

GOVERNMENT GAZETTE

PRETORIA, 8 MAY 2002

No.

GENERAL NOTICE

NOTICE OF 2002

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA



LICENCE ISSUED TO SENTECH LIMITED ON

MONDAY, 6 MAY 2002

TO PROVIDE AN INTERNATIONAL TELECOMMUNICATION GATEWAY SERVICE

ENABLING IT TO OPERATE AS A CARRIER OF CARRIERS IN TERMS OF

SECTION 32C(1)(A) AND SECTION 32C(6) OF THE TELECOMMUNICATIONS

ACT 103 OF 1996 AS AMENDED

INTERNATIONAL TELECOMMUNICATION GATEWAY SERVICE

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 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 "**Authority**" means the Independent Communications Authority of South Africa established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 and its successors;
- 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 "**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 Telecommunication Gateway 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 Telecommunication Gateway Facility on a wholesale basis;

1.2.4 **"Carrier of Carriers"** means a telecommunication service (including any signal conveyed by means of a telecommunication system of that service) which -

1.2.4.1 originates on the telecommunication system of a public switched telecommunication service licensee or mobile cellular telecommunication licensee or an under-serviced area licensee in the Republic and terminates in a telecommunication system in another country or vice versa; or;

1.2.4.2 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 **"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

1.2.8 **"International Telecommunication Gateway Facility"** means the telecommunication systems and telecommunication 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:-

- 1.2.8.1 1 (one) or more network connection points outside the Territory;
and
- 1.2.8.2 1 (one) or more network connection points within the Territory;
- 1.2.9 “**ITU**” means the International Telecommunication Union;
- 1.2.10 “**Licence**” means this Licence issued by the Authority to the Licensee in terms of sub-sections 32C(1)(a) and 32C(6) of the Telecommunications Act;
- 1.2.11 “**Licensee**” means Sentech Limited, registration number 1990/001791/07, a company duly registered and incorporated under the company laws of the Territory;
- 1.2.12 “**Licence Fee Income**” means the total annual invoiced revenue of the Licensee (less discounts, value-added tax and other indirect taxes) derived from Operators for the provision to them of any aspect of the Carrier of Carriers service, 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;
- 1.2.13 “**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);
- 1.2.14 “**Message**” means any sound, signal, sign or image conveyed by means of the International Telecommunication Gateway Facility;
- 1.2.15 “**Minister**” means the Minister of Communications;
- 1.2.16 “**Operators**” means any public switched telecommunication service licensee or any entity licensed to provide similar services, mobile cellular telecommunication service licensee or any entity licensed to provide similar services or any Under-Served Area Licensee, licensed to provide such services in terms of the Telecommunications Act;
- 1.2.17 “**Public Land Mobile Network**” means the telecommunication systems used by mobile cellular telecommunication service licensees to provide mobile cellular telecommunication services;

- 1.2.18 **"Public Switched Telecommunication Network"** means the telecommunication systems used by public switched telecommunication service licensees to provide public switched telecommunication services;
- 1.2.19 **"Regulations"** means regulations promulgated in terms of section 96 of the Telecommunications Act No. 103 of 1996;
- 1.2.20 **"Telecommunications Act"** means the Telecommunications Act No 103 of 1996;
- 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 telecommunication services in terms of section 40A(2) of 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.
- 1.5 All terms and expressions not expressly defined herein shall have the meanings assigned to them as set out in the Telecommunications Act, as amended, and all applicable Regulations issued in terms of that Act. The Licensee is required to comply with the Telecommunications Act and all applicable Regulations.

2 LICENCE PERIOD

The initial term of the Licence shall be for a 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 Telecommunication 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 Telecommunication Gateway Facility:-
 - 3.2.1.1 the Public Switched Telecommunication Networks;
 - 3.2.1.2 the Public Land Mobile Networks;
 - 3.2.1.3 any telecommunication system operated by an Under-Serviced Area Licensee;
 - 3.2.1.4 any telecommunication system situated outside the Territory and licensed in another country to provide international telecommunication services except where such connection would contravene a treaty or other agreement to which the Territory is a party;
 - 3.2.1.5 any telecommunication facility required for the provision of a Carrier of Carriers service;
 - 3.2.2 convey to and from any connected telecommunication system 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 and to use the Carrier of Carrier 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 3.1, 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 system 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 its Carrier of Carriers service and the interconnection of the same to any telecommunication system;
 - 3.3.4 use any telecommunication facility for the connection of the International Telecommunication Gateway Facility to the telecommunication system of any Operator or any operator licensed to provide international telecommunication 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;
 - 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 telecommunication services outside of the Territory; and
 - 3.3.7 use the frequency spectrum assigned by the Authority in the frequency spectrum licence for the provision of the Carrier of Carriers service.
- 3.4 The Licensee shall be entitled by virtue of this Licence to operate the International Telecommunication Gateway 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, shall all 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 shall use all reasonable endeavours to ensure that its employees, agents and contractors comply with the provisions of this

Licence in the exercise or performance of the Licensee's rights and obligations as set out in this Licence.

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 R25 (Twenty Five) Million Rand.

4.1.1 Should the Licensee fail to make payments of any amounts due in terms of clause 4.1.2 on the due date for payment thereof, then and in such event, interest at the Applicable Interest Rate shall accrue on the amount which is due in terms of clause 4.1.2., such interest to be calculated from the due date for payment thereof to the date of actual payment.

4.1.2 Subject to clause 4.1.3, the principal amount of the fixed licence fee referred to in clause 4.1 shall be payable by the Licensee to the Authority in 5 (five) 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. by making payment prior to the dates specified in 4.1.2 and, in such cases, 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.

4.2 Annual Variable Licence Fee

4.2.1 Subject to what is stated below, an annual variable licence fee in an amount equal to 0.5% (one half of 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 of the Licensee's Financial Year in 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 After the fourth year of the Licence Period, the annual variable licence fee shall be payable within ninety (90) days after the expiry of Sentech's financial year in question.
- 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.
- 4.3 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.
- 4.4 The provisions of clause 4.2 shall apply *mutatis mutandis* to all subsequent Licence Periods of this Licence.

5 UNIVERSAL SERVICE OBLIGATION

The Licensee shall pay annual contribution to the Universal Service Fund as prescribed by regulation in terms of section 67(2) of the Telecommunication Act.

6 PERFORMANCE SPECIFICATIONS

- 6.1 The Carrier of Carriers service provided by the Licensee shall conform to such Regulations as prescribed by the Authority.

6.2 The Licensee shall introduce measures and at all times use its resources to ensure that any telecommunication apparatus used in connection with the International Telecommunication Gateway Facility or in the provision of the Carrier of Carriers service, including any telecommunication facilities owned by the Licensee shall comply with:-

6.2.1 the requirements for electromagnetic compatibility; and

6.2.2 the requirements for network interoperability,

as prescribed by the Authority in accordance with international specifications and standards.

7 FAIR TRADING

The Licensee 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 telecommunication facility or connection to the Licensee's International Gateway Telecommunication Facility.

8 ACCOUNTS

8.1 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.

8.2 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.

9 TRANSFER OF LICENCE AND OWNERSHIP AND CONTROL

9.1 Transfer of Licence

The Licensee shall not transfer the Licence without the prior written consent of the Authority having been obtained in terms of the Telecommunications Act and the applicable Regulations.

9.2 Transfer of ownership and control

9.2.1 Any transfer of shares 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 shall require prior written approval by the Authority.

9.2.2 Any transaction, agreement or undertaking entered into by the Licensee with any other party that could have the effect of changing the control of the Licensee, shall require prior written approval by the Authority.

10 EMPLOYMENT EQUITY, HUMAN RESOURCE DEVELOPMENT AND TRAINING

10.1 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.

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

10.2.1 supporting independent contractors from Historically Disadvantaged Groups; and

10.2.2 supporting industry development initiatives.

11 GENERAL

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

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

12 CONFIDENTIALITY OF INFORMATION

- 12.1 The Licensee shall not disclose the content of any signal transmitted or intended to be transmitted over its International Telecommunication Gateway Facility, unless required to do so by a court order or in terms of any law.
- 12.2 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.

13 RENEWAL OF THE LICENCE

The Licence may be renewed in terms of the Telecommunication Act.

14 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.

15 REVOCATION OF THE LICENCE

The Licence may be revoked in accordance with the Telecommunications Act.

16 FORCE MAJEURE

- 16.1 The Licensee shall not be liable for any default or delay in the performance of its obligations under the Licence if and to the extent:-

- 16.1.1 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
- 16.1.2 the Licensee is without fault in causing such default or delay.

17 NOTICES

- 17.1 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) 471-4753

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.

- 17.2 Any notice addressed to the Licensee at its physical address shall be delivered by hand, or sent by telefax.
- 17.3 Any notice shall be deemed to have been given:-
- 17.3.1 if hand delivered during business hours on a business day, on the day of delivery;
- 17.3.2 if sent by telefax, on the date of sending of such telefax.

18 AMENDMENT

- 18.1 Subject to the provisions of section 48 of the Telecommunications Act, the Authority shall be entitled to amend any term or condition of this Licence.

18.2 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.

19 MISCELLANEOUS PROVISIONS

19.1 Adherence to International Standards

19.1.1 The Licensee shall comply with the applicable standards and requirements of the ITU, as agreed to or adopted by the Republic.

19.2 Legal Compliance

19.2.1 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 from complying with the provisions of this Licence, the Telecommunications Act or any other law to the extent that it may be applicable.

19.3 Access to network facilities

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

Issued at _____ on this ____ (day) / _____ (month) / 2002

MANDLA LANGA
CHAIRPERSON
INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)

NKATEKO NYOKA
CHIEF EXECUTIVE OFFICER
INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)