to such revocation;
  - 8.1.2 where the licensee repeatedly fails to comply with orders and directives of the Authority; and
  - 8.1.3 when a final order of liquidation or sequestration has been made against the licensee.

# **SECTION B: PRIVATE TELECOMMUNICATIONS NETWORK SERVICES (PTN'S)**

## **1. PARTICULARS OF THE APPLICANT**

The juristic nature and the particulars of the applicant shall be fully disclosed.

- 1.1 With respect to natural persons, the following particulars shall be disclosed:
- 1.1.1 The fact that the applicant is a natural person;
  - 1.1.2 citizenship;
  - 1.1.3 full names and surname;
  - 1.1.4 sex;
  - 1.1.5 Identity number reflected in the identity document issued to such person by the responsible Government authority of the Republic of South Africa;
  - 1.1.6 date of birth;
  - 1.1.7 race;
  - 1.1.8 business, residential and postal addresses;
  - 1.1.9 address at which all legal processes are to be served; and
  - 1.1.10 telephone and fax numbers.
- 1.2 The Authority shall be entitled to request written proof for any of the personal particulars disclosed.
- 1.3 With respect to juristic persons, the following particulars shall be disclosed:
- 1.3.1 The nature of the juristic person, i.e. whether company [in which event it should be disclosed whether it is a private, public or a company incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973)], or a close corporation, or a trust, or a partnership;
  - 1.3.2 the personal particulars (as required under paragraph 1.1) of each shareholder, member, sponsor of a trust, trustee, a beneficiary of a trust, or partner;
  - 1.3.3 the particulars of all holding or subsidiary companies, if any, should also be disclosed.

## **2. DESCRIPTION OF SERVICE**

- 2.1 It will suffice for the applicant to state that it intends to conduct a PTN for purposes principally or integrally related to its operations and to interconnect its network to that of a PSTN.

## **3. TECHNICAL INFORMATION**

- 3.1 The configuration and description of all technical aspects of the proposed PTN as well as the equipment to be used, should be fully disclosed. Without in any way limiting the generality of the foregoing, the disclosure in this respect should include the following:
- 3.1.1 The configuration of the proposed PTN;
  - 3.1.2 the description of all interfaces within the PTN;
  - 3.1.3 equipment not supplied by the Public Switched Telecommunications Network ("PSTN") operator which will be used;

- 3.1.4 "Statement of Compliance", from a recognised approval house, to the effect that the equipment can be connected to the PSTN as well as a "Type Approval Licence" issued by the Authority in respect of such equipment; and
- 3.1.5 infrastructure and equipment to be provided by the PSTN operator.

#### **4. FEES AND CONTRIBUTIONS TO FUNDS**

- 4.1 The amount of application fees to be charged will be made public after the Authority has completed a costing exercise, and such amount will be incorporated herein.
- 4.2 The amounts of, the terms and manner of payment of, as well as the period for which, licence fees will be payable, shall be governed by the results of a separate public process enquiry conducted in accordance with section 27 of the Act. The results of such a process will be incorporated herein.
- 4.3 The basis and manner of determination of contributions to the Universal Service Fund and to the Human Resource Development Fund as well as the dates when and manner in which such contributions shall become payable, shall be governed by the results of a separate public process enquiry conducted in accordance with section 27 of the Act. The results of the said enquiry shall be incorporated herein.

#### **5. OBLIGATIONS OF THE PTN LICENSEES**

- 5.1 All persons licensed to conduct PTN shall, until a date fixed by the Minister by notice in the *Gazette*—
  - 5.1.1 conduct the service in question by means of facilities obtained from Telkom SA Ltd ("Telkom") only, except where a private telecommunications network—
    - 5.1.1.1 system is installed on a single piece of land or contiguous pieces of land owned by the same person; or
    - 5.1.1.2 is maintained by Transnet or Eskom;
  - 5.1.2 not be entitled to cede or assign rights to use facilities by means of which PTN's are conducted, nor sublet or part with control or otherwise dispose of the said facilities;
  - 5.1.3 not resell any capacity or any telecommunication facilities;
  - 5.1.4 not permit telecommunication traffic entering the private network from the PSTN to re-enter the private network, or the traffic entering the PSTN from the private network to re-enter the PSTN;
  - 5.1.5 interconnect only with Telkom.
- 5.2 Licensees shall provide the Authority with any relevant information or reports requested by the Authority, from time to time, for the purposes of exercising its powers, duties and functions under the Act.

#### **6. OBLIGATIONS ON TELKOM**

- 6.1 Telkom may submit a copy of terms and conditions intended to be used for all PTN operators who will require facilities from Telkom for an endorsement by the Authority that such proposed terms and conditions are not in conflict with the Act, and are not unreasonable.
- 6.2 In the event of Telkom not submitting its intended standard terms and conditions as contemplated in 6.1 herein, any of the parties (i.e. Telkom or the PTN operator) shall notify the Authority whenever a request for facilities is made, and the provisions of section 44 (3) of the Act shall be applicable. The guidelines contemplated under sections 44 (5) and 44 (6) shall be prescribed shortly.
- 6.3 Telkom shall—
  - 6.3.1 set up mechanisms to the satisfaction of the Authority that any of its employees, agents or representatives do not monitor or disclose any information, including traffic information, of the PTN operators for any purpose other than for the provision of service to that particular PTN operator;

- 6.3.2 ensure that all PTN operators have equal access to its facilities. To this end Telkom shall, within one calendar month after these regulations become effective, file with the Authority—
  - 6.3.2.1 the manner and format in which Telkom wishes applications for facilities to be made to it;
  - 6.3.2.2 the period considered by Telkom to be a reasonable period within which each of the facilities requested, can be made available; and
  - 6.3.2.3 a tariff, and the period within which, Telkom intends to make such tariff applicable for each of the facilities that may be requested by the PTN operators.
- 6.4 The Authority shall thereafter request representations and comments from interested persons on such proposed manner and format of applications, the period within which facilities can be provided as well as on the applicable tariffs, whereafter the Authority shall decide upon and publish guidelines in this regard.
- 6.5 Failure by Telkom to comply with such guidelines will constitute cause for the Authority to make orders contemplated under section 44 (7) of the Act.

## **7. AMENDMENT OF A LICENCE**

- 7.1 A PTN licence can only be amended by the Authority on a written notice to a licensee wherein the proposed amendment together with the reasons therefor, are specified. Licensees shall be entitled to make representations with regard to the proposed amendments.

## **8. REVOCATION**

- 8.1 The Authority may revoke a licence on 90 (ninety) calendar day's notice in writing under any of the following circumstances:
    - 8.1.1 Where the licensee agrees in writing with the Authority to such revocation;
    - 8.1.2 where the licensee repeatedly fails to comply with orders and directives of the Authority; and
    - 8.1.3 when a final order of liquidation or sequestration has been made against the licensee.
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