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GOVERNMENT NOTICE

DEPARTMENT OF INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. R. 469

28 May 2010

ELECTRONIC COMMUNICATIONS ACT, 2005 (NO. 36 OF 2005):

REGULATIONS

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

The Independent Communications Authority of South Africa in terms of section 31(3) of the Electronic Communications Act, 2005 (Act No.36 of 2005), hereby prescribes regulations in the schedule.



**PARIS MASHILE
CHAIRPERSON**

ICASA

SCHEDULE

1. DEFINITIONS

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 for a radio frequency spectrum licence in the manner prescribed in 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 the award of the radio frequency spectrum licence to the highest bidding applicant;

"Deadline" means the date and time 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;

"HDI" means Historically disadvantaged individuals.

"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. 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

4. INVITATION TO APPLY (ITA)

The ITA shall set out the following:

- (a) The subject of the ITA;
- (b) The place and deadline for the submission of the application;
- (c) An application fee including other costs relating to the application;
- (d) The selection process;
- (e) The evaluation criteria;
- (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.

5. AMENDMENTS TO AN APPLICANT'S APPLICATION

(1) An applicant who, after submitting its application, effects changes to the documents containing the application information detailed in Schedules A must within seven(7) days from the date that such change becomes effective, notify the Authority.

(2) No changes can be effected to Schedule B and sub-regulations 1.8, 1.9 and 1.10 of Schedule A.

(3) The Authority must, after being notified by an applicant of the changes referred to in regulation 5(1) determine whether;

(a) any such changes significantly alters the initial application so as to constitute a new application; and

(b) the application, so altered, is disqualified in terms of these Regulations, from the application process.

(4) 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 seven (7) 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 or financial interest in another applicant within the same application process;

(b) has been granted a radio frequency spectrum licence by the Authority within the designated range unless the licensee has less than the maximum bandwidth made available in line with these regulations in which case they will only be allowed to apply for additional spectrum which results in total assignment not exceeding the maximum bandwidth made available 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 ownership by Historically disadvantaged Individuals (HDI); or

(e) has submitted an application which contains false or misleading information; or

(f) is colluding or has attempted to collude, with another applicant with the intention to distort or manipulate information; or

(g) has obtained or acquired, confidential information relating to another applicant; or

(h) has failed to notify the authority of the changes referred to in 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 shall use the following procedure:

- (a) Select applicants on the basis of the evaluation criteria set out in the ITA and in these regulations and
- (b) may invite applicants to participate in an auction in the event that there are more than the required number of qualifying applicants.

9. 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.

10. Application of a “Use it or lose it” principle

- (1) ICASA shall review radio frequency spectrum utilisation by the licensee assigned in terms of this regulation after two (2) years of a licence being granted. Failure to meet 50% of the rollout-targets set out as part of licence conditions prior to second anniversary of the licence is considered a non-utilisation . In the event of non-utilisation ICASA shall withdraw the licence.
- (2) To assist the Authority with its determination in clause 10(1), the Licensee must submit to the Authority, prior to the second anniversary of the licence, a declaration:
 - (a) stating that the services are being provided; and
 - (b) detailing the extent of service provision including the period of use, the percentage of population covered by the service in the Licence Area and how that is calculated.

11. SHORT TITLE AND COMMENCEMENT

These Regulations are called the High Demand Radio Frequency Spectrum Licensing Framework 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 a person who 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, directors, and where applicable, the names and positions of members, 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 that neither it nor any 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 that it has neither obtained nor acquired, or is obtaining or acquiring, or is attempting to obtain or acquire confidential information relating to another Applicant.

- (c) Warrant or state that it has not 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

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 will offer to end-users and / or subscribers. In this regard, the Applicant 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 granting of the

radio frequency spectrum licence 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

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 targetstaking into consideration the End User and Subscriber Regulations (Government Gazette No 32431 of 24 July 2009).

(d) Coverage

- (i) The Applicant is required to provide commitments related to the extent of the population coverage of the service .
- (ii) Population Coverage
The Applicant needs to provide commitments related to the extent of the population coverage.

3. Business Plan

3.1. The Applicant is required to present a business plan 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; and
- (g) Investment strategy.

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

SCHEDULE C WARRANTY UNDERTAKING

Applicants are required to make undertakings by authorised persons in the following manner:

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 or misleading 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

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