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## CONTENTS

No.

Page  
No.      Gazette  
            No.

### GENERAL NOTICE

#### **Independent Communications Authority of South Africa**

*General Notice*

296	Electronic Communications Act (36/2005): Invitation to apply for Individual Electronic Communications Service (I-ECS) licences for a public entity .....	3	32026
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# GENERAL NOTICE

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## NOTICE 296 OF 2009



### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

#### INVITATION TO APPLY FOR INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICE (I-ECNS) AND INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICE (I-ECS) LICENCES FOR A PUBLIC ENTITY

#### 1. INTRODUCTION

The Independent Communications Authority of South Africa ("the Authority") hereby invites Broadband Infraco (Proprietary) Limited to submit applications for I-ECNS and I-ECS licences, in terms of section 9(1) and (2) of the Electronic Communications Act, No: 36 of 2005 ("ECA"), and in terms of the Ministerial Policy Directive of 6 February 2009.

As a first step in the process, the Authority will invite Broadband Infraco (Proprietary) Limited to submit an application in line with this ITA. The Authority will then publish the application in the government gazettee and invite interested stakeholders to make written submissions. The Authority may decide to hold public hearings on the application, and if so, such hearings will be held on the 20<sup>th</sup> of May, 2009.

#### 2. BACKGROUND

Broadband Infraco (Proprietary) Limited has been established in terms of the Broadband Infraco Act, No. 33 of 2007 (Infraco Act) to expand the availability and affordability of access to electronic communications, including but not limited to

under-developed and under-serviced areas, through the provision of electronic communications network services and electronic communications services.

In terms of section 3(2) and 3(1A) read with section 5(6) of the ECA, the Minister issued a policy directive in Government Gazette No:31869 on 6 February 2009, directing the Authority to conduct the necessary processes to accept and consider applications for ECNS and ECS to Broadband Infraco (Proprietary ) Limited to enable the State to:

- a) expand the availability and affordability of access to electronic communications networks and services, including but not limited to underdeveloped and underserviced areas;
- b) provide affordable access to electronic communications networks and services; and
- c) ensure that the bandwidth requirements for specific projects of national interest are met.

The Authority is therefore issuing this ITA to permit Broadband Infraco (Proprietary) Limited, to apply for I-ECNS and I-ECS licences in line with the Ministerial policy directive.

### **3. MANNER OF APPLICATION**

- a) Application for I-ECNS and I-ECS licences by Broadband Infraco (Proprietary) Limited must be submitted to the Authority by 20 April 2009.
- b) Application must be in writing.
- c) The applicant must answer all questions set out in this application form in full. If any question is considered not applicable, please mark N/A with further explanation if necessary.
- d) The Authority may conduct public hearings in relation to any application for an individual licence. Should the Authority decide to have public hearings they will be held on 20 May 2009.

- e) The Authority may require an applicant or an interested party who has submitted written representations to furnish the Authority, within the period of 30 days, with such further information as may be reasonably necessary.
- f) The application must be permanently bound (using either heat binding or spiral binding).
- g) The application must have a cover page with the name of the applicant, the licence being applied for and year of application on it.
- h) The page(s) immediately following the cover must be the content pages which detail each section of the application and its page number.
- i) Pages including the appendices **must** be numbered sequentially starting with the page immediately following the contents page(s) as page 1 and ending with the very last page of the application.
- j) Applications, representations, responses and other documents relating to an application which are submitted to the Authority are open for public inspection during the normal office hours of the Authority.
- k) Subject to section 4D of the Independent Communications Authority of South Africa Act, Act 13 of 2000 ("the Act"), the applicant may request that any part of the application be treated as confidential. The Authority may determine that an application or portions thereof are confidential and will inform the applicants accordingly.
- l) If the request for confidentiality is refused, the applicant making the request will be allowed to withdraw such portions as applicable or waive the confidentiality as appropriate. Applicants' attention in this regard is drawn to Section 4D of the Act with regard to applications for confidentiality.
- m) Each application must be accompanied by a non-refundable application fee of R 50 000.00.
- n) The application must be addressed for the attention of the **Chairperson and submitted to the General Manager: Licensing and Compliance at Block D, Pinmill Farm, 164 Katherine Street, Sandton.**

## ANNEXURE A

<b>1. PARTICULARS OF THE APPLICANT</b>	
Full name of applicant:	
Designated contact person:	
Applicant's street address:	
Applicant's principal place of business (if different from street address):	
Applicant's postal address:	
Applicant's phone number/s:	
Applicant's fax number/s:	
E-mail address of designated contact person:	
Indicate if the applicant is, or will be, registered under the laws of South Africa and has or will have its principal place of business located within South Africa.	
<b>Indicate how the applicant, in obtaining the licence, will:</b>	
ensure that electronic communications network services are provided by persons or groups of persons from a diverse range of communities in South Africa; and	
promote the empowerment of historically disadvantaged persons including women and the youth and people with disabilities, in accordance with the requirements of the ICT charter	
other (specify)	
<b>If the Applicant is a juristic person:</b>	
Indicate the legal form of the Applicant(e.g. private company incorporated in terms of the Companies Act, 1973):	
Registration number of the Applicant:	
Attach certified copies of the Applicant's certificate of incorporation and memorandum and articles of association or other constitutive documents of the Applicant (e.g. memorandum and articles of association, association agreement, constitution) indicating the applicant's compliance with the requirements of section 5(8) (b) of the ECA.	
<b>ATTACH AS APPENDIX 2.1</b>	

If the Applicant is not a juristic person but intends to operate as one, if the licence that is the subject of this registration is granted:

Provide a written undertaking that the Applicant will comply with section 5(8) (b) of the ECA.

**ATTACH AS APPENDIX 2.2**

Indicate when and how the Applicant will comply with section 5(8) (b) of the ECA.

Provide a resolution authorizing the signatory to this application to sign this application and/or to represent the applicant at the Authority's hearings in respect of this application.

**ATTACH AS APPENDIX 2.3**

## ANNEXURE B

### PROPOSED SPECIFIC TERMS AND CONDITIONS

In terms of section 4 of the Infraco Act, the state owned entity is supposed to contribute to the provision of universal and affordable access to electronic communications services, including but not limited to underdeveloped and under-serviced areas. It is in light of these requirements that the state owned entity is required to provide the following information as part of its application:

The applicant should provide a detailed market impact analysis on how it intends to position its role in the market, taking into consideration the provision of section 4 of the Infraco Act. Accordingly, the market impact analysis should include but not limited to the following information:

#### **1. Affordable access**

- 1.1 The applicant should indicate to the Authority how it intends to provide affordable electronic communications services taking into account existing industry prices;
- 1.2 In dealing with 1.1 above, the applicant should clearly indicate the basis for its proposed prices and how such prices would relate to the cost of providing electronic communications services and electronic communications network services.

#### **2. Universal access**

- 2.1 With respect to promoting the availability of services, the applicant should indicate how it intends rolling out electronic communications network



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services and electronic communications services to ensure access to such services.

2.2 The applicant is required to demonstrate, in detail, how its rollout plan will contribute to the provision of access to electronic communications networks and services, including but not limited to underdeveloped and under-serviced areas.

2.3 The roll-out plan should provide specific timeframes.

The Authority reserves the right to review the universal service obligations imposed on the licensee, subject to the finalisation of the definition of under-serviced areas in terms of section 88 (2) of the Electronic Communications Act No: 36 of 2005.

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