

REPUBLIC  
OF  
SOUTH AFRICA



REPUBLIEK  
VAN  
SUID-AFRIKA

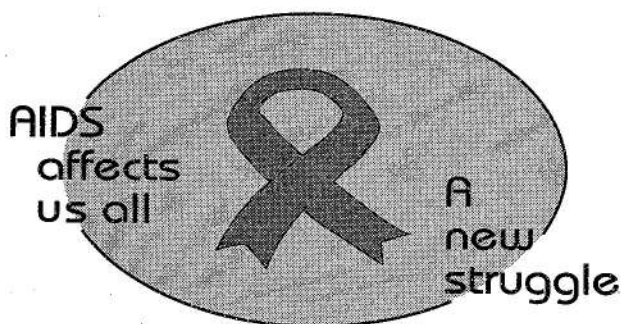
# Government Gazette Staatskoerant

Vol. 417

PRETORIA, 9 MARCH  
MAART 2000

No. 20976

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DEPARTMENT OF HEALTH

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## GENERAL NOTICE

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NOTICE 1146 OF 2000

**SOUTH AFRICAN TELECOMMUNICATIONS REGULATORY AUTHORITY**



**NOTICE IN TERMS OF PARAGRAPH 3.2 OF THE REGULATIONS PUBLISHED BY  
THE MINISTER FOR POSTS, TELECOMMUNICATIONS & BROADCASTING IN  
GOVERNMENT GAZETTE No. 20112 OF 24 MAY 1999**

1. During the period from 20 February 2000 to 8 March 2000, the Authority received written questions from certain applicants for the third mobile cellular telecommunication service licence ("the licence") or their legal representatives regarding the recusal of the Authority's Chairperson from the decision-making process in respect of the applications for the licence. The letters from the relevant applicants or their legal representatives, setting out their questions in this regard, are reproduced in the schedule to this notice.
2. The Authority considered it necessary to answer the questions set out in the abovementioned letters. The Authority's responses to the abovementioned letters are also reproduced in the schedule to this notice, together with a letter which the Authority sent to all the applicants for the licence in this regard.

**Mr E Funde, PrEng, PE**  
**Deputy Chairperson**  
**SATRA**



AfricaSpeaks Cellular (Pty) Ltd  
Registration No. 99/07399/07  
94 Jan Smuts Avenue  
Saxonwold 2196  
P O Box 4769  
Johannesburg 2000

20 February 2000

## URGENT

### SATRA COUNCIL

C/O Mr. Eddie Funde  
Heia Safari Ranch  
Per Fax: (011) 659-0709  
No of Pages: 3

Also per fax: Pin Mill Farm, Fax: 321-8566

Dear Councillors

### Sunday World Article: Mr Maepa

We draw your most urgent attention to an article in *Sunday World* of today 20 February 2000, which is headed "Maepa gets the boot". A copy of the article is attached.

The article relates to the present deliberations of the SATRA Council on the award of the third cellular licence.

Kindly inform us as a matter of urgency, and fully, what the circumstances were in respect of Mr Maepa's withdrawal/removal from this current and crucial phase of the third licence award process.

We draw your attention generally to the provisions of section 15 of the Telecommunications Act of 1996 and in particular, to section 15(2) relating to the requirement *inter alia* that relevant proceedings should be recorded.

In addition to the information requested above, please provide us with a transcript of those proceedings so that we may evaluate what has taken place, in respect of the process, and likewise evaluate the content of any information given there and considered in respect of any interest, as contemplated in section 15. Once we have had such opportunity, we may wish to make representations to SATRA concerning such matters.

Tel: + 27 11 646-7440 Fax: + 27 11 646-6928 E-mail: [info@africaspeaks.co.za](mailto:info@africaspeaks.co.za) [www.africaspeaks.co.za](http://www.africaspeaks.co.za)

In the meantime, we formally request you not to complete your deliberations and not to make any decisions concerning the applications pending before you.

Yours faithfully



Mashudu Ramano  
Chairperson

CC: Minister of Post & Communications  
CC: CellC  
CC: Five Mobile Networks  
CC: Khuluma 084  
CC: Nextcom  
CC: Telia/Telenor

**2 SUNDAY WORLD February 20 2000 ★****BRI****■ Maepa gets the boot**

Nape Maepa, the chairman of the South African Telecommunications Regulatory Authority (Satra), could be forced to step down.

The broadcast minister got involved after allegations arose that Maepa had an interest in one of the companies bidding for the third cellular licence.

Satra insiders say Maepa was asked to leave a conference at Heia Safari Ranch in Johannesburg on Friday after Ivy Matsepe-Cassaburi, the minister, found his involvement with one of the bidding companies "disturbing."

Negotiations between Maepa and the ministry are said to have been going on since Thursday. Sources say an "amicable solution" was reached for Maepa to go.

Ministerial spokesman Gladwyn Marumo said no information was available on any arrangement. — *Sechaba la Nkosi*

Your ref:  
Our ref: Y Carrim/S Patel/Afr80001

23 February 2000

2000-02-24



ATTENTION: THABO MAKHAKHE  
PROJECT DIRECTOR  
THIRD CELLULAR LICENCE

South African Telecommunications Regulatory Authority  
Block B, Pin Mill Farm  
164 Katherine Street  
Sandton  
2196

#### ATTORNEYS

7th Floor, Braamfontein Centre

23 Jorissen Street, Braamfontein

Johannesburg, South Africa

P O Box 30894, Braamfontein

South Africa, 2017

Telephone (+2711) 403-2765

Fax (+2711) 403-1764

E-mail: admin@cth.co.za

Web: www.cth.co.za

Docex 50, Johannesburg

PER TELEFAX: 321-8566/7

Dear Mr Makhakhe

#### SUNDAY WORLD ARTICLE : MR MAEPA

We refer to your telefax dated 23 February 2000.

In view of the contradictory statements in the press regarding Mr Maepa's recusal, our client is not satisfied that the circumstances surrounding Mr Maepa's recusal have been adequately explained.

Our client therefore reiterates its request for a copy of the transcript of the proceedings of Council as contemplated in section 15 of the Telecommunications Act. In addition, our client also requests that it be furnished with copies of the minutes of the proceedings in question. We remind you that our client has a constitutional right to the information that it has requested and that all of its rights in this regard are reserved.

Our client is also concerned that if the basis of Mr Maepa's recusal is as explained by your fax then our client fails to understand why other councillors, who are in similar or seem to be in similar positions as Mr Maepa, have not recused themselves.

Our client has recently been advised that Councillor Gosa is or has become a shareholder in one of our client's shareholders namely Katekani Investments (Pty) Ltd. If that is the case then we fail to understand why she has not recused herself from the third cellular licence process.

Partners: MH Cheadle (BA (Hons) BProc LLB); NRL Haysom (BA (Hons) LLB); A Cachalia (BA LLB Hdp Tax); HM Seady (BA LLB LLM); PS Benjamin (BA LLB LLM); AJ Armstrong (BA (Hons) LLB); PS Stein (BA PDip ASS LLB LLM); BM Barry (BA LLB); TN Radtke (BA Law LLB); AKM Meyer (BA (Hons) LLB LLM); AJ Sreenkamp (BA LLB LLM (Pret.) LLM (Notre Dame)); AS Roskam (BA LLB PDip Labour Law); N Howard (BA LLB); YT Carrim (BSC LLB); Associates: RJ van Voore (BA LLB LLM); CJ Doble (BA LLB); Assisted by: MJ Taylor (BA LLB LLM); MER Phooko (BProc LLB LLM); DJ Tshepe (BProc LLB); S Patel (BProc LLB); Z Dadoo (BProc LLB); C Raffinetti (BA LLB); B Conradie (BA LLB LLM); D Norton (BA (Hons) Hdp Ed. LLB); General Manager: C Tilley (B LLB); Consultants: K Pillay (BA LLB MCJ)  
Cape Town office: Tel. (021) 422-2210, Fax (021) 422-2377 E-mail: cth@cthcpt.co.za



Please as a matter of urgency provide us with details of whether Councillor Gosa indeed has an interest of any type in Katekani Investments and if so the nature thereof.

With regard to paragraph 6 of your letter, we wish to bring to your attention that communications with the Council regarding section 15 of the Telecommunications Act do not fall within the ambit of paragraphs 3.1 and 3.2 of Government Gazette number 20112 of 24 May 1999. Our view, therefore, is that our client is entitled to obtain the information sought from SATRA in the manner that our client has requested it.

Should we not receive the information requested above forthwith and the transcript as requested, our client will have no option but to take legal action in order to assert and/or protect its rights in the matter.

Yours faithfully



**YASMIN CARRIM / SAFIYYA PATEL**  
**CHEADLE THOMPSON & HAYSOM**

Cc: Mr Nape Maepa  
Telefax: 321-8547



# Shepstone & Wylie

Attorneys

*Pratt - Duet*

## FACSIMILE TRANSMISSION HEADER

DATE: 23 February 2000  
 TO: SOUTH AFRICAN TELECOMMUNICATIONS REGULATORY AUTHORITY  
 ATTENTION: THE CHAIRMAN  
 FAX: (011) 321 8566  
 FROM: Ian Chadwick  
 REF: AJJC/mn/M1048939  
 NO OF PAGES INC THIS PAGE : 1+2

36 Aliwal Street, Durban, 4001  
 P O Box 205, Durban, 4000  
 Republic of South Africa  
 Docex : Number 91  
 Fax Number : (031) 304-4928  
 Tel Number : (031) 302-0111  
 Direct Line : (031) 302-0455  
 Cell Number : 082-4589552  
 Internet Home Page : <http://www.wylie.co.za>  
 E-Mail Address : [sw.chadwick@wylie.co.za](mailto:sw.chadwick@wylie.co.za)

Also at: Ballito, Cape Town, La Lucia Ridge, London, Pietermaritzburg and Richards Bay

The information contained in this message is confidential and intended only for the individual or entity to whom it is addressed and may not be disseminated to anyone else. If any privileged information is included such privilege is not waived. If it is received in error, please would you notify us by telephone.

A list of the partners of the firm is available for inspection at 35 Aliwal Street, Durban.

Dear Sir

### APPLICATION FOR A LICENCE TO PROVIDE A MOBILE CELLULAR TELECOMMUNICATION SERVICE IN THE REPUBLIC OF SOUTH AFRICA

We act for Nextcom Cellular (Pty) Limited. We are instructed that our client, acting pursuant to an invitation issued by the Minister by notice in the Gazette promulgated in terms of section 34 of the Telecommunications Act No.103 of 1996 has made application, together with five competitors, for a licence to provide a mobile cellular telecommunication service within the Republic of South Africa.

We are advised that following the procedures laid down by section 34 of the said Act, which procedures included the submission of bids and proposals by our client and others and the holding of public enquiries and inspections, the point has now been reached where the authority appointed under the Act to determine such application (SATRA) is in a position to announce its decision and recommendation to the Minister concerning the successful applicant for the said licence.

Our client's attention has recently been drawn to the content of a report in the business section of *Die Beeld* published on 21 February 2000 wherein the author states that SATRA has recently altered its decision to appoint Nextcom as the preferred candidate for the third

cell phone licence and has decided to appoint Cell C, one of our client's competitors as the preferred nominee in our client's place. The report states that this follows on the recusal of the Chairman, Mr Nape Maepa from the selection process. Similar allegations and speculation is contained in a report in the Business Day edition of 23 February 2000 including the astonishing assertion that representatives of Cell C were present at the same bush lodge at which representatives of SATRA recently met (presumably to discuss the various bids).

Our client is extremely concerned about its position in the light of the aforesaid reports and we are instructed to enquire whether the aforesaid facts stated in the reports are indeed correct.

We are furthermore instructed to seek the authority's undertaking that it will not make any decision or recommendation regarding the appointment of the successful applicant for the licence in question namely the third mobile cellular telecommunication service licence, until such time as our client has had the opportunity to examine and evaluate the documentation placed before the authority and/or relied upon by the authority in arriving at its decision, including all documentation concerning the business plans, financial viability, experience and ability, technical plans, network roll-out, proposed service implementation, universal service proposal, empowerment and economic development of each of the applicants as well as the scoring achieved by each of the applicants on each of the relevant criteria. In fact our client requires that it be furnished with all documents used by SATRA during the said investigation process.

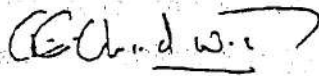
If a decision has indeed already been reached concerning the authority's nominee for the aforesaid licence, our client also requires the authority's written reasons for such decision.

You will no doubt be aware that our client is entitled to the aforesaid information and reasons in terms of not only the provisions of section 35 of the Telecommunications Act No.103 of 1996 but also by reason of its right to just administrative action in terms of section 33 of the Constitution of the Republic of South Africa Act No.108 of 1996 read with sections 23(1) and 23(2) of the Sixth Schedule to the said Act which deals with the question of lawful administrative action during the transition period namely until such time as the legislation envisaged in section 33(3) of the Constitution has been enacted. In this regard we are

advised that the Promotion of Administrative Justice Act has been enacted but not yet promulgated. This is the act envisaged by section 33(3) of the Constitution. We mention, in passing, that the Promotion of Administrative Justice Act also entitles our client to administrative action which is procedurally fair including the right to present and dispute information and argument and the right to receive written reasons for any administrative act which materially and adversely affects that person's rights.

Please let us have your written response within 72 hours of receipt of this notification failing which our client will launch an urgent application against SATRA for the appropriate relief.

Yours faithfully



A I J Chadwick

SHEPSTONE & WYLIE

Your ref:

Our ref: Y Carrim/S Patel/Afr80001

24 February 2000

South African Telecommunications Regulatory Authority  
Block B, Pin Mill Farm  
164 Katherine Street  
Sandton  
2196

**ATTENTION: THABO MAKHAKHE**  
**PROJECT DIRECTOR**  
**THIRD CELLULAR LICENCE**  
**PER TELEFAX: 321-8566/7**

Dear Mr Makhakhe

**AfricaSpeaks Request/SunTel (Pty) Ltd**

We refer to your telefax dated 23 February 2000 and the letter attached thereto.

We are instructed to place on record the following with the Authority:

1. Mr Maepa was never and is not a shareholder of AfricaSpeaks Communications (Pty) Ltd, AfricaSpeaks Telecommunications (Pty) Ltd or AfricaSpeaks Cellular (Pty) Ltd ("AfricaSpeaks"), the applicant for the third cellular licence.
2. We understand that Mr Maepa was a shareholder of a company called Sun-Telecommunications (Pty) Ltd ("SunTel") which submitted an application for a mobile cellular telecommunications licence in 1992 and according to information furnished to us has been dormant since then. SunTel has no association with any of the companies in the AfricaSpeaks group of companies and is not a shareholder of Africaspeaks.
3. Mr Maepa's business partner in SunTel in 1992, Mr Tshivhase, is a trustee of the Tshivhase Development Foundation Trust, a trust incorporated in July 1995 to promote development in the Northern Province. The trust has a one percent share in AfricaSpeaks Communications (Pty) Ltd which translates into a 0,51% holding in AfricaSpeaks Cellular (Pty) Ltd. Mr Tshivhase is not a shareholder nor a director of Africaspeaks. In fact the Trust does not have any shareholders at all, the beneficiaries are the people of the Northern Province.
4. We re-iterate the request made to you yesterday, 23 February 2000, to provide us with copies and a transcript of the minutes of relevant proceedings forthwith. We also re-iterate our position that regulation 3.1 and 3.2 do not apply to our queries

**ATTORNEYS**

7th Floor, Braamfontein Centre

23 Jorissen Street, Braamfontein

Johannesburg, South Africa

P O Box 30894, Braamfontein

South Africa, 2017

Telephone (+ 2711) 403-2765

Fax (+ 2711) 403-1764

E-mail: admin@cth.co.za

Web: www.cth.co.za

Dacex 50, Johannesburg

Partners: MH Ocedia (BA (Hons) BProc LLB); NRL Haysom (BA (Hons) LLB); A Cachalia (BA LLB Hdp Tax); RM Seady (BA LLB LLM); PS Benjamin (BA LLB LLM); AL Armstrong (BA (Hons) LLB); PS Stein (BA PDip ASS LLB LLM); HM Barry (BA LLB); TN Radikopole (BA Law LLB); AKM Mayer (BA (Hons) LLB LLM); AJ Steenkamp (BA LLB LLM (Proc) LLM (Notre Dame)); AS Roekam (BA LLB PDip Labour Law); N Howard (BA LLB); VT Carrim (BSC LLB); Associates: RJ van Voore (BA LLB LLM); GJ Dobie (BA LLB); Assisted by: MJ Taylor (BA LLB LLM); MBE Phisoana (BProc LLB LLM); DU Tshope (BProc LLB); S Patel (BProc LLB); Z Dasou (BProc LLB); C Rademacher (BA LLB); B Conradie (BA LLB LLM); D Nortin (BA (Hons) LLB LLM); Commercial Manager: L Miley (B Juris); Consultants: K Pillay (BA LLB MCJ)

Cape Town office: Tel. (021) 422-2210, Fax (021) 422-2370, E-mail: lth@cthpt.co.za

and requests regarding the proceedings of Council or the recusal/ withdrawal of Mr Maepa.

5. The Authority is required, as an administrative tribunal, to deal with our queries and our request for information pertaining to section 15 of the Act, which queries and requests have been made in order to exercise or protect our client's rights and interests, in a manner consistent with the Constitution and the common law principles of administrative law. Please provide us with the requested information immediately.

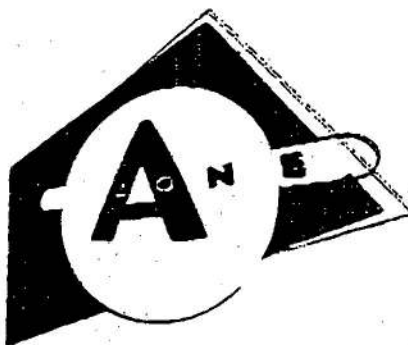
All our client's rights in this matter are reserved and a failure on our client's part to deal with any other aspects of your fax does not constitute an admission thereof.

Yours faithfully



**YASMIN CARRIM / SAFIYYA PATEL  
CHEADLE THOMPSON & HAYSOM**

Cc: Mr Nape Maepa  
Telefax: 321-8547



c/o Afrozone, Hurlingham Office Suites Block D; Cnr. William Nicol & Republic Roads, Sandton, 2146  
Telephone: 011 886 3070 Telefax: 011 886 9980

1 March 2000

To: Thabo Makhakhe  
Project Director: 3<sup>rd</sup> Cellular licence  
**SATRA**  
Block A  
Pin Mill Farm  
164 Katherine Street  
Sandton

*2 pages via facsimile 321-8536*

**RE: Reasons for SATRA's intended recommendation**

Sir,

We have now had the opportunity to peruse the documents SATRA made available to us on 29 February 2000. This "strength and weakness" analysis does not contain SATRA's reasons for its decision, at least not sufficiently to enable us to comment fully and meaningfully on SATRA's intended recommendation.


We therefor request, as a matter of urgency, to be furnished with full reasons for SATRA's decision, including, without limitation-

- a) a detailed breakdown of the overall scores;
- b) all evaluation reports including, including those by financial and technical advisors to SATRA; and
- c) minutes of SATRA's meeting at which scores were integrated and discussed.

We are advised that this information is also necessary to preserve our constitutional and common law rights to fair administrative action, and that we are entitled to this as a matter of law.

We await your urgent response.

Sincerely,

PP 

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Telenor / Telia Consortium





Block B, Pin Mill Farm  
164 Katherine Street, Sandton, 2196  
Private Bag X1, Marlboro, 2063  
South Africa

Tel: (+27 11) 321-8200  
Fax: (+27 11) 321-8566/7

23 February 2000

AfricaSpeaks Cellular (Pty) Ltd  
P O Box 4769  
Johannesburg  
2000

TELEFAX : (011) 646-6928

Att : Mr Mashudu Ramano

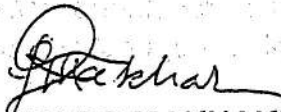
Dear Sir

**SUNDAY WORLD ARTICLE : MR MAEPA**

1. I refer to your telefax dated 20 February 2000 addressed to the Authority's Councillors, which was received by them after they had concluded their deliberations for the day. I have been instructed by Council to respond to your telefax.
2. I enclose a copy of a letter that is being sent to all the applicants for the licence and which sets out the facts surrounding the decision by the Authority's Chairperson, Mr Nape Maepa, to recuse himself from the decision-making process in respect of the licence.
3. Contrary to what is suggested in your abovementioned telefax, section 15(2) of the Telecommunications Act, No. 103 of 1996 ("the Act"), does not require that proceedings of the nature contemplated in that provision be recorded mechanically. All that is required is that the disclosure by the relevant Councillor of the nature of his or her interest, and the decision taken by the remaining Councillors in that regard, should be recorded in the minutes of the proceedings in question.
4. Nevertheless, Mr Maepa's disclosure of the facts set out in the enclosed letter was made during the course of the Council meeting referred to in paragraph 5 of the enclosed letter. The discussions held at that meeting were recorded mechanically but, to date, no transcript of that recording has been prepared.

5. Mr Maepa's disclosure of the facts set out in the enclosed letter is also recorded in the minutes of the relevant Council meeting. However, because Mr Maepa had recused himself, there was no need for the Authority's Council to make any decision as to whether Mr Maepa should be precluded, in terms of section 15(2)(a) of the Act, from participating in the deliberations by the Authority's Council regarding the applications for the licence.
6. I have been requested by the Authority's Council to remind you that all communications regarding the licensing process should be conducted in accordance with paragraphs 3.1 and 3.2 of the Regulations published by the Minister for Posts, Telecommunications & Broadcasting in *Government Gazette* No. 20112 of 24 May 1999. These regulations provide as follows:
  - "3.1 An applicant or interested person may submit written questions in respect of the licensing process for one mobile cellular telecommunication service licence, other than in respect of the invitation, to the Authority to be delivered at the offices of the Authority during normal office hours marked for the attention of The Project Manager, Third Mobile Cellular Telecommunication Service Licence.
  - 3.2 Within 14 (fourteen) days of receipt of written questions referred to in regulation 3.1, the Authority shall give notice in the *Government Gazette* of those questions which, in its opinion, are necessary to answer, together with answers thereto."

Yours faithfully



THABO MAKHAKHE  
PROJECT DIRECTOR

*Copy: All Third Cellular Licence Applicants*



Block B, Pin Mill Farm  
164 Katherine Street, Sandton, 2196  
Private Bag X1, Marlboro, 2063  
South Africa

Tel: (+27 11) 321-8200  
Fax: (+27 11) 321-8566/7

28 February 2000

Cheadle Thompson & Haysom  
P O Box 30894  
Braamfontein  
2017

**BY TELEFAX : 403-1764**

**Attention : Ms Y Carrim**

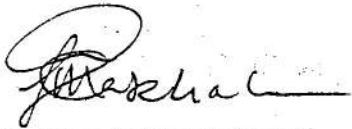
Dear Madam

**SUNDAY WORLD ARTICLE : MR MAEPA**

1. I refer to your telefax dated 23 February 2000. I have been instructed by the Council of the Authority to reply to your abovementioned telefax on behalf of the Authority.
2. As I explained in my letter dated 23 February 2000 addressed to your client, Mr Maepa's disclosure of the facts relating to his directorship of Sun Telecommunications (Proprietary) Limited was recorded mechanically. Apart from such disclosure, no proceedings were conducted in terms of section 15 of the Telecommunications Act, No. 103 of 1996.
3. As stated in my telefax dated 25 February 2000, a transcript of the meeting at which Mr Maepa made the abovementioned disclosure is now being prepared, and the minutes of that meeting are being finalised.

4. Your client's constitutional right of access to information is limited to the information that your client requires for the purpose of exercising or protecting its rights.
5. Legal documents as well as correspondence in our possession from Katekane Investments (Proprietary) Limited confirm that Councillor Gosa is not, and has never been, a shareholder of Katekane. She is also not a shareholder of any other company that has any interest in the applications for the third mobile cellular telecommunication licence. Katekane has also submitted an affidavit to this effect to the Auditor General.
6. I trust that the information set out above satisfactorily addresses your client's concerns.

Yours faithfully



**THABO MAKHAKHE**  
**PROJECT DIRECTOR**



Block B, Pin Mill Farm  
164 Katherine Street, Sandton, 2196  
Private Bag X1, Marlboro, 2063  
South Africa

Tel: (+27 11) 321-8200  
Fax: (+27 11) 321-8566/7

25 February 2000

Shepstone & Wylie  
P O Box 205  
Durban  
4000

Telefax : (031) 304-4926

Attention : Mr A I J Chadwick

Dear Sir

## APPLICATION FOR LICENCE TO PROVIDE MOBILE CELLULAR TELECOMMUNICATIONS SERVICE

1. I refer to your telefax dated 23 February 2000 addressed to the Chairperson of the South African Telecommunications Regulatory Authority ("the Authority"). I have been instructed by the Council of the Authority to reply to your abovementioned telefax on behalf of the Authority.
2. The Authority responds as follows to your enquiry regarding the allegations that appeared in *Die Beeld* of 21 February 2000 and *Business Day* of 23 February 2000:
  - 2.1 It is not correct that the Authority has recently, or at all, altered its "decision" to appoint your client as the "preferred candidate" for the third mobile cellular telecommunication service licence ("the licence").

It is also not correct, as has been suggested, that the Authority has decided to appoint Cell-C "as the preferred nominee in your client's place".

2.2 The Authority's Council met on 18, 19 and 20 February 2000 in order to deliberate on the various applications for the licence with a view to formulating its intended recommendation, as contemplated in section 35(1)(a)(i) of the Telecommunications Act, No. 103 of 1996 ("the Act").

2.3 Prior to the meetings on the abovementioned dates, no decision had been taken in relation to the Authority's intended recommendation regarding the applications for the licence. In other words, it was not possible to replace one applicant with another applicant as the "preferred nominee". Hence, the alleged "replacement" of one applicant by another applicant as the "preferred nominee" could not (as has been alleged) have "followed on the recusal" of the Authority's Chairperson from the decision-making process. No doubt, your client has by now furnished you with a copy of my letter dated 23 February 2000, addressed to all the applicants for the licence, in which I set out the circumstances surrounding the Chairperson's recusal.

2.4 Representatives of Cell-C were present at the Heia Safari Ranch on Thursday 17 February 2000, when members of the Authority's staff and the Councillor arrived there en route to the adjacent Aloe Ridge Hotel, where the Authority's Councillors met last weekend for the purpose of conducting deliberations in respect of the applications for the licence. The presence of the Cell-C representatives at the Heia Safari Ranch at the time when the relevant Councillor and members of staff arrived there was purely co-incidental. There was no communication between the Councillor and members of staff concerned and the Cell-C representatives other than an exchange of greetings.



3. As far as the undertakings sought by you are concerned, I advise as follows:
- 3.1 Your client has had ample opportunity to examine and evaluate all the documents (other than documents relating to the financial plans and business capacity of the various applicants) placed before, and relied upon by, the Authority in considering the applications for the licence. All these documents have been available to your client for a considerable period of time.
- 3.2 As previously announced, the Authority's intended recommendation in terms of section 35(1)(a)(i) of the Act will be announced on 29 February 2000. The Authority's reasons for its intended recommendation will be published at the same time. These reasons will include information regarding the scoring achieved by each of the applicants in respect of the relevant evaluation criteria.
- 3.3 As you know, your client will be entitled, in terms of section 35(1)(b) of the Act, to make representations to the Authority in relation to its intended recommendation. Naturally, the Authority will give due consideration to any representations which your client may wish to make. As provided for in the same section of the Act, the Authority may adjust or alter its intended recommendation in the light of the representations that may be made by your client or any of the other applicants for the licence.
4. I trust that the above information answers your queries to your satisfaction.

Yours faithfully



THABO MAKHAKHE  
PROJECT DIRECTOR





Block B, Pin Mill Farm  
164 Katherine Street, Sandton, 2196  
Private Bag X1, Marlboro, 2063  
South Africa

Tel: (+27 11) 321-8200  
Fax: (+27 11) 321-8566/7

25 February, 2000

Cheadle Thompson & Haysom  
P.O. Box 30894  
BRAAMFONTEIN  
2017

Telefax: (011) 403-1764

Attention: Ms Y Carrim

**AFRICASPEAKS CELLULAR (PTY) LTD**

1. I refer to your telefax dated 24 February 2000.
2. The Authority notes the statements made in paragraph 1,2 and 3 of your abovementioned telefax.
3. As I stated in my telefax dated 23 February 2000 addressed to your client, no transcript of the recording of the meeting at which the Authority's Chairperson disclosed the nature of his relationship with Mr Mashudu Tshivhase had been prepared at that stage. A transcript is now being prepared and should be ready early next week. Likewise, the minutes of the relevant meeting are in the process of being finalised and should be available early next week.
4. In the meanwhile, it would be appreciated if you could let me know on what basis your client claims that it is entitled to be furnished with copies of the abovementioned transcript and minutes. In particular, you are requested to specify the nature of the "rights and interests" that your client wishes to exercise or protect. This information will assist the Authority's Council in determining whether or not your client is indeed entitled to be furnished with copies of the transcript and minutes.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Thabo Makhakhe', with a stylized flourish at the end.

**THABO MAKHAKHE**  
**PROJECT DIRECTOR**



Block B, Pin Mill Farm  
164 Katherine Street, Sandton, 2196  
Private Bag X1, Marlboro, 2063  
South Africa

Tel: (+27 11) 321-8200  
Fax: (+27 11) 321-8566/7

23 February 2000

Mr. Villiers Terblanche [for Telia / Telenor]

White & Case

The Forum Building 14<sup>th</sup> Floor

Maude and Fifth Street

**SANDTON**

2146

Telefax: (011) 884-7229

Dear Sir

## **APPLICATIONS FOR THIRD MOBILE CELLULAR TELECOMMUNICATIONS LICENCE**

1. I am writing this letter to you in accordance with the instructions of the Authority's Council.
2. By now, you will probably have read reports that have appeared in the press regarding the fact that the Authority's Chairperson, Mr Nape Maepa, has recused himself from the decision-making process in respect of the applications for the third mobile cellular telecommunications licence ("the licence"). In view of certain factual inaccuracies in those reports, the Authority wishes to inform you of the facts surrounding the decision by Mr Maepa to recuse himself.

3. During or about 1992, Mr Maepa was a director of Sun Telecommunications (Proprietary) Limited ("SunTel"). At that time, SunTel submitted an application for a mobile cellular telecommunications licence but, for reasons that are not relevant for present purposes, did not persist with that application. SunTel has been dormant since then.
4. One of Mr Maepa's co-directors of SunTel was Mr Mashudu Tshivase. Mr Tshivase is a trustee of the Tshivase Development Foundation Trust, which holds an equity interest in one of the applicants for the licence, namely AfricaSpeaks Cellular (Proprietary) Limited.
5. In view of the fact that SunTel had been dormant for several years, Mr Maepa had assumed that SunTel had been de-registered and that he was no longer a director of that company. However, on Thursday 17 February 2000 it came to Mr Maepa's attention that SunTel had not been de-registered and that, technically, he was still a director of SunTel.
6. The Authority's Councillors met on Friday 18 February 2000. During this meeting, Mr Maepa disclosed the facts set out above. He also informed the Authority's Council that he had, that morning, resigned as a director of SunTel. He stated that he was aware of the possibility that he might be perceived to have an interest of the nature contemplated in section 15(1) of the Telecommunications Act, No. 103 of 1996 ("the Act").
7. On Saturday, 19 February 2000, Mr Maepa informed the Authority that he had decided to recuse himself from the decision-making process in respect of the applications for the licence. Mr Maepa stated that he did not believe that the facts set out above meant that he had an interest of the nature contemplated in section 15(1) of the Act, or that any other conflict of interests existed that might preclude him from performing his functions in relation to the licensing process in an impartial and proper manner. He stated, however, that he

- accepted that a perception might exist that he would not be able to perform his functions impartially.
8. The remaining members of the Authority's Council accepted Mr Maepa's decision and held deliberations regarding the applications for the licence.
9. Mr Maepa's decision to recuse himself from the decision-making process in respect of the applications for the licence must be understood not only against the background of section 15 of the Act, but also against the background of the common-law rule against bias on the part of administrative decision-making bodies or officials. According to this rule, any person who is empowered to participate in a statutory decision-making process should recuse himself or herself from that process if circumstances exist which may lead reasonable people to think that he or she is biased. The duty of recusal arises where it appears that the person concerned has an interest in the matter or where there is some other reasonable ground for believing that there is a likelihood of bias on his or her part. The fact that, in reality, the person concerned was impartial or was likely to be impartial is not the test. It is the reasonable perception of the affected parties as to his or her impartiality that is important. In other words, the test for disqualifying bias is the existence of a reasonable suspicion of bias. Actual bias, or even an apprehension of a real likelihood of bias, is not a prerequisite.
10. The Authority's Councillors did not make any decision as to whether Mr Maepa should be precluded, in terms of section 15(2)(a) of the Act, from participating in the deliberations by the Authority's Council regarding the applications for the licence.

11. We trust that this clarifies the situation.

Yours faithfully



**THABO MAKHEKHE**  
**PROJECT DIRECTOR**

*Addressees: All Third Cellular Applicants*



Block B, Pin Mill Farm  
164 Katherine Street, Sandton, 2196  
Private Bag X1, Marlboro, 2063  
South Africa

Tel: (+27 11) 321-8200  
Fax: (+27 11) 321-8566/7

8 March 2000

Mr. Villiers Terblanche [for Telia / Telenor]  
White & Case  
The Forum Building 14<sup>th</sup> floor  
Maude and Fifth Street  
**SANDTON**  
2146

**Telefax: (011) 884-7229**

Dear Sir,


#### **REASONS FOR INTENDED RECOMMENDATION**

1. I refer to your telefax dated 1 March 2000.
2. The Authority's Council has considered your request that you be furnished with additional reasons and information relating to the Authority's intended recommendation in respect of the applications for the third mobile cellular telecommunication service licence.
3. The Authority is of the view that the reasons for its intended recommendation that were published on 29 February 2000 are sufficiently detailed to enable the applicants for the licence to make meaningful representations to the Authority in relation to its intended recommendation. Accordingly, the Authority does not intend to furnish you with additional reasons or information in this regard.

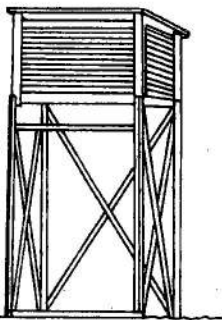
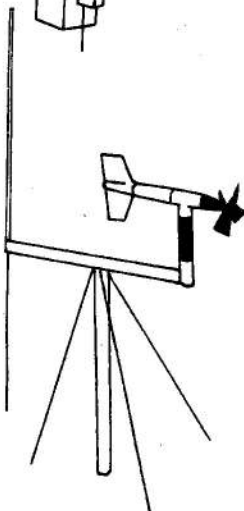


4. I also refer to your letter dated 02 March, 2000 in which you requested that you be furnished with a copy of a report of the recommendation of Afcent CLC Consortium to the SATRA Council. In this regard, I wish to advise that no such document exists and that, consequently, the Authority is unable to accede to your request.
5. You are reminded that you are entitled to submit written representations to the Authority, on or before 14 March 2000, in respect of the Authority's intended recommendation.

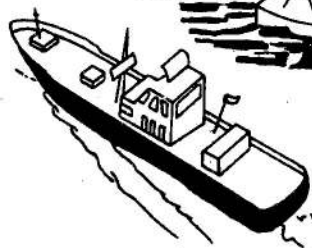
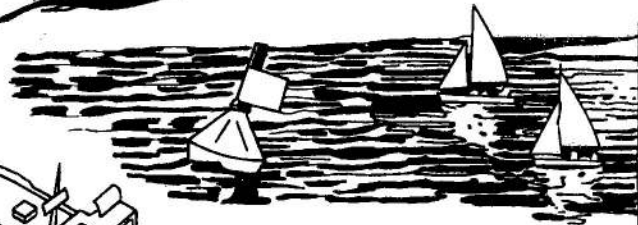
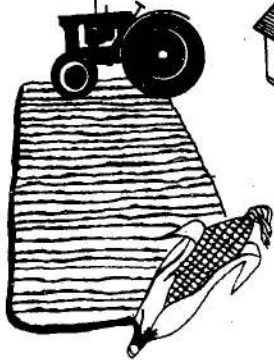
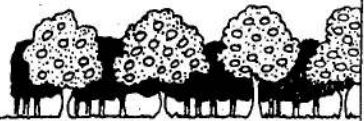
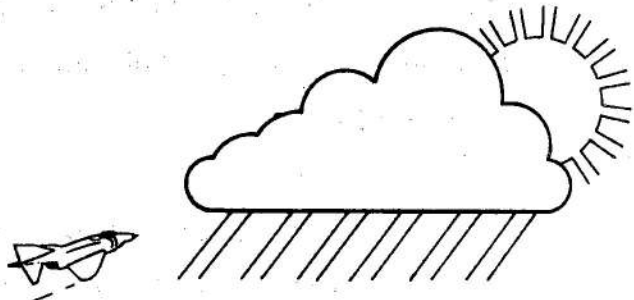
Yours faithfully

  
**THABO MAKHAKHE**  
**PROJECT DIRECTOR**

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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001  
Publications: Tel: (012) 334-4507, 334-4508, 334-4509, 334-4510  
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504  
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737  
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001  
Publikasies: Tel: (012) 334-4507, 334-4508, 334-4509, 334-4510  
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504  
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