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CONTENTS • INHOUD*No.**Page
No.* *Gazette
No.***GENERAL NOTICE****Independent Communications Authority of South Africa***General Notice*

2791 Telecommunications Act (103/1996): Notice of withdrawal and intention to make regulations for Value Added Network Services

3 27072

GENERAL NOTICE

NOTICE 2791 OF 2004

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE OF WITHDRAWAL AND INTENTION TO MAKE REGULATIONS FOR VALUE ADDED NETWORK SERVICES

The Independent Communications Authority of South Africa ("the Authority") gives notice that it hereby withdraws the notice published on 2 December 2004 in Government Gazette 27057 Notice 2765.

The Independent Communications Authority of South Africa ("the Authority"), hereby gives notice that it intends making regulations for Value Added Network Services (VANS) in terms of section 96(5)(b) and sections 33(1)(b), 34(1), 40 and 88 of the Telecommunications Act, 1996 (Act No. 103 of 1996), as amended.

Interested persons are hereby invited to submit written comments or written representations with regard to the proposed regulations, to be received **by no later than 30 days from publication of this notice**, by post, hand delivery or fax and also in electronic format (Microsoft Word 6.0, Adobe PDF) for the attention of:

Mr. Andries Matthysen
Senior Manager: Licensing Enforcement & Numbering & Administration
ICASA Private Bag X10002, Sandton, 2146,
Block C,
ICASA
Pin Mill Farm,
164 Katherine Street, Sandton;
Telephone (011) 321 8377 or 83 326 3543;
Facsimile (011) 321 8583,
E-mail: AMatthysen@icasa.org.za

MANDLA LANGA
CHAIRPERSON
ICASA

In terms of section 96(6) of the Telecommunications Act, 1996 (Act No. 103 of 1996), I, Dr. Ivy Matsepe-Casaburri, Minister of Communications hereby approve and publish the regulations in the Schedule made by the Independent Communications Authority of South Africa under section 96(1) and 96(5)(b) read with sections 33(1)(b), 34(1), 40 and 88 of the said Act.

Dr. Ivy Matsepe-Casaburri
Minister of Communications

SCHEDULE

1 REPEAL

This regulation repeals the following:

- a. the section 40 regulations published in Government Gazette 26371 of the 19th of May 2004, Notice 837 of 2004;
- b. the manner of application regulations for Value-Added Network Service Licences published in Government Gazette 1384 of the 1st of October 2003, Notice 1384 of 2003; and
- c. the section 88 regulations published in Government Gazette 1384 of the 1st of October 2003, Notice 1390 of 2003.

2 LICENCE FOR THE PROVISION OF VALUE-ADDED NETWORK SERVICES

In terms of the provisions of section 40 of the Telecommunications Act (Act 103 of 1996) and the applicable regulations

"VANS provider's name"

(hereafter called "the Licensee"), is hereby licensed to provide value added network services, subject to the following terms and conditions:

2.1 DEFINITIONS AND INTERPRETATIONS

In this licence, unless otherwise stated, words and terms used shall have the same meaning as defined in the Telecommunications Act, (Act No. 103 of 1996, as amended) and any regulations promulgated thereunder.

"Act" means the Telecommunications Act, 1996 (Act No. 103 of 1996, as amended).

"Anniversary date" means every consecutive twelve month period from the date of issue of this licence.

"Customer" shall mean a person who has indicated a willingness in writing to enter into a contract with the Licensee for the provision of the service.

"Licence Fee Income" means the total annual invoiced revenue of the Licensee (less discounts, value-added tax and other indirect taxes) derived from customers for the provision to them of any aspect of the value-added network services, including the fees derived from the Licensee pursuant to section 40 (4) of the Act, less net facilities leasing fees and charges and bad debts incurred and as provided for in terms of the Income Tax Act, No. 58 of 1962.

"Self-provision" means the procurement of any telecommunication facilities by the Licensee from any supplier of telecommunication facilities and to use them under and in accordance with this licence to provide the telecommunication service.

"Value added network service" means a telecommunication service provided by a person over a telecommunication facility, which facility has been obtained by that person in accordance with the provisions of section 40(2) of the Act, to one or more customers of that person concurrently, during which value is added for the benefit of the customers, which may consist of-

- (a) any kind of technological intervention that would act on the content, format or protocol or similar aspects of the signals transmitted or received by the customer in order to provide those customers with additional, different or restructured information;
- (b) the provision of authorised access to, and interaction with, processes for storing and retrieval of text and data;
- (c) managed data network services.

2.2 RIGHTS AND OBLIGATIONS OF THE LICENSEE

Unless otherwise stated

- a) The Licensee shall be entitled, subject to the other provisions in this licence, to provide any or all value-added network services including voice services by means of any protocol.
- b) This Licensee shall provide its service by means of telecommunications facilities provided by any licensed PSTS operator, up until 31 January 2005, where after the Licensee may Self-provision or obtain its telecommunication facilities from any other licensed telecommunication service provider, including from a private telecommunication network operator that does not require a private telecommunication network licence.
- c) The Licensee in exercising its Self-provision rights shall comply with all radio regulations in the course of using any radio apparatus.
- d) The Licensee shall have the right to interconnect and enter into an Interconnection Agreement with any duly authorised person under section 32(1) of the Act and in accordance with the provisions of sections 43 and 44 of the Act and any regulations so promulgated to facilitate speedy interconnection of the Licensee with any duly authorised person.
- e) Any Licensee who seeks to interconnect with a circuit switched network shall have the right to apply to the Authority for numbering resource for the provision of the service and the Authority may subsequently allocate to the Licensee numbers in accordance with such regulations as may be applicable from time to time.

2.3 CONSUMER PROTECTION

- a) The Licensee shall not disclose any information about its Customers, obtained in the course of providing the service, to third parties or use it for any purpose other than fulfilling its obligations to Customers, unless required to do so pursuant to condition (i).
 - (i) The Licensee may disclose information about Customers to a third party to the extent that it is required –

- (a) in the process of debt collection;
 - (b) by the Licensee's auditors for the purpose of auditing the Licensee's accounts;
 - (c) by the Licensee's attorneys in connection with any potential, threatened or actual litigation;
 - (d) by the Authority for the purpose of compiling, verifying or auditing any reports, accounts or other information required under this licence.
-
- b) The Licensee shall clearly reflect and differentiate the value added network services and the services provided by it in terms of section 40(4) of the Act, from other non-value added network services for which it is charging its customers and this information shall be made available to the Authority for inspection upon request.
 - c) The Licensee shall establish efficient procedures for dealing with Customer complaints and to provide Customers with such service assistance as and when they may so require.
 - d) The Licensee shall keep a record of financial records for a minimum period of at least five (5) years.
 - e) The Licensee shall, when providing voice services, provide by means of its Value-Added Network Services such capabilities as would enable a Customer to communicate via the 112 national emergency number with any Emergency Organisation in the event of an emergency and be subject to the provisions of Chapter X of the Act.
 - f) The Licensee shall, in the case of exercising its right in terms of section 40 (4) of the Act, ensure that the person to who such facilities are being ceded to, assigned to, sublet to or to whom control has been parted to, is a person duly licensed in terms of the provisions of the Act.

2.4 EMPOWERMENT

- a) A minimum of 30% of the shareholding of the Licensee shall vest in the hands of historically disadvantaged individuals in the case where the Licensee is a

juristic person by the end of September 2005.

2.5 REVOCATION

- a) This licence may be revoked by the Authority upon breach by the Licensee of any of the terms and conditions of this licence or provisions of the Act. The provisions of the Act shall apply in relation to any breach committed or alleged to be committed by the Licensee.

2.6 TERMINATION

- a) This licence shall come into effect on the date of issue and will remain valid for a period of ten (10) years, provided that the licence may be renewed on application in accordance with the provisions of section 49 of the Act.
- b) The Licensee shall apply to the Authority for renewal of the licence at least three (3) months prior to the expiry date of the licence.
- c) Should the Licensee fail to apply in accordance with the above clause, the licence shall lapse.

2.7 TRANSFER OF LICENCE

- a) Transfer of this licence shall be done in accordance with the regulations prescribed under section 50 of the Act.
- b) The provisions of section 40 (4) of the Act enabling the Licensee to cede or assign his or her rights to use such facilities or to sublet or part with control or otherwise dispose of telecommunication facilities, shall not in any manner be construed as amounting to a transfer of a licence.

2.8 ANNUAL LICENCE FEE

- a) The Licensee shall on each anniversary date of the licence pay to the Authority an annual variable licence fee in amount equal to 0.1% of the Licence Fee Income.
- b) Payment of the annual variable licence fee shall be accompanied by a copy of audited financial statements of the Licensee as they relate to the Licensee's value added network services.

Issued aton the..... day of 20....

.....
Chief Executive Officer

3 APPLICATION FEE

An application for a value added network service licence shall be accompanied by an application fee of R 30 000, which is to be adjusted annually for inflation by taking into account cumulative changes in the Consumer Price Index for the immediately preceding calendar year and with 2004 as the base year.

3.1 TIME FOR PAYMENT OF LICENCE FEES FOR A VANS LICENCE

The first payment of the annual licence fee for any Value Added Network Service Licence shall be made within three months after the first anniversary of the issued licence. Subsequent annual licence fees for a Value Added Network Service licence shall be paid on or before each anniversary thereafter.

3.2 PENALTY FOR LATE PAYMENT

A Value Added Network Service Licensee who fails to pay the annual licence fee on or before the required date shall, in addition to the annual licence fee, pay a penalty comprising 10% (ten percent) of the annual licence fee per month overdue up to three months after the required date, failing which s100 of the Act shall be invoked.

4 MANNER OF APPLICATION

An application for a VANS licence shall:

- a) be made to the Authority in writing by completing the application form as set out in Annexure A attached herein;
- b) identify the applicant by providing the following information:
 - 1) if the applicant is a **natural person**, the following information must be furnished:
 - (i) the full names of the applicant;
 - (ii) the identity number of the applicant;
 - (iii) the applicant's permanent residential address;
 - (iv) the applicant's business address;
 - (v) the applicant's telephone and fax numbers.
 - 2) if the applicant is a **juristic person**, the following information must be furnished:
 - (i) business name and address, the telephone and fax numbers of the applicant, and certified copies of all the founding documents of the applicant;
 - (ii) the full name, address (physical, postal and e-mail) and the telephone number, fax number of each shareholder or member owning shares or having an interest in the applicant by completing section 1.2.2 of the application form.
- c) contain a general description of the service to be provided.
- d) contain a letter from the Authority in respect of any telecommunications equipment to be connected to the public switched telecommunication network that confirms that

such telecommunications equipment to be used by the applicant has been type approved by the Authority.

e) In the case of natural persons with annual turnover of R1 000 000 (one million Rand) and above;

(i) the employment strategies related to historically disadvantaged individuals;

f) In the case of juristic persons;

(i) the employment strategies related to historically disadvantaged individuals; and

(ii) a minimum of 30 percent (%) shareholding by historically disadvantaged individuals by the end of September 2005.

Annexure A

**APPLICATION FOR A LICENCE TO PROVIDE
VALUE ADDED NETWORK SERVICE (VANS).**

1 PARTICULARS OF THE APPLICANT

1.1 Natural persons:

Name of the applicant:

Nature of business.....
.....
.....
.....

Identification number of the applicant:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Permanent residential address:
.....
.....
.....

Principal place of business:
.....
.....
.....

Telephone number: (.....).....

Fax number :(.....).....

Cellular Number: (.....).....

E-mail address:

1.2 Companies and Closed Corporations:

1.2.1 Address

1.2.1.1 Business name:

1.2.1.2 Nature of business:

.....

.....

.....

.....

1.2.1.2 Registration number:

[illegible]

1.2.1.3 Principal place of business:

.....

.....

.....

1.2.1.4 Postal Address:

.....

.....

.....

1.2.1.5 Telephone number :(......).....

1.2.1.6 Fax number : (.....).....

1.2.1.7 E-mail address:

1.2.1.8 Please attach certified copies of all the founding documents of the applicant to this application. (Founding statement for CC, Shareholders agreement, Application for conversion from company to CC, Certificate of incorporation, Memorandum of association, Certificate of Incorporation for Section 21 Company, Deed of Trust, Certificate of change of name of company)

1.2.2. Shareholders

Note: If shareholders/members are more than the provided space, please submit their information on a separate sheet.

1).	Name:	Shares:%
		

Address: Tel. No. : (.....) Fax No. : (.....) E-mail Address:	Nature of Shares	<input type="checkbox"/> Ordinary <input type="checkbox"/> Preference <input type="checkbox"/> Redeemable
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2). Name: Address: Tel. No. : (.....) Fax No. : (.....) E-mail Address:	Shares:%	Nature of Shares <input type="checkbox"/> Ordinary <input type="checkbox"/> Preference <input type="checkbox"/> Redeemable
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3). Name: Address: Tel. No. : (.....) Fax No. : (.....) E-mail Address:	Shares:%	Nature of Shares <input type="checkbox"/> Ordinary <input type="checkbox"/> Preference <input type="checkbox"/> Redeemable
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4). Name: Address: Tel. No. : (.....) Fax No. : (.....) E-mail Address:	Shares:%	Nature of Shares <input type="checkbox"/> Ordinary <input type="checkbox"/> Preference <input type="checkbox"/> Redeemable
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5). Name: Address: Tel. No. : (.....) Fax No. : (.....) E-mail Address:	Shares:%
	Nature of Shares	<input type="checkbox"/> Ordinary <input type="checkbox"/> Preference <input type="checkbox"/> Redeemable

6). Name: Address: Tel. No. : (.....) Fax No. : (.....) E-mail Address:	Shares:%
	Nature of Shares	<input type="checkbox"/> Ordinary <input type="checkbox"/> Preference <input type="checkbox"/> Redeemable

2. Description of the Service

Please tick the applicable block(s)

A description of the proposed service(s) to be provided:

- ☐ Electronic Data Interchange (EDI)
- ☐ Protocol Conversion
- ☐ Access to a Database
- ☐ E-mail
- ☐ Internet
- ☐ Managed Data Network Services (MDNS)

Other:

.....

3. Please attach to this application, a letter from the Authority which confirms type approval in respect of any telecommunications equipment to be connected to any another person providing a telecommunications service.

4. EMPOWERMENT

4.1 To be completed by applicants who are natural persons:

The employment strategies related to historically disadvantaged individuals:.....

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.....
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4.2 To be completed by applicants who are juristic persons.

4.2.1 The employment strategies related to historically disadvantaged individuals:.....

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4.2.2 Percentage of shareholding by historically disadvantaged individuals:
.....%

5. Any other information the applicant deems relevant.

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