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GOVERNMENT NOTICE

DEPARTMENT OF COMMUNICATIONS

No. R. 1242

28 August 2003

TELECOMMUNICATIONS ACT, 1996 (ACT NO. 103 OF 1996)

REGULATIONS ON APPLICATION FOR TRANSFER OF TELECOMMUNICATION SERVICE LICENCES

In terms of section 95(3) of the Telecommunications Act, 1996 (Act No. 103 of 1996), I, Dr. Ivy Matsepe-Casaburri, Minister of Communications hereby approve and publish the regulations in the Schedule made by the Independent Communications Authority of South Africa in terms of section 96(1) read with section 50(1) of the said Act.

Dr. Ivy Matsepe-Casaburri
Minister of Communications

SCHEDULE

Definition

1. In this Schedule any word or expression to which a meaning has been assigned by the Act, shall have the same meaning unless the context indicates otherwise, and –

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

Application for the transfer of telecommunication service licences

2. (1) An application for the transfer of a telecommunication service licence shall be made by the licensee who is the prospective transferor.
- (2) The application referred to in sub-regulation (1) shall -
 - a) be made in writing;
 - b) include a motivation as to the reason for the requested transfer;
 - c) provide an audit of the prospective transferor's licence obligations detailing the obligations that have been fulfilled, the obligations that are outstanding and the obligations that will be taken over by the prospective transferee upon the transfer of the licence;
 - d) identify the prospective transferee, and for this purpose -
 - (i) if the prospective transferee is a natural person, the information shall be furnished:
 - (aa) The full names of the prospective transferee;
 - (bb) the identity number of the prospective transferee;
 - (cc) the prospective transferee's permanent physical address;
 - (dd) the address of the prospective transferee's principal place of business; and
 - (ee) the prospective transferee's telephone and fax numbers;

(ii) if the prospective transferee is a juristic person, the following information shall be furnished:

- (aa) Business name and address, telephone and fax numbers of the prospective transferee, and where applicable, certified copies of all the founding documents of the prospective transferee and its previous predecessors in title;
- (bb) full names, business and residential addresses and the telephone numbers of each shareholder or member owning shares or interests exceeding five percent of the total shares or interests (financial and any other interests) in the prospective transferee;
- (cc) the percentage of shares or interests of each shareholder or member owning shares or interests in excess of five percent of the total shares or interests in the prospective transferee; and
- (dd) ownership interests of the prospective transferee in other telecommunication licensees;

e) identify the prospective transferor, and for this purpose -

(i) if the prospective transferor is a natural person, the following information shall be furnished:

- (aa) The full names of the prospective transferor;
- (bb) the identity number of the prospective transferor;
- (cc) the prospective transferor's permanent residential address;
- (dd) the address of the prospective transferor's principal place of business; and
- (ee) the prospective transferor's telephone and fax numbers;

(ii) if the prospective transferor is a juristic person, the following information shall be furnished:

- (aa) Business name and address, telephone and fax numbers of the prospective transferor, and where applicable, certified copies of all the founding documents of the transferor;
 - (bb) full names, business and residential addresses and the telephone numbers of each shareholder or member owning shares or interests in the prospective transferor;
 - (cc) the percentage of shares or interests of each shareholder or member owning shares or interests in excess of five percent of the total shares or interests in the prospective transferor;
 - (dd) the classes of shares or interests of each shareholder or member owning shares or interests in excess of five percent of the total shares or interests in the prospective transferor; and
 - (ee) ownership interests of the prospective transferor in other telecommunication licensees;
- (f) in the case where the prospective transferor has been liquidated, the applications must –
- (i) identify the liquidator, including all relevant contact details;
 - (ii) include an affidavit from the prospective transferor, or the liquidator in the case where a transferor has been liquidated, that supports the service licence transfer;
 - (iii) be signed by both the transferor or the transferor's liquidator and the transferee to ensure that both parties are aware of and in support of the application; and
- (g) identify the licence for which application for transfer is being made, and for this purpose stipulate –
- (i) the licence name and category; and
 - (ii) the licence number, where applicable.

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3. The prospective transferee shall make a statement in respect of himself or herself, his or her company or a person appointed to manage his or her business, in the past five years as to whether-
- a) any licences have been issued to him or her, or the company under the Act and if so, their names and categories;
 - b) there is any engagement in any telecommunications activities or services by him or her, or the company that does not require a licence in terms of section 33(2) of the Act;
 - c) any telecommunications licence has been revoked from him or her, or the company in the Republic of South Africa or anywhere else in the world;
 - d) he or she, or the company has applied and has been rejected or is in the process of applying for a telecommunication licence;
 - e) any conditions have been imposed on him or her, or the company by the Authority on account of failing to honour any licence obligations;
 - f) any legal action has been taken by either the Authority or interested persons against him or her, or the company on account of a breach of the Act or telecommunications regulations; and
 - g) proceedings in the above cases are pending.
4. Failure to provide all the information required shall render the application unsuccessful.
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