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GOVERNMENT NOTICE

DEPARTMENT OF COMMUNICATIONS

No. R. 490

20 May 2005

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**REGULATIONS FOR VALUE-ADDED NETWORK SERVICES**

I, Dr. Ivy Matsepe-Casaburri, Minister of Communications, in terms of section 96 of the Telecommunications Act, 1996 (Act No. 103 of 1996), hereby give notice that I have approved the Regulations in the Schedule, made by the Independent Communications Authority of South Africa, under section 96 of the said Act.



Dr. Ivy Matsepe-Casaburri
Minister of Communications

SCHEDULE**DEFINITIONS**

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates-

"customer" means a person who has indicated a willingness to enter into a contract with the licensee for the provision of the value-added network service on the licensee's terms and conditions, or has in writing entered into a contract with the licensee for the provision of such service.

"historically disadvantaged persons" means South African citizens who are Black people, women or people with disabilities and that Black people are defined to include 'Africans, Indians and Coloureds'.

"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, and charges and bad debts incurred and as provided for in terms of the Income Tax Act, No. 58 of 1962.

“licensee” means a person licensed to provide a service under section 40 of the Act.

“the Act” means the Telecommunications Act, 1996 (Act No. 103 of 1996);

MANNER OF APPLICATION

2. (1) An applicant for a value-added network service licence as contemplated in section 40 of the Act, in the case of a natural person, must be a South African citizen and in the case of a juristic person, be duly established in terms of applicable South African law.

(2) An application for a value-added network service as contemplated in subregulation (1) shall be made to the Authority in writing by the completion and submission of the application form as set out in the Annexure.

(3) In addition to the completion and submission of an application form submitted in terms of subregulation (2), an applicant shall provide information with respect to the extent to which it has achieved or will achieve participation by historically disadvantaged persons with respect to-

- (i) empowerment in the management and control structures;
- (ii) skills development;
- (iii) enterprise development; and
- (iv) procurement

CONSUMER PROTECTION

3. (1) A licensee shall not disclose any information about its customers, obtained in the course of providing the value-added network service, to third parties or use it for any purpose other than fulfilling its obligations to customers, unless required to do so pursuant to subregulation 2.

(2) Notwithstanding subregulation (1), a 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;
 - (e) by order of a court;
 - (f) in terms of any other applicable law.
- (3) A licensee shall establish effective and efficient mechanisms for dealing with customer complaints which shall be lodged with the Authority.

EMPOWERMENT

4. (1) A licensee shall, within 12 months of issue of the licence, demonstrate a minimum of 15 percent equity ownership by historically disadvantaged persons, and achieve a 30 percent equity ownership within 24 months of issue of the licence.
- (2) The provisions of subregulation (1) shall apply only where the licensee's annual licence fee income is greater than R1 000 000.

ANNUAL LICENCE FEE

5. (1) A licensee shall, within three months after the end of each financial year, pay to the Authority an annual variable licence fee in an amount equal to 0.1% of the licence fee income.
- (2) Payment of the annual variable licence fee contemplated in subregulation (1) shall be accompanied by a copy of the audited financial statements of

the licensee as they relate to the licensee's value-added network services.

APPLICATION FEE

6. (1) An application for a value-added network service licence shall be accompanied by a non-refundable application fee of R 5636, 86 which is to be adjusted annually on 1 April, for inflation by taking into account cumulative changes in the Consumer Price Index (CPI) for the immediately preceding calendar year.
- (2) The Authority may review the cost of application fees from time to time.

REPEAL

7. These Regulations repeal-

- (a) the Regulations published in Government Notice 837 in *Government Gazette* 26371 of 19 May 2004;
- (b) the Regulations published in Government Notice R.1384 in *Government Gazette* 25519 of 1 October 2003; and
- (c) the Regulations published in Government Notice R. 1390 in *Government Gazette* 25519 of 1 October 2003.

TRANSITIONAL MEASURES

8. (1) Any person who submitted an application for a value-added network service licence in terms of the regulations published in Government Notice R. 1384 in *Government Gazette* 25519 of 1 October 2003, shall be deemed to have applied in accordance with these regulations.
- (2) A person contemplated in subregulation (1) –
 - (a) shall be afforded 30 days from the date of publication of these Regulations, within which to amend, vary or supplement his, her or it's applications;

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- (b) who has paid the application fee for the application of a value-added network service licence, is deemed to have paid the application fee in accordance with these regulations;
 - (c) who seeks to withdraw an application for a value-added network service licence, shall, within 30 days of publication of these regulations, do so in writing, and request a refund of the prescribed application fee in writing.

1.2.1.2. Nature of business:

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1.2.1.3. Registration number:

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1.2.1.4. Principal place of business:

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1.2.1.5. Postal Address:

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

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

1.2.1.8. E-mail address:

1.2.1.9. 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, etc.)

2. Description of the Service (use additional page(s) if required)
Please tick the applicable block(s)

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

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