



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 438

Pretoria, 18 December 2001
Desember

No. 22959



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

CONTENTS • INHOUD

No.		Page No.	Gazette No.
	GENERAL NOTICE		
	Independent Communications Authority of South Africa		
	<i>General Notice</i>		
2391	Telecommunications Amendment Act, 2001: Intention to prescribe regulations which set out the manner and form for submission of applications for under-serviced area licenses by small businesses (commonly referred to as SMME'S)	2	22959

GENERAL NOTICE**NOTICE 2391 OF 2001****INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
(ICASA)****NOTICE OF INTENTION TO PRESCRIBE REGULATIONS WHICH SET OUT
THE MANNER AND FORM FOR SUBMISSION OF APPLICATIONS FOR
UNDER-SERVED AREA LICENSES BY SMALL BUSINESSES
(COMMONLY REFERRED TO AS SMME'S)**

The Independent Communications Authority of South Africa ("the Authority") hereby gives notice that it intends making the following regulations in terms of section 40A (2)(a) and 96 (4) of the Telecommunications Amendment Act, 2001 with regard to the manner and form for submission of applications for under-serviced area licenses by small business operators.

Interested persons are hereby invited to submit written comments or written representations with regard to the proposed regulations, to be received by **no later than the 31st of January 2002** by post, hand delivery, facsimile transmission or by an electronic version in Microsoft Word 6.0 or lower for the attention of Mr Siyabonga Madyibi, Icasa Private Bag X10002, Sandton, 2146; Block C, Pin Mill Farm, 164 Katherine Street, Sandton; Facsimile (011) 321 8442 ; e-mail Madyibis@icasa.org.za

**MANDLA LANGA
CHAIRPERSON
ICASA**

SCHEDULE**PROPOSED REGULATIONS WHICH SET OUT THE MANNER AND FORM FOR SUBMISSION OF APPLICATIONS FOR UNDER-SERVED AREA LICENSES BY SMALL BUSINESSES (COMMONLY REFERRED TO AS SMME'S)****1. DEFINITIONS**

In these regulations, words shall have the same meaning assigned to them in the Telecommunications Act No. 103 of 1996 and the Telecommunications Amendment Act of 2001 (Act No. 64 of 2001) unless the context indicates otherwise –

2. INTRODUCTION

2.1 The Independent Communications Authority of South Africa, ("ICASA"), in accordance with section 40A of the Telecommunications Amendment Act No. 64 of 2001 (the "Act") hereby invites Small Businesses (SMME) to apply for an under serviced area licence in the following determined areas:

a) Northern Province

- (i) CBDC4 Bushbuckridge/Lowveld Municipality
- (ii) DC35 Capricon District

b) Kwazulu Natal

- (i) DC21 Ugu District Municipality
- (ii) DC26 Zululand District

c) Eastern Cape

- (i) DC15 OR Tambo Municipality
- (ii) DC12 Amatole District

d) Free State Province

- (i) DC20 Northern Free State District
- (ii) DC18 Lejweleputswa District

2.2 These regulations serve as an outline for the composition of an application for licenses to install and operate telecommunications network in areas as determined by the Minister (Gazette No) in terms of Section 40 A (1).

2.3 The Independent Communication Authority of South Africa (the Authority) will manage or participate in the licensing process as provided for in Section 40 A (1), (2) (a) and (b), (5) (6).

- 2.4 An applicant who has been awarded a licence in any one of these identified areas and who holds a controlling interest or ownership interest in such a licence will not be permitted to hold more than two licences and can only hold a minority shareholding interest in the second licence.
- 2.5 In evaluating the applications for such licences preference will be given to an applicant who has provided for effective participation and involvement of people or community groups within the locality of the area for which the licence is issued.

3. OBJECT OF THESE REGULATIONS

- 3.1 The objective of these regulations are:
 - 3.1.1 to invite prospective applicants to submit their bids regarding the obtaining of an under - serviced area license.
 - 3.1.2 to ensure that all applications are submitted in accordance with the manner prescribed in this document.
 - 3.1.3 to set out that the official language to be used for this process shall be English.
 - 3.1.4 to ensure that when preparing the applications, applicants must give due regard to Section 2 (objects of the Act)

4. THE SERVICE

- 4.1 The licence will be issued in terms of Section 40A of the Act as amended.
- 4.2 The licensee shall provide **any** telecommunications service as laid out in Section 40A (3) of the Act, which includes the provision of
 - 4.2.1 Voice over Internet Protocol,
 - 4.2.2 Fixed mobile service and
 - 4.2.3 Public pay telephones
- 4.3 The provision of any of the services listed in 4.2.1, 4.2.2 and 4.2.3 shall be limited to the geographic area determined by the Minister under Gazette No. 22954.
- 4.4 The licensee shall in terms of Section 40A (3), be permitted to interconnect with networks of public switched telecommunications service licenses and networks of mobile cellular telecommunication service licensees, who are duly licensed in terms of Section 36, 36 A, 36 B and 37 of the Act.
- 4.5 While certain technologies are to be preferred, no particular telecommunication service technology is mandated. Preferred technologies are those, which allow a wider choice of customer equipment, are widely accepted in other national markets, are electro-magnetically compatible with existing frequency spectrum users and are capable of transition to the provision of third generation services.

4.6 There will be no specific limitation on the frequencies to be assigned, to the successful applicants.

4.7 The licensee shall be entitled and required to construct, maintain and operate a network capable of the provision of the above mentioned services, to collaborate with public telecommunications operators and mobile operators whose networks are interconnected with that of the licensee and to provide subscribers with services in accordance with the terms and conditions of the licence.

5. THE APPLICATION PROCESS

5.1 Closing Date for Submitting Applications

5.1.1 The applications must be submitted to the Authority by no later than (.....at) South African time ("the closing date") together with payment of an application fee in the amount of R15 000-00 as a fee for the evaluation activities concerning the tender procedures and process.

5.2 Publication of Applicants

5.1.1 The Authority will publish in the **Government Gazette** the names of all applicants who have submitted their applications in compliance with these regulations per area within (30) days after the closing date.

5.1.2 No additional information may be submitted by the applicant after the closing date. However the Authority may require an applicant or an interested party who has lodged written representations to furnish the Authority, within the period specified by it, with such further information as may be reasonably necessary in order to consider the application.

5.3 Decision of the Authority.

5.3.1 The Authority shall finalise the adjudication process within (90) days after the closing date after submission of applications.

5.4 Questions and Answers relating to the applications.

5.4.1 Questions concerning the applications can only be submitted as follows:

- i) In writing (by e-mail or fax) no later than four weeks before the closing date to:

Project Director: SMME's

ICASA

164 Katherine Street

Pinmill Farm

Sandton, South Africa

Telephone: (011 321 8300)

Fax: (011 321)

E-mail: (INSERT)

ii) in English only

- 5.4.1 Questions on these regulations posed in any manner other than as set out in 5.4.1 above will not be answered or addressed by the Authority.
- 5.4.2 The identity of the Applicant posing questions will on request remain anonymous.
- 5.4.3 The questions and accompanying answers will be forwarded simultaneously to all applicants as set out in the gazette.
- 5.4.4 Questions will be answered within one week after receipt where possible.
- 5.4.5 If any legislative amendments occur during the application proceedings that might influence the contents of these regulations, all the applicants will be informed and will be allowed to adjust their applications accordingly.

5.5 Compliance /Admission of Applications

5.5.1 Applications will only be admitted if:

- 5.5.1.1 The application has been received on or before the closing date and time;
- 5.5.1.2 The application conforms to the requirements on the structure and composition as set out in these regulations; and
- 5.5.1.3 The payment of an application fee of R15 000-00 has been received on or before the closing date.

5.6 Acknowledgement of Receipt

- 5.6.1 The Authority shall acknowledge receipt of the applications in writing to the applicants.

6. SUBJECT AND CONTENT OF THE APPLICATION

- 6.1 The structure of the application submitted to the Authority in terms of these regulations shall include the following aspects:

6.2.1 Technical and Business Plan

- 6.2.2.1 A critical element of the application is the linkage between the consumer benefits and the proposed technical approach for delivering these benefits. It is expected that the applicant demonstrate both technical and commercial feasibility.

- 6.2.2.3 Technical feasibility will be demonstrated through a description of the network architecture and through an operational plan.

- 6.2.2.3 Commercial feasibility will be demonstrated through the development of a detailed business plan. The business plan will include references to the technical and

operational plans, which will also contain a discussion on marketing plans, investment plans, and financial projections.

6.2.2 Credibility

6.2.2.1 The Authority is seeking evidence and assurance of the applicant's abilities and commitment to deliver the promised benefits and implement the proposed technical and business plans. Applications should therefore give clear evidence of the applicant's abilities and resources in relevant areas such as:

- a) Experience in developing and managing telecommunication systems
- b) Experience in meeting consumer needs innovatively
- c) Experience in managing significant projects
- d) Access to financial resources.

6.2.2.2 Part of the evaluation will include the strength of the applicant's commitment to deliver on elements of its application. Application elements may become part of the licence conditions enforceable by the Authority

6.2.3 Financial Offer

6.2.2.1 Applicants are required to make a financial offer for the initial under serviced area licence fee.

6.2.2.2 Annual licence fees shall at a later stage be set by the Authority and such licence fee shall depend on the annual turnover of the licensee.

6.2.4 Consumer Benefits

6.2.4.1 Each applicant is expected to demonstrate his/her understanding of Consumer needs for communications. Each application should cover the following areas:

- a) **Service innovation and packaging.** Applicants should demonstrate their understanding of Consumer needs and the unique Consumer requirements in the under-serviced areas. The applicant should present its range of products, proposed tariff packages and its plans for marketing and distributing service.
- b) **Tariff level and flexibility.** A key element of delivering consumer benefit is the tailoring of tariffs to attract the widest practicable number of consumers. The applicant should describe its approach for setting tariffs, its liability to offer flexible pricing packages, and its commitments to a competitive market.
- c) **Quality of Service.** The applicants are expected to demonstrate understanding of consumer perception of service quality by describing quality of service targets they will undertake. The applicant should also propose a method for verifying achievement of quality of service targets.
- d) **Geographic Coverage.** The applicant should demonstrate an understanding of the geographic coverage requirements of potential consumers and the value

consumers will attach to targeted coverage levels described in their application. Applicants should commit to targets that they believe are both required and financially viable in under-serviced areas.

6.2.4.2 In addition to the above user benefits, it is believed that substantial benefits from under-serviced area licenses will also accrue to the South African economy. Such benefits might include:

- a) Employment generation in related industries
- b) Universal service and access
- c) Increase in Government taxation revenues
- d) Enhanced efficiency of the South African telecommunication sector.
- e) Increased local and regional competitiveness
- f) Skills development.

6.2.4.3 The applicant should give qualitative, and where possible, quantitative assessments of national benefits which will be derived from the award of under-serviced area licence to the applicant.

7. EVALUATION CRITERIA

7.1 The evaluation criteria to be applied by the Authority when considering applications flows generally from the objects of the Act. However in consideration of this licence there shall be particular regard to section 40A 2 (b) of the Telecommunications Amendment Act of 2001. It is set out therein that in consideration of applications in terms of this section due regard shall be given to applications by persons from historically disadvantaged groups and from applicants which are managed and controlled, or owned by women.

7.2 The following table set out below indicates the evaluation criteria and the associated evaluation points, on which the Authority shall evaluate valid applications. The evaluation points set forth below represent the weight of each criterion within the complete evaluation.

7.3 The evaluation of the applications will focus on the following factors, which collectively will demonstrate which applicant is best suited to provide telecommunication services in the under-serviced areas:

- 7.3.1 Ownership and control – applicants are to provide a detailed description of the direct and indirect ownership of the entity.
- 7.3.2 Financial Offer: amount offered as the initial licensee fee for the under serviced area licence.
- 7.3.3 Consumer Benefits : the benefits the applicant is offering to the consumer.

- 7.3.4 Business Plan: quality and content of the Business Plan focusing on tariffs, realism of the market plan, and financial forecasts.
- 7.3.5 Technical Plan: quality and content of the Technical Plan including a timetable for implementation of coverage targets, efficiency of network design, and plans for ensuring quality of service standards.
- 7.3.6 Experience and Credibility: applicants are to provide relevant experience on the provision of similar telecommunications services and projects.
- 7.3.7 Empowerment: applicants shall demonstrate the level of involvement of historically disadvantaged individuals or groups and women.
- 7.3.8 Additional features including:
- Access to emergency service numbers
 - Directory inquiry services
 - Billing feature
 - Arbitration and dispute settlement procedures for consumers.

Factors	Weight
Ownership and control	20
Financial Offer	15
Consumer benefits	05
Business Plan	15
Technical Plan	15
Empowerment	15
Additional features	05
Experience and Credibility	10
Total	100

8. EVALUATION OF APPLICATIONS

- 8.1 After the submission of applications in terms of these regulations the Authority will consider all valid applications in terms of the criteria set out in clause 7 above, in terms of the Act particularly section 40A and in terms of these regulations. Thereafter the Authority may either refuse an application or make a recommendation to the Minister that the Minister grant the application conditionally and suggest conditions for the Minister to impose.
- 8.2 The Minister may then grant the application in terms of section 40A (5) of the Telecommunications Amendment Act of 2001.
- 8.3 If the Minister grants the application, the Authority shall issue the licence in terms of section 40A (2)(a) of the Amendment Act. In such event the licensee will then be required to apply to the Authority in terms of section 30 (3) (b) of the Act for a frequency licence

9. Terms and Conditions

9.1 Selection of the Applicant and Issuing of the Licence

- 9.1.1 The Authority will issue a licence to the successful applicant upon acceptance by the applicant of the licence including the terms and conditions on which the licence is being issued.
- 9.1.3 If the successful applicant does not indicate the acceptance of the licence and its conditions within a month, the Authority will recommend to the Minister the next highest ranked applicant, based on the comparative evaluation of all applicants. The Authority will publicly announce such a decision.
- 9.1.4 After each of the successful applicants has informed the Authority of his/her acceptance of the licence and the related licence conditions, the licence issued will be published in the South African Government Gazette.
- 9.1.5 The licensee shall commence the provision of the licensed services within six months from the date when the licence is issued. In case of default the licensee may pay such penalties as may be levied by the Authority.

10. Duration of the licence

- 10.1 The licence granted will be for a period of (15) years with an extension period of (5) years.

11. Disclaimer

- 11.1 All expenses of the applicant related to preparing and submitting the application will be entirely the responsibility and for the account of the applicant. The Authority shall not reimburse these expenses, nor will it be liable for any direct or indirect damages suffered or to be suffered as a consequence thereof.

12. List of applicable laws, regulations and policy directions

- 12.1 Telecommunications Act No. 103 of 1996
- 12.2 Telecommunications Amendment Act No. 64 of 2001
- 12.3 The ICASA Act No. 13 of 2000
- 12.4 IBA Act No. 153 for 1993 as amended
- 12.5 Sentech Act No. 63 of 1996 as amended
- 12.6 Post Office Act No. 44 for 1958
- 12.7 Interception and Monitoring Act No. 127 of 1992
- 12.8 Labour Relations Act No. 55 of 1998
- 12.9 Employment Equity Act No. 55 of 1998
- 12.10 Constitution of the Republic of South Africa Act No. 108 of 1996

- 12.11. National Small Business Act No. 102 of 1996
- 12.12 Skills Development Act No. 97 of 1998
- 12.13 Skills Development Levies Act No. 55 of 1998
- 12.14 National Environment Management Act No. 107 of 1998
- 12.15 Promotion of Access of Information Act No. 2 of 2000
- 12.16 State of the Nation address of 2000 by the President 1996
- 12.17 White Paper on National Strategy for the Development and Promotion of Small Business
- 12.18 Licence issued to Telkom under Section 36 of the Telecommunications Act Notice No. 17984 of 7 May 1997
- 12.19 Competition Act 89 of 1998
- 12.20 National environment management Act No. 107 of 1998
- 12.21 Telecommunications Policy Directives issued by the Minister of Communications dated 15 August 2001.

THE APPLICATION FORM

1. APPLICANTS DETAILS-PART ONE

1.1	Full legal name of applicant and two representatives duly authorised to respond to queries/communications from the Authority
1.2	Physical address
1.3	Postal Address
1.4	Telephone numbers
1.5	E-mail address
1.6	Telefax number

2. OWNERSHIP AND CONTROL-PART TWO

2.1	Provide a description of the applicant's legal status
2.2	Provide certified copies of all relevant founding documentation
2.3	Provide details of the applicant's date of formation and how the applicant has developed since.
2.4	Provide a detailed description of all direct and indirect ownership interests in the applicant, including beneficial ownership interests.
2.5	Provide the Applicant's mission statements;
2.6	Provide a narration of the Applicants historical development with emphasis on its ownership patterns at each stage of growth;
2.7	Provide a complete and detailed description of all direct and indirect ownership interests in the applicant, including beneficial ownership interests;
2.8	Provide a brief description of all persons who hold a direct of indirect ownership interest in the applicant; at present or at any time during the existence of the Applicant.

2.9	Provide a complete and detailed description of all direct and indirect voting interests in the applicant, including beneficial voting interest;
2.10	Provide a complete and detailed description of all direct and indirect financial interests in the applicant, including beneficial financial Interest;
2.11	Provide a complete and detailed description of the governing body of the applicant, for example the board of directors, indicating how such governing body is appointed and procedures governing such body;

3. MANAGEMENT-PART THREE

3.1	Provide a brief description of the corporate management of the applicant;
3.2	Provide details of each member of the applicant's senior corporate management including directors, senior officers members, partners, trustees, as the case may be
3.3	Provide the following details: name, date of birth, identity number, address, nationality, occupation and a brief <i>curriculum vitae</i> , with Relevant experience

4. FINANCIAL ABILITY-PART FOUR

4.1	Provide details of how the applicant intends to fund the share of the capital expenditure and operations of the Licence, Applications must provide evidence of research and investigation on the costs in this regard. Detail the source of funding the applicant intend to access and provide detailed proof of such funding. The information required in terms of this item as set out below is premised on the applicant being a company. In the even that the applicant is a natural person or an entity other than a company, provide the required certificates, descriptions and proof that would be appropriate for the applicant, ensuring that the substantive information required has been provided.
4.2	Provide Director's certificates in respect of the amount of issued an paid – up share capital, the aggregate values of shareholders loans to the company and a detailed breakdown of such loans;
4.3	Provide a description of the method by which share/loan capital is to be raised;
4.4	Provide a description of any additional commitments or obligations of any

	of the applicant's shareholders to provide further funds to the applicant;
4.5	Provide proof that a shareholder referred to above is financially capable of providing such funds;
4.6	Bank Facilities: Provide a description of and proof of bank facilities or other credit arrangements, for example-Banker's certificate of the amount of deposits available; Banker's certificate of the amount of the overdraft facilities available; Banker's certificate of the amount of other credit facilities; or bank guarantees;
4.7	Other: Provide a description of and proof of any other funding sources;
4.8	Provide copies of the audited financial statements and auditor's reports thereon for the previous three years, together with the most recent interim results for the applicant and persons who have a direct ownership interest in the applicant.

5. BUSINESS PLAN-PART FIVE

	Provide a detailed description of the Business Plan by addressing the following matters:
5.1	Market projections and assumptions
5.2	Provide brief marketing strategy
5.3	Financial projections and assumptions.
5.5	Brief revenue projections
5.6	Capital cost
5.7	Cash flow projections

6. TECHNICAL PLAN-PART SIX

	Provide a detailed description of network technical plan on matters such as:
6.1	Conceptual plan and network hierarchy
6.2	Network planning principle
6.3	Quality of service
6.4	Metering and billing
6.5	Operations and maintenance

6.7	Network development schedule
6.8	Network sharing with other operators
6.9	Procurement Plan

7. SERVICE IMPLEMENTATION – PART SEVEN

7.1	Provide details of the services to be provided including, without limitation, voice telephone services, data services, emergency services, directory services, operator assisted services, and value added network services and provide details of implementation time frames.
7.2	Provide details of plans that cover matters such as the distribution of handsets and accessories and the servicing of such equipment.
7.3	Provide details of how network usage will be metered and of billing systems.

8. EMPOWERMENT – PART EIGHT

8.1	Provide details of all direct and indirect ownership and control interests, without limitation to, voting, financial, governing and management interests held by persons from historically disadvantaged groups, in total and broken down by particular categories, including, without limitation, black persons, women and disabled persons.
8.2	Provide complete details of the financial contributions to the applicant by persons from historically disadvantaged groups who hold ownership or control interests in the applicant. Also set out how dividends will be distributed to those empowerment groups that form part of the applicant.
8.3	Provide details of all positions of senior management held by persons from historically disadvantaged groups, in total and broken down by particular categories including, without limitation, black persons, women and disabled persons.
8.4	Provide details in respect of proposed staffing plans with regard to persons from historically disadvantaged groups.
8.5	Provide details of applicant's employment equity plans.
8.6	Provide details of plans to contribute to knowledge and skills transfer to persons from historically disadvantaged groups.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 334-4508, 334-4509, 334-4510

Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504

Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737

Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510

Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504

Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737

Kaapstad-tak: Tel: (021) 465-7531