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GENERAL NOTICE

Independent Communications Authority of South Africa

General Notice

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GENERAL NOTICE

NOTICE 1003 OF 2009



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA HEREBY
ISSUES A NOTICE INVITING COMMENTS REGARDING THE DRAFT
REGULATIONS CONTAINED HEREIN**

1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice and invites comments on the draft regulations published in terms of section 31(3) of the Electronic Communications Act, 2005 (Act No. 36 of 2005)
2. Electronic copies of the Draft regulation are available on the Authority's website (www.icasa.org.za).
3. Interested persons are hereby invited to submit written representations, including an electronic version of the representation in Microsoft Word, of their views on the Draft regulation by no later than 16h00 on Friday, 04 September 2009
4. Persons making representations are further invited to indicate whether they are requesting an opportunity to make oral representations (and the estimated duration thereof, which shall not exceed one hour).

5. Written representations or enquiries may be directed to:

Mr. Mandla Mchunu, Manager: Spectrum Management
Pinmill Farm, Block A, 164 Katherine Street, Sandton
Tel: +27 1 1-5663291 Fax: +27 1 1-5663292
Email: mmchunu@icasa.org.za

6. All written representations submitted to the Authority pursuant to this notice shall be made available for inspection by interested persons from 08 September 2009 at the ICASA Library and copies of such representations and documents will be obtainable on payment of a fee.

Written representations will be made publicly available except where respondents indicate that their responses or parts thereof are confidential. Respondents are requested to separate any confidential material into a clearly marked confidential annexure. Unconditional permission to use such confidential material will be assumed unless the author expressly states otherwise. If, however, the request for non-disclosure to the public is refused, the person making the request will be allowed to withdraw the representation or document in question. Any copyright attached to responses will be assumed to have been relinquished unless it is expressly reserved.



PARIS MASHILE
CHAIRPERSON
ICASA

REGULATIONS FOR THE PROCEDURES AND CRITERIA FOR GRANTING RADIO FREQUENCY SPECTRUM LICENCES FOR COMPETING APPLICATIONS OR INSTANCES WHERE THERE IS INSUFFICIENT SPECTRUM AVAILABLE TO ACCOMMODATE DEMAND

1. INTERPRETATION

In these Regulations, any word or expression to which a meaning is assigned in the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended or the Independent Communications Authority of South Africa Act, 2000 (Act No.13 of 2000), as amended, shall have that meaning ascribed to it unless otherwise specified.

"Applicant" means a person who has submitted an Application to be granted a radio frequency spectrum licence by the Authority in terms of these Regulations;

"Application" means the request to be granted a radio frequency spectrum licence in the manner prescribed in these Regulations;

"Application fee" means the non-refundable charge determined by the Authority and payable by the Applicant against submission of an Application;

"Application process" means the administrative process which the Authority embarks upon to adjudicate Application(s) submitted to it;

"Auction" means a sale to the highest bidding applicant;

"Black Economic Empowerment" means ownership and/or control by a person or persons who prior to the 27 April 1994, and despite being a citizen of the Republic of South Africa would not have had a right to vote in a general election in the Republic of South Africa;

"Days" means all days of the week excluding public holidays, Saturdays and Sundays;

"Deadline" means the time and/or date by which any requirement stipulated by the Authority pursuant to these Regulations must have been fulfilled by an Applicant to the satisfaction of the Authority;

"Designated range" means the portion of the radio frequency spectrum to which the Authority has determined that these Regulations shall be applicable;

"ITA" means an Invitation To Apply;

"Invitation To Apply" means a notice published by the Authority inviting Applicants to submit Applications in respect of a Designated Range;

"Lot" means the sub-segmentation of a Designated Range of the radio frequency spectrum into unpaired or paired rasters or multiple Megahertz;

"Ownership interest" means any direct or indirect ownership of issued share capital of more than 5% (five percent);

"Reserve price" means the minimum price payable for each Lot of the radio frequency spectrum within the Designated Range.

"Supplementary information" means any information, which may be requested by the Authority from time to time from an Applicant throughout the course of an Application Process;

"the Act" means the Electronic Communications Act, 2005 (Act No. 36 of 2005).

2. PURPOSE OF THESE REGULATIONS

The purpose of these Regulations is to prescribe the procedures and criteria for the granting of a radio frequency spectrum licence in instances envisaged in section 31(3) of the Act.

3. INVITATION TO APPLY (ITA)

The ITA shall set out the following:

- (a) The subject of the ITA;
- (b) The place and deadline for submission of application;
- (c) An application fee including other costs relating to the application;
- (d) The selection process;
- (e) The Evaluation criteria including points allocation;
- (f) The terms and conditions relating to the application;
- (g) The proposed licence terms and conditions; and
- (h) Any other information or requirements the Authority may deem necessary.

4. APPLICATIONS FOR RADIO FREQUENCY SPECTRUM LICENCE

- (1) *All applications must be submitted pursuant to an ITA.*
- (2) All applications must be submitted:
 - (a) In writing;
 - (b) At the place nominated in the ITA; and
 - (c) On or before the deadline.

(3) All applications must be delivered sealed and must contain the following information:

- (a) a document containing the information detailed in Schedule A of these Regulations and duly signed by an authorised representative;
- (b) a document containing the information detailed in Schedule B of these Regulations and duly signed by an authorised representative; and
- (c) Schedule C duly completed and signed by an authorised representative.

(4) An application must be accompanied by the applicable Application Fee as set out in the ITA

5. AMENDMENTS TO AN APPLICANT'S APPLICATION

(1) An applicant who, after submitting its application, effects changes to:

- (a) its ownership and control;
- (b) the documents containing the application information detailed in Schedules A and B; or
- (c) the composition of its board of directors must within fourteen (14) days from the date that such change becomes effective, notify the Authority,

(2) The Authority must, after being notified by an applicant of the changes referred to in regulation 5(1):

- (a) determine whether any such changes significantly alters the initial application so as to constitute a new application; and
- (b) whether the application, so altered, is disqualified in terms of these Regulations, from the application process.

(3) After having evaluated the amendments notified to the Authority pursuant to regulation 5(1), the Authority shall notify the applicant of its

determination regarding its qualification or disqualification, as the case may be, from consideration within the application process.

6. REQUEST FOR THE SUBMISSION OF SUPPLEMENTARY INFORMATION

- (1) The Authority may require an applicant to prepare and submit any supplementary information regarding any aspect of its application within the application process.
- (2) The Authority may direct an applicant to submit any such supplementary information within fourteen (14) days after receiving a written request from the Authority.

7. DISQUALIFICATION OF AN APPLICANT FROM THE APPLICATION PROCESS

An applicant shall be disqualified from the application process where such applicant:

- (a) has submitted an application and is an affiliate of another applicant, or possesses an ownership interest in another applicant within the same application process; or
- (b) has been granted a radio frequency spectrum licence by the Authority within the designated range, to which the application relates; or
- (c) has submitted more than 1 (one) application to the Authority for the grant of a radio spectrum licence within the designated range; or
- (d) has less than 30% (thirty percent) direct Black Economic Empowerment; or
- (e) has submitted an application which the Authority reasonably believes to contain false or misleading information; or
- (f) is reasonably perceived by the Authority to be colluding, has attempted to collude or is attempting to collude with another

applicant with the intention to substantially distort or materially manipulate information; or

- (g) has obtained or acquired, or is obtaining or acquiring, or is attempting to obtain or acquire confidential information relating to another applicant; or
- (h) has failed to notify the authority in terms of regulation 5(1) of these regulations; or
- (i) has failed to comply with the terms and conditions of the application as set out in the ITA; or
- (j) has failed to comply with a request in terms of regulation 6.

8. SELECTION PROCESS

In evaluating applications, the Authority may use one or more of the following processes:

- (a) Select applicants on the basis of the evaluation criteria set out in the ITA and in these regulations; or
- (b) Invite applicants to participate in an auction; or
- (c) A combination of the processes set out in regulation 8(a) and 8(b).

9. EVALUATION CRITERIA

The Authority shall, in evaluating the applications, and taking into account the objects of the Act, consider the following factors:

- (a) The structure of ownership and control of the applicant;
- (b) The nature and extent of consumer benefits to be derived by the general public from the applicant;
- (c) The viability of the business plan of the applicant for the intended use of the licence;
- (d) The viability and efficacy of the applicant's technical plan;

- (e) The experience, expertise and credibility of the applicant and/or its employees in business in general and in electronic communications in particular;
- (f) The extent of the applicant's Black Economic Empowerment;
- (g) The extent of participation by black people, women, youth and disabled people in management, at board level and as professionals and technicians;
- (i) Any other additional factors that it may deem necessary.

10. DETERMINATION OF A RESERVE PRICE FOR THE LOTS OF THE RADIO FREQUENCY SPECTRUM WITHIN A DESIGNATED RANGE

The Authority shall from time to time set out the applicable reserve price in an ITA for the lots of the radio frequency spectrum within a designated range.

11. SHORT TITLE AND COMMENCEMENT

These Regulations are called the **Radio Frequency Spectrum Licence Regulations** and will become effective on the day of publication in the government gazette.

SCHEDULE A

APPLICATION INFORMATION

The Applicant is required to provide the following details:

1.1 Applicant's registered name:

1.2 Company registration number:

1.3 Premises where company is registered:

1.4 Applicant's contact address:

1.5 Telephone number:

1.6 Fax number:

1.7 Electronic mail address:

1.8 Identity and principal address of all persons directly or indirectly controlling the applicant and their respective shareholding interests:

1.9 Identity and principal address of all persons directly or indirectly controlled by the person(s) controlling the Applicant and their respective shareholding interests:

1.10 Identity and principal address of all persons directly or indirectly controlled by the Applicant, and/or the Applicant's shareholding interest in such persons:

2. Identity of duly authorised person

The Applicant is required to provide details of the names and positions in the Applicant of at least three persons, each of whom has the delegated authority to bind the Applicant for all purposes relating to the Application process and matters related thereto.

3. Directors or members

3.1 The Applicant is required to provide the names and positions of each of the executive, non-executive and independent non-executive directors of the Applicant.

3.2 The Applicant is required to provide the names and positions of persons constituting the executive management who fall into the following categories:

- (a) Women;
- (b) Disabled;
- (c) Youth; and
- (d) Black.

4. Qualification of the Applicant

In relation to the determination by the Authority pursuant to Regulation 7 of the regulations regarding whether or not an Applicant should be considered within the evaluation process, the Authority requires the Applicant to:

- (a) Warrant and state whether the Applicant or a person(s) directly or indirectly controlling the Applicant has colluded, or attempted to collude, or is colluding or is attempting to collude with another Applicant so as to distort and materially manipulate the outcome of the Application process.

- (b) Warrant and state whether the Applicant has obtained or acquired, or is obtaining or acquiring, or is attempting to obtain or acquire confidential information relating to another Applicant.

- (c) Warrant and state whether the Applicant has rendered any service which is directly related to the current Application process to another Applicant.

5. Other Information

The Applicant is required to provide details and notarised copies of all agreements relating to the management of the Applicant, including shareholders' agreement and/or consortium agreements.

SCHEDULE B

SUBSTANTIVE INFORMATION

The evaluation of the Applications will be premised on the following aspects of the information which, collectively ought to demonstrate a reasonable likelihood that the Applicant shall attain or exceed the stipulated terms and conditions of the radio frequency spectrum licence. Furthermore, applicants are required to submit binding commitments in relation to each of the factors detailed herein:

1. Ownership and Control

The Applicant is required to demonstrate the involvement of Historically Disadvantaged Individuals and women at the following levels within the Applicant:

- (i) Beneficial ownership
- (ii) Participation at Board Level
- (iii) Participation at Operational Level
- (iv) Participation in Management

2. Consumer Benefits

- 2.1. The Applicant is required to provide a detailed description of the anticipated benefits which the Applicant would offer to consumer and / or subscribers. In this regard, the Application is required to provide a detailed description of the following:

(a) Service innovation and packaging

- (i) The Applicant is required to demonstrate their heightened understanding of consumer demand characteristics and unique consumer requirements for the services which the Applicant intends rendering pursuant to the grant of the radio frequency spectrum license in the designated bands. Furthermore, the Applicant must present its proposed range of wholesale and retail services, proposed tariff packages and its plans for marketing and distribution.

(b) Tariff level and flexibility

- (i) The Applicant is required to present its approach for the determination of wholesale and retail tariffs, its approach to offering flexible pricing packages, and the proposed contractual terms and conditions for rendering wholesale and retail services pursuant to the grant of a radio frequency spectrum license in the designated bands.

(c) Quality of Service

The Applicant is required to demonstrate a heightened understanding of consumer perception regarding quality of service and describing quality of service targets which serve as binding commitments. The Applicant is also required to propose a methodology for the verification and attainment of quality of service targets.

(d) Geographic Coverage

- (i) The Applicant is required to have a heightened understanding and commitments to the geographic coverage requirements of potential consumers and the value

consumers may attach to the targeted coverage levels described in their Application.

3. Business Plan

- 3.1. The Applicant is required to present a business plan analysis which is reflective of overall realistic assumptions and realistic financial forecasts for a minimum period of three years.
- 3.2. Furthermore, the Applicant is required to provide the following details:
 - (a) A detailed market analysis for the services contemplated to be offered upon the grant of a radio frequency spectrum license;
 - (b) A detailed demand analysis for the services contemplated to be offered upon the grant of a radio frequency spectrum license;
 - (c) Forecast of market share;
 - (d) Forecast of the total market size and segmentation;
 - (e) Description of the product and services to be offered upon the grant of a radio frequency spectrum license;
 - (f) Pricing strategies for the services and related bundled services to be offered upon the grant of a radio frequency spectrum license;
 - (g) Investment strategy, and
 - (h) Financial analysis.

4. Technical Plan

4.1. The Applicant must provide details of the following considerations relating to the implementation of the technical plan:

The efficiency of network design:

- (a) Details of network planning tools and design methodology;
- (b) Network coverage and a detailed schedule of the rollout plans;
- (c) Details of network capacity requirements;
- (d) Demonstrate the efficient utilisation of the radio frequency spectrum;
- (e) Details of technology solution selection;
- (f) Details of the applicant's plans for network and security;

SCHEDULE C**WARRANTY UNDERTAKING**

I..... (duly authorised person)

Have prepared and/ or compiled, or directly supervised those who have prepared all or parts of this application and/or information constituting this application.

To the best of my knowledge, the application information contained herein, and any attachment thereto, is accurate and not misleading.

I further understand that should any information included herein be found to be false, misleading and/or inaccurate the entire application will be disqualified and the applicant precluded from further consideration within the application process.

Name and title of the person authorised to sign this undertaking:

Authorised Signature

Date
