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GENERAL NOTICES

NOTICE 2404 OF 2001



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA HEREBY GIVES NOTICE TO THE PUBLIC, IN TERMS OF SECTION 32C(4) AND (5) OF THE TELECOMMUNICATIONS ACT OF 1996 ("THE ACT"), TO MAKE WRITTEN AND ORAL REPRESENTATIONS ON THE PROPOSED TERMS AND CONDITIONS OF THE CARRIER OF CARRIERS SERVICE LICENCE TO BE ISSUED TO SENTECH.

Interested persons are hereby invited to submit written representations to the Authority on the draft Carrier of Carriers Service Licence, including the Annexures, by no later than **13h00 on Monday 20th of January 2002** by post, hand delivery or facsimile transmission. For the sake of efficiency and where possible a softcopy of the corresponding hardcopy of the representation must be e-mailed to matta@icasa.org.za.

The written representations must be addressed to **Mr Andries Matthysen**, Acting HOD: Telecommunication Licensing, Independent Communications Authority of South Africa, Private Bag X10002, Sandton, 2146 or Block A, Pin Mill Farm, 164 Katherine Street, Sandton, Facsimile (011) 321-8550, Tel 011 321-8377 or Cell 083 326 3543.

The Authority is required by section 32C(1)(a) of the Act to issue a licence to Sentech to provide a Carrier of Carriers Service, as defined in the Act. This is the first time the Authority will be issuing a licence of this type. The Authority has therefore taken the approach of encouraging as much public comment as possible.

The Authority has attached a draft Frequency Spectrum Licence as an Annexure to the draft Carrier of Carriers Service Licence. The Authority welcomes proposals on all terms and conditions set out in the draft licences, as attached. It should be noted that the Frequency Spectrum Licence will be issued in terms of section 30 of the Act.

Persons making written representations must clearly indicate in their representations if they wish to make oral representations including the duration thereof which shall not exceed one (1) hour. Should such requests for oral hearings be received then public hearings shall commence on **20th of February 2002 at 09h30** at Block C, Pin Mill Farm, 164 Katherine Street, Sandton, Gauteng.


MANDLA LANGA
CHAIRPERSON
ICASA

**LICENCE ISSUED TO SENTECH LIMITED TO PROVIDE A
CARRIER OF CARRIERS SERVICE AND AN
INTERNATIONAL GATEWAY TELECOMMUNICATIONS
FACILITY UNDER SECTION 32(C)(1)(a) TO THE
TELECOMMUNICATIONS ACT 103 OF 1996**

1 INTERPRETATION

1.1 In this Licence and the annexes to this Licence:-

1.1.1 clause headings are for convenience and are not to be used in the interpretation of the Licence in which such headings appear;

1.1.2 unless the context indicates a contrary intention, an expression which denotes

1.1.2.1 any gender includes the other gender,

1.1.2.2 a natural person includes a juristic person and *vice versa*, and

1.1.2.3 the singular includes the plural and *vice versa*.

1.2 In this Licence, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

1.2.1 **"Affiliate"** means with respect to the Licensee, any other entity which (i) is a wholly-owned subsidiary or holding company or a wholly-owned subsidiary of the holding company of such entity. In this Licence, the terms **"subsidiary"** and **"holding company"** shall have the meaning assigned thereto in Section 1 of the Companies Act, 1973, as amended;

1.2.2 **"Authority"** means the Independent Communications Authority of South Africa established in terms of section 3 to the ICASA Act and its successors;

1.2.3 **"Call"** means a call (including, any Message conveyed by means of a telecommunication system) which originates in the telecommunication system of any Operator in the Territory,

conveyed by the Licensee via the International Gateway Telecommunications Facility and which terminates in a telecommunication system in a country other than the Territory or vice versa or a call (including, any Message conveyed by means of a telecommunication system) which originates and terminates in a telecommunication system of an operator licensed to provide international services in a country other than the Territory which is conveyed via the International Gateway Telecommunications Facility on a wholesale basis;

1.2.4 **"Carrier of Carriers"** means a telecommunication service (including any signal conveyed by means of the telecommunication system of that service) which

- a) originates on the telecommunication system of a public switched telecommunication service licensee or mobile cellular telecommunication licensee or an under-serviced area licensee in the Republic and terminates in a telecommunication system in another country or *vice versa*; or;
- b) originates and terminates in a telecommunication system of an operator licensed in another country to provide international services, but is conveyed via a telecommunication system in the Republic on a wholesale basis, but which specifically excludes the termination of international telecommunication services to end-users directly in the Republic;

1.2.5 **"Effective Date"** means 7 May 2002 and more particularly, the commencement of business on that day;

- 1.2.6 **"Financial Year"** means the financial year end of the Licensee ending on 31 March of each and every year;
- 1.2.7 **"Guidelines"** means the Interconnection Guidelines issued by the Authority in terms of section 43 of the Telecommunications Act on 15 March 2000 in Notice 1259 of Government Gazette No. 20993 and the Facilities Leasing Guidelines issued by the Authority in terms of section 44 of the Telecommunications Act on 15 March 2000 in Notice 1260 of Government Gazette No. 20993, as amended or substituted from time to time;
- 1.2.8 **"Interconnection Agreement"** means any agreement concluded between the Licensee and any Operator, wherein the commercial and technical arrangements for such interconnection are detailed, including:-
- 1.2.8.1 the transfer of Calls in either direction;
 - 1.2.8.2 the use of the Licensee's International Gateway Telecommunications Facility;
 - 1.2.8.3 the use of the Licensee's Carrier of Carriers Service;
 - 1.2.8.4 the provision of related services;
 - 1.2.8.5 the payment of Interconnect Fees; and
 - 1.2.8.6 any other commercial or technical term required for the purposes of interconnection;
- 1.2.9 **"Interconnect Fees"** means the fees payable in terms of an Interconnection Agreement for the carriage of Calls via the International Gateway Telecommunications Facility or the fees payable for the provision of the Carrier of Carriers Service;

- 1.2.10 **"International Gateway Telecommunications Facility"** means the telecommunications systems and telecommunications facilities which are owned, installed, maintained, operated and used by the Licensee for the purposes of providing the Carrier of Carriers Service, by whatever means, including any telecommunication facility, by means of which Calls are conveyed between all or any of:-
- 1.2.10.1 1 (one) or more Network Connection Points outside the Territory; and
- 1.2.10.2 1 (one) or more Network Connection Points within the Territory;
- 1.2.11 **"Licence"** means this Licence issued by the Authority to the Licensee under section 32(C)(2) to the Telecommunications Act;
- 1.2.12 **"Licensee"** means Sentech Limited, registration number 1990/001791/07, a company duly registered and incorporated under the company laws of the Territory and its Affiliates;
- 1.2.13 **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 Carrier of Carriers Service Network, as the case may be, less net Interconnect Fees and Charges and bad debts incurred and as provided for in terms of the Income Tax Act, No 58 of 1962;
- 1.2.14 **Licence Period** means the term for which this Licence, including the applicable frequency spectrum licence/s, shall be in force (including such periods in respect of which this Licence and the applicable frequency spectrum licence/s may be renewed);

- 1.2.15 **"Message"** means any sound, signal, sign or image conveyed by means of the International Gateway Telecommunications Facility;
- 1.2.16 **"Minister"** means the Minister of Communications;
- 1.2.17 **"Operators"** means any Public Switched Telecommunications Service Licensee or any entity licensed to provide similar services, Mobile Cellular Telecommunications Service Licensee or any entity licensed to provide similar services or any Under-Serviced Area Licensee, licensed to provide such services in terms of the Telecommunications Act;
- 1.2.18 **"Public Land Mobile Network"** means the telecommunication systems used by Mobile Cellular Telecommunication Service Licensees to provide mobile cellular telecommunication services;
- 1.2.19 **"Public Switched Telecommunications Network"** means the telecommunication systems used by Public Switched Telecommunications Service Licensees to provide Public Switched Telecommunications Services;
- 1.2.20 **"Telecommunications Act"** means the Telecommunications Act No 103 of 1996, as amended or re-enacted or both from time to time and any regulations promulgated thereunder;
- 1.2.21 **"Territory"** means the Republic of South Africa;
- 1.2.22 **"Under-Serviced Areas"** means those geographic areas as determined by the Minister by notice in the Government Gazette as having a teledensity of less than 5%;

- 1.2.23 **"Under-Serviced Area Licensee"** means any person licensed to provide those telecommunications services set out in section 40(A)(3) to the Telecommunications Act;
- 1.2.24 **"Universal Service Fund"** means the fund established in terms of section 65 of the Telecommunications Act.
- 1.3 Words and expressions defined in any clause shall, for the purposes of that clause, bear the meaning assigned to such words and expressions in such clause.
- 1.4 If any provision is a substantive provision conferring rights or imposing obligations on the Licensee, notwithstanding that it is only in the interpretation clause, effect will be given to it as if it were a substantive provision in the body of the Licence.

2 **COMMENCEMENT AND DURATION OF LICENCE**

This Licence shall come into effect on the Effective Date and shall remain valid for a Licence Period of 25 (twenty five) years from the Effective Date.

3 **LICENCE AUTHORITY**

- 3.1 The Licensee is authorised by this Licence to procure, own, construct, maintain, operate and use an International Telecommunications Gateway Facility for the provision of a Carrier of Carriers Service within and outside the Territory.
- 3.2 The Licensee shall be entitled and is authorised in terms of this Licence to:-
- 3.2.1 connect or cause to be allowed to be connected, to the International Gateway Telecommunications Facility:-

- 3.2.1.1 the Public Switched Telecommunications Networks;
- 3.2.1.2 the Public Land Mobile Networks;
- 3.2.1.3 any telecommunications system operated by an Under-Serviced Area Licensee;
- 3.2.1.4 any telecommunication system or telecommunication service situated outside the Territory and licensed in another country to provide international services except where such connection would contravene a treaty or other agreement to which the Territory is a party;
- 3.2.1.5 any telecommunications facility required for the provision of a Carrier of Carriers Service;
- 3.2.2 convey to and from any connected telecommunication system or telecommunication service or telecommunication equipment as contemplated in clause 3.2.1 any Call and to perform any switching incidental to such conveyance;
- 3.2.3 provide the Carrier of Carriers Service to any Operator who requests such services and to use the Carrier of Carrier Telecommunications Service for the Licensee's own purposes or business activities; and
- 3.2.4 provide any telecommunication service that is incidental to the service referred to in clause 3.2.3;
- 3.3 In addition to the rights referred to in clause 3.2, the Licensee shall be entitled to:-
 - 3.3.1 procure, design, develop and maintain any software or hardware to be used in connection with any telecommunication apparatus

- and to use or deploy any commercially licensed software for the provision of its Carrier of Carriers Service;
- 3.3.2 use any protocol application in its provision of the Carrier of Carriers Service;
- 3.3.3 use its own telecommunications facilities in the provision of the Carrier of Carriers Service and the International Gateway Telecommunications Facility and the interconnection of the same to any telecommunications system;
- 3.3.4 use any telecommunications facility for the connection of the International Gateway Telecommunications Facility to the telecommunications system of any Operator or any operator licensed to provide international telecommunications services outside of the Territory;
- 3.3.5 provide any service which is ancillary to the Licensee's provision of a Carrier of Carriers Service, including billing and installation, maintenance and repair services; and
- 3.3.6 enter into suitable arrangements with any licensed operator for the sharing of infrastructure and facilities, for the co-location of facilities and infrastructure and to interconnect with any Operator or operator licensed to provide international telecommunications services outside of the Territory.
- 3.4 The Licensee and any of its Affiliates shall be entitled by virtue of this Licence to operate the International Gateway Telecommunications Facility and to provide a Carrier of Carriers Service together with all or any other rights granted to the Licensee under this Licence, provided that any service which is ancillary to the Licensee's provision of Carrier of Carriers Service, including

billing and installation, maintenance and repair services, all of which shall be subject to the provisions of the Telecommunications Act, the relevant regulations promulgated from time to time in terms of section 96 and the terms and conditions of this Licence.

- 3.5 The Licensee's rights and obligations in terms of this Licence may be exercised or performed in part by its employees, agents, representatives, contractors or Affiliates. The Licensee shall be responsible for their acts or omissions in respect of the exercise or performance of such rights and obligations.

4 LICENCE FEES

4.1 Fixed Licence Fee

- 4.1.1 In consideration for the grant of the Licence, the Licensee shall pay to the Authority a fixed licence fee in respect of the initial term of the Licence, referred to in clause 2, in the amount of R75 (Seventy Five Million Rand).
- 4.1.2 Interest at the Applicable Interest Rate shall accrue from time to time on the unpaid balance of the fixed licence fee referred to in clause 4.1.1 and shall be payable annually by the Licensee to the Authority on the anniversary of the Effective Date.
- 4.1.3 Subject to clause 4.1.4, the principal amount of the fixed licence fee referred to in clause 4.1.1 shall be payable by the Licensee to the Authority in 12 (twelve) equal annual instalments, the first instalment to be paid on the third anniversary of the Effective Date.
- 4.1.4 The Licensee may accelerate payments of the fixed licence fee referred to in clause 4.1.1 by making payment prior to the date

specified above and, in such a case, the provisions of clause 4.1.2 shall still apply.

- 4.1.5 In addition to the fixed licence fee, the Licensee shall pay the fees stipulated in its frequency spectrum licence and such other fees as may be payable in terms of such regulations as may apply to it from time to time.
- 4.1.6 The payment of the fixed licence fee referred to in clause 4.1.1 shall be secured by means of a guarantee, in terms acceptable to the Authority, to be provided by the Licensee to the Authority within 30 days after the Effective Date and which shall, upon being so provided, constitute Annexure A to this Licence.

4.2 **Annual Variable Licence Fee**

- 4.2.1 Subject to what is stated below, an annual variable licence fee in an amount equal to 1% (one percent) of the audited Licence Fee Income shall be payable by the Licensee to the Authority.
- 4.2.2 The first payment of the annual variable licence fee referred to in clause 4.2.1 shall be made within 3 (three) months after the end of the third year of the Licence Period and shall be calculated on the basis of the Licence Fee Income generated during the third year of the Licence Period.
- 4.2.3 With effect from the beginning of the fourth year of the Licence Period, the annual variable licence fee shall be payable quarterly in arrears and shall be calculated on the basis of the assessed Licence Fee Income in the preceding quarter, provided that, where appropriate, the total amount payable by the Licensee in respect of any Financial Year shall be adjusted upon receipt of the Licensee's audited annual financial statements.

- 4.2.4 The annual variable licence fee payable by the Licensee shall be reviewable by the Authority after the fifth anniversary of the Effective Date, provided that, in the event of the percentage of Licence Fee Income payable by the Licensee being increased by the Authority, the percentage so increased shall not exceed the percentage of net operating income payable by similarly licensed operators in respect of the corresponding licence fees payable by them.
- 4.2.5 In reviewing the percentage of Licence Fee Income payable by the Licensee in terms of this clause, the Authority shall have due regard to factors such as the number of similarly licensed operators in the Territory, the spectrum allocated to such similarly licensed operators and the percentage of net operating income payable by such similarly licensed operators.
- 4.2.6 The provisions of clause 4.2 shall apply *mutatis mutandis* to all subsequent Licence Periods of this Licence.

5 UNIVERSAL SERVICE OBLIGATION

- 5.1 The Licensee shall pay an annual contribution of 0.01% of its Turnover to the Universal Service Fund. The first payment to be made by the Licensee to the Universal Service Fund shall be made within 30 (thirty) days of the first anniversary of the Effective Date and thereafter within 30 (thirty) days of each and every subsequent anniversary of the Effective Date. This provision is subject to further regulations being prescribed in terms of section 67(2) of the Telecommunications Act.
- 5.2 The Licensee shall procure that its auditors certify the Turnover for each and every Financial Year, as soon as is possible after the

expiry of the Financial Year in question. The Licensee shall furnish such certification to the Authority as soon as it is in the receipt of the same from its auditors in order to enable the Authority to verify the accuracy of the Universal Service Fund contribution paid by the Licensee in terms of clause 5.1.

6 INTERCONNECTION

- 6.1 The Licensee shall enter into Interconnection Agreements with any Operator for the provision of a Carrier of Carriers Service to such Operators.
- 6.2 Where the Licensee enters into any Interconnection Agreement with any Operator, the conclusion of such agreements will be in accordance with section 43 of the Telecommunications Act and the Guidelines.

7 PERFORMANCE SPECIFICATIONS

- 7.1 The Carrier of Carriers Service provided by the Licensee shall conform to such regulations as prescribed by the Authority.
- 7.2 The Licensee shall introduce measures and at all times use its resources to ensure that any telecommunication apparatus used in connection with the International Gateway Telecommunications Facility or in the provision of the Carrier of Carriers Service, including any Telecommunications Facilities owned by the Licensee shall comply with:-
- 7.2.1 the requirements for electromagnetic compatibility; and
- 7.2.2 the requirements for network interoperability,

as prescribed by the Authority in accordance with international specifications and standards.

8 FAIR TRADING

- 8.1 The Licensee, its Affiliates, agents and sub-contractors shall not demonstrate any undue preference to or exercise any undue discrimination against any Operator in respect of the provision of the Carrier of Carriers Service or in respect of the construction or maintenance of any telecommunications facility or connection to the Licensee's International Gateway Telecommunications Facility.

9 ACCOUNTS

- 9.1 The Licensee shall maintain proper accounting records in a form, which is sufficient to show and explain its transactions and in this regard, the Licensee shall maintain such records as fairly represent the cost, revenue and financial position of the Licensee's business activities in terms of this Licence.
- 9.2 Within 3 (three) months of the end of each Financial Year of the Licensee, the Licensee shall present to the Authority audited annual financial statements prepared in accordance with Generally Accepted Accounting Practice and as approved by the Licensee.

10 RESTRICTION ON TRANSFER OF SHARES

- 10.1 The Licensee shall not transfer the Licence without the prior written consent of the Authority having been obtained in terms of the Act.
- 10.2 Any transfer of shares which would result in the direct or indirect ownership of more than 30% (thirty percent) of the issued share capital of the Licensee being acquired by any party which is not a shareholder of the Licensee as at the Effective Date, or any change

in composition of one quarter or more of the Licensee's board of directors, as a result of a change in the ownership of the issued share capital of the Licensee, shall require prior written approval of the Authority.

11 CONFIDENTIALITY OF INFORMATION

11.1 Content of communications

The Licensee shall not disclose the content of any signal transmitted over the Network, unless required to do so by a court order or in terms of any law.

11.2 Customer information

The Licensee shall not use any information regarding its past, current or potential Customers for purposes other than those for which the information was obtained, unless the Customer gives prior written consent to such other use.

12 RENEWAL OF THE LICENCE

The Licence may be renewed in terms of the Act.

13 CANCELLATION OF LICENCE

In the event of the liquidation of the Licensee, the Licensee shall notify the Authority in writing of the cancellation of the Licence.¹

14 REVOCATION OF THE LICENCE

The Licence may be revoked in accordance with the Act.

¹ The Authority intends to attach, as an Annexure, to this licence a pro forma bank guarantee letter that will deal with the question of cancellation and forfeiture.

15 FORCE MAJEURE

15.1 The Licensee shall not be liable for any default or delay in the performance of its obligations under the Licence or to any Operator if and to the extent:-

15.1.1 such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of the Licensee; and

15.1.2 the Licensee is without fault in causing such default or delay.

16 NOTICES

16.1 The Licensee selects as its *domicilia citandi et executandi* the following physical addresses:-

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
Sentech Limited	Sender Technology Park Octave Road Radiokop	(011) 471-4456

or such other address or telefax number as may be substituted by notice given as herein required. The Licensee shall be entitled from time to time by written notice to the Authority, to vary its *domicilium* to any other address within the Territory.

16.2 Any notice addressed to the Licensee at its physical address shall be delivered by hand, or sent by telefax.

16.3 Any notice shall be deemed to have been given:-

16.3.1 if hand delivered during business hours on a business day, on the day of delivery;

16.3.2 if sent by telefax, on the date of sending of such telefax.

17 **AMENDMENT**

17.1 Subject to the provisions of section 48 to the Telecommunications Act, the Licensee and the Authority shall be entitled to amend any term or condition of this Licence.

17.2 No amendment, alteration, addition, variation or consensual cancellation of this Licence shall be of any force or effect unless reduced to writing and signed by the Authority.

18 **MISCELLANEOUS PROVISIONS**

18.1 **Adherence to International Standards**

The Licensee shall comply with the applicable standards and requirements of the ITU, as agreed to or adopted by the Republic.

18.2 **Legal Compliance**

The Licensee shall comply with all applicable laws of the Republic and with all international obligations to which the Republic is bound and, unless expressly indicated to the contrary, nothing in this Licence shall be construed or understood so as to relieve or exempt the Licensee or any other party, including any of the Licensee's employees, agents, contractors or Affiliates, from complying with the provisions of this Licence, the Act or any other law to the extent that it may be applicable.

18.3 **Access to Network Facilities**

Upon reasonable notice, the Licensee shall provide access to its Network facilities for inspection by the Authority

ANNEXURE

PROPOSED CARRIER OF CARRIER FREQUENCY SPECTRUM LICENCE TERMS AND CONDITIONS

The Authority, in exercising the powers conferred upon it by Section 30 of the Telecommunications Act, 2001 (Act 64 of 2001) and the applicable regulations hereby issues this licence to **SENTECH LIMITED** to use the radio frequency spectrum and radio apparatus subject to the Act, the regulations, the Carrier of Carriers Service Licence issued to **SENTECH** on and the terms and conditions set out hereunder.

1. Frequency Spectrum Authorisation

1.1 The Licensee shall be authorised to operate on, and to provide the Carrier of Carriers Service, through the use of radio frequency spectrum and the use of radio stations as set out in the Register of Assignments.

1.2 Frequency Spectrum assigned to the licensee shall be on an exclusive or shared basis and shall be noted as such under the Register of Assignments.

1.3 Specific channels assigned to the licensee for exclusive use shall be available nation-wide.

1.4 The Frequency Spectrum Licence shall authorise the use of radio frequencies and stations listed in Annexure-____ to this licence

which for all intents and purposes shall be regarded as part of the licence.

1.5 The Authority shall assign radio frequencies in accordance with the South African Bandplan and resolutions and recommendations of the International Telecommunication Union (ITU).

2. Additional Frequency Spectrum Authorisation

The Licensee may at any time apply in writing for authorisation from the Authority to utilise of additional frequencies and stations.

3. Term of Licence

The term of this licence shall commence on date of issue hereof, and shall continue until the expiry or termination, for any reason, of the Carrier of Carriers Service Licence issued to SENTECH and published in Government Gazette _____ ("service licence"). This licence may be renewed in terms of the Act.

4. Frequency Spectrum Licence Fees

The licensee shall on each anniversary of the effective date pay to the Authority an annual licence fee with respect to the assigned Frequency Spectrum, which shall be payable in Rand before the end of December of each year, as set forth in the fee schedule or as prescribed in terms of section 88 of the Act.

4 Use of Radio Apparatus

The Licensee shall be permitted to use any radio apparatus necessary for the efficient and effective use of the frequency spectrum assigned herein, provided that such equipment has received type approval by the Authority.

6. Radio Stations

6.1 The licensee must ensure that:

6.1.1 radio installations are installed and operated in a manner that complies within the limits of exposure of human beings to radio fields.

6.1.2 where applicable, the antenna structures are marked in accordance with the prescribed specifications.

6.1.3 prior to the installation of significant antenna structures, consultation with the appropriate land use Authorities has taken place.

6.2 The licensee shall be licensed to establish maintain and use the transmitting and receiving stations for radiocommunication set forth from time to time in the Register of Assignments in accordance with the provisions of this licence.

7. Technical Specifications

7.1 The technical specifications applicable to this licence are those included in Annexure ___ of this Licence.

Signed for ICASA by _____, This _____ Day
of [Month], 2002, in Sandton.