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## GENERAL NOTICE

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### NOTICE 3025 OF 2002



### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**NOTICE IN TERMS OF SECTIONS 27 AND 52 OF THE TELECOMMUNICATIONS ACT, (NO 103 OF 1996), AS AMENDED, (HEREINAFTER REFERRED TO AS "THE ACT") INVITING REPRESENTATIONS WITH REGARD TO THE OWNERSHIP AND CONTROL OR THE HOLDING OF ANY FINANCIAL OR VOTING INTEREST IN LICENCES ISSUED PURSUANT TO SECTION 40 A OF THE TELECOMMUNICATIONS ACT (i.e. UNDER - SERVICED AREA LICENCES).**

1. The Independent Communications Authority of South Africa (hereinafter referred to as "the Authority") hereby gives notice that it shall commence a public enquiry, as provided for in

- terms of section 27 of the Act, which proposes to address the issue of ownership and control in Under-Serviced Area licences.
2. Interested persons are hereby invited to submit written representations of their views on the content of the discussion document by no later than **Monday the 23<sup>rd</sup> of December 2002**.
  3. Persons submitting representations are required to indicate in their written submission whether they require to make an oral presentation on the date of the Public Hearings.
  4. The Public Hearings for the enquiry will be held on **Thursday the 16<sup>th</sup> January 2003, at Icasa, Block C, Pinmill Farm, 164 Katherine Street, Sandton, Gauteng**.
  5. The schedule setting out the details of the Public Hearings will be gazetted once the submissions have been received, taking into consideration the number of persons who want to make oral presentations.
  6. All persons attending these public hearings will do so at their own cost.
  7. All written submissions submitted to the Authority, pursuant to this notice, shall be made available for public inspection at the Icasa Library, Block D, Pinmill Farm.
  8. These submissions will be made available from the **05<sup>th</sup> January 2003 to the 15<sup>th</sup> January 2003 from 10h00 – 16h30**.
  9. Any person who requires to make copies of such submissions may do so at the Icasa library at a fee.
  10. The discussion document which is the subject matter of this notice is annexed hereto marked **Schedule "A"**.
  11. Representations and submissions may address any issue which is relevant to the discussion document.

12. All submissions are to be forwarded to Ms Michelle Hajari,  
Council Advisor, Independent Communications Authority of  
South Africa, Private Bag X10002, Sandton, 2146, Block B,  
Pinmill Farm, 164 Katherine Street, Sandton, Facsimile  
(011)3218548, Tel (011)3218379 or cell 0829030807.e-mail  
address [mhajari@icasa.org.za](mailto:mhajari@icasa.org.za).

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

## **SCHEDULE A**

**Discussion Document on the limitation of ownership and control in respect of telecommunication services, in licences that shall be issued in an Under-Serviced Area, pursuant to section 40A of the Act.**

1. During February 2002 the Authority published regulations in terms of section 52 of the Act, as contained in government gazette no 23190, which provided for the limitation of ownership and control of telecommunication services.
2. The aforementioned regulation however addresses issues of ownership and control of telecommunication services in general.
3. The introduction of section 40A in the Act creates a new category of licensees namely Under -Serviced Area Licences (hereinafter referred to as "USALs")
4. One of the objectives in creating this category was to ensure rollout of telecommunication services in these areas and at the same time to encourage the participation of small businesses in the sector.
5. The creation of this opportunity is intended also to promote management, control and ownership of telecommunications companies by women and to further promote the participation of historically disadvantaged groups (hereinafter referred to as HDGs) or individuals (HDIs) within the sector.
6. In encouraging small businesses, communities, women and HDGs or HDIs, to effectively participate in the sector through

acquiring ownership and control within such enterprises, the Authority has to ensure that there is an enabling framework within which this initiative develops.

7. In order to allow for diversity in the ownership and control of such licences, the Authority has identified a need to further amplify the existing regulations in terms of section 52.
8. A further factor to be considered on this issue is whether there should be any limitation of foreign participation in these licences.
9. The definition of "**ownership interest**" and "**controlling interest**" for the purpose of this discussion document will be the same as those contained in government gazette number 23190.
10. It is further anticipated that this process will culminate in the promulgation of a regulation which shall have the effect of restricting ownership and control in the licensees that will be awarded such licences.
11. The purpose of implementing such a restriction is to prevent a concentration of ownership or controlling interests in each and every licence, thereby defeating the objective of empowerment of HDGs and impeding the process of diversification of ownership and control in USALs.
12. It may also be said that the Public Switched Telecommunication Service providers, the Mobile Cellular Telecommunication Service providers and Sentech (Pty) Ltd (i.e licensees in terms of sections 32B, 32C, 36 and 37 of the Act) currently have a significant presence in the various telecommunications markets and should therefore be excluded from participation in these licences.



13. In issuing such licences, the Authority is further proposing that a person, entity or affiliate of such person who has a controlling interest in an USAL, shall not hold a controlling interest in any other USAL.
  14. With regard to the ownership interest in an USAL the Authority proposes that a person, entity or affiliate of such person be restricted to holding an ownership interest in no more than two licences.
  15. The Authority is of the view that to allow unrestricted cross-ownership may create a potential for collusion and anti-competitive practices.
  16. The Authority, having listed these issues which it considers pivotal to the licensing framework, hereby invites all interested parties to comment on the content of this discussion document and to propose substantiated alternatives to these proposals.
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