



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 438

Pretoria, 20 December 2001
Desember

No. 22976



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CONTENTS • INHOUD

No.	Page No.	Gazette No.
GENERAL NOTICES		
Independent Communications Authority of South Africa		
<i>General Notices</i>		
2404 Telecommunications Act (103/1996): Notice in terms of section 32 C (4) and (5) to make written and oral representations on the proposed terms and conditions of the carrier of carriers service licence to be issued to Sentech	3	22976
2405 do.: Draft licence to be issued to Sentech Limited to provide multimedia service and a multimedia service network as a common carrier in terms of section 32 (C) (2).....	25	22976

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-served 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.

NOTICE 2405 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 MULTIMEDIA SERVICES LICENCE TO BE ISSUED TO SENTECH.

Interested persons are hereby invited to submit written representations to the Authority on the draft Multimedia 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 X1, Marlboro, 2063, 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 of the Act to issue a licence to Sentech to provide multimedia services, 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. Under one clause of the proposed licence, the Authority has presented two options for comment. These options have been presented in order to canvass views on specific points and should not be seen as exhaustive.

The Authority has attached a draft Frequency Spectrum Licence as an Annexure to the draft Multimedia 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

**DRAFT LICENCE TO BE ISSUED TO SENTECH LIMITED TO
PROVIDE MULTIMEDIA SERVICES AND A MULTIMEDIA
SERVICE NETWORK AS A COMMON CARRIER IN TERMS
OF SECTION 32(C)(2) OF THE TELECOMMUNICATIONS ACT
103 OF 1996**

**MULTIMEDIA SERVICE AND MULTIMEDIA SERVICE NETWORK
LICENCE**

TERMS AND CONDITIONS

1 DEFINITIONS

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 its interpretation;

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*,

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 **Applicable Interest Rate** means the prime interest rate as published from time to time by the South African Reserve Bank, established by Section 9 of the Currency and Banking Act, No 31 of 1920, and operating in terms of the South African Reserve Bank Act, No 90 of 1989;
- 1.2.3 **"Approved Equipment"** means telecommunications equipment which has been approved by the Authority under Chapter VI of the Telecommunications Act;
- 1.2.4 **"Authority"** means the Independent Communications Authority of South Africa established in terms of section 3 to the ICASA Act and its successors;
- 1.2.5 **"Broadcasting Signal Distribution Licence"** means the Broadcasting Signal Distribution Licence, number 001/SD/1997 issued in terms of the Independent Broadcasting Authority Act, 1993 to the Licensee;
- 1.2.6 **"Communication Configuration"** means (i) point to point; or (ii) point to multipoint; or (iii) multipoint to point; or (iv) multipoint to multipoint interactive transmission and distribution of Multimedia Services;
- 1.2.7 **"Customer"** means any person who has indicated a willingness in writing to enter into a contract with the Licensee for the provision of Multimedia Services by the Licensee or for the use of the Multimedia Service Network on the terms and conditions stipulated by the Licensee from time to time;
- 1.2.8 **"Customer Terminal Device"** means any fixed or mobile device which does not form part of the Multimedia Service Network and

which is used for the delivery of Multimedia Services directly to Customers;

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

1.2.10 **"Financial Year"** means the financial year of the Licensee ending on 31 March of each and every year;

1.2.11 **"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;

1.2.12 **"Historically Disadvantaged Person"** means, in relation to natural persons, persons who are generally regarded as South African Black persons (i.e. Africans, Coloureds or Indians), women and persons with disabilities and, in relation to juristic persons, means entities that are controlled by Historically Disadvantaged Persons, and Historically Disadvantaged Group shall have a corresponding meaning;

1.2.13 **"ITU"** means the International Telecommunication Union;

1.2.14 **"Intellectual Property"** means any know-how (not in the public domain), invention (whether or not patented), design, trademark or copyright (whether or not registered) of the Licensee;

1.2.15 **"Interconnection Agreement"** means any agreement concluded between the Licensee and any person licensed to provide telecommunication services in terms of the

Telecommunications Act or any person in respect of whom the Authority has prescribed that any telecommunication services or activities may be provided or conducted without a licence wherein the commercial and technical arrangements for interconnection are detailed, including:-

- 1.2.15.1 the transfer of Multimedia Traffic in either direction between the Licensee and/or other licensed operators;
- 1.2.15.2 the use of the Licensee's Multimedia Service Network;
- 1.2.15.3 the provision of Multimedia Services;
- 1.2.15.4 the provision of related services;
- 1.2.15.5 the payment of Interconnect Fees; and
- 1.2.15.6 any other commercial or technical term required for the purposes of interconnection;
- 1.2.16 **"Interconnect Fees"** means the fees payable in terms of an Interconnection Agreement for the carriage of Multimedia Traffic via the Multimedia Service Network or the fees payable for the provision of Multimedia Services;
- 1.2.17 **"Licence"** means this Licence issued by the Authority to the Licensee in terms of section 32(C) of the Telecommunications Act;
- 1.2.18 **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 Multimedia Service or Multimedia 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;

1.2.19 **Licence Period** means the term, referred to in clause 2, for which this Licence, including the associated frequency spectrum licence/s, shall be in force (including such periods in respect of which this Licence and the associated frequency spectrum licence/s may be renewed and any further periods of renewal);

1.2.20 **"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;

1.2.21 **"Minister"** means the Minister of Communications;

1.2.22 **Multimedia Services** means

OPTION ONE

the provision by the Licensee of real time, near real time, non-real time and specified time interactive telecommunication services comprising but not limited to the storage, representation, transmission and distribution of various types of media in a synchronised and integrated manner over multiple infrastructure platforms to single or multiple Customers or licensed operators through a variety of Customer Terminal Devices. Multimedia Services shall include the provision of any interactive digital multimedia services, multimedia content provision, manipulation and management, multimedia transmission and distribution and server based multimedia services and any combination thereof;

or

OPTION TWO

a telecommunications service that integrates and synchronises various forms of media to communicate information or content in an interactive format, including services such as -

- a. internet through television;
- b. pay-per-view;
- c. video on demand;
- d. electronic transactions (including e-commerce);
- e. text;
- f. data;
- g. graphics;
- h. animation;
- i. audio;
- j. visual content,

but shall not include mobile cellular telecommunication services and public switched telecommunication services"¹

1.2.23. **"Multimedia Service Network"** means the Multimedia Service Network including any return path owned, constructed, maintained and operated by the Licensee for the purposes of providing Multimedia Services by whatsoever means, including any telecommunications facility and the telecommunication

¹ This is the statutory definition of multimedia service as set out in section 1 of the Telecommunications Act, as amended. Commentary on the two options should, inter alia, deal with the issue of whether the statutory definition can be further clarified in a licence. The options are not exhaustive. Option One is a broad interpretation of the term "multimedia service". The Authority seeks commentary on whether any limitations should be placed on this interpretation, and if so, on what basis.

systems of any licensed operator by means of which Multimedia Traffic is conveyed in accordance with any Communication Configuration or Symmetry of Information Flow through the application of any applicable protocol between:-

- 1 (one) or more Terminal Connection Points;
- 1 (one) or more Network Connection Points;
- a Terminal Connection Point and a Network Connection Point;
- a Terminal Connection Point or a Network Connection Point, as the case may be and a corresponding point in another country;²

1.2.24 **"Multimedia Traffic"** includes any text, data, graphics, audio, animation or visual content or any combination thereof transmitted or distributed by the Licensee by means of its Multimedia Service Network.

1.2.25 **"Multi-Purpose Community Centres"** means the centres identified by the USA as being the primary vehicles for the for the provision of community access to communication and information programmes and to which the Licensee shall provide support as envisaged in clause 5.3;

1.2.26 **"Network Connection Equipment"** means in relation to the Multimedia Service Network or Multimedia Services, an item of telecommunication apparatus comprised in that telecommunication system which is not Terminal Connection

² This is a broad interpretation of the term "Multimedia Service Network". The Authority seeks commentary on whether any limitations should be placed on this interpretation, and if so, on what basis.

Equipment and which is used or is meant to be used to provide interconnection with any other telecommunication system;

1.2.27 **"Promotion of Access to Information Act"** means the Promotion of Access to Information Act No. 2 of 2000;

1.2.28 **"PSTS"** means public switched telecommunications service;

1.2.29 **"Republic"** means the Republic of South Africa, established by the Constitution of the Republic of South Africa Act, No.108 of 1996.

1.2.30 **"Symmetry of Information Flow"** means the unidirectional transmission or bi-directional transmission to asymmetric transmission or distribution of Multimedia Traffic;

1.2.31 **"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;

1.2.32 **"Teledensity"** means the number of telephone lines per 100 (one hundred) persons and as contained in the Telecommunications Act as amended;

1.2.33 **"Terminal Connection Equipment"** means in relation to the Multimedia Service Network an item of telecommunication apparatus comprised in that telecommunication system which is fixed or mobile and which enables:-

1.2.33.1 Customer Terminal Devices to be connected to the Multimedia Service Network or the Licensee's Multimedia Services;

- 1.2.33.2 Multimedia Traffic to be conveyed in either direction between the Customer Terminal Devices and the Multimedia Service Network; and
- 1.2.33.3 the proper functioning and operation of Customer Terminal Devices and the testing of the Multimedia Service Network or the testing of Multimedia Services in relation thereto;
- 1.2.34 **"Terminal Connection Point"** means any point within an item of Terminal Connection Equipment at which Multimedia Traffic is conveyed to or from one or more items of Customer Terminal Devices;
- 1.2.35 **Territory** means the geographical area of the Republic
- 1.2.36 **"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% (Five Percent);
- 1.2.37 **"Under-Serviced Area Licensee"** means any person licensed to provide those telecommunications services set out in section 40(A)(3) to the Telecommunications Act;
- 1.2.38 **"USA"** means the Universal Service Agency, the body established in terms of s58 of the Telecommunications Act;
- 1.2.39 **"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 LICENCE PERIOD

The initial term of the Licence shall be for a period of 15 (fifteen) years from the Effective Date.

3 LICENCE AUTHORITY

3.1 Subject to the provisions of section 32C(8) of the Telecommunications Act, the Licensee is authorised by this Licence to own, construct, maintain, operate and use a Multimedia Service Network for the provision of Multimedia Services within the Republic.

3.2 The Licensee shall be entitled and is authorised in terms of this Licence to:-

3.2.1 provide Multimedia Services to any person who request such services, to provide Multimedia Services to Customers and to use the same for the Licensee's business activities and own purposes;

3.2.2 provide multimedia services as a common carrier only to other licensed multimedia services on a reasonable, equitable and non-discriminatory basis;

3.2.3 use the frequency spectrum assigned and allocated by the Authority for the provision of Multimedia Services;

3.2.4 connect, or cause or allow to be connected to the Multimedia Service Network or Multimedia Services, any telecommunication

system or telecommunication service in the Republic which is licensed under the Telecommunications Act or which the Authority has prescribed can be provided without a licence in terms of section 33 to the Telecommunications Act;

3.2.5 connect, or cause or allow to be connected to the Licensee's Multimedia Service Network or its Multimedia Services, any telecommunication system or telecommunication service situated outside the Territory except where such connection would contravene a treaty or other agreement to which the Territory is a party;

3.2.6 connect, or cause or allow to be connected to the Multimedia Service Network or the Multimedia Services, any Customer Terminal Device;

3.2.7 connect or cause or allow to be connected to the Multimedia Service Network or Multimedia Services, any telecommunications facility required for the provision of Multimedia Services;

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 Multimedia Service;

3.3.2 use any protocol application in its provision of the Multimedia Service;

- 3.3.3 use its own telecommunications facilities in the provision of the Multimedia Service and the interconnection of the same to any telecommunications system;
 - 3.3.4 use any telecommunications facility for the connection of the Multimedia Facility to the telecommunications system of any Operator;
 - 3.3.5 provide any service which is ancillary to the Licensee's provision of a Multimedia 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.
- 3.4 All the rights set out in this Licence 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 and any of its Affiliates shall be entitled by virtue of this Licence to operate the Multimedia Service Network and to provide Multimedia Services together with all or any other rights granted to the Licensee under this Licence.
- 3.6 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

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 R250m (two hundred and fifty million Rand).

4.1.1 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.

4.1.2 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.

4.1.3 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.

4.1.4 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.

4.1.5 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 an Annexure 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 COMMUNITY SERVICE OBLIGATIONS

- 5.1 The Licensee shall pay an annual contribution of 0.01% of its Licence Fee Income 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 Licence Fee Income 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 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.
- 5.3 In addition to the obligation set out in clause 5.1, the Licensee shall provide telecommunication solutions in an endeavour to promote

the upliftment of underprivileged South Africans in the following manner:-³

- 5.3.1 the provision of technical consultancy services to community broadcasters;
- 5.3.2 the provision of 100 Multi-Purpose Community Centres, rolled out across all provinces and under-served areas;
- 5.3.3 by providing Customer Terminal Equipment to schools and clinics, as determined by the Authority;
- 5.3.4 the provision of a 50% discount to nominated schools, clinics, hospitals and Multi-Purpose Community Centres on any connection or similar fees or charges levied by Sentech for the provision of Multimedia Services
- 5.3.5 by making the Multimedia Service Network accessible to Under-Served Area Licensees at the normal rates and charges therefor.

6 INTERCONNECTION

- 6.1 The Licensee shall enter into an Interconnection Agreement with any entity licensed in terms of the Telecommunications Act or with any entity which provides a telecommunications service which the Authority has prescribed can be provided without a licence.
- 6.2 The conclusion of any Interconnection Agreement in terms of this Licence shall be subject to the provisions of section 43 of the Telecommunications Act and the Guidelines.

³ Community Service Obligations will be set out more fully in an Annexure to this Licence. The Authority welcomes specific proposals in this regard.

7 PERFORMANCE SPECIFICATIONS

- 7.1 The Multimedia Services 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 Multimedia Service Network or in the provision of Multimedia Services, 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.
- 7.3 If requested by a Customer, the Licensee shall provide such Customer with a detailed statement of account.

8 CUSTOMER SERVICE STANDARDS

- 8.1 The Licensee shall develop and enforce guidelines for use by its personnel when handling enquiries and complaints from a Customer to whom it provides Multimedia Services and to whom it supplies Terminal Connection Equipment and/or Customer Terminal Devices. The Licensee shall make such guidelines available to any Customer who requests to be furnished with a copy of the same.
- 8.2 The Licensee shall prepare and enforce standard terms and conditions for the use of its Multimedia Services and it shall make such standard terms and conditions available to Customers at the

commencement of or the bringing into service of Multimedia Services to be provided to such Customers.

9 FAIR TRADING

9.1 The Licensee, its Affiliates, agents and sub-contractors shall not demonstrate any undue preference to or exercise any undue discrimination against any person or class or description of persons in respect of the provision of Multimedia Services or in respect of the construction or maintenance of any connection to the Multimedia Service Network.

9.2 The Licensee shall include a provision in its end-user agreements with Customers wherein it undertakes to comply with a code of practice for consumer affairs to be established by the Licensee and which shall at a minimum address the following:-

9.2.1 guidance to Customers in respect of disputes or complaints relating to the provision of Multimedia Services by the Licensee;

9.2.2 advice to Customers on charging and billing and procedures including the procedures to be followed in respect of billing and charging enquiries;

9.2.3 advice on the procedures to be followed in respect of the proper use of the Multimedia Services by Customers; and

9.2.4 standards of conduct to be adhered to by the Licensee in the provision of Multimedia Services to its Customers.

9.2.5 The Licensee shall lodge with the Authority representative sample copies of all end-user contracts relating to the Licensee's provision of Multimedia Services to any Customer.

10 ACCOUNTS

- 10.1 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.
- 10.2 Within 3 (three) months at 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.

11 RESTRICTION ON TRANSFER OF SHARES

- 11.1 The Licensee shall not transfer the Licence without the prior written consent of the Authority having been obtained in terms of the Act.
- 11.2 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.

12 EMPLOYMENT EQUITY, HUMAN RESOURCE DEVELOPMENT AND TRAINING

- 12.1 The Licensee shall comply with the provisions of the Employment Equity Act, No 55 of 1998, and the Skills Development Act, No 97 of 1998, in relation to employment equity, human resource

development and training. All reports submitted to the Department of Labour in this regard by the Licensee shall also be submitted to the Authority.

12.2 The Licensee shall participate in the development of the telecommunication industry by, *inter alia*:

12.2.1 supporting independent contractors from Historically Disadvantaged Groups; and

12.2.2 supporting industry development initiatives.

13 GENERAL

13.1 Should any provision of this Licence be invalid and unenforceable for any reason, the remaining provisions shall nevertheless remain of full force and effect.

13.2 To the extent that this Licence may be inconsistent with any provisions of the Act or any applicable regulations, such provisions of the Act or the regulations shall take precedence over this licence.

14 INTELLECTUAL PROPERTY

14.1 The Licensee shall be entitled to use its Intellectual Property in connection with its provision of Multimedia Services and the Multimedia Service Network.

14.2 The Licensee shall be entitled to use any third party intellectual property, which is provided to it under licence or in terms of any other arrangement for the provision of the Multimedia Services or the Multimedia Telecommunications Network Service.

- 14.3 The Licensee shall be entitled to restrict the right to use any of its Intellectual Property or the intellectual property of any third party as contemplated in clause 14.2 in any agreement entered into between the Licensee and any licensed operator or Customer.

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 CONFIDENTIALITY OF INFORMATION

16.1 Content of communications

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

16.2 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.

17 RENEWAL OF THE LICENCE

The Licence may be renewed in terms of the Act.

18 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.⁴

19 REVOCATION OF THE LICENCE

The Licence may be revoked in accordance with the Act.

20 NOTICES

20.1 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.

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

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

⁴ 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.

- 20.3.1 if hand delivered during business hours on a business day, on the day of delivery;
- 20.3.2 if sent by telefax, on the date of sending of such telefax.

21 AMENDMENT

- 21.1 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.
- 21.2 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.

22. MISCELLANEOUS PROVISIONS

22.1 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.

22.2 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.

22.3 Access to Network Facilities

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

ANNEXURE

PROPOSED MULTIMEDIA SERVICE 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 Multimedia 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 Multimedia Services, through the use of radio frequency spectrum, including Broadcasting 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 Telecommunications 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 Multimedia Service Licence issued to SENTECH and published in Government Gazette ("service licence") and 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 as set forth in the fee schedule or as prescribed in terms of section 88 of the Act, before the end of December of each year.

5. 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

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.

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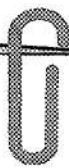
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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 334-4508, 334-4509, 334-4510

Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504

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Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

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