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GENERAL NOTICE

NOTICE 755 OF 2002

I, Ivy Matsepe-Casaburri, Minister of Communications, pursuant to section 35A(1)(a) read with sections 2 and 5(4)(c) of the Telecommunications Act 103 of 1996, as amended, ("the Act"), hereby determine the manner in which applications are to be made for equity interests in the Second National Operator and the applicable licensing process for the granting of a public switched telecommunication service licence to the Second National Operator in terms of section 32B(1) of the Act as set out more fully in the Schedule hereto.

A handwritten signature in black ink, appearing to read 'Ivy Matsepe-Casaburri', with a stylized initial 'IM' above the name.

14 May 2002.

SCHEDULE:

1. The Second National Operator ("SNO") will be licensed in terms of section 32B (1) read with section 35A (1) (a) of the Telecommunications Act No. 103 of 1996, ("the Act") as amended and in accordance with the manner and process set out hereinafter.

2. **INVITATION FOR EQUITY INTEREST FROM HISTORICALLY DISADVANTAGED GROUPS**

2.1 The first phase of the licensing process for the SNO will be the allocation of nineteen percent (19%) equity interest to persons from historically disadvantaged groups in the Second National Operator ("the BEE allocation"). This is in furtherance of and consistent with the objects set out in section 2 of the Act and in accordance with the amended and revised Policy Directions issued under Notice 652 of 2002 and annexure thereto and published in Government Gazette ("GG") 23372 of 26 April 2002.

2.2 The Invitation to Apply for the nineteen percent (19%) BEE allocation as contemplated in paragraph 2.1 above was issued in Government Gazette 23010 on 7th December 2001. For the purposes of rectification it is hereby stated that the Invitation to Apply ('ITA') issued in Government Gazette

23010 was intended to be a Notice issued in terms of section 35A and not in terms of section 34 and 35 of the Act.

2.3 All applications lodged with the Independent Communications Authority of South Africa (the Authority) on the 15th April 2002 pursuant to Government Gazette 23010 and published in Government Gazette 23333 dated 17th April 2002, shall be considered and evaluated by the Authority in terms of the evaluation criteria set out in Government Gazette 23010 and the procedures set out herein.

2.4 The Authority shall, after having duly considered any application for the nineteen percent (19%) equity interest in the Second National Operator and any written submissions in relation to the applications that may be requested by the Authority and submitted within the period determined by the Authority, make its recommendation to the Minister of Communications ("the Minister").

2.5 The Minister may in respect of a recommendation made by the Authority contemplated in paragraph 2.4 above –

- (a) accept it;
- (b) request further information from the Authority;
- (c) refer it back to the Authority for further consideration; or
- (d) reject it.

- 2.6 The Authority shall, where the recommendation has been accepted by the Minister, notify the successful applicant of the Minister's decision.

3. INVITATION FOR ALLOCATION OF EQUITY FROM LOCAL AND/OR INTERNATIONAL INVESTORS

- 3.1 The Minister shall issue by notice in Government Gazette an invitation to apply for the allocation of fifty one percent (51%) equity interest to local and/or international investors in the Second National Operator in furtherance of the objects set out in section 2 of the Act and in accordance with the amended and revised Policy Directions issued under Notice 652 of 2002 and annexure thereto published in Government Gazette 23372 of 26 April 2002.
- 3.2 The Authority shall, after having duly considered any application for the fifty one percent (51%) equity interest in the Second National Operator and any written submissions in relation to the applications that may be requested by the Authority and submitted within the period determined by the Authority, make its recommendation to the Minister.

3.3. The Minister may in respect of a recommendation by the Authority contemplated in paragraph 3.2 above –

- (a) accept it;
- (b) request further information from the Authority;
- (c) refer it back to the Authority for further consideration; or
- (d) reject it.

3.4 The Authority shall, where the recommendation has been accepted by the Minister, notify the successful applicant of the Minister's decision.

4. PROCEDURE FOR APPLICATIONS

In dealing with applications lodged with it pursuant to the Invitations contemplated in clauses 2 and 3, the Authority shall invoke the following procedure:

4.1 Notice of applications:

- 4.1.1 (a) The Authority shall give notice of the applications in the Government Gazette and invite interested persons to lodge written representations in relation to such applications within a period as is mentioned in the notice;
- (b) After the period for lodging written representations in terms of paragraph 4.1.1 (a) above has passed, the Authority may hold a hearing in respect of the application;
- (c) A hearing contemplated in paragraph 4.1.1 (b) above may be open to the public.
- 4.1.2 The Authority may require an applicant or interested persons who have lodged written representations in terms of paragraph 4.1.1 (a) above to furnish the Authority, within the period specified by it, with such further information as may be reasonably necessary in order to consider the application.
- 4.1.3 No application may be varied or amended after the closing date for receipt of such applications.

4.2 Confidentiality of documents

4.2.1 All applications, written representations and other documents relating to an application that are lodged with the Authority shall be open to public inspection (subject to the provisions of paragraphs 4.2.2 & 4.2.3 hereunder) during the normal office hours of the Authority and the Authority shall at the request of any person and on payment of such fee as may be prescribed, furnish him or her with a copy thereof.

4.2.2 The Authority may, at the request of an applicant or person who lodged written representations, determine that any document or information that is commercially sensitive or any other matter reasonably justifying confidentiality, shall not be open to public inspection, if such document or information can be separated from the application, representations or other documents in question.

4.2.3 For the purposes of this notice, commercially sensitive documents or information or any other matter reasonably justifying confidentiality shall exclude documents or information that was or becomes or as a matter of law should be, generally available to the public.

4.2.4 If the Authority refuses a request as contemplated in paragraph 4.2.2 above, the applicant or person concerned shall be allowed to withdraw the

document or information in question and once withdrawn, the document in question shall not be considered to be part of the application.

4.3 Public Hearings

4.3.1 A hearing contemplated in paragraph 4.1.1 (b) above shall be subject to the provisions of paragraph 4.3.2 below and shall be open to the public.

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

5. FINAL DETERMINATION OF EQUITY INTEREST OF ESKOM AND TRANSNET

5.1 The Minister, with the concurrence of the Minister of Public Enterprises, has determined, in terms of section 32B (2), that thirty percent (30%) of the equity interest of the Second National Operator would be set aside for Eskom and Transnet.

- 5.2 The Minister, in conjunction with the Minister of Public Enterprises, shall confirm the final determination of the equity interests of Eskom and Transnet in the Second National Operator as contemplated in terms of section 32B(3) of the Act.

6. INTEGRATION OF EQUITY HOLDERS

- 6.1 The Minister, by notice in the Government Gazette, shall –

- (a) publish the names of the equity holders and the stake that each hold of the Second National Operator and
- (b) direct the Authority to facilitate the integration of the equity holders into a juristic entity, incorporated in accordance with the laws of the Republic of South Africa, as the Second National Operator.

7. LICENCING CONDITIONS

- 7.1 The Authority shall propose conditions appropriate to the licence and in furtherance of the objects referred to in section 2 and other provisions of the Act that will apply to the Second National Operator.

- 7.2 Before proposing such licence conditions the Authority may request written representations with respect to the proposed licence conditions and or hold a hearing.

8. GRANTING AND ISSUING OF LICENCE

- 8.1 Subject to the provisions of sections 32B, 36, 36B of the Act, a licence shall be granted to a juristic entity referred in paragraph 6.1 above on conditions proposed by the Authority.
- 8.2 The Authority shall, at the instance of the Minister in granting the licence to the juristic entity as the Second National Operator, issue the licence in question.
- 8.3 The licence granted and issued shall become effective on the due date specified therein.
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