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GENERAL NOTICE

NOTICE 358 OF 2002



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE OF INTENTION TO SUPPLEMENT THE EXISTING FACILITIES LEASING GUIDELINES ISSUED BY THE AUTHORITY IN TERMS OF SECTION 44 OF THE TELECOMMUNICATIONS ACT OF 1996 AS AMENDED AND WHICH WERE PROMULGATED BY THE MINISTER UNDER GAZETTE NUMBER 20993 NOTICE NO. 1260 OF 2000.

The Independent Communications Authority of South Africa (the Authority) hereby gives notice that it intends to prescribe supplementary facilities leasing regulations to the existing facilities leasing guidelines which were published under the gazette set out above. The supplementary regulations will be effected in terms of section 96 (1), (4) and 96 (6) read with section 44 of the Telecommunications Act (Act No. 103 of 1996) (the Act) as amended.

To give effect to the proposed supplementary regulations the Authority has attached under the schedule herein the supplementary facilities leasing regulations for telecommunication services, which are required in terms of section 44 of the Act.

Interested persons are hereby invited to submit written representations or comments with regard to the proposed regulations **no later than 13h00 on the 19th of April 2002** by post, hand delivery or facsimile transmission. Where available a softcopy of the corresponding hardcopy of the representation should be e-mailed to PeterH@icasa.org.za.

The written representations must be addressed to **Mr Peter Hlapolosa**, Acting Head of Department: Economics and Analysis Unit, Independent Communications Authority of South Africa, Private Bag X1, Marlboro, 2063, or Block A, Pin Mill Farm, 164 Katherine Street, Sandton, Facsimile (011) 321-8536, Tel 011 321-8374 or Cell 083 326 3938.

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 a request for such oral hearings be received then public hearings shall be held on a date to be determined by the Authority at Block C, Pin Mill, 164 Katherine Street, Sandton, Gauteng.

MANDLA LANGA
CHAIRPERSON
ICASA

SCHEDULE

SUPPLEMENTARY FACILITIES LEASING GUIDELINES

1. DEFINITIONS

In these Guidelines words will have the meaning given to them in the Telecommunications Act 103 of 1996 as amended or if any words are not defined therein, then they shall have the meaning given to them in General Notice 1260 of 2000.

2. APPLICATION OF THESE GUIDELINES

2.1 These guidelines apply to the persons identified in section 2.2 and set out additional rights and obligations applicable to such persons when entering into a Facilities Leasing Agreement pursuant to General Notice 1260 of 2000. These guidelines do not:

- a. limit the matters which may be dealt with in a Facilities Leasing Agreement but provide a minimum set of issues which shall be addressed; or
- b. prevent the parties to a Facilities Leasing Agreement from negotiating or entering into bilateral or multilateral agreements which deal with issues other than those addressed in these guidelines.

2.2 These guidelines shall apply to the following:

- a. PSTS licensees contemplated in Section 36 of the Telecommunications Act as amended and does not apply to licensees as contemplated in section 40 A of the Telecommunications Act as amended.
- b. Sentech, only in relation to the provision by Sentech of carrier of carriers services.

2.3 For purposes of these guidelines and the matters addressed herein, Telkom SA Limited is declared a major operator and its facilities leased in accordance with these guidelines shall be considered essential facilities.

2.4 For purposes of these guidelines and the matters addressed herein, persons listed in section 2.2 are public operators.

3. OBLIGATIONS OF FACILITIES PROVIDER

3.1 A request for any of the following listed essential facilities and services, and essential facilities shall be deemed reasonable unless the Authority determines, based upon clear and convincing evidence provided by the facilities provider, that such request is unreasonable under the circumstances of a particular request:

- (a) The local loop and any portion thereof (sub loop) between the facilities provider's end office or central office and the end user's premises;
- (b) Inside wiring within an end user's premises owned by or under the control of the facilities provider's;
- (c) Network interface devices;
- (d) Switching and switching capability;
- (e) Collocation space and facilities, including access to power, heating, ventilation, air conditioning, and related amenities;
- (f) Line conditioning;
- (g) Interoffice transmission facilities;
- (h) Signalling;

- (i) Call related databases; including elements essential facilities necessary for number portability;
- (j) Service management systems;
- (k) Operations services;
- (l) Directory information;
- (m) Maintenance, repair, and testing services;
- (n) Maintenance pair, and testing services.
- (o) Right of way, way leaves or servitudes; and
- (p) Space on or within poles, ducts , cable trays, manhole, hand holds and conduits.

The list of services and essential facilities set forth above is not exhaustive and may be supplemented by the Authority by Notice in the Gazette.

- 3.2 The facility provider shall not place any restrictions on the resale of the essential facilities and services obtained by any person identified in section 2.2 pursuant to these guidelines and/or General Notice 1260 of 2000.
- 3.3 Any term or condition of any Facilities Leasing Agreement that violates the Act, section 3.4 hereunder or section 5.1 of General Notice 1260 of 2000 shall be null and void and have no legal effect to the extent of its illegality.
- 3.4 The provision of section 12 of General Notice 1260 of 2000 shall apply to the charges for essential facilities and services obtained pursuant to these guidelines.
- 3.5 The provisions of sections 13.1 and 13.2 of General Notice 1260 of 2000 shall apply to the charges for essential services and facilities of major operators under these guidelines.

4. FACILITIES LEASING CHARGES

- 4.1 Cost-based charges must be used by Major operators of essential facilities in leasing essential facilities to any requesting public operator as calculated pursuant to the guidelines in this section 4.
- 4.2 Reasonable cost of capital shall be used in calculating the cost of an essential facility.

The depreciation rates used in calculating economic costs of essential facilities shall be the depreciation rates set forth in the relevant section of the operator's Chart of Accounts/Cost Allocation Manual (COACAM).

- 4.2.3 Allowable common costs are economic costs efficiently incurred in providing a group of essential facilities or services that cannot be attributed directly to individual essential facilities or services.
- a. The sum of the allocation of common costs for all essential facilities and services shall equal the total common costs associated with the relevant accounts from the COACAM.
 - b. The following factors shall not be considered in a calculation of economic costs of an essential facility:
 - i. Embedded costs. Embedded costs are the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications service providers.
 - ii. Opportunity costs. Opportunity costs include the revenues that a major operator would have received for the sale of telecommunications services, in the absence of competition from telecommunications service providers that purchase essential facilities.
 - iii. Revenues to subsidize other services. Revenues to subsidize other services include revenues associated with essential facilities or telecommunications service offerings other than the essential facility for which a rate is being established.
- 4.3 The cost-based charges per unit of an essential facility equals the costs of the essential facility, as defined in section 4.2 divided by a reasonable projection of the sum of the total number of units of the essential facility that the major operator is likely to provide to requesting telecommunication carriers and the total number of units of the essential facility that the major operator is likely to use in offering its own services, during a reasonable measuring period.

For example, if an essential facility is supplied on the basis of measurement, such as a cable, the unit would be a metre or a kilometre; if an essential facility is supplied on the basis of a period of time, such as the duration of a call, the unit would be a minute; and if an essential facility is supplied on the basis of an occurrence, such as a database query, the unit shall be a single such occurrence.

- 4.4 Essential facility rates shall be structured consistently with the manner in which the costs of providing the essential facilities are incurred.
- 4.4.1 The costs of dedicated facilities shall be recovered through flat-rate charges.
- 4.4.2 With respect to essential facilities that a major operator offers on a flat-rate basis, the number of units is defined as the discrete number of essential facilities (e.g. local loops or local switch ports) that the major operator uses or provides.
- 4.4.3 With respect to essential facilities and services that a major operator offers on a usage-sensitive basis, the number of units is defined as the unit of measurement of the usage (e.g. minutes of use or call related database queries) of the essential facility.
- 4.5 The cost-based charges of an essential facility and services shall not exceed the stand-alone costs associated with the essential facility and services. In this context, stand-alone costs are the total costs, including corporate costs, that would be incurred to produce a given essential facility and services if that essential facility and services were provided by an efficient company that produced nothing but the given essential facility and services.
- 4.6 Major operators of essential facilities must lease those essential facilities to private operators or service providers at no more than the major operator's fully allocated costs for those essential facilities.
- 4.7 A major operator must prove to the Authority that the rate for each essential facility it offers does not exceed the cost-based charges per unit of providing the essential facility, using a cost study that complies with the methodology set forth in this section 4.
- 4.7.1 The Authority may determine that the cost information available to it with respect to one or more essential facilities does not support the adoption of a rate or rates that are consistent with the requirements set forth in this section 4. In that event, the Authority may establish a rate for an essential facility that is consistent with the best current practices in the international market.
- 4.7.2 Any rate(s) established through the use of international best current practices shall be superseded once the Authority has completed review of a cost study that complies with the economic cost based pricing methodology described in this section 4, and has concluded that such study is a reasonable basis for establishing essential facility rates.
- 4.8 The cost-based charges of any essential facility shall not include any costs for which recovery is already provided through other cost recovery mechanisms.

5. RESALE OF SWITCHED TELECOMMUNICATION SERVICES

- 5.1 Major operators must make their switched telecommunications services available for resale at wholesale rates.
 - 5.2 Wholesale rates shall be based on retail rates less avoided costs and shall include a reasonable profit.
 - 5.3 The wholesale rate for switched telecommunications services shall not include, inter alia, any of the following avoided cost items:
 - a. administration;
 - b. marketing;
 - c. billing and collection;
 - d. customer service and public relations; and
 - e. all other such functions that are avoided because such functions are to be provided by the facilities acquirer.
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