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GENERAL NOTICE

NOTICE 647 OF 2002



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE IN REGARD TO RESPONSE TO PUBLIC ENQUIRIES (6.1.2) ON THE SECTIONS IN THE GMPCS INVITATION TO APPLY PUBLISHED ON 20 DECEMBER 2002.

The Independent Communications Authority of South Africa (ICASA) hereby gives notice of response to inquiries put forth by the public according to section 6.1.2 on the GMPCS Invitation to Apply.

**MANDLA LANGA
CHAIRPERSON
ICASA**

GMPCS ITA QUESTIONS AND ANSWERS

1. Both Government Gazette Notices 2394 of 2001 & 2395 of 2001 were issued in terms of sec. 34(2)(a)(v) of the Telecommunications Act. Sec. 34(2)(a)(v) however refers to multimedia licence. It is assumed that the correct reference is section 34(2)(a)(vi) being "any other telecommunication service prescribed for the purposes of this subsection." Clarity is sought in this regard.

RESPONSE

This is correct.

2. The ITA as it is currently drafted, can be interpreted in one of two ways. Either as to apply only in respect of the GMPCS Service Licence or to apply to both the GMPCS Service licence and the GMPCS Earth Gateway licence.

RESPONSE

In our view the ITA has omitted to include GMPCS Earth Gateway licences.

3. The structure of the ITA and its associated deadline for applications might prevent future GMPCS operators from obtaining a GMPCS Service licence and/or a GMPCS Earth Gateway licence in a timeous manner.

How do ICASA and/or the Ministry envisage dealing with the licence requirements of the future GMPCS systems?

RESPONSE

This is a matter for the Minister as she is responsible for the issue of the ITA.

4. The statement in clause 8.2 of the ITA indicates that the Applicant shall bear all costs *including such other fees as ICASA may prescribe*. It is crucial for a potential applicant to determine all costs and charges relating to an application before such an application is made.

RESPONSE

This is a reference to the s88 regulations in which GMPCS application and licence fees are prescribed. GMPCS licensees will also be required to make contributions to the Universal Service Fund in terms of the forthcoming s67 regulations.

5. Finally, there are a number of typing errors which appear in the text and should be rectified for the sake of clarity:
 - Clause 6.1.2: The reference to 2.2.1 read 6.1.1.
 - Clause 6.2.6: Sections 15 and 16 are not included in the document.
 - Clause 13.4.1: No clause 18.6 is included in the document.

RESPONSE

We take note of the typing errors.

6. What is the requirement for foreign entities in regard to having a presence in SA?

Section 12.1 and 12.2 of the ITA appear to concern foreign entities. Section 12.1 of the ITA states, "A foreign applicant must state in its Application where it has a corporate or other presence in the Republic of South Africa". This appears to indicate that a foreign entity must have some type of presence in the country. What type of presence is required? Would registration as foreign entity doing business in SA suffice?

RESPONSE

We understand this to be a request for information rather than a requirement that a foreign entity should have a presence in the country.

7. Are there going to be separate licences for GMPCS service and GMPCS earth Gateway service?

It would seem that prior to the publication of the most recent documents, there would have been separate licences for the two types of services. Telkom only – in terms of the policy would be allowed to be licensed to provide earth gateway service until the end of its exclusivity (which is May this year). This would not however preclude licensing of others before May 2002 in order that they are ready to start operating in May 2002. Is it correct that there will be separate service licences and earth gateway service licence to be effective only at the expiry of Telkom's exclusivity in May 2002?

The recently published documents seem to confuse matters. First, it seems as if ICASA's regulation in terms of section 34(2)(a)(v) of the Act (No. R.27) should have been issued in terms of section 33(2) of the Act, which would have declared GMPCS a licensable telecommunication service. This is the effect of the wording of the regulation. It states that ICASA (and not the Minister) grants and issues licences. The wording of the changed section 33(2) regulation has to be published (or GMPCS would not be a licensable telecommunication service). Is the regulation intended to deal both with sections 33(2) and 34(2)(a)(v) of the Act?

Further, the invitation issued by the Minister seems only to apply to GMPCS service and not also earth gateway service licences. Will earth gateway service licences be awarded by invitation only and if so, when will such invitation be issued?

A further anomaly is that there are no licence fees prescribed (although there are application fees prescribed) for earth gateway service licences. Does ICASA intend to prescribe licence fees for earth gateway service licences?

RESPONSE

In our view, GMPCS earth gateway licences have been omitted from the ITA.

The regulation only refers to s34 (2) and not s33 as the prescription of GMPCS under s34 (2) requires the Minister to issue an invitation to apply. Licence fees for earth gateway stations will need to be included in a s88 regulation.

8. Will frequency licences be issued simultaneously with the issuance of GMPCS service and earth gateway service licences?

Both service licences and frequency licences are required in terms of the Telecommunications Act. So, there could be a situation where a service licence is granted and not a frequency use licence and then one would be liable to pay a fee for a service licence that is without much value (because no frequency use licences have been issued). Will frequency licences be granted simultaneously with service licences?

RESPONSE

Frequency spectrum licences will need to be issued together with or after the issue of the GMPCS telecommunications service licences.

9. Possible procedural irregularities.

Note that the recently published documents were published twice, first on 20 December 2001 and again on 8 January 2002. Note also the regulations were issued without public comment as is required by section 96(4) of the Act.

Although section 96(5) provides an exception, the regulations were not expressly issued in terms of section 96(5) of Act. Further, there seems to be no justification other than regulatory delay, which may not meet the public interest test expressed in the Act.

Note also that the revised policy direction was also not published for public comment as required by section 5(4)(b) of the Act.

Although these points might seem peripheral only and should not delay the implementation of the GMPCS licensing process, they could well end up taking the process back to the starting point. Any aggrieved party will likely take the points on review.

RESPONSE

The s34 and s88 regulations in Government Gazette Notices 2393 and 2394 of 2001 were published in terms of s96 (5) (b) of the Telecommunications Act.
