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No. Gazette
 No.***GENERAL NOTICE****Independent Communications Authority of South Africa***General Notice*

3444 Telecommunications Act (103/1996): Notice on the proposed licence terms and conditions under which a Global Mobile Personal Communication via Satellite (GMPCS) Service shall be licensed.....

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GENERAL NOTICE

NOTICE 3444 OF 2002



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE ON THE PROPOSED LICENCE TERMS AND CONDITIONS UNDER WHICH A GLOBAL MOBILE PERSONAL COMMUNICATION VIA SATELLITE (GMPCS) SERVICE SHALL BE LICENSED

The Independent Communications Authority of South Africa hereby gives notice in terms of section 34(3)(b) of the Telecommunications Act, 1996 (Act No. 103 of 1996), as amended on the terms and conditions under which it intends to licence GMPCS Services in South Africa in the Schedule below.

Interested persons are hereby invited to submit written representations in relation to the proposed terms and conditions for GMPCS Service licences, to the Authority **by no later than 16h30 on 13 January 2003**, by post, hand-delivery, facsimile transmission and an electronic version in Microsoft Word 6.0 or lower for the attention of Mr Andries Matthysen, ICASA Private Bag X10002, Sandton, 2046; Block C, ICASA, Pin Mill Farm, 164 Katherine Street, Sandton; Facsimile (011) 321 8550; e-mail AMatthysen@icasa.org.za.

MANDLA LANGA
CHAIRPERSON

ICASA**Draft****GMPCS Service Licence****Table of Contents**

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The Independent Communications Authority of South Africa (hereinafter referred to as "the Authority"), in exercise of the powers conferred to it by the Telecommunications Act (Act 103 of 1996), as amended, (hereinafter referred to as "the Act"), hereby issues a GMPCS Service licence to

THE SATPHONE COMPANY LTD,
421 Asetileen Street, Silvertondale
(example)

(hereinafter referred to as "the Licensee") to operate and maintain a Global Mobile Personal Communications by Satellite Service in the Republic of South Africa, subject to the terms and conditions contained herein.

Definitions

Words and terms used in this licence shall have the same meaning as ascribed in the Act, and in addition

"commencement of service" means the date on which the Licensee commences commercial operation.

"community service obligation" means obligations imposed on the Licensee in this licence to provide telecommunication services to areas within the RSA.

"contract of service" means an agreement entered into between the Licensee and the End-user for the provision of GMPCS Service to the End-user, which contract sets forth the rights, duties and liabilities of the parties with regard to the said service.

"End-user" means a person whom, in compliance with the terms and conditions of the Contract of Service entered into with the Licensee, assumes the obligations of the said contract for the utilisation of the GMPCS Service.

"GMPCS service" means the transmission of any type of telecommunication service - voice, fax, or paging - which is provided directly to end users, anywhere on earth, by means of a GMPCS system.

"GMPCS service provider" means the person who undertakes to provide and maintain a GMPCS Service to the End-user in accordance with the Contract of Service entered into between the parties and the provisions of this licence.

"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.

"GMPCS System Provider" means the person that provides, operates and maintains the GMPCS system by means of which the GMPCS Service is provided, either directly or indirectly, to End-users.

"GMPCS-MoU" means the principles under which signatories thereto have agreed to allow the introduction of GMPCS Service, as laid down in the five articles under Opinion 2 adopted at the World Telecommunications Policy Forum of 1996.

"GMPCS-MoU Mark" means a mark, agreed upon by the signatories of the GMPCS-MoU, which may be affixed on GMPCS terminals pursuant to these Arrangements.

"Interconnection Agreement" means an agreement concluded in terms of section 43 of the Act between the Licensee and one or more PSTS licensee(s) or similarly licensed persons, and shall include any interconnection agreement already entered into between the Licensee and Telkom or any similarly licensed persons;

"Interconnect Fees" means the fees payable in terms of an Interconnection Agreement or Facilities Leasing Agreement for:

- (i) the carriage of messages originating in one network by means of another network, and/or
- (ii) Leased Lines;

"ITU" means International Telecommunications Union.

"Outage" means a period of time during which a system is not functional.

"PSTN" means the telecommunication systems installed or otherwise provided, maintained and operated by a public switched telecommunication licensee for the purpose of providing public switched telecommunication services.

"Service area" means the territory of the Republic of South Africa.

General Provisions

Authorised Services

This licence authorises the provision of a GMPCS Service in terms of the GMPCS-MoU and licence number _____ issued in _____ (country of registration), by means of the "Satstar" (example) system.

Applicable law

The Licensee shall provide the GMPCS Service authorised by this licence in accordance with the terms and conditions of this licence as well as the laws of the Republic of South Africa.

Assignment of rights

The Licensee shall not assign, transfer, subcontract, dispose of or in any manner alienate this Licence or any part thereof, or any benefit or interest therein, or thereunder without the prior written consent of the Authority.

Performance Guarantee

The Licensee, shall procure a performance guarantee substantially in accordance with the draft document attached hereto in Annexure 2 to the satisfaction of the Authority underwriting the performance obligations of the Licensee in terms of this licence.

Licence Fee

The fixed Licence Fee of R75,000,000 (Seventy-five Million Rand) for a GMPCS Service licence may be paid as a once off amount on issue of the licence or as follows:

- i) R10 Million on the first anniversary of the date of issue of the licence
- ii) R15 Million on the second anniversary of the date of issue of the licence
- iii) R15 Million on the third anniversary of the date of issue of the licence
- iv) R15 Million on the fourth anniversary of the date of issue of the licence

- v) R20 Million on the fifth anniversary of the date of issue of the licence

International Standards

The Licensee shall comply with all international regulatory and technical standards applicable to the GMPCS Service and the GMPCS system, including without limitation the switching and transmission standards set by the Telecommunication Standardisation and the Radiocommunication Bureaux of the ITU, and within any requirements of the GMPCS-MoU Arrangements.

Technical Standards

The Licensee shall submit to the Authority its plans for numbering, signalling, transmission, switching and synchronisation for written approval by the Authority and shall comply with all technical standards prescribed and imposed by the Authority from time to time.

Local Employment and Training

- a) The Licensee shall conduct its recruitment and training in accordance with the provisions of the Constitution and South African legislation, in particular the Employment Equity Act and to this effect it shall furnish the Authority with a manpower resource development strategy, including an implementation schedule within one month of the issue of this licence.
- b) The Licensee shall develop training and instruction programmes for its own and other personnel who may be required to construct, operate and maintain the GMPCS system and interface with related systems.
- c) If the Licensee has to engage non-South African Nationals to perform specialised duties or work, the Licensee shall furnish to the Authority information as to the quantity of non-South African Nationals and nature of such duties, and after every period of twelve months from the Commencement of Service, the Licensee shall furnish information on the progress made in transferring these specialised duties to South African Nationals.

Traffic data provision

The Licensee shall:

- a) Install, operate and maintain a traffic monitoring system that is capable of recording the origins, destinations, duration and volumes of South African related traffic at specified times and intervals, and

- b) Furnish at six monthly intervals from the Commencement of Service or upon request by the Authority, such information to the Authority.

Contributions to the Universal Service Fund

The Licensee shall make contributions to the Universal Service Fund in accordance with Section 67 of the Telecommunications Act.

Community Service Obligations

- a) The Licensee shall provide and maintain, and replace where necessary, one thousand (1000) fixed GMPCS based community service telephones to previously disadvantaged communities for the duration of this licence in areas, the location and rollout of which shall be determined by the Authority in consultation with the Licensee. The Authority may consult the Universal Service Agency in this regard.
- b) The Licensee shall submit and agree with the Authority within six months of the date of issue of this licence the performance indicators to be used for the evaluation of its community service telephone rollout obligations.

OBLIGATIONS AND SERVICE QUALITY

Contract of Service

- a) Subject to section 2.1, the GMPCS Service shall be provided to all End-users on a non-discriminatory basis and pursuant to the same terms and conditions.
- b) The Licensee shall provide all services under this licence in accordance with the published terms and conditions of service offered, the format of which is provided in Appendix (1).
- c) The Licensee shall provide in writing to each End-user at the time of concluding the service contract, a *Code of Commercial Practices* practised in South Africa and approved by the Authority. This Code shall include, without limitation, the complaint procedure, the system of Outage credits and the system of emergency services and shall not replace or diminish the rights of the End-user as a consumer or any rights it is entitled to under the contract of service.

Responsibility for GMPCS

The Licensee shall assume full responsibility for any and all liability, which may arise from the operation of the GMPCS Service unless such is proven to be outside the control of the Licensee. The Licensee shall indemnify the Government of South Africa and PSTN operators for any such liability.

Quality of Service

The Licensee shall provide GMPCS Service at any location in the Service Area without interruption, except as may be necessary to perform routine maintenance from time to time, while endeavouring to keep interruptions to the End-users at a minimum for the duration of the maintenance.

Quality Measurement and Control (QMC)

- a) The Licensee shall within six months of the date of this licence establish a quality measurement and control system for the GMPCS Service, which shall enable verification of compliance with the standards referred to in sections 2.6 and 2.7. Detailed information about such system shall be presented to the Authority within this time period for recording.
- b) The Licensee shall furnish quality of service reports to the Authority at six monthly intervals, commencing after the establishment of the QMC system, or as requested by the Authority from time to time.

Outage Credits

The Licensee shall from the date of Commencement of Service establish a system of Outage credit to be given to an End-user for periods of time when the service was not available to the End-user for reasons outside the End-user's control. This system's details shall be lodged with the Authority within that time period for its approval or modification, and shall become part of the Contract of Service between the Licensee and the End-user. The Licensee shall have no liability to End-users for Outages outside the control of the Licensee.

Complaint System

The Licensee shall, from the Commencement of Service, establish an efficient and user friendly system to receive, process and respond to complaints or claims by End-users or other affected parties related to the GMPCS Service. This system shall be presented to the Authority within one month of the Commencement of Service, for approval.

Confidentiality of Communications

The Licensee shall not monitor or disclose the content of any telecommunications carried on its system or permit any other person to do likewise, except as required or permitted by law.

Emergency Services

The Licensee shall provide its End-users within the Republic of South Africa free access to emergency services within the Republic of South Africa.

INTERCONNECTION

The Licensee shall be permitted to enter into Interconnection Agreements with licensed telecommunications systems within South Africa in terms of section 43 of the Act.

RATES AND INVOICING

Setting of tariffs

- a) The Licensee shall not charge any tariffs or fees for the Service and any other services whatsoever until such tariffs and fees have been lodged in writing with the Authority and approved.
- b) The tariffs and fees must be in a form approved by the Authority, which shall provide written reasons in the event of non-approval. The notice of tariffs and fees lodged with the Authority must state the period (i.e. the term) for which it is to be in force. The term must not begin before the thirtieth day after the notice has been lodged with the Authority. In relation to each kind of service that the licensee proposes to offer during the term, the notice must set out -
 - i.) a description of the service; and
 - ii.) details of the nature and amounts of charges payable for the service.
- c) If the charges in a tariff plan vary, in their nature, in their amounts or both, the notice must set out why and how the charges vary.
- d) The notice must be precise and detailed enough to be used to work out the nature and amounts of charges payable for the supply of the Service in particular cases.
- e) The Licensee shall not, without the approval of the Authority, increase any existing tariff plan by an amount which is greater than the percentage year on year increase in the Consumer Price Index for all goods unless such a change constitutes a special promotion for marketing or advertising purposes
- f) Notwithstanding the provisions of paragraph 13.5, any increase in the Community Service Telephone tariff plan as annexed to this Licence and as amended from time to time shall be approved by the Authority. If the Authority disallows or delays the proposed Community Service Telephone tariff plan increase, it shall provide written reasons to the Licensee for its decision.

- g) The base tariffs and fees which the Licensee may apply as from the Commercial Date are annexed hereto and shall be treated as having been lodged with the Authority.
- h) Where the Authority has approved an increase in tariffs and fees, these increased tariffs and fees shall constitute the new base tariffs and fees.

Publication of tariffs

- a) The Licensee shall publish details of its tariffs and fees and any other terms and conditions on which its services are provided by-
 - i.) making them available for inspection at its major places of business during normal business hours, and
 - ii.) sending the appropriate parts thereof to any person who may request same.

Invoicing

- a) The Licensee shall provide each End-user whose *domicilium citandi et executandi* is within South Africa a monthly invoice for the consumption of the contracted services, broken down per type of service, and in the event of measured services, itemising the date, time, duration and cost of each service.
- b) The invoice shall be denominated in South African currency and comply with the South African tax regime.

No Discrimination on Tariffs or Prices

The Licensee shall not charge discriminatory tariffs to End-users, but shall provide like service to like classes of End-users under like terms and conditions, at like prices. Such classes of End-users may include discount classes such as rural or "large-user" discounts and any base for distinction approved in accordance with the relevant regulations.

INSPECTION, ACCOUNTING AND AUDITING

Inspection

The Licensee shall permit the Authority to inspect the physical plant including, without limitation, the GMPCS Service and administrative offices at any reasonable time. Such inspections shall be conducted in the presence of authorised personnel of the Licensee. The Licensee shall cooperate fully with the Authority during such inspections.

Accounting and Auditing

- a) The Licensee shall maintain financial records of its South African operations in accordance with good accounting practices and shall upon request make the books and records of accounts available for inspection by the Authority within a reasonable time.
- b) Within three months of the end of each financial year of the Licensee, it shall present to the Authority accounting statements, truly and fairly presenting the costs (including capital costs), revenue and financial position of the businesses together with a report of the Licensee's auditor on those statements.
- c) The Authority may make regulations governing the manner in which such accounts shall be filled. Until such time the Licensee shall maintain proper accounting records in accordance with generally accepted accounting practice in such form as is sufficient to –
 - A) show all the activities of the Licensee taken together and the activities of each of the Licensee's businesses engaged in –
 - (i) the Retail Business;
 - (ii) the Wholesale Business;
 - (iii) the supply of Terminal Equipment (other than Community Service Telephones);
 - (iv) the supply of Community Service Telephones and the provision of the Service by means of Community Service Telephones;
 - (v) the provision of supplementary services;
 - (vi) the supply of printed directories;
 - (vii) such other categories as the Authority may from time to time require, separately from each other and from the other businesses of the Licensee; and
 - B) explain its transactions and those of each of those businesses.
- C) The Licensee shall record, in such accounting records at full or market-related cost, any material transaction between –
 - (i) it and any of the businesses of the Licensee specified in the Chart of Accounts and Cost Allocation Manual, once one is established;
 - (ii) one such business and another; and
 - (iii) it and any other person in which the Licensee has shares; and

(iv) it and any other person who has shares in the Licensee or in the shareholders of the Licensee; and

(v) it and a subsidiary company, as defined in the Companies Act, of such Licensee.

EFFECTIVE TERM AND TERMINATION

Effective Term of the Licence

This licence shall be valid for fifteen years (15), commencing on the date of issue.

Extension of the Licence

- a) Any application for extension must be made in writing at least one year before the licence lapses.
- b) Such an extension can be for a minimum period of five years or for such other period requested by the Licensee and agreed to by the Authority.
- c) The renewal of the licence is subject to the Authority being satisfied that the Licensee has materially complied with the terms and conditions of this licence.

Termination of Licence

The licence shall remain in force in accordance with its terms and conditions until one of the following events occurs, which shall constitute an event of termination:

I. Expiration of Term

This licence shall expire on the fifteenth anniversary of the date of issue of this licence, unless extended by the Authority on application prior to that date.

II. Termination for Cause

The following events shall constitute cause for termination:

- a) Failure by the Licensee to provide service to End-users within twelve months from the date on which the licence was issued.
- b) Continuous interruption of service for a consecutive or combined period of ninety days over any six-month period, provided,

however, that the interruption(s) is not the result of *force majeure* as defined in clause 8.

- c) Insolvency or the filing of any insolvency proceeding by the Licensee or adjudication of same in favour of creditors if such proceeding is filed against the Licensee, any proceeding or assignment of assets for the benefit of creditors, or any state of Licensee which may be considered "insolvency" under the laws of South Africa.

FORCE MAJEURE

- 8.1 Without prejudice to their rights under this licence, the Licensee shall not be held responsible, should its performance hereunder be delayed or prevented by circumstances of *force majeure* which shall include, but not be limited to lockout, strike, riot, mutiny, civil commotion, fire, accident, act of God, war, government action or other reason beyond the reasonable control of either party hereto.

- 8.2 In the event of *force majeure* occurring, the Licensee shall notify the Authority in writing within fourteen days of its first occurrence.

DISPUTES, WAIVERS AND BREACH OF LICENCE

- 9.1 Should any disagreement or dispute arise between the parties in respect of the provisions of this licence, the Authority and the Licensee shall make every effort to resolve it amicably by means of negotiations.

- 9.2 No waiver by either party of the terms or conditions of this licence to be performed by either party shall be construed as a waiver by the party of any succeeding breach of the same or any other term or condition to be performed by the other party.

- 9.3 Any alleged contravention of or failure by the Licensee to comply with the conditions of this licence shall be dealt with in accordance with the provisions of section 100 of the Act.

MISCELLANEOUS PROVISIONS

- 10.1 The insertion of headings and the provision of an index are for purposes of reference only and shall not affect the construction or interpretation thereof.

- 10.2 Save where the context otherwise requires, the singular includes the plural, the masculine includes the feminine and *vice versa*.

- 10.3 Should one or more of the provisions of this licence prove to be invalid and/or unenforceable, this will not affect the validity and/or enforceability of the other provisions of the licence.
- 10.4 Modification of the terms and conditions of this licence together with the appendices may only be made after written agreement between the Licensee and the Authority; however, each party shall give due consideration to any proposal for the modification(s) by the other party.
- 10.5 Any notice given pursuant to this licence shall be in writing and may be given by delivering the same by hand-delivery, facsimile successfully transmitted, registered mail, electronic mail successfully delivered to the party concerned at its *domicilium citandi et executandi* or at such other address or number as either party may have notified in writing to the other party for the purpose hereto.

For ICASA:

For the LICENSEE;

Issued this..... day of 2002

Appendix 1: Terms and conditions of service offered.

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