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GENERAL NOTICE

NOTICE 1782 OF 2001



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA HEREBY, IN TERMS OF SECTION 27 OF THE TELECOMMUNICATIONS ACT OF 1996 ("THE ACT"), GIVES NOTICE TO THE PUBLIC OF ITS INTENTION TO HOLD AN ENQUIRY INTO THE PROPOSED REGULATION ON SUPPLEMENTARY FACILITIES LEASING GUIDELINES FOR PUBLIC SWITCHED TELECOMMUNICATION SERVICE AND UNDERSERVED AREAS AS ATTACHED IN THE SCHEDULE.

The Authority wishes to hear the views of the public and interested persons on the proposed regulation on supplementary facilities leasing guidelines for public telecommunication service and underserved areas, which will be required in terms of the Telecommunications Policy Directions issued by the Minister of Communications on 26 July 2001.

In view of the tight time frames for Telkom's Initial Public Offering (IPO) and the licensing of the Second National Operator (SNO), Third National Operator (TNO) and Sentech, ICASA intends to invoke s96(5)(b) of the Telecommunications Act, which allows the Authority to fast-track 'any regulation which the public interest requires to be made without delay' to expedite the making of the above-mentioned regulation, once the Telecommunications Amendment Bill is passed by Parliament and enacted by the President. It is in the public interest that Telkom's IPO should be successful and that there should be no delay in the licensing of the SNO, TNO and Sentech, because these activities are critical for the overall stability and growth of the South African economy.

Interested persons are hereby invited to submit written representations in relation to this enquiry to the Authority by no later than **13h00 on Friday, 24th of August 2001** by post, hand delivery or facsimile transmission. Where available a softcopy of the corresponding hardcopy of the representation should be e-mailed to PeterH@icasa.org.za.

The written representations must be addressed to **Mr Peter Hlapolosa**, Acting Head of Department: Economics and Analysis Unit, Independent Communications Authority of South Africa, Private Bag X1, Marlboro, 2063, or Block A, Pin Mill Farm, 164 Katherine Street, Sandton, Facsimile (011) 321-8536, Tel 011 321-8374 or Cell 083 326 3938.

Persons making written representations must clearly indicate in their representations if they wish to make oral representations including the duration thereof which shall not exceed one (1) hour. Should a request for such oral hearings be received then public hearings shall be held on the **7th of September 2001 at 09h30** at Block C, Pin Mill Farm, 164 Katherine Street, Sandton, Gauteng.

MANDLA LANGA
CHAIRPERSON
ICASA

SCHEDULE

SUPPLEMENTARY FACILITIES LEASING GUIDELINES FOR PUBLIC SWITCHED TELECOMMUNICATION SERVICE AND UNDER-SERVED AREAS

1. DEFINITIONS

- 1.1 In these Guidelines the following words will have the meaning given to them in General Notice 1260 of 2000 unless the context otherwise requires.
- 1.2 Words used in these Guidelines that are not defined by these Guidelines but are defined by the Telecommunications Act shall have the meaning given to them by the Telecommunications Act.
- 1.3 In these Guidelines, the following word will have the meaning given to it unless the context requires otherwise:

Element means any unbundled essential facility or portion thereof associated with the provision of a telecommunication service, including any network element or method of obtaining access to any network element, including physical collocation.

2. APPLICATION OF THESE GUIDELINES

- 2.1 These guidelines apply to the persons identified in section 2.2 and set out additional rights and obligations applicable to such persons when entering into a Facilities Leasing Agreement pursuant to General Notice 1260 of 2000. These guidelines do not:
 - a. limit the matters which may be dealt with in a Facilities Leasing Agreement — but provide a minimum set of issues which shall be addressed; or
 - b. prevent the parties to a Facilities Leasing Agreement from negotiating or entering into bilateral or multilateral agreements which deal with issues other than those addressed in these guidelines.
- 2.2 These guidelines shall apply to the following:
 - a. PSTS licensees;
 - b. Under-served area licensees; and
 - c. Sentech, only in relation to the provision by Sentech of international telecommunication services.
- 2.3 For purposes of these guidelines and the matters addressed herein, Telkom SA Limited is declared a major operator and its facilities leased in accordance with these guidelines shall be considered essential facilities.
- 2.4 For purposes of these guidelines and the matters addressed herein, persons listed in section 2.2 are public operators.

3. OBLIGATIONS OF FACILITIES PROVIDER

- 3.1 The facilities provider shall lease or otherwise provide all telecommunication services, telecommunication systems, telecommunication facilities and elements, in whole or in part on an unbundled basis, that are reasonably requested by the facilities acquirer.

- 3.2 Requests made by a facilities acquirer pursuant to section 3.1 shall be deemed reasonable if they serve the goals set forth in section 2 of the Act. A request for any of the following listed essential facilities, services, and elements shall be deemed reasonable unless the Authority determines, based upon clear and convincing evidence provided by the facilities provider, that such request is unreasonable under the circumstances of a particular request:
- a. the local loop and any portion thereof (sub-loop) between the facilities provider's end office or central office and the end-user's premises;
 - b. inside wiring within an end-user's premises owned by or under the control of the facilities provider;
 - c. network interface devices;
 - d. switching and switching capability;
 - e. collocation space and facilities, including access to power, heating, ventilation, air conditioning, and related amenities;
 - f. line conditioning;
 - g. interoffice transmission facilities;
 - h. signalling;
 - i. call-related databases, including elements necessary for number portability;
 - j. service management systems;
 - k. operator services;
 - l. directory information;
 - m. operations support systems;
 - n. maintenance, repair, and testing services;
 - o. rights of way, wayleaves or servitudes; and
 - p. space on or within poles, ducts, cable trays, manhole, hand-holds and conduits.
- 3.3 The list of services and elements set forth above in section 3.2 is not exhaustive and may be supplemented by the Authority by Notice in the Gazette.
- 3.4 The facility provider shall not place any restrictions on the resale of the services and facilities obtained by any person identified in section 2.2 pursuant to these guidelines and/or General Notice 1260 of 2000.
- 3.5 Any term or condition of any Facility Lease Agreement that violates the Act, section 3.4 or section 5.1 of General Notice 1260 of 2000 shall be null and void and have no legal effect to the extent of its illegality.
- 3.6 The provision of section 12 of General Notice 1260 of 2000 shall apply to the charges for services and facilities obtained pursuant to these guidelines.
- a. The provisions of sections 13.1 and 13.2 of General Notice 1260 of 2000 shall apply to the charges for services and facilities of major operators under these guidelines.

4. FACILITIES LEASING CHARGES

- 4.1 Major operators of essential facilities must lease essential facilities to any requesting public operator or underserved area licensee at the long run incremental cost (LRIC) of those essential facilities as calculated pursuant to the guidelines in this section 4.
- 4.2 LRIC is to be calculated on the basis of relevant forward looking economic costs calculated for an efficient telecommunications service provider and including a reasonable cost of capital.
- 4.2.1 LRIC shall include the long-run incremental cost of the element itself as described in subsection 4.2.2 and a reasonable allocation of the forward-looking common costs described in subsection 4.2.3.

4.2.2 The long-run incremental cost of an element is the forward-looking cost over the life of the element, which shall be determined as provided in the major operator's COACAM of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element.

- a. The long-run incremental cost of an element must be based on the use of the most efficient telecommunications technology currently in use and the lowest cost network configuration possible, given the existing location of the major operator's wire centres.
- b. The forward-looking cost of capital shall be used in calculating the long-run incremental cost of an element.
- c. The depreciation rates used in calculating forward-looking economic costs of elements shall be the depreciation rates set forth in the relevant section of the operator's COACAM.

4.2.3 Forward-looking common costs are economic costs efficiently incurred in providing a group of elements or services that cannot be attributed directly to individual elements or services.

- a. The sum of the allocation of forward-looking common costs for all elements and services shall equal the total forward-looking common costs associated with the relevant accounts from the COACAM.
- b. The following factors shall not be considered in a calculation of the forward-looking economic costs of an element:
 - i. Embedded costs. Embedded costs are the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications service providers.
 - ii. Opportunity costs. Opportunity costs include the revenues that a major operator would have received for the sale of telecommunications services, in the absence of competition from telecommunications service providers that purchase elements.
 - iii. Revenues to subsidize other services. Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

4.3 The LRIC per unit of an element equals the forward-looking costs of the element, as defined in section 4.2 divided by a reasonable projection of the sum of the total number of units of the element that the major operator is likely to provide to requesting telecommunication carriers and the total number of units of the element that the major operator is likely to use in offering its own services, during a reasonable measuring period.

For example, if an element is supplied on the basis of measurement, such as a cable, the unit would be a foot or a mile; if an element is supplied on the basis of a period of time, such as the duration of a call, the unit would be a minute; and if an element is supplied on the basis of an occurrence, such as a database query, the unit shall be a single such occurrence.

4.4 Element rates shall be structured consistently with the manner in which the costs of providing the elements are incurred.

4.4.1 The costs of dedicated facilities shall be recovered through flat-rate charges.

- 4.4.2 With respect to elements that a major operator offers on a flat-rate basis, the number of units is defined as the discrete number of elements (e.g. local loops or local switch ports) that the major operator uses or provides.
- 4.4.3 With respect to elements that a major operator offers on a usage-sensitive basis, the number of units is defined as the unit of measurement of the usage (e.g. minutes of use or call related database queries) of the element.
- 4.5 The LRIC of an element shall not exceed the stand-alone costs associated with the element. In this context, stand-alone costs are the total forward-looking costs, including corporate costs, that would be incurred to produce a given element if that element were provided by an efficient company that produced nothing but the given element.
- 4.6 Major operators of essential facilities must lease those essential facilities to private operators or service providers at no more than the major operator's fully allocated costs for those essential facilities.
- 4.7 A major operator must prove to the Authority that the rate for each element it offers does not exceed the LRIC per unit of providing the element, using a cost study that complies with the methodology set forth in this section 4.
- 4.7.1 The Authority may determine that the cost information available to it with respect to one or more elements does not support the adoption of a rate or rates that are consistent with the requirements set forth in this section 4. In that event, the Authority may establish a rate for an element that is consistent with the best current practices in the international market.
- 4.7.2 Any rate(s) established through the use of international best current practices shall be superseded once the Authority has completed review of a cost study that complies with the forward-looking economic cost based pricing methodology described in this section 4, and has concluded that such study is a reasonable basis for establishing element rates.
- 4.8 The LRIC of any element shall not include any costs for which recovery is already provided through other cost recovery mechanisms.

5. RESALE OF SWITCHED TELECOMMUNICATION SERVICES

- 5.1 Major operators must make their switched telecommunications services available for resale at wholesale rates.
- 5.2 Wholesale rates shall be based on retail rates less avoided costs and shall include a reasonable profit.
- 5.3 The wholesale rate for switched telecommunications services shall not include, inter alia, any of the following avoided cost items:
- administration;
 - marketing;
 - billing and collection;
 - customer service and public relations; and
 - all other such functions that are avoided because such functions are to be provided by the facilities acquirer.