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## GENERAL NOTICE

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### NOTICE 798 OF 2004

#### NOTICE IN TERMS OF SECTION 27 OF THE TELECOMMUNICATIONS ACT

- 1) The Independent Communications Authority of South Africa (ICASA) hereby gives notice and invites comment in terms of section 27 of the Telecommunications Act no. 103 of 1996 ("the Act") on how commercial public pay phone strategy should be developed.
- 2) Interested persons are hereby invited to submit written representations on their views on the commercial public pay phone industry. Electronic versions of representations on Microsoft word will also be accepted.
- 3) Persons making representation are requested to indicate if they wish to make oral representation, the estimated duration of which shall not exceed 45 minutes.
- 4) Written Representations may be posted or hand delivered by no later than 10<sup>th</sup> June 2004, for the attention of :

Ms D. Ngoasheng  
Senior Manager: Consumer Protection  
ICASA P/Bag X1 Marlboro  
2063

or  
ICASA Block C Pinmill Farm  
164 Kathrine Street  
Sandton

or  
[dngoasheng@icasa.org.za](mailto:dngoasheng@icasa.org.za)

- 5) In order to provide a wide basis for representations to be made during the enquiry, the Authority has compiled questions as a guideline to address critical issues related to this matter. Since, these questions are not in any way exhaustive, the respondents are invited to comment on any issue that might be relevant to this exercise.
- 6) All written representations submitted to the Authority pursuant to this notice shall be made available for inspection by interested persons from 18<sup>th</sup> of June 2004 at

the ICASA library and copies of such representations and documents will be obtainable on payment of the prescribed fee.

- 7) At the request of any person who submits a written representation or document pursuant to this notice, the Authority may determine whether such representation or document, or any portion thereof, relates to the financial situation or business plan of any person, or to any other matter reasonably justifying confidentiality, in which event such representation or document shall not be made available for inspection by members of the public. If the request for non-disclosure to the public is refused, the person making the request shall be allowed to withdraw such representation or document.
- 8) With respect to the documentation determined not to be open to public inspection in terms of paragraph 7 above, the Authority may direct that the public or any member or category thereof, shall not be present while the oral submissions relating to such documentation are being made; provided that those present shall have been notified of this intention and, allowed to object thereto and after such objections had been considered by the Authority.
- 9) These questions have been incorporated into the annexure hereto titled "DISCUSSION DOCUMENT ON THE COMMERCIAL PUBLIC PAY PHONE STRATEGY (hereinafter referred to as "the discussion document")
- 10) The findings and conclusions, if any, made by the Authority following the public enquiry will be published in the Government Gazette in accordance with Section 27 of the Act

Mandla Langa  
Chairperson  
ICASA

### **Discussion Document on the Commercial Public pay phone strategy**

#### **1 Background**

- 1.1 For years, the provision of Public pay telephony was an exclusive right granted to Telkom in terms of section 39 (2) and clause 3.1 (d) of its license Section 4.2 of Telkom's license stipulates that the Licensee shall consult with the Authority on guidelines, which shall be prepared by the licensee for determining where new public pay phones should be installed at the end of the period of exclusivity in terms of section 39 of the Telecommunications Act.

- 1.2 For purposes of the enquiry we shall use the definition in Telkom's license of "public pay phones": which states that it "means apparatus (including any kiosk, booth, acoustic hood, shelter or similar structure in which the apparatus may be installed) at which public pay phone services are made available to the public, and which contains a device to accept payment for those services ". There is no definition of public payphone in the mobile operators' license. The service which is the subject of this enquiry is the commercial public pay phone which makes use of mobile operator's air time.
- 1.3 On the other hand telecommunications mobile operators licensed in terms of Section 37 of the Act namely VODACOM, MTN and CELLC have in their licenses obligations to roll out Community Service Telephones (CST) in under serviced areas at subsidized tariffs. This is referred to as the regulated community phone industry. The mobile operators have adopted varying models to roll out their CST's and some have appointed entrepreneurs to operate these phones.

Many entrepreneurs of the CSTs started moving their community service telephones to city centres. Such entrepreneurs had to be requested to move back to under serviced areas after several complaints by other players in the market were made directly to the Authority and the relevant Operators. What had become clear to the Authority was that the entrepreneurs wanted to operate in more profitable areas like towns and cities. The entrepreneurs, as franchisees of the operators, have always been fully aware of areas in which the CSTs were supposed to be located. This suggests a change of focus from the community service mandate to a more commercial interest by the entrepreneur.

The mobile operators' CSTs and the fixed line public pay phones provided by Telkom, comprise the regulated industry, over which the Authority has control. Thus the Authority monitors the tariffs, quality of service and distribution of such telephones.

- 1.4 Telkom's exclusivity on the public pay phone service came to an end in the year 2001 through Section 39 of the Telecommunications Act as amended. Section 39 (2) (a) further states that no person other than Telkom shall be granted a license to provide a public pay phone service until after 7 May 2002.

#### **1.5 Definitions of the market and reasons for its existence**

" Public Pay Phone " in Telkom's license means apparatus (including any kiosk, booth acoustic hood shelter or similar structure in which that apparatus may be installed) at which public pay telephone services are

made available to the public or segments of the public ,and which contains a device to accept payment for those services.

“Community Service Telephone (CST) in the mobile operator’s licenses means Terminal equipment which is registered which is registered as such by a Licensee in its own records ; and which is made available to the general public for the provision of the service and, to this end ,is accessible at community service telephone tariff rates as approved by the Authority from time to time; and which is located in an under -served area or in a community centre ;and single units of which may be grouped in a single location ,in which event each individual telephone will be considered a single telephone for purposes of the Licensee’s community service obligations as set out in the license.

The commercial public pay phone market that has developed exists owing to a combination of factors.

Due primarily to issues of affordability, people are unable to get contracts with either mobile phone operators through their service providers or with Telkom SA. For convenience they thus become prepaid customers. The trend has been that consumers often use the hand held cellular telephones to receive calls and the CSTs to make outgoing calls.

Service providers sell corporate packages with the regulated tariff plan to distributor companies. The distributor company often has agreements with more than one service provider, which gives them greater bargaining powers in terms of corporate discounts.

- 1.6 The Authority is aware of the role that public pay phones play in the lives of the public be it from an entrepreneur, social and safety consideration. To this end the Authority noticed a steep rise in commercial public pay phone industry as many people started seeing this as a livelihood and a business opportunity.
- 1.7 The subject of this inquiry is commercial public pay phones or non regulated public pay phones which use GSM technology as a means of making a service available to customers. This service is exclusively performed at service provider level. The retail operator or entrepreneur uses a commercial or corporate package which is not subject to area restrictions.
- 1.8 Approximately four parties are usually involved in this business namely:
  - Service Providers from whom corporate or commercial packages are purchased.

- Manufacturers of the terminal
- Distributors of the terminal
- Retail operators

- 1.9 Given the background of subsidized tariffs of CSTs, members of the public believe that all calls from GSM public pay phones are cheaper than calls from a fixed line. This belief is becoming entrenched in people's minds as a result of misleading advertisements of the franchisees that purport to charge less than CSTs.

## **2 Misleading Advertising**

- 2.1 The misleading advertisements have helped make this business viable for some operators. The operators of the commercial pay phones advertise that they charge R0.50 cents per unit. The unit is not defined, so unsuspecting consumers are lured by the seemingly low tariff to make a call from the commercial public pay phones and end up paying much more than they would pay from CSTs or from a Telkom public pay phone.

**What should the Authority's role be in a situation where there are misleading advertisements?**

## **3 Distributors**

- 3.1 In November 2002 the Authority held a meeting with some distributors to get an understanding of the commercial public pay phone industry, due to the number of complaints that were being lodged with the Authority. It has come to the attention of the Authority that historically disadvantaged individuals are targeted as retail operators through pamphlets distributed in townships and rural areas. Potential entrepreneurs respond to adverts by approaching the respective distributor to purchase the hardware.

The cost of the hardware differs from one distributor to another. The prices range between R2 999.00 and R6 999.99. Some retail operators have advised the Authority that upon purchase of the hardware they are asked to sign a contract with the distributor. Other retail operators have informed the Authority that they do not have contractual relationships with the distributors. In cases where the contract exists, it is drafted in favour of the distributor.

## **4 Industry Dynamics**

### **The Theory**

The Authority's investigations have revealed the following:

- 4.1 the retail operator buys hardware from a distributor based on a marketing campaign.
- 4.2 the retail operator enters into an airtime contract with the distributor for a period of 24 to 36 months
- 4.3 the telephone is preloaded with the distributor company's proprietary information, such as billing charges, billing time periods and recharge unit cut off times
- 4.4 the retail operator is trained in the use of equipment and the distributor's business practice.
- 4.5 the retail operator uses the phone for his/her customer base and once the airtime units have been depleted, pays the distributor who in turn recharges the telephone management system through a remote device.

## **5 The Reality**

The reality however differs radically for different reasons.

- 5.1 Franchisees enter into contracts with the distributor in response to the advertised low cost of the hardware. The hardware is sold to the retail operators at a subsidised fee; however the terms thereof are not explained to the retail operators. Hence they have to pay monthly to the distributor to cover the cost of the subsidies for a period of two years. They also have an ownership clause that specifies that the hard ware only becomes the property of the franchisee after 24 months of 'appropriate' usage, which is not defined
- 5.2 Many distributor companies make use of paper based banking systems whereby the retail operator is required to fax through the bank deposit slips in order to request recharges. This has proven to be problematic in that the distributors often wait for the information on the deposit slips before charging air time to a retail operator's instrument. There are often delays in recharging the air time, and the business is affected detrimentally by the delays.

If the relationships break down for whatever reason the retail operator is left with the hard ware he/she cannot use with other distributors as the hard ware is sim locked to that particular distributor.

**Q The Authority seeks clarification of what is meant by "appropriate usage" that is expected of retail operators and what measures and**

**controls should be put in place to monitor and oversee the relationships between distributors and retail operators?**

**Q The Authority seeks information and invites the respondents comment on sim locking of retail operators systems by the distributors.**

## **6 Contract with Distributors**

**6.1** The Authority has established that the terms and conditions of the contracts entered into between the distributors and the retail operators, where such contracts are in place, are as follows:

- the retail operator signs a twenty four month contract although they have purchased the instrument/s for cash.
- the retail operator pays a service fee of between R200.00 and R500.00 per month the purpose of which is not explained.
- the retail operator are locked into acquiring a certain amount of airtime per month irrespective of how much air time they have used in previous months.
- the contract includes a monthly charge of line rental of an amount of R860 for a two year contract, which translates to R20 640.00. The line rental amount may vary among distributors, which line rental amount is not explained.

**6.2** The Authority invites comments on whether the retail operators should conclude contracts with distributors? If so what should the terms and conditions of these contracts be?

**Are the respondents in agreement with the terms and conditions of these contracts?**

**The Authority further seeks inputs on whether the respondents think that the Authority should monitor such contracts? Should such contracts be filed with the Authority? Should such contracts be filed with the Authority?**

## **7 Mobile Phone Operators**

**7.1** The technology being used is GSM. Thus the "air time" is in fact being purchased from mobile operators. In its investigations the Authority has

established from the distributors that they purchase a high volume of corporate packages at a low tariff from the service providers of mobile operators, and then resell these packages to retail operators at a profit.

**Q. Clarification is also sought on the role that the mobile operators play in the provision of this service.**

**7.2 The Authority seeks information on the nature of the relationship between Service Providers, Mobile Operators and the distributors?**

**7.3 The Authority further seeks information on whether the commercial public pay phone service is being provided under the license of the mobile operator?**

## **8 Radius of the operation**

**8.1** It has been brought to the attention of the Authority that commercial public pay phones can and are set up anywhere a retail operator considers viable on any particular day. The portability of the phones makes this possible. This has created a problem of in-fighting among retail operators as they compete over the positioning their commercial phones in places with high volumes of traffic, for example in taxi ranks.

**8.2 The Authority seeks information on whether there need to be restrictions placed on the number of commercial phones within certain distances. If so what should be the determining factor in setting these distances?**

## **9 Type Approval and Standards**

**9.1** There have been complaints lodged with the Authority regarding public pay phone equipment becoming defective after a short period of purchase and use.

**9.2 Q Should the public pay phone operators be registered, and if so by whom?**

**Q Are the equipment and apparatus that are being used currently in compliance with the standards as published by Standards South Africa (STANSA) from time to time.**

**Q We invite respondents to comment on ways to monitor and ensure that all equipment being used or to be used in the future comply with the standards aforesaid.**

## **10 After Sales Service**

- 10.1 The issue of after- sales service has been brought to the attention of the Authority. The current state is that vendors are expected to bear the cost of sending the equipment to the distributor for repairs.
- 10.2 When the equipment is not working, (which is something that happens frequently), the retail operators are not provided with a substitute or loan instrument to continue with their business.
- 10.3 **Should there be obligatory after- sales service for the benefit of the retail operators? Should the manufactures be requested to provide guarantees for their products? If so for how long?**

## **11 Tariffs**

- 11.1 Through its investigations, the Authority has found that commercial pay phone operators charge high tariffs when compared with CST and tariffs of fixed public pay phones. This results in complaints being lodged with the Authority. The Authority has encountered numerous challenges in trying to explain the different tariff structure of the CST and commercial public phones operating in the same area.
- 11.2 **Q The Authority seeks to establish if the tariffs of commercial public pay phones should be regulated, if so how?**

**Q Should the regulated tariff be in line with the ones of mobile cellular operator's tariff, or should there be one just for commercial public pay telephones?**

## **12 Consumer Protection**

- 12.1 **In terms of their license conditions Public pay phones should provide free access to emergency services and toll free numbers. Do commercial public payphones provide this free access? If not, should commercial phones provide this free access?**
- 12.2 **Payment methodologies and giving of change. Do all commercial payphones operate strictly on cash basis? Do they give change when it is due to the consumers? Should they give change when it is due? Is it an**

acceptable practice to use bartering systems and thus give chewing gum or sweets in stead of change? Should the tariff be structured such that there will be no change due to consumers?

- 12.3 Do consumers know what the advertised tariffs translate into with regard to actual call charges?
- 12.4 Should the Authority require that there be a code of practice that commercial public pay phone operators abide by? Would the code of practice be similar to that of mobile phone operators? Who do you think should monitor adherence to the said code?
- 12.5 Should the Authority regulate this commercial public pay phone industry? Does this industry fall within the area of regulatory jurisdiction of the Authority?

### **Conclusions**

The Authority seeks the views of all interested parties on the above, and on any matter related to commercial public pay phones even though same may not have been expressly raised in this enquiry.

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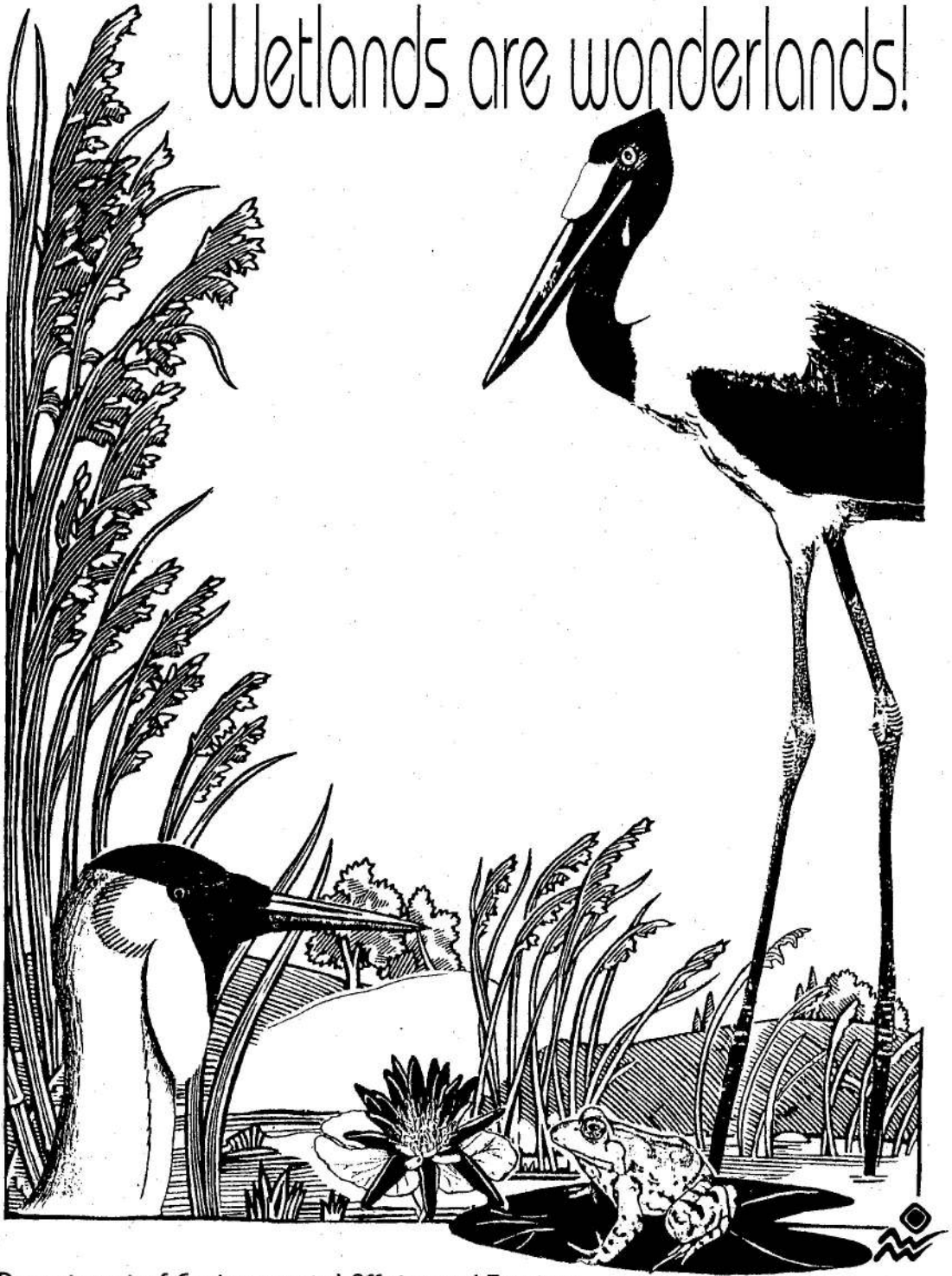
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