



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 440

Pretoria, 27 February
Februarie 2002

No. 23190



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

CONTENTS

*No.**Page
No. Gazette
 No.*

GENERAL NOTICE

Communications, Department of

General Notice

300	Telecommunications Act (103/1996): Regulations: Limitation of ownership and control of telecommunication services	3	23190
-----	---	---	-------

GENERAL NOTICE

NOTICE 300 OF 2002

DEPARTMENT OF COMMUNICATIONS

REGULATIONS IN RESPECT OF THE LIMITATION OF OWNERSHIP AND CONTROL OF TELECOMMUNICATION SERVICES

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 the regulations in the Schedule made by the Independent Communications Authority of South Africa in terms of section 96 (4) read with section 52 of the said Act.

I. MATSEPE-CASABURRI

Minister of Communications

SCHEDULE

These regulations repeal the regulation No. 300 published on 5 March 1999 in *Gazette* No. 19828.

1. Definitions

In these regulations a word or expression shall have the meaning assigned to it in terms of the Telecommunications Act, 1996 (Act No. 103 of 1996), and, unless the context indicates otherwise—

“affiliate”—

(a) in relation to a juristic person, means—

- (i) any person who has a direct or indirect ownership interest or control interest in the juristic person;
- (ii) any person in whom the juristic person has a direct or indirect ownership interest or control interest; or
- (iii) any person in whom a person contemplated in subparagraph (i) has a direct or indirect ownership interest or control interest;

(b) in relation to a natural person means, a parent, spouse or child of the relevant person;

“concentrated market” means any telecommunication service category in which there are fewer than five licensees;

“control interest” means that a person has a control interest if that person—

- (a) directly or indirectly beneficially owns more than twenty five percent of the issued share capital of the licensee; and/or
- (b) is entitled to vote more than twenty five percent of votes that may be cast at a general meeting of the licensee or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of the licensee; and/or
- (c) is able to appoint or veto the appointment of a majority of the directors of the licensee; and/or
- (d) is a holding company and the licensee is a subsidiary of that company as contemplated in section 1 (3) (a) of the Companies Act (Act 61 of 1973); and/or
- (e) in the case where the licensee is a trust, has the ability to vote more than twenty five percent of votes that may be cast at a general meeting of the trustees, to appoint the majority of the trustees, to appoint or change the majority of the beneficiaries of the trust; and/or
- (f) in the case of a close corporation, owns more than twenty five percent of the member's interest, or controls directly or has the right to control more than twenty five percent of the member's votes in the close corporation; and/or
- (g) has the ability to materially influence the policy of the licensee in a manner comparable to a person who in the ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f);

“historically disadvantaged persons” means—

- (a) amongst other, individuals who before the Constitution of the Republic of South Africa Act, 1993 (Act 200 of 1993), came into operation, were disadvantageded by unfair discrimination on the basis of race, gender, disability, sexual orientation or religion;
- (b) an association the majority of whose members are individuals referred to in paragraph (a);
- (c) a juristic person other than an association, and individuals referred to in paragraph (a) own and control the majority of its issued share capital or members' interest and are able to control the majority of its votes;
- (d) a juristic person or an association, and individuals referred to in paragraph (a) or (b) or (c) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes;

"licensee" means any person who holds a telecommunication service licence under the Act;

"ownership interest" means any direct or indirect ownership of equity shareholding of more than 1,5 per cent in a licensee;

"telecommunication service category" means—

- (a) a public switched telecommunication service;
- (b) a mobile switched telecommunication service;
- (c) a national long distance telecommunication service;
- (d) an international telecommunication service;
- (e) local access telecommunication service;
- (f) public-pay telecommunication service;
- (g) value added network service;
- (h) private telecommunication network service;
- (i) global mobile personal communication by satellite service;
- (j) data telecommunication service;
- (k) any other telecommunication service categorised by the Authority in terms of section 33 (1) (b) of the Act;

"telecommunication service licence" means a licence issued or deemed to have been issued in terms of the Act.

Limitation of ownership and control of telecommunication services

2. (1) No person who holds an ownership interest or control interest in a licensee in any telecommunication service category in a concentrated market, or an affiliate of such person, shall hold an ownership interest or control interest in any other licensee in the same category.

Maintenance and submission of ownership and control interest records

3. (1) A licensee must maintain accurate, complete and sufficiently detailed records indicating the ownership and control interests in that licensee, including, without limitation—

- (a) ownership interests held by historically disadvantaged person;
- (b) control interests held by historically disadvantaged person;
- (c) ownership interests held by foreign persons; and
- (d) control interests held by foreign persons.
- (e) ownership and control interests held by any other persons.

(2) A licensee must file with the Authority each year, no later than 31 January, a full accounting of all ownership interests and control interest in that Licensee, as at 30 September of the previous year, including without limitation, ownership interests and control held by historically disadvantaged persons and foreign persons as set out in regulation 4 (1).

(3) A licensee must file with the Authority, whenever required to do so by the Authority, any records or information or extracts therefrom required to be maintained in provision 4 (1).

Transfer of ownership interests and control interests

4. (1) Subject to regulation 6, no ownership interest or control interest in a licensee may be transferred until the licensee has obtained written approval from the Authority in terms of the procedure set out under provision 5 (1)—

- (a) if the transfer results in an effective change of the control interest or ownership interest in the licensee;
- (b) if the transfer results in an increase in the ownership interests or control interests held by foreign persons;
- (c) if the transfer results in a decrease in the ownership interests or control interests held by historically disadvantaged persons.

(2) A licensee who is a party to a proposed merger who is required to notify the Competition Commission of that proposed merger in terms of the Competition Act, 1998, must notify the Authority of that proposed merger at the same time when the Competition Commission is notified thereof.

Procedures for transfers of ownership interests or control interest

5. (1) A licensee must submit to the Authority a written application of the transfer of ownership or control interests—

- (a) indicating that the application is submitted in terms of this regulation;
- (b) explaining accurately, completely and in sufficient detail, the transfer that is the subject of the application;
- (c) setting out accurately, completely and in sufficient detail all of the ownership interests and the control interests in the licensee including, without limitation, ownership interests and control interests held by historically disadvantaged persons, foreign persons and by any other persons;

- (d) setting out accurately, completely and in sufficient detail what would be all of the ownership interests and the control interests in the licensee, if the application were to be granted and the transfer to take place including, without limitation, ownership interests and control interests held by historically disadvantaged persons, foreign persons and by any other persons.

(2) (a) The Authority may at the request of an applicant or a person who submitted representations, determine that any document or information relating to the financial capacity or business plan of any person or to any matter reasonably justifying confidentiality, shall not be open to public inspection, if such document can be separated from the application, representations or other documents in question.

(b) The Authority refuses a request contemplated in regulation 5 (2) (a), the applicant or person concerned shall be allowed to withdraw the document or information in question, in which event, the Authority shall not consider the document or information so withdrawn.

(3) (a) The Authority shall publish a notice of the application in the *Government Gazette* and invite written representations with regard thereto, to be submitted within the period specified in the notice or within such additional period as the Authority may determine.

(b) The application, representations and other documents relating to the application which are submitted to the Authority, except those which the Authority has determined shall not be open to public inspection, shall be open to public inspection during normal office hours of the Authority. The Authority shall at the request of any person and on payment of a fee determined by the Authority, furnish him or her with a copy thereof.

(c) After the period for submitting representations in terms of regulation 5 (3) (a) has passed, the Authority may hold public hearings in respect of the application at such time and place as the Authority may determine.

(d) A hearing contemplated in regulation 5 (3) (c) shall, subject to regulation 5 (3) (e), be open to the public.

(e) Before considering any document or information which the Authority has determined shall not be open for public inspection, the Authority may direct that the public or any member or category thereof shall not be present at the hearing: Provided that before making such a direction the Authority shall notify those present of its intention to do so, allow persons to object to such direction and give due consideration to any objection made.

(4) (a) The Authority shall, after having considered the application and the written representations, if any, and any other information considered relevant by the Authority notify the applicant and any interested party of its decision together with the reasons therefor.

(5) The provisions of paragraph 4 (1) and 5 are subject to section 130 of the Act.

DEPARTMENT OF COMMUNICATIONS

Dog ate your Gazette? ... read it online



www.SA Gazettes.co.za

A new information Portal keeping you up to date with news, legislation, the Parliamentary programme and which is the largest pool of SA Gazette information available on the Web.

- Easily accessible through the www!
 - Government Gazettes - from January 1994
 - Compilations of all Indexes pertaining to the past week's Government Gazettes
 - All Provincial Gazettes - from September 1995
 - Parliamentary Bills - as of January 1999
- Available in full-text, with keyword searching
- Sabinet Online scans, formats, edits and organize information for you. Diagrams and forms included as images.
- No stacks of printed gazettes - all on computer. Think of the storage space you save.
- Offer Bill Tracker - complementing the SA Gazettes products.

For easy electronic access to full-text gazette info, subscribe to the SA Gazettes from Sabinet Online. Please visit us at www.sagazettes.co.za





*Looking for back copies and out of print issues of
the Government Gazette and Provincial Gazettes?*

The National Library of SA has them!

Let us make your day with the information you need ...

National Library of SA, Pretoria Division

PO Box 397

0001 PRETORIA

Tel.:(012) 321-8931, Fax: (012) 325-5984

E-mail: infodesk@nlsa.ac.za



*Soek u ou kopieë en uitdruk uitgawes van die
Staatskoerant en Provinsiale Koerante?*

Die Nasionale Biblioteek van SA het hulle!

Met ons hoef u nie te sukkel om inligting te bekom nie ...

Nasionale Biblioteek van SA, Pretoria Divisie

Posbus 397

0001 PRETORIA

Tel.:(012) 321-8931, Faks: (012) 325-5984

E-pos: infodesk@nlsa.ac.za

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