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

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## GENERAL NOTICES

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### NOTICE 2392 OF 2001

**Notice in terms of Section 5(4)(c) of the Telecommunications Act.**

I, Ivy Matsepe-Casaburri, Minister for Communications, hereby publish the following amended policy direction on Global Mobile Personal Communications by Satellite (GMPCS), contained in the schedule.



**DR. IVY MATSEPE-CASABURRI**

**MINISTER**

**SCHEDULE****POLICY DIRECTION ON GLOBAL MOBILE PERSONAL  
COMMUNICATIONS BY SATELLITE IN THE  
REPUBLIC OF SOUTH AFRICA.****ISSUED BY THE MINISTER COMMUNICATIONS  
IN TERMS OF SECTION 5 OF  
THE TELECOMMUNICATIONS ACT 103 OF 1996.**

In this Policy Direction, unless the context requires otherwise,

- (i) All words and expressions shall have the same meanings ascribed to them in the Telecommunications Act 103 of 1996 and the Telkom Licence;
- (ii) Words and expressions not defined in this policy direction or the Telecommunications Act shall be as defined in the International Telecommunications Union, Memorandum of Understanding (Geneva, 14 February 1997) and, the relevant ITU Recommendations on GMPCS, to the extent that such definitions are not inconsistent with the terms of the Republic's telecommunication law and regulations;

**1 DEFINITIONS**

- (a) **"GMPCS"** means Global Mobile Personal Communications by Satellite.;
- (b) **"GMPCS system"** means any satellite system, whether fixed or mobile, broadband and/or narrowband, global or regional, geostationary or non-geostationary, existing or planned, providing telecommunication services directly to end users from a satellite or network or constellation of satellites, other than and excluding those elements of the Public Switched Telecommunication Network (PSTN) by means of which, inter alia, satellite telecommunication services are provided. Such elements include, but are not limited to V-Sat and satellite newsgathering network infrastructure.
- (c) **"GMPCS service"** means the transmission of any type of telecommunications service - voice, data, fax, or paging - which is provided directly to end users, anywhere on earth, by means of a GMPCS system.
- (d) **"GMPCS system operator"** means the person authorised by the ITU to use particular space segments and radio frequencies and who is responsible for the management, administration and operation of a GMPCS system;
- (e) **"GMPCS country operator"** means any person authorised by a GMPCS system operator and includes an authorised agent, charged with the responsibility for the management and administration of a GMPCS service provided in the Republic;



- (f) **"GMPCS earth gateway station"** means a land based facility used to establish, maintain, validate and control communication with the space segment of a GMPCS system utilising feeder links and which is interconnected to one or more telecommunication system(s);
- (g) **"GMPCS service licence"** means a telecommunications service licence issued to a GMPCS country operator in terms of this policy direction and the Act, and entitling the holder to provide a GMPCS service in the Republic;
- (h) **"GMPCS earth gateway operator"** means a person which is authorised by a GMPCS system operator, or an authorised agent of a GMPCS system operator and licensed by The Authority in terms of the Act, as the entity with responsibility for the management and administration of a GMPCS earth gateway station situated in the Republic;
- (i) **"GMPCS earth gateway service"** means the service provided by a GMPCS earth gateway station in establishing, maintaining, validating and controlling communication with the space segment of a GMPCS system utilising feeder links and which is interconnected to one or more telecommunication systems;
- (j) **"GMPCS earth gateway licence"** means a telecommunication service licence, issued to a GMPCS earth gateway operator in terms of the Act and subject to 9.2, entitling the holder to operate a GMPCS earth gateway station in the Republic. Should the GMPCS earth gateway station provide telemetry, tracking, and command functions, such licence may also entitle the holder to provide such telemetry, tracking, and command functions;
- (k) **"Republic"** means the Republic of South Africa;
- (l) **"The Act"** means the Telecommunications Act 103 of 1996;
- (m) **"The Authority"** means the Independent Communications Authority of South Africa (ICASA), established in terms of section 3 of the Independent Communications Authority of South Africa Act, Act No 13 of 2000.
- (n) **"The Telkom Licence"** means the public switched telecommunications service Licence issued to Telkom SA Ltd on 7 May 1997 to provide telecommunication services in terms of section 36 of the Act.
- (o) **"User terminal equipment"** means a GMPCS terminal, registered with the ITU, by the GMPCS system operator, and includes GMPCS hand-held and other portable terminals, vehicle-mounted terminals, vessel or platform mounted terminals at sea or in the atmosphere (platforms being inclusive of aeronautical or maritime buoys), fixed private terminals, fixed or mobile public pay telephone terminals and any other type of GMPCS terminal which may be used by an end user to send and/or receive telecommunication traffic directly to and/or from a satellite or system of satellites;

## **2 INTRODUCTION**

- 2.1 The introduction and provision of GMPCS services in the Republic has inter alia the following potential benefits for the Republic and its citizens:
  - 2.1.1 The provision of telecommunication services in under-served areas;
  - 2.1.2 making progress towards the provision of universal access and universal service,
  - 2.1.3 the development of the Republic's telecommunications infrastructure,
  - 2.1.4 ensuring that the Republic's telecommunications infrastructure remains abreast of and integrated with the world telecommunications infrastructure,
  - 2.1.5 broadening the range of telecommunication services in the Republic,
  - 2.1.6 the integration of the Republic's economy into the global economy,
  - 2.1.7 the promotion of investment in the Republic,
  - 2.1.8 the provision of opportunities for local businesses to participate in global business; and
  - 2.1.9 the promotion of small, medium and micro enterprises (SMMEs).
- 2.2 It is expected that the implementation of GMPCS systems and services will contribute to the achievement of the objectives listed in Section 2 of the Act.
- 2.3 GMPCS has received ITU support, and the ITU has and will allocate appropriate radio frequency spectrum to GMPCS system operators globally.
- 2.4 The Republic wishes to comply with its obligations to the ITU and other international telecommunication authorities and structures.
- 2.5 It is in the interests of the Republic's citizens that telecommunication services of an international standard be provided in the Republic.
- 2.6 This policy direction accordingly seeks to facilitate the early implementation of GMPCS services within the Republic in such a manner that the benefit of such services for the public is maximised.
- 2.7 This policy direction is drafted in accordance with the Republic's international obligations, and in particular with those applicable to or impacting upon GMPCS.

### **3 OBJECTIVES**

The objectives of this policy direction are:

- 3.1 to allow for the introduction of GMPCS into the Republic as and when GMPCS services become available,
- 3.2 to ensure that GMPCS services are provided in a manner consistent with the broad public interest,
- 3.3 to ensure that the needs of users of GMPCS services are satisfied on a fair and non-discriminatory basis,
- 3.4 to enhance telecommunications between people and organisations within the Republic and those in the Republic and other countries,
- 3.5 to contribute to making progress towards the goals of universal access and universal service, especially in remote and rural areas,
- 3.6 to promote the economic development of the Republic and other countries in the Southern African region,
- 3.7 to contribute to the range of services available to the public, so that the different needs of consumers are served,
- 3.8 to provide for competition between different GMPCS systems and services and associated user terminal equipment manufacturers, distributors, dealers and service providers, as a means of ensuring a range of services of good quality and affordable prices,
- 3.9 to facilitate, where possible, participation in the enterprise of GMPCS by local groups, companies and individuals,
- 3.10 to ensure the efficient use of the radio frequency spectrum,
- 3.11 to endeavour to ensure that no aspect of GMPCS violates the sovereign rights of the Republic or any other country,
- 3.12 to promote the empowerment of historically disadvantaged people,
- 3.13 to retain control over national telecommunication policy objectives, assure the integrity of the legal and regulatory framework.
- 3.14 To endeavour to ensure that the interests of countries in the Southern African region are respected through appropriate regulation of GMPCS services and GMPCS earth gateway services.

#### **4 PROVISION OF GMPCS SERVICES AND GMPCS GATEWAY SERVICES**

- 4.1 Subject to the Act, a single entity may hold more than one licence, and in particular, a single entity may hold both a GMPCS service license and a GMPCS gateway licence simultaneously.

#### **5 COMPETITION BETWEEN GMPCS SYSTEMS AND SERVICES**

- 5.1 The Authority shall endeavour to promote competition between GMPCS systems and services and shall seek to create an environment in which all GMPCS service providers can compete fairly.
- 5.2 Appropriate frequency assignments shall be made to licensees to facilitate and promote fair competition.
- 5.3 There shall be no limitation on the number of GMPCS service licences or GMPCS gateway licences, which may be issued by the Authority, provided that appropriate radio frequency spectrum is available.

#### **6 PROMOTION OF THE SOCIAL OBJECTIVES SET OUT IN THE ACT**

- 6.1 The Authority must ensure that the applicant will contribute in a satisfactory manner to the achievement of social objectives, taking into account applicable commercial considerations.
- 6.2 The Authority may assist an applicant regarding the development of an appropriate plan for the achievement of the social objectives contained in the Act.

#### **7 TARIFFS FOR SERVICES**

- 7.1 The Authority shall ensure that the tariffs for GMPCS services are market related.

#### **8 REQUIREMENTS FOR USER TERMINAL LICENCES**

- 8.1 The Authority shall give effect to the Republic's international obligations in terms of any Memorandum of Understanding or other applicable agreement with respect to GMPCS user terminal equipment.
- 8.2 The Authority shall ensure that user terminals comply with, and are registered in terms of the requirements of the GMPCS-MOU.

## **9 INTERCONNECTION AND BYPASS**

- 9.1 All earth gateway stations used for the provisions of GMPCS earth gateway services in the RSA shall be interconnected to the PSTN.**
- 9.2 For the period referred to in section 36(3) of the Act, and paragraph 3.1 of the Telkom licence, Telkom shall be responsible for the operation of all GMPCS earth gateway stations and the provision of all GMPCS earth gateway station services in the Republic, unless in the Authority's view, they are unable or unwilling to do so.**
- 9.3 The provisions of 9.1 and 9.2 above shall not apply in respect of the INMARSAT services that were in operation before 1 April 1998**
- 9.4 It is recognised that this policy direction and the Act precludes bypass of the PSTN and therefore certain GMPCS operators cannot be licensed until such time as The Act is properly amended to accommodate the licensing of such operators.**



## Annexure A

GMPCS POLICY  
AMENDMENTS

As Published	As Amended	Reason
<p>b.) "GMPCS system" means any satellite system, whether fixed or mobile, broadband and/or narrowband, global or regional, geostationary or non-geostationary, existing or planned, providing telecommunication services directly to end users from a satellite or network or constellation of satellites, other than and excluding those elements of the Public Switched Telecommunication Network (PSTN) by means of which, inter alia, satellite telecommunication services are provided. Such elements include, but are not limited to V-Sat and satellite news gathering network infrastructure and Intelsat.</p>	<p>"GMPCS system" means any satellite system, whether fixed or mobile, broadband and/or narrowband, global or regional, geostationary or non-geostationary, existing or planned, providing telecommunication services directly to end users from a satellite or network or constellation of satellites, other than and excluding those elements of the Public Switched Telecommunication Network (PSTN) by means of which, inter alia, satellite telecommunication services are provided. Such elements include, but are not limited to V-Sat and satellite newsgathering network infrastructure.</p>	<p>Removed: "and Intelsat" at the end of the definition as it is superfluous</p>
<p>c.) "GMPCS service" means a telecommunication service, <u>new and distinct from existing telecommunication services as defined in the Telecommunications Act 103 of 1996</u>, which is provided directly to end users by means of a GMPCS system.</p>	<p>"GMPCS service" means the transmission of any type of telephone service - voice, data, fax, or paging - which is provided directly to end users, anywhere on earth, by means of a GMPCS system.</p>	<p>The definition was incorrect, as GMPCS services cannot be considered "new and distinct from existing telecommunication services as defined in the Act."</p>
<p>h.) "GMPCS earth gateway operator" means a person which is authorised by a GMPCS system operator, or an authorised agent of a GMPCS system operator, as the entity with responsibility for the management and administration of a GMPCS earth gateway station situated in the Republic;</p>	<p>"GMPCS earth gateway operator" means a person, which is authorised by a GMPCS system operator, or an authorised agent of a GMPCS system operator, <u>and licensed by The Authority in terms of the Act</u>, as the entity with responsibility for the management and administration of a GMPCS earth gateway station situated in the Republic;</p>	<p>Added "and licensed by the authority" for the sake of clarity</p>
<p>j.) "GMPCS earth gateway licence" means a telecommunication service licence, issued to a GMPCS earth gateway operator in terms of the Act, entitling the holder to operate a GMPCS earth gateway station in</p>	<p>"GMPCS earth gateway licence" means a telecommunication service licence, issued to a GMPCS earth gateway operator in terms of the Act <u>and subject to 9.2</u>, entitling the holder to operate a GMPCS earth gateway station in the Republic. Should the GMPCS earth gateway</p>	<p>Added "and subject to 9.2 at the request of ICASA for the sake of clarity</p>

As Published	As Amended	Reason
<p>the Republic. Should the GMPCS earth gateway station provide telemetry, tracking, and command functions, such licence may also entitle the holder to provide such telemetry, tracking, and command functions.</p>	<p>station provide telemetry, tracking, and command functions, such licence may also entitle the holder to provide such telemetry, tracking, and command functions.</p>	
<p><b>9 INTERCONNECTION AND BYPASS</b></p>	<p><b>9 INTERCONNECTION AND BYPASS</b></p>	<p>Changed the order and structure of numbering as the impression was created that interconnection was only required for the period of Telkom's exclusivity as stated in 9.1</p>
<p>9.1 For the period referred to in section 36(3) of the Act, and paragraph 3.1 of the Telkom licence:</p>	<p>9.1 All earth gateway stations used for the provisions of GMPCS earth gateway services in the RSA shall be interconnected to the PSTN.</p>	
<p>9.1.1 All earth gateway stations used for the provisions of GMPCS earth gateway services in the RSA shall be interconnected to the PSTN.</p>	<p>9.2 For the period referred to in section 36(3) of the Act, and paragraph 3.1 of the Telkom licence, Telkom shall be responsible for the operation of all GMPCS earth gateway stations and the provision of all GMPCS earth gateway station services in the Republic, <u>unless in the Authority's view, they are unable or unwilling to do so.</u></p>	<p>Added: "unless in the Authority's view" at the request of ICASA.</p>
<p>9.1.2 Telkom, Sentech and the SNO shall be responsible for the operation of all GMPCS earth gateway stations and the provision of all GMPCS earth gateway station services in the Republic, unless it indicates in writing that it is unable or unwilling to do so.</p>	<p>9.3 The provisions of 9.1 and 9.2 above shall not apply in respect of the INMARSAT services that were in operation before 1 April 1998</p>	<p>Removed reference to <b>Sentech</b> and the <b>SNO</b> as they can only be licensed at the end of Telkom's exclusivity period and the intent was that Telkom operates earth gateway stations during its exclusivity period to ensure compensation in case of bypass.</p>
<p>9.1.3 It is recognised that this policy direction and the Act precludes bypass of the PSTN and therefore certain GMPCS operators cannot be licensed until such time as The Act is properly amended to accommodate the licensing of such operators.</p>	<p>9.4 It is recognised that this policy direction and the Act precludes bypass of the PSTN and therefore certain GMPCS operators cannot be licensed until such time as The Act is properly amended to accommodate the licensing of such operators.</p>	
<p>9.2 The provisions of 9.1 above shall not apply in respect of the INMARSAT services that were in operation before 1 April 1998.</p>		

**NOTICE 2393 OF 2001****TELECOMMUNICATIONS ACT, 1996 (ACT No. 103 OF 1996)**

In terms of section 96(6) of the Telecommunications Act, 1996 (Act No. 103 of 1996), I, Ivy Matsepe-Casaburri, Minister of Communications hereby approve and publish the regulations in the Schedule made by the Independent Communications Authority of South Africa under section 96(5)(b) read with section 88(1), section 88(2) and section 88(3) of the said Act.



**Ivy Matsepe-Casaburri**  
**Minister of Communications**

**SCHEDULE****Definitions**

In this Schedule any expression to which a meaning has been assigned by the Telecommunications Act, 1996 (Act 64 of 2001) (hereinafter referred to as, "the Act") and the Global Mobile Personal Communication by Satellite (GMPCS) Policy Direction No. \_\_\_\_\_ shall have the same meaning unless the context otherwise indicates;

**2. Application Fee**

The application fee in respect of applications for licences to provide GMPCS service or GMPCS earth gateway service is R50 000,00 (fifty thousand rand) payable by way of a bank guaranteed cheque, crossed and marked, "Not Transferable", and made out to the Independent Communications Authority of South Africa.

**3. Time when licence fees shall be paid**

A licence fee shall be paid on the date of issue of the licence and annually thereafter.

**4. Licence fee**

- (a) A licence fee for the GMPCS Service licence shall be R75 000 000, 00 (seventy five million rand).

(b) The annual licence fee for the GMPCS service licence shall be 0.075% of annual turnover.

**5. Penalty for a late payment of a licence fee**

Licence fees that are overdue will attract interest charges at the applicable prime rate as determined by Nedbank SA.



**MANDLA LANGA**  
**CHAIRPERSON, ICASA**

**Date: 8 December 2001**

**NOTICE 2394 OF 2001****TELECOMMUNICATIONS ACT, 1996 (ACT No. 64 OF 2001)**

In terms of section 96(6) of the Telecommunications Act, 1996 (Act No. 64 of 2001), I, Ivy Matsepe-Casaburri, Minister of Communications hereby approve and publish the regulations in the Schedule made by the Independent Communications Authority of South Africa under section 96(5)(b) read with section 34(2)(a)(v) of the said Act.



**Ivy Matsepe-Casaburri**  
**Minister of Communications**

**SCHEDULE****Definitions**

In this Schedule any expression to which a meaning has been assigned by the Telecommunications Act, 1996 (Act 64 of 2001) (hereinafter referred to as, "the Act") and the Global Mobile Personal Communication by Satellite (GMPCS) Policy Direction No. \_\_\_\_\_ shall have the same meaning unless the context otherwise indicates;

**1. Categories of licences and the telecommunication services authorised thereby**

(1) The Authority may on application grant and issue the following categories of telecommunication licences:

- (a) GMPCS service licence.
- (b) GMPCS earth gateway service licence.

(2) The telecommunication services which shall be authorised by the licences contemplated in regulation 2(1) above are:

- (a) GMPCS service.
- (b) GMPCS earth gateway service.



**MANDLA LANGA**  
**CHAIRPERSON, ICASA**

**Date: 8 December 2001**



**NOTICE 2395 OF 2001**

I, Ivy Matsepe-Casaburri, Minister for Communications, hereby publish the following invitation to apply for a telecommunications Service licence by means of Global Mobile Personal Communications by Satellite (GMPCS) service as prescribed in terms of section 34(2)(a)(v) of the Telecommunications Act, 1996 (Act No. 103 of 1996)



**DR. IVY MATSEPE-CASABURRI**

**MINISTER**

## **1. THE INVITATION**

- 1.1. In terms of section 34(2)(a)(v) of the Telecommunications Act 1996, applications are hereby invited by the Minister of Communications, for licences to operate a telecommunication services by means of Global Mobile Personal Communications by Satellite (GMPCS).

## **2. ABBREVIATIONS/DEFINITIONS**

- 2.1. Terms defined in the Telecommunications Act of 1996, the GMPCS policy direction and used in this Invitation to Apply shall have the meaning assigned to them therein.
- 2.2. Unless the context clearly indicates otherwise, the following abbreviations and/or definitions shall have the meaning set forth below:

<b>"Act"</b>	means the Telecommunications Act 103 of 1996; as amended.
<b>"Application"</b>	means the application to be submitted by an Applicant in response to this ITA and as further described in this ITA.
<b>"Application Process"</b>	means the application and all subsequent events pursuant to applicable law up to the award of the Licences.
<b>"DOC" or "Department"</b>	means the Department of Communications.
<b>GMPCS"</b>	means Global Mobile Personal Communications by Satellite.
<b>"GMPCS Service"</b>	<b>"GMPCS service"</b> means the transmission of any type of telecommunications service - voice, data, fax, or paging - which is provided directly to end users, anywhere on earth, by means of a GMPCS system.
<b>"GMPCS system"</b>	<b>"GMPCS system"</b> means any satellite system, whether fixed or mobile, broadband and/or narrowband, global or regional, geostationary or non-geostationary, existing or planned, providing telecommunication services directly to end users from a satellite or network or constellation of satellites, other than and excluding those elements of the Public Switched Telecommunication Network (PSTN) by means of which, inter alia, satellite telecommunication services are provided. Such elements include, but are not limited to V-Sat and satellite news-gathering network infrastructure.

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<b>"Historically Disadvantaged Groups"</b>	Shall have the same meaning as defined in the Employment Equity Act.
<b>"ITA"</b>	means this Invitation to Apply, including the appendices thereto.
<b>"Licences"</b>	means the Licences for the provision of GMPCS service to be issued pursuant to the Act.
<b>"Minister"</b>	means the Minister of Communications;
<b>"Policy Direction"</b>	Means the policy direction as published in Government Gazette No 22170 of 23 March 2001 and amendment thereof.
<b>"ICASA"</b>	means the Independent Communications Authority of South Africa (ICASA), established in terms of section 3 of the Independent Communications Authority of South Africa Act, Act No 13 of 2000, or its legal successor.

**3. DESCRIPTION OF ITA DOCUMENTS**

- 3.1. The ITA Documents consist of this ITA, including Appendices, together with any other written communication(s) signed by a duly authorised representative of the Ministry of Communications which expressly states that such communication is included as part of the ITA Documents.
- 3.2. The ITA Documents are and remain the property of the Ministry of Communications.

**4. INFORMATION PROVIDED - DISCLAIMER**

- 4.1. Nothing contained in the ITA Documents or otherwise may be relied on as a promise or representation, whether as to past, present or future.
- 4.2. The ITA Documents do not purport to contain all of the information that may be required to evaluate the Application Process.
- 4.3. The ITA Documents supersede all information concerning the Application Process, which may have been previously communicated to Applicants by the Relevant Authorities whether orally or in writing or otherwise.
- 4.4. The ITA Documents are not intended to form the basis of a decision to apply for Licences or any other investment decision and does not constitute an offer, invitation or recommendation to enter into any transaction or to make any decision.

**5. GOVERNING LAW**

- 5.1. The ITA Documents, the Application Process and the actions arising there from shall be governed by and construed according to the law of the Republic of South Africa.

**6. GENERAL INSTRUCTIONS TO APPLICANTS**

- 6.1. **Submission of Written Questions by Applicants and Answers Thereto**

6.1.1. All enquiries by Applicants relating to the Application Process shall be addressed in writing by Applicants to the office of the Chairperson, ICASA, at facsimile number: (011) 321 8547 or to the address listed in 6.2.1 below. Such enquiries should identify the Application Process, the Applicant and provide e-mail, facsimile and telephone contact details of such Applicant. ICASA reserve the right not to respond to frivolous enquiries or enquiries lacking the proper identification and contact details.

6.1.2. Answers (if any) to all enquiries referred to in section 2.2.1 and copies of such enquiries will be made available without disclosing the identity of the party who submitted the question, by no later than 60 days after receipt thereof.

6.1.3. ICASA reserves the right not to answer any particular enquiry or to answer in any way it deems appropriate.

## **6.2. Submission of Applications**

6.2.1. Applications, together with the application fee of SAR 50 000,00 (Fifty-thousand Rand), must be submitted to:

**The Chairperson: ICASA**  
**Block B, Pin Mill Farm**  
**164 Katherine Street**  
**Sandton**  
**2196**

6.2.2. Applications shall reach ICASA by no later than 12:00 on the 30<sup>th</sup> April 2002, or such later date as the Minister may determine.

6.2.3. Faxed Applications will not be accepted. Applications may be delivered by hand or by courier or posted at the Applicant's risk.

6.2.4. Applicants will be notified in writing of the receipt of their Applications.

6.2.5. All Applications must provide the information requested in the ITA Documents.



6.2.6. All Applications must conform to the required format specified in Sections 15 and 16 following.

6.2.7. Applications that are incomplete or not submitted in accordance with the requirements of applicable law and/or this ITA (including format requirements) will be rejected without further consideration.

## **7. WHO MAY SUBMIT APPLICATIONS**

7.1. Applications are invited from interested parties in accordance with the Act. Specific attention is drawn to section 35(3) and section 35(4) of the Act.

## **8. COST OF APPLICATION SUBMISSIONS AND APPLICATION PROCESS**

8.1. The application fee of SAR 50 000,00 (Fifty-thousand Rand) as prescribed by ICASA in terms of section 88 of the Act is payable for each application submitted.

8.2. The Applicant shall bear all costs associated with its Application, including such other fees as ICASA may prescribe. The Applicant shall not be entitled to reimbursement of any costs incurred in the Application process.

## **9. ADDITIONAL INFORMATION**

9.1. Any Applicant may be required at any time by ICASA to respond to questions and/or provide supplementary documentation or information.

## **10. GOVERNMENT GAZETTE PUBLICATION**

10.1. Where required by applicable law, ICASA will, as soon is reasonably practicable, publish all information and communications in connection with the Application Process in the *Government Gazette*, which are required to be so published.

## **11. PREPARATION OF APPLICATIONS - REQUIREMENTS**

### **11.1. Executive Summary**

11.1.1. An Executive Summary must be provided, giving a brief description of the Application.

### **11.2. Corporate and/or Contractual Structure of the Applicant**

#### **11.2.1. Corporate / JV Information**

Each Applicant must submit in its Application the following details of the Applicant (or, if a consortium or joint venture, of each of the members of such consortium a joint venture):

- Name of organisation
- Type of organisation (e.g. limited liability company)
- Registration number
- Registered address
- 

**11.2.2. Head office:**

- Postal address
- Street address
- Telephone number/s
- Mobile number/s
- Facsimile number/s
- e-mail address/es

**11.2.3. Contact person/s:**

- Name/s
- Telephone number/s
- Mobile number/s
- Facsimile number/s
- E-mail address/es

**11.2.4. Names and contact particulars of at least two references.**

**12. FOREIGN APPLICANTS**

**12.1.** A foreign applicant must state in its Application where it has a corporate or other presence in the Republic of South Africa.

**12.2.** The Applicant is required to provide the following details of such presence:

- Name
- Registration number

- Registered address
- Street address
- Postal address
- Telephone number/s
- Mobile numbers/s
- Facsimile number/s
- e-mail address
- Names of office contact person/s
- Their telephone number/s
- Their mobile number/s
- Their facsimile number/s
- Their e-mail address/es

### **12.3. Compliance with the law**

Applicants are required to submit with their Application a declaration stating that they are fully acquainted with all applicable law in respect of the Application Process and that they will comply therewith.

### **12.4. Ownership and control**

- 12.4.1. legal description of the Applicant;
- 12.4.2. full details of direct and indirect ownership interests in the applicant;
- 12.4.3. full details of direct and indirect ownership interests by foreign persons in the Applicant;
- 12.4.4. full details of direct and indirect ownership interests of persons from historically disadvantaged groups in the Applicant;
- 12.4.5. full details of the governing body of the Applicant.
- 12.4.6. principal shareholders and percentage shareholding, highlighting equity ownership and other participation by persons from Historically Disadvantaged Groups.
- 12.4.7. ultimate shareholder(s) and relationship to organisation.
- 12.4.8. organisational chart showing the Applicant's members, advisers and Application Process sub-contractors and a description of the role to be played by each such party.

**12.5. Business Plan**

- 12.5.1. full details of the operational management of the service operations;
- 12.5.2. full details of the marketing plan.
- 12.5.3. full details of the financial plan;

**12.6. Service**

- 12.6.1. full details of the proposed service, including a listing of services to be provided, if relevant.

**12.7. Technical Plan**

- 12.7.1. Overview of the technical aspects of the service operations, including requirements for frequency spectrum licensing;
- 12.7.2. All applicants should note that if their application is successful they will be required to apply for radio frequency spectrum licence from ICASA in terms of section 30 of the Act.

**12.8. Social Objectives Plan**

- 12.8.1. Overview of social objectives plan, indicating how the Applicant will contribute towards the upliftment of Historically Disadvantaged Individuals.

**12.9. International Telecommunication Union Authorisation**

- 12.9.1. Evidence that the International Telecommunication Union has authorised a person to provide GMPCS system service, that is, to use a particular space segment and radio frequencies for the management, administration and operation of the relevant GMPCS system. Such evidence should include;
  - a) ITU registration and recording of the respective satellite system.
  - b) The respective international treaty(ies), agreement(s) and / or arrangement(s) under which the particular facilities are made available.
  - c) Proof of registration or authorisation from the respective notifying administration(s)

### **12.10. Experience**

- 12.10.1. The relevant capabilities, experience and qualities of the Applicant and each of its members and/or third parties that will form a material part of the Applicant's activities in connection with the Application Process. Applicants are to submit copies of annual reports and similar information.

## **13. FORMAT OF APPLICATIONS**

### **13.1. Language**

- 13.1.1. Applications must be prepared and submitted in English. Any printed literature included in an Application may be in another language so long as it is accompanied by an English translation of the pertinent passages. For the purpose of interpretation of the Application, the English translation provided shall govern.
- 13.1.2. All official correspondence and any other documentation exchanged between the parties shall be in English.

### **13.2. Content and Order of Application Documents**

- 13.2.1. The Application shall comprise the following documents, properly indexed and paginated, in the following order:
- 13.2.1.1. Cover letter and Application fee as determined by ICASA;
  - 13.2.1.2. Executive Summary of Application;
  - 13.2.1.3. Full Application as detailed in Section 3 and applicable law;
  - 13.2.1.4. Other information.

### **13.3. Copies**

- 13.3.1. All interested parties must submit an original Application (marked as 'original') and 25 (twenty five) copies (each marked as a "copy") of its Application for the application process together with all attachments and appendices. Applications must also be submitted in electronic format on micro floppy disk or CD-rom using Microsoft Office 2000 (or lower version) software.



#### **13.4. Binding**

- 13.4.1. All documents should be bound, either singly or with several documents bound together. The Application should preferably not include any loose paper. If loose paper is necessary (e.g., where drawings cannot be bound), the Applicant shall provide in the cover letter to the Application a list identifying loose inclusions with a reference number. Each loose inclusion shall be marked with the corresponding reference number as well as with the reference indication and shall be signed by the person(s) referred to in 18.6 below.

#### **13.5. Correction of Errors**

- 13.5.1. The complete Application shall be submitted without alterations, erasure or omissions except as necessary prior to submission, to correct errors made by the Applicant, in which case such corrections shall be initialled in black ink by the person or persons signing the Application.

#### **13.6. Signing Requirements**

- 13.6.1. The principal or persons duly authorised to legally bind the Applicant, shall sign the original Application. Each such person or persons shall be properly authorised to sign such documentation by way of a formal resolution by the Board of Directors, or its equivalent, of the organisation concerned, and copies of such resolution, properly dated and signed must accompany each Application.
- 13.6.2. In addition, each signatory shall make a written declaration to the effect that all documentation signed by him/her is factually correct and true and that it understands and accepts the terms and conditions of this ITA.
- 13.6.3. An authorised person or persons, legally binding the Applicant, must sign all copies of correspondence from the Applicant to ICASA. All such signatures must be accompanied by the name of the person(s) signing them, their position(s) and the name of their organisation.

**NOTICE 2396 OF 2001**

I, Ivy Matsepe-Casaburri, Minister of Communications, hereby publish the following Invitation to Apply (in terms of section 34(2), read with Sections 32B and 35(4) of the Telecommunications Act No. 103 of 1996 as amended), inviting historically disadvantaged groups to apply for a nineteen per cent (19%) equity interest in the Second National Operator, which will be Licensed in 2002 to provide public switched telecommunication service in the Republic of South Africa.



**Dr. Ivy Matsepe-Casaburri**

**MINISTER OF COMMUNICATIONS**

## 1. SUBJECT OF THE INVITATION TO APPLY

### Introduction

1.1 The Minister of Communications of the Republic of South Africa (the "Minister") hereby issues an Invitation to Apply ("the Invitation") to persons from historically disadvantaged groups, inviting such persons to apply for nineteen per cent equity interest, in the Second National Operator ("SNO") which is to be established in the Republic of South Africa, whose operations will commence in 2002. In terms of the Telecommunications Act No 103 of 1996 ("the Act"), as amended, and as provided in the Invitation, the SNO shall be Licensed and required to provide Public Switched Telecommunication Services ("PSTS") which shall include the design, leasing, construction, maintenance and operation of the network in terms of the Licence(s) granted by the Minister and issued by the Independent Communications Authority of South Africa ("the Authority"). Any such Licence so issued shall be preceded by an evaluation process set out hereunder.

1.1.1 Nineteen per cent (19%) of the equity interest in the SNO shall be allocated to persons from historically disadvantaged groups.

1.1.2 The successful Applicant shall be a company ("the BEE company") duly incorporated according to the laws of South Africa.

1.1.2.1 The BEE company shall be required to establish a new company with the following entities:

1.1.2.2 Eskom and Transnet

1.1.2.3 Any successful Local and/or International Applicant in the second ITA

1.2 In order to qualify as a historically disadvantaged group(s), Applicant(s) must satisfy the following criteria:

1.2.1 The BEE component must be a company duly incorporated according to the laws of South Africa, owned, managed and controlled by persons from historically disadvantaged groups who are South African citizens and applications must indicate that ownership will benefit South African citizens to ensure empowerment.

1.2.2 The validity of applications shall be determined by the Authority.

1.2.3 The Authority may request clarification from Applicants on all or some aspects of their Invitation.

1.3 Interested persons may submit questions of clarification concerning the Invitation to Apply directly to the Minister and not the Authority. Such questions must be in writing, and be hand delivered, e-mailed or faxed to the Minister no later than 14 March 2002 to the following address:

**The Minister of Communications**

**Telecommunications Business Unit**

**ITA - BEE Project**

**Department of Communications**

**Nkululeko House**

**399 Duncan Street**

**Hatfield PRETORIA**

**Tel No: 012 427 8000**

**Fax No: 012 427 8102**

**e-mail address: mashila@doc.pwv.gov.za**

#### **1.4 Process of Licensing the SNO**

The licensing of the SNO shall be undertaken in terms of the following process:

- 1.4.1 The first phase will involve the allocation of 19% (nineteen per cent) equity interest, to persons from historically disadvantaged groups in terms of section 35 of the Act.
- 1.4.2 The second phase shall be the allocation of a 51% (fifty one per cent) equity interest to a Local and/or International Investor in the SNO.
- 1.4.3 30% (thirty per cent) equity interest will be allocated to Eskom and Transnet as determined in terms of section 32B(2) of the Act.

#### **1.5 The Services**

- 1.5.1 The range of Service in respect of which this Invitation is issued, is provided for in terms of sections 36, 36(A) and 36(B) of the Act.
- 1.5.2 The Services to be provided by the SNO, including the provision of modern information services, must take account of the requirements and needs of both business and residential consumers.

**1.6 Form of application and manner in which it is contemplated that the service will be provided**

Pursuant to the Act, the Minister of Communications hereby determines the form and manner of the Invitation as follows:

- 1.6.1 The Applicant: A company duly incorporated under the laws of the Republic of South Africa.
- 1.6.2 Subject-matter of this Invitation: the allocation of 19% equity interest in the SNO;
- 1.6.3 Number of licence rights to the SNO: one (1) PSTS Licence to be issued in terms of the Act;
- 1.6.4 Term of licence: Twenty (20) years from the date of signing the Licence, which may be extended by the Authority for a further five(5) years, subject to written application by the Licensee to the Authority.
- 1.6.5 Except for the Invitation(s) to apply for licences in under-serviced areas in terms of Section 40(A) of the Act, the Minister shall not issue another Invitation for the provision of PSTS before 8 May 2005;
- 1.6.6 Telecommunications facilities sharing: The Licensee shall be entitled to utilise the telecommunications facilities of Telkom South Africa Limited for a period of 2 years from the date of commencement of service;
- 1.6.7 Amount of annual licence fee: an annual licence fee shall be payable calculated from the date of commencement of the provision of PSTS. The due amount shall be an amount equal to 0.075% of the Licensee's annual revenues realised from the provision of PSTS.



## **2. THE APPLICATION TIMETABLE**

- 2.1 The Application process shall be conducted in accordance with the following schedule:

2.1.1 Publication of this Invitation	21 December 2001
2.1.2 Transmission of questions to the Minister by potential Applicants	14 January 2002
2.1.3 Publication of all questions and answers by ICASA	21 January 2002
2.1.4 Deadline for submission of Applications	14 March 2002
2.1.5 Authority completes Evaluation of Applications	14 May 2002
2.1.6 Authority transmits recommendation to the Minister	14 May 2002
2.1.7 Minister notifies Authority of decision to grant application	31 May 2002

## **3. COSTS RELATING TO THE APPLICATION**

- 3.1 Applicants shall bear all costs incurred in connection with the preparation and submission of the Application. Regardless of the outcome of the Application, Applicants may under no circumstances claim reimbursement from the Minister, the Authority or any other Government Ministry and/or Department of RSA or any costs related directly or indirectly, to the Application.

### **3.2 APPLICATION FEE**

A bank guaranteed cheque of R75 000,00 to be submitted with the application.

## **4. CONDITIONS OF ELIGIBILITY IN RESPECT OF THE APPLICATION**

- 4.1 Any consortia shall provide original copies of the agreements endorsed by the members.

4.2 The following companies, entities and/or subsidiaries shall be excluded from submitting an Application either as individual Applicants or as member(s) of a consortium:

4.2.1 Cell C

4.2.2 MTN/Mcell

4.2.3 Sentech Limited

4.2.4 Telkom South Africa Limited

4.2.5 Vodacom

4.2.6 Any company undergoing a bankruptcy or liquidation or final settlement procedure;

4.2.7 Any employee of the Ministry and Department of Communications or any other Government department directly involved in the licensing of the SNO, either through an employment contract or any other contractual means;

4.3 The Applicant, or in the case of a consortium, the authorised signatory of each group within the consortium, shall sign a declaration confirming the truth of the content of the application. In the event that the declaration is false, the Applicant will be disqualified.

## **5. SUBJECT AND CONTENT OF THE LICENCE**

5.1 The Licence to be issued as contemplated in Clause 1.2 shall include the following:

5.1.1 Description of the service: The PSTS shall be provided in the territory of the Republic of South Africa in accordance with the conditions of the Licence;

5.1.2 The Licensee shall be entitled and required to construct, maintain and operate a PSTS network capable of the provision of PSTS and to cooperate with other public telecommunications operators

whose networks are interconnected with that of the Licensee and to provide subscribers with PSTS in accordance with the terms and conditions of the Licence;

## **INTRODUCTION TO TERMS AND CONDITIONS OF THE ITA**

### **1. APPLICATION**

#### **1.1 Empowerment**

1.1.1 Section 35 of the Telecommunications Amendment Act of 2001; together with section 2 of the Telecommunications Act of 1996, emphasises the need for Black Economic Empowerment (BEE) in respect of the issuing of licences. This has been placed in the Act to ensure that the historical legacy that enforced the exclusion of certain groups from the industry, sector and economy is addressed. The requirement is for the ownership, management and control of the BEE company to be held by persons from historically disadvantaged groups.

1.1.2 The problem is that up to now the involvement of persons from historically disadvantaged groups has been confined to a few individuals. This has to be changed to ensure broad based participation of historically disadvantaged groups in the sector and in the economy.

#### **1.3 Empowerment of Women**

1.3.1 Section 2(q), which sets out the objects of the Act emphasises the empowerment of women in the telecommunications sector. Those, read with section 40A of the Act, advocate for the ownership, control and management of telecommunications companies by women.

1.3.2 Historically, women have been excluded from employment, equity and participation in the economy generally and in the telecommunications sector in particular. This has downgraded their role in society and the South African

government has identified this as a priority issue that needs to be addressed. This picture has been more marked in the telecommunications sector with limited involvement of women in the management, control and ownership of telecommunications companies.

#### **1.4 Management Capacity and Skills**

- 1.4.1 The lack of skills from persons from historically disadvantaged groups in the management and control of telecommunications companies requires that the business plan be presented to indicate the manner in which the nineteen per cent set aside for persons from historically disadvantaged groups will be utilised. This is to ensure the further development of management skills amongst other persons from historically disadvantaged groups apart from the internal management skills development programme.

#### **1.5 Ownership and Control**

In order to ensure fair competition in the telecommunications market:

- 1.5.1 the Applicant shall not hold any direct or indirect ownership in any other domestic public telecommunications operator or the current telecommunications operators shall not hold any direct or indirect ownership in the Applicant Company;
- 1.5.2 a company, which holds any direct or indirect ownership in a domestic telecommunications operator, acquires any direct or indirect ownership in the Applicant, such company shall be required to sell its ownership in the Applicant Company, or other domestic telecommunications operator, within six (6) months from the date of acquisition.
- 1.5.3 the Authority's right in connection with changes in ownership: A preliminary written consent of the Authority shall be obtained for any changes in the

ownership structure of the Licensee, in particular for the sale of shares to a third party, any sales of shares exceeding 5% in the aggregate within five (5) years, or any capital increases resulting in a change of ownership exceeding 5% in the aggregate in the share of any of the owners within five (5) years.

## **1.6 Human Resource Development**

1.6.1 Globally, there is a shortage of ICT skills and this shortage is even greater within developing countries such as South Africa. There is an urgent need to develop skills amongst persons from historically disadvantaged groups and in training ICT professionals in the sector in general. The reversal of the current trend in terms of ICT skills can only be achieved through concerted and defined interventions.

1.6.2 The Applicants will also have to clearly indicate how they will be engaging other investors in the SNO in respect of the development and transfer of skills to persons from historically disadvantaged groups. Links with Historically Disadvantaged Tertiary Institutions will be of critical importance in demonstrating commitment to skills development.

## **1.7 Information and Communications Technology (ICT) Professionals**

1.7.1 The Applicants herein will utilise the skills and professional capacity of persons from historically disadvantaged groups in the fields of engineering, economics, accountancy, technology as well as the legal environment. This has to be done both as an internal development programme as well as in the areas of outsourcing and the compilation of the application.

## **1.8 Youth Involvement**

1.8.1 The current economic and social environment as well as the fact that approximately half of the South African population is below the age of 28,



requires a concerted effort to ensure that the youth are integrated into the economic and social life of society.

1.8.2 The Applicant must show how it will integrate this important sector of our society in its plan.

## **2. TERMS AND CONDITIONS RELATING TO THE APPLICATION**

2.1 Those bidding for the set aside from historically disadvantaged groups have to clearly demonstrate that they represent a broad base of support as follows:

2.1.1 That the ownership and control structure of the group is geographically dispersed, and supported by an indication of the participation of individuals and groups at provincial and local level especially those areas that are outside the major metropolitan areas.

2.1.2 The ownership and control of the set aside for persons from historically disadvantaged groups should take account of the government's integrated sustainable rural development programme.

2.1.3 The composition of the Applicants for the set aside for persons from historically disadvantaged groups must demonstrate that they have a plan to ensure the meaningful participation of women or women's groups in the ownership, management and control of these companies.

2.2 The business plan that will be presented has to clearly indicate the levels of participation as well as the strategy to ensure the increased participation of women in the sector and the company. The development of skills of women in this sector in general has to be clearly identified and how downstream activities related to the operations of the SNO will ensure that the role played by women who own and control companies is developed and extended over time.

- 2.3 The business plan for the Applicants from historically disadvantaged groups allocated in the SNO must indicate the management experience and skills to be provided by such Applicants.
3. The Applicant must provide a plan to meet the management requirements of the set aside for persons from historically disadvantaged groups in the SNO, as well as in the management and operations of the SNO.
  - 3.1 The majority of the members of the board of directors and the executive management committee of the Licensee shall comprise South African nationals with a permanent address in South Africa.
  - 3.2 The Applicants have to clearly state the manner in which they will ensure the development of skills amongst persons from historically disadvantaged groups in the ICT sector.
  - 3.3 A plan for the development of skills for persons from historically disadvantaged groups as well as the transfer of skills to such persons has to be provided including the development of skills in terms of the staffing, management and control of the SNO.
4. The Applicant shall make the following statements in the Application:
  - 4.1 the Applicant does not fall within the exceptions set forth in this Invitation.
  - 4.2 the Applicant shall unconditionally warrant the fulfilment of the undertakings assumed in its Application and shall provide the financial collateral therefore.
  - 4.3 the Applicant shall undertake that in the event that it is selected as the successful Applicant of the Licence, it shall subject to Clause 1.2, conclude a Licence agreement with the Authority that shall satisfy all requirements of

applicable law, the contents of this Invitation and the undertakings of its own Application.

4.4 the Applicant shall subject to Clause 1.2 undertake that in the event it is selected as the successful Applicant, the Authority shall be entitled to directly settle any claims from the bank guarantee of good performance submitted to the Authority for the securing of the performance of certain obligations specified in this invitation or the Licence, should the Applicant fail to fulfill, fully or partially, any such obligation.

4.5 the Applicant shall accept as binding the applicable laws, regulations and policy directions issued by the Minister and/or Authority on the preparation, storage, maintenance in an accessible manner, as well as disclosure of the information necessary for the monitoring of the performance of the Licence Company and shall undertake to comply with and enforce any such rules.

4.6 the Applicant shall declare that there exists no cause for disqualification or curtailment against it, and that acceptance of its Application in this process would not result in the creation of such causes for disqualification or curtailment. The Applicant shall acknowledge that it shall be required to meet the eligibility requirements, including those concerning ownership structure, specified in applicable laws and regulations, this Invitation and the Licence through the entire term of the Licence.

4.7 the Applicant shall make a formal declaration to the effect that the Company to be established shall submit to the Authority by 30 June of each year the audited annual report of the previous business year, approved by the shareholders at the Annual General meeting.

4.8 the Applicant shall make a declaration to the effect that it accepts the terms and conditions of this Invitation and the evaluation and selection procedure as binding.

- 4.9 the Applicant shall make a representation as to whether any of the companies with participation or voting rights in excess of 5% in the Applicant - including consortium members - or in which the Applicant holds a majority interest is under dissolution, liquidation or bankruptcy procedure. The information supporting such representation shall be provided in an attachment to the Application.
- 4.10 the Applicant shall certify the extent that the Applicant, shareholder(s) holding a majority interest in the Applicant or any venture in which the Applicant holds a majority interest has tax, official fee or liabilities, or liabilities towards allocated public funds that are overdue for over one (1) year. The information necessary for the assessment of the extent and the nature of such overdue payments shall be provided in an attachment to the Application. The Applicant, and members of the consortium thereof, shall provide relevant certificates from the South Africa Revenue Services to this effect.
- 4.11 the Applicant shall certify the extent that the Applicant, any venture holding a majority interest in the Applicant or venture in which the Applicant holds a majority interest has had any judgement of a court of law, ruling of the Competition Commission or Competition Tribunal against them that became effective with the last three (3) years in relation to civil, criminal or competition offences committed within their business capacity. The information supporting such certification shall be provided in an attachment to the Application.
- 4.12 the Applicant shall certify as to whether any judicial (collection) procedure is in progress, or has been in progress in the last three (3) years against the Applicant, any venture holding a majority interest in the Applicant or any venture in which the Applicant holds a majority interest. The information supporting such certification shall be provided in an attachment to the Application, and shall be treated as confidential by the Authority.

4.13 The Applicant shall certify as to whether there exists any civil law suit in progress against the Applicant, any shareholder(s) holding a majority interest in the Applicant or any venture in which the Applicant holds a majority interest which is the subject of any judicial action. The information and Attachments supporting such certification shall be provided in an appendix to the Application, and shall be treated as confidential by the Authority.

4.14 The duly executed statements and representations set forth in above shall be submitted by the Applicant in an appropriate form, together with all accompanying documents. Applications without the statements and representations may be disqualified by the Authority. The Authority reserves the right to request submission of additional information, documents, statements and representations. All declarations and documents submitted in support of the Application, in particular business plans and technical plans shall form an integral part of the Application.

## 5. FUNDING

5.1 The lack of funding provided by traditional financial institutions for companies and entities owned by persons from historically disadvantaged groups requires specific consideration. In order for the set aside for persons from historically disadvantaged groups to be successful, the Applicants will have to have access to funding of their operations. The lack of adequate funding mechanisms for persons from historically disadvantaged groups requires innovative funding mechanisms to be developed to provide capital for the set aside for persons from historically disadvantaged groups.

5.2 The experience of persons from historically disadvantaged groups being financed primarily through debt-equity, often results in the management and control of the companies shifting from them to the financing institutions

## **6. TERMS AND CONDITIONS FOR FUNDING**

- 6.1 The funding of the company has to be clearly stated to ensure that the control and ownership of the company can clearly be seen to be in the hands of persons from historically disadvantaged groups and that the control and ownership cannot be diluted.
- 6.2 The funding of the 19% set aside to persons from historically disadvantaged groups has to be indicated in the business plan in a transparent manner.
- 6.3 Any failure to disclose the full details of the funding mechanisms will result in disqualification of the Applicant. The use of these funding mechanisms and spread of ownership and funding will serve to the advantage of the Applicant.

## **7. THE LICENCE**

- 7.1 The geographical area for the provision of PSTS in accordance with this Invitation shall be the entire territory of the Republic of South Africa.
- 7.2 The use of the frequency bands in border areas of the country may be limited by preferred frequency distribution agreements concluded with neighbouring countries or, in the absence of such an agreement, by the frequency use in such neighbouring countries.
- 7.3 The time schedule relating to the national territorial coverage will be set forth in the draft licence which will be attached to the ITA for local or international investors;

## **8. TERMS AND CONDITIONS OF LICENCE**

- 8.1 The term of the licence shall be twenty (20) years from the commencement of service.



8.2 On the written application by the Licensee the Authority may extend the period of the Licence, for a further five (5) years, subject to the opinion of the Authority that the services have been rendered to acceptable quality standards and in compliance with the original Licence.

8.3 Should the Licensee default in the construction of the network, the Licensee shall, until the completion of the construction of a network capable of the quality and range of services determined in the Licence, pay a default penalty specified in the Licence;

8.4 The Licensee shall be required to provide advanced telecommunications services to both business and residential customers.

8.5 The Licensee shall at the end of each year submit an audited report to the Authority on the degree of achievement of the Licence requirements, describing the extent and the causes of delays, if any. The report shall include an analysis of the degree of compliance with the conditions of the licence. The Authority shall be entitled to further audit the data provided.

8.6 On the fifth anniversary of the effective date, the Authority and the Licensee shall mutually review the global technological developments and the impact thereof upon the market, other conditions relating to the licence activities and international obligations undertaken in the meantime by the Government of the RSA, and as a consequence of the above, the necessity of amending and/or supplementing the Licence.

8.7 The Licensee shall conclude such agreements with other providers of telecommunications services, in accordance with applicable law, in order to meet the time-scheduled requirements relating to the marketing, quality, quantity and technical parameters of the licence activity, terms and conditions of co-

operation with other telecommunications operators, minimum requirements and other conditions relating to the Licence activities.

8.8 The Licensee shall construct its telecommunications network and provide its services at all times in compliance with the Licence.

## **9. OTHER FEES PAYABLE BY THE LICENSEE**

9.1 The Licensee shall pay the radio frequency spectrum licence fee specified by the Authority;

## **10. CONFIDENTIAL TREATMENT OF INFORMATION**

10.1 If the Applicant wishes to exclude certain confidential information from public inspection as provided for in section 34 of the Act, the Applicant shall submit two additional copies marked "For Public Inspection", which copies shall exclude such confidential information and shall clearly indicate where such confidential information has been excluded, together with the Applicant's request to the Authority to have that confidential information excluded from public inspection in terms of section 34(4)(b) of the Act.

10.2 Applicants shall be responsible for the review and interpretation of the Invitation, including all attachments and the draft Licence. Applicants shall be fully liable if, due to its failure to comply with such requirements their Application is rejected or disqualified by the Authority.

10.3 Each Applicant shall be responsible for the assessment and analysis of the South African telecommunications market and the relevant regulatory environment. Neither the Minister, the Authority, nor the Government of the RSA, their officials and/or employees shall be responsible for any disadvantage suffered by an Applicant, prior to, during or subsequent to the Application

process as a result of the inaccurate assessment and analysis of the South African telecommunications market or regulatory environment, or for any other reason whatsoever. In addition, Applicants shall be responsible for the procurement and interpretation of data necessary for the fulfilment of their obligations, and shall bear all liability incurred in connection with the use thereof. Applicants shall seek their own counsel for the preparation of application.

10.4 Neither the Minister, the Department of Communications nor the Authority shall entertain *ex parte* contacts with regard to this Invitation, or any other matter relating to the proceedings for the application for the PSTS licence initiated by the Invitation.

10.5 Neither the Minister, the Authority nor their officials and/or employees shall be held responsible for any disadvantage suffered by an Applicant during or subsequent to the Application process as a result of its inaccurate assessment and analysis of the South African telecommunications market or regulatory environment, or for any other reason whatsoever.

## 11. AMENDMENT OF THE INVITATION

11.1 The Minister may in her sole discretion amend the Invitation prior to the date specified for the submission of Applications.

11.2 The Minister shall publish a notification regarding the amendment of the Invitation in the same way as the Invitation itself was announced and shall publish such amendment by Government Gazette.

11.3 In the event of an amendment to the invitation the deadline specified for the submission of Applications may be extended by the Minister.

11.4 No amendment to the Invitation may be made by the Minister within the fifteen (15) day period prior to the deadline specified for the submission of Applications.

## **12. BINDING EFFECT OF THE APPLICATION**

12.1 The Applications shall be binding upon the Applicants for a period of one hundred and twenty (120) days from the deadline for submission of Applications, up to a date to which such period has been extended by the Minister.

## **13. RIGHTS RELATING TO APPLICATION DOCUMENTATION**

13.1 Applicants acknowledge that the Authority shall have a non-exclusive right to use, the Application documents, any information included therein. Such right shall extend only to the reproduction of the Application through printing by electronic means, for use in materials prepared by the Authority in connection with the Application, or any other uses relating to the adjudication process, the selection of the successful Applicant, conclusion and the potential revision and/or amendment of the Licence.

## **14. SUBMISSION OF APPLICATION**

14.1 Format, signing and packaging of Applications:

14.1.1 Original and duplicate copies of the Application shall be prepared in printed form in accordance with Attachment 3. The Applicant shall submit as a part of the Application an executive summary not exceeding fifteen (15) pages.

14.1.2 The Application documentation (including the executive summary but excluding the attachments) shall not exceed two hundred (200) pages. Each page of the Application documentation (including the Application, the executive summary and the attachments), other than the attachments

the submission of which is not required by this invitation to the Application, shall be signed by the representatives of the Applicant. Any correction, rider or deletion shall only be valid if countersigned by the representatives of the Applicant. Copies of the documents concerning representation (signature specimen, power of attorney in a notarised document or a private document providing conclusive evidence, or in case of a foreign Applicant any equivalent documents) shall be submitted in the original format, while duplicate copies of these documents may be attached to duplicate copies of the Application.

14.1.3 Applicant shall submit one (1) original copy and twenty five (25) numbered duplicate copies of the Application. One copy shall be unbound and unstapled and be marked as "ORIGINAL COPY" and the "DUPLICATE COPY No. [     ]" (with the relevant number), respectively.

14.1.4 In case of any conflict among the contents of the original and duplicate copies of the Application, the original copy shall prevail. All tables and financial submissions shall be prepared in accordance with SA GAAP as part of the Application and shall also be submitted in electronic format, in MS Excel 8.0 (Office 2000) format. In the case of any conflict between the hard copy and the copy submitted on the floppy disk, the hard copy shall prevail.

14.1.5 Applications shall be submitted sealed in sturdy containers addressed to the Chairperson of the Authority, for the attention of the Project Manager indicating the name and contact address of the Applicant. The envelope should be labelled as follows:

14.1.5.1 "PSTS LICENCE APPLICATION" Each document (that is, the Application and its attachments), other than the bank guarantee of the Application, certificates relating to the payment of the procedural fees shall be placed inside the above container.

## **15. PLACE AND DEADLINE FOR SUBMISSION OF APPLICATIONS**

15.1 Applications shall be submitted at the following address:

**The Chairperson  
FAO The Project Manager  
ICASA  
64 Pin Mill Farm  
164 Katherine Street  
Sandton  
South Africa  
(011) 321-8203 (T)  
(011) 321-8547 (F)**

15.2 The Minister may, in her sole discretion, extend the deadline for submission of Applications. The decision concerning such extension shall be published in an amendment to the Invitation. In the case of any extension, the legal consequences of non-compliance with deadlines shall apply to such modified deadline.

## **16. AMENDMENT AND WITHDRAWAL OF APPLICATIONS**

16.1 The Applicant shall not be entitled to amend or withdraw its Application during the period of binding effect specified in this Invitation. Should the Applicant withdraw its Application during such period, the Applicant shall lose the Application fee.

## **17. APPLICATION FEE**

17.1 Applicants shall pay an Application Fee of Seventy Five Thousand Rands (R75,000.00) in the form of a bank guaranteed cheque in favour of ICASA when submitting the Application.



17.2 Applicants shall not be entitled to claim reimbursement of such Application fee for any reason whatsoever.

## **18. EVALUATION CRITERIA**

### **18.1 Empowerment of Women**

18.1.1 The Applicant will be required to illustrate how women will effectively participate in the licence. The Applicant will be required to demonstrate and to submit a plan to ensure the participation of women and women's groups in the ownership, management and control of these companies and to clearly illustrate how downstream activities related to the operations of the SNO will ensure participation of and benefit these women. The Applicant must indicate how dividends from the venture will be distributed to benefit these women and the other empowerment groups.

### **18.2 Funding of the BEE**

18.2.1 The Applicant must provide the full proposed funding mechanism for the acquisition of the 19% stake. This funding has to be clearly addressed in the business plan.

### **18.3 Management Capacity**

18.3.1 The business plan has to indicate the management experience and skills to be provided by the BEE. It should focus on the management capability of the BEE to contribute to the success of the SNO.

### **18.4 ICT professionals**

18.4.1 Applicants will need to indicate how they will be utilising the skills and the professional capabilities of persons from historically disadvantaged groups

in the field of engineering, economics, accountancy, technology and the legal environment.

### **18.5 Human Resource Development**

- 19.5.1 Applicants need to clearly set out how they will ensure the development of skills amongst persons from historically disadvantaged groups. They should also show links with historically disadvantaged tertiary Institutions.

### **18.6 Involvement of Youth**

- 18.6.1 The Applicant will need to demonstrate how it will integrate youth into the economic and social sphere of telecommunications.

### **18.7 Business and technical plan**

- 18.7.1 The Applicant will need to address the concept of its marketing plan giving due consideration to market analysis, demand analysis, market size and segmentation, marketing strategies as well as overall sustainability including the strategic plan for the SNO. It should include both technical/network design strategy.

### **18.8 Role in bridging the digital divide**

- 18.8.1 The Applicant needs to set out clearly what initiatives it proposes to address the issue of the digital divide.

### **18.9 Business model of the empowerment component within the SNO**

- 18.9.1 The Applicant needs to address its business plan within the SNO setting out its investment plan, its own financial analysis, key ratios, sensitivity analysis and its own business experience in other markets.
- 18.9.2 The Applicants for the set aside for persons from historically disadvantaged groups have to clearly demonstrate their management capability to contribute to the success of the SNO. The management profile and capacity of the

Applicant has to be demonstrated and provided for in the comprehensive business plan to be presented to the Authority.

#### **18.10 Experience and understanding of the sector**

18.10.1 The Applicant will need to demonstrate experience and ability to provide the necessary skills, research in understanding the sector and making projections, the quality of its technical experience, network infrastructure sharing, any experience in network design.

**19. Application must be set out in accordance with the application form attached to this document.**

**THE APPLICATION FORM****1. The Applicant**

- 1.1 Full legal name of the Applicant and two representatives, duly authorised by the Applicant to respond to communication from the Authority
- 1.2 Physical address
- 1.3 Postal address
- 1.4 Telephone number(s)
- 1.5 E-mail address
- 1.6 Telefax number

**2. Ownership and Control**

- 2.1 Provide a brief description of the Applicant's legal status;
- 2.2 Provide certified copies of all relevant founding documentation;
- 2.3 Provide a brief description of how and when the Applicant was formed and how it has developed since then;
- 2.4 Provide a complete and detailed description of all direct and indirect ownership interests in the Applicant, including beneficial ownership interests;

- 2.5 Provide a brief description of all persons/individuals who hold a direct or indirect ownership interest in the Applicant;
- 2.6 Provide a complete and detailed description of all direct and indirect voting interests in the Applicant, including beneficial voting interest;
- 2.7 Provide a complete and detailed description of all direct and indirect financial interests in the Applicant, including beneficial financial interests;
- 2.8 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.

### **3. Management**

- 3.1 Provide a brief description of the corporate management and organizational structure 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 *curriculum vitae*, with relevant experience.

#### **4. Shareholder Interests**

- 4.1 Provide a description of all shareholder agreements and/or other arrangements relating to contingent direct and indirect ownership and control;
- 4.2 Provide details of advisors and research consultants and state their roles in assisting the Applicant;
- 4.3 Provide any other relevant information regarding the ownership or control of the Applicant.

#### **5. Financial Ability**

- 5.1 The Applicant must provide details of how the Applicant intends to fund the 19% (or part thereof) share of the capital expenditure and operations of a PSTS Licence; Applications must provide evidence of research and investigation of the costs in this regard. The applicant must detail the sources of funding which it intends 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 event that the Applicant is a natural person or an entity other than a company, it must provide the required certificates, descriptions and proof that would be appropriate for the Applicant, ensuring that the substantive information required has been provided;



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- 5.2 The Applicant must provide Directors' certificates in respect of the amount of issued and paid-up share capital, the aggregate values of shareholders loans to the company and a detailed breakdown of such loans;
- 5.3 The Applicant must provide a description of the method by which share and/or loan capital is to be raised;
- 5.4 The Applicant must provide a description of any additional commitments or obligations of any of the Applicant's shareholders to provide further funds to the Applicant;
- 5.5 The Applicant must provide proof that a shareholder referred to above is financially capable of providing such funds;
- 5.6 The Applicant must 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 overdraft facilities available; Banker's certificate of the amount of other credit facilities; or bank guarantees;

5.7 The Applicant must provide a description of and proof of any other funding sources;

5.8 The Applicant must 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.

## **6. Business and Telecommunications Experience**

6.1 The Applicant must provide a brief description of the business and telecommunications experience of the Applicant and the proposed human resources contribution in the following key areas: financial, technical, marketing, regulatory, human resources, and in any other operational areas;

6.2 The Applicant must provide the following details: name, date of birth, identity number, address, nationality, occupation and a brief personal background and indication of experience of key personnel who could be employed by the licence company.

## **7. Applicant Volunteered Information**

## 8. EVALUATION CRITERIA

8.1 The Authority shall rate applications in accordance with the following criteria:

	Criteria	Points
1.	Empowerment of Women	10
2.	Management capacity	20
3.	Human Resource Development	10
4.	Youth involvement	5
5.	Business and technical Plan	15
6.	Role in Bridging the Digital Divide	5
7.	Empowerment of historically disadvantaged groups in the business model within the SNO	20
8.	Experience and understanding of the Sector	5
9.	Ability to raise funding	10
	<b><u>Total</u></b>	<b><u>100</u></b>

8.2 The Applicant shall be entitled to submit, as Attachments to such tables, any documents used in support of the above tables, or any other documents deemed necessary by the Applicant. For the purposes of this section the phrase "the entire term of licence" shall be deemed to refer to the original twenty (20) year long term of the licence.

8.3 The Minister shall not be obliged to publish a new Invitation on the subject-matter of this Invitation, in the event that none of the Applicants is selected as the successful Applicant of the Licence.

**Attachment****List of Applicable Laws, Regulations and Policy Directions**

In preparing applications, regard should be had to, among other matters, various publications in the Government Gazette. These include the following:

1. Telecommunications Act No. 103 of 1996 as amended
  2. Sentech Act No. 63 of 1996
  3. IBA Act No. 153 of 1993
  4. ICASA Act No. 13 of 2000
  5. Post Office Act No. 44 of 1958 as amended
  6. Ministerial Policy Direction on Contributions to the Universal Service Fund published in Notice 775 of 1997 in Government Gazette 17984 dated 7 May 1997;
  7. Ministerial Policy Direction on Contributions to the Human Resources Fund published in Notice 774 of 1997 in Government Gazette 17984 dated 7 May 1997;
  8. Ministerial Policy Direction on GMPCS published in Government Gazette No. 22170 dated 23 March 2001;
  9. Ministerial Determination on Interconnection Guidelines published in Notice 771 of 1997 in Government Gazette 17984 dated 7 May 1997;
  10. Licence issued to Telkom SA Limited to provide telecommunication services in terms of section 36 of the Act published in Notice 768 of 1997 in Government Gazette 17984 dated 7 May 1997;
  11. Licences issued to Vodacom Group (Proprietary) Limited and Mobile Telephone Networks (Proprietary) Limited to provide cellular telecommunication services published in Notice 1078 of 1993 in Government Gazette 15232 dated 29 October 1993;
  12. Icasa List-----
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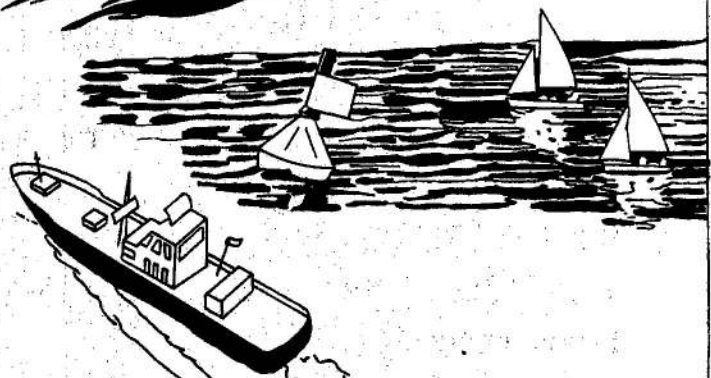
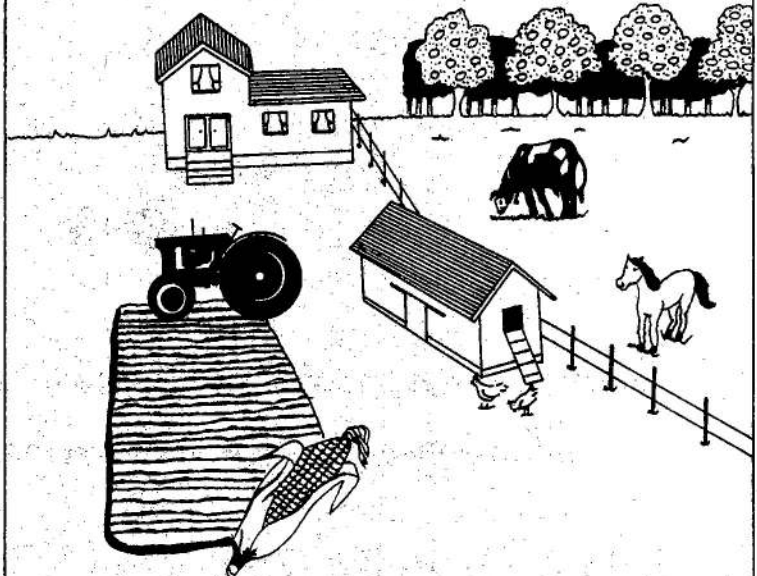
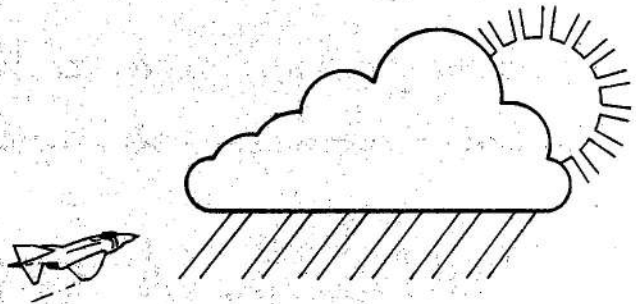
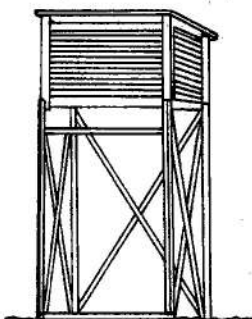
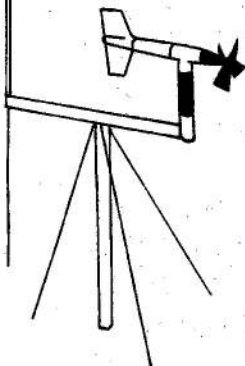
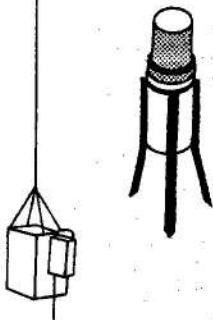
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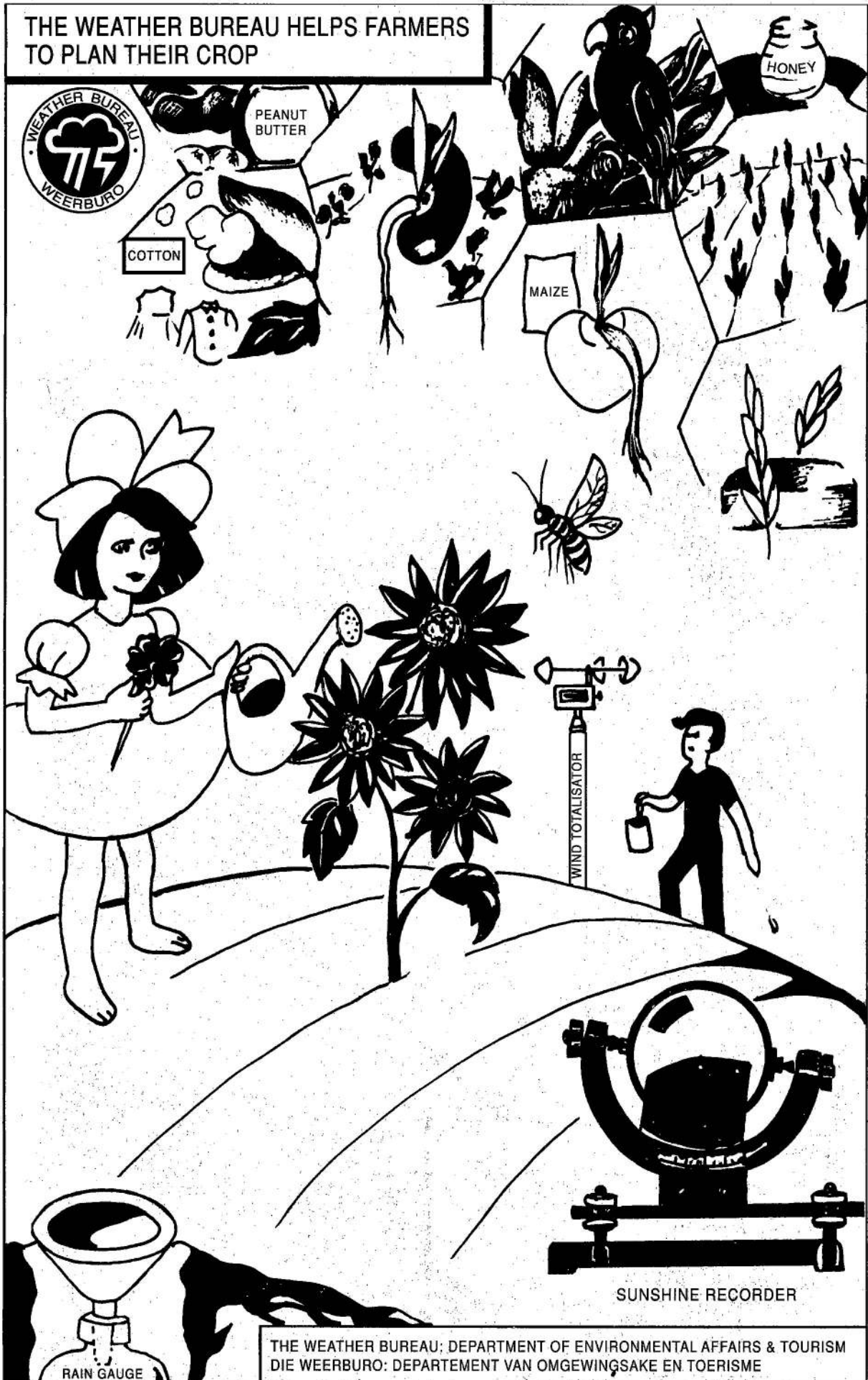
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