



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 9271

Regulasiekoerant

Vol. 538

Pretoria, 16 April 2010

No. 33125

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes



9771682584003



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

CONTENTS • INHOUD

No.

Page
No. Gazette
 No.

GOVERNMENT NOTICE

Independent Communications Authority of South Africa

Government Notice

R. 318 Electronic Communications Act (36/2005): Mobile Television Regulations, 2010 3 33125

GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. R. 318

16 April 2010



MOBILE TELEVISION REGULATIONS, 2010

The Independent Communications Authority of South Africa ("the Authority") hereby publish the Mobile Television Regulations made by the Authority in terms of sections 4(1)(d), 4(2)(b) and 31(3) of the Electronic Communications Act, 2005 (Act No. 36 of 2005). The Policy directive which was issued by the Minister of Communications in terms of section 3(1) and 3(2) of the Act and published under Government Notice 876 in *Government Gazette* 30308 of 17 September 2007 has been considered by the Authority



PARIS MASHILE
CHAIRPERSON

1. Definitions

In these Regulations, any word or expression will have the meaning assigned to it in the Electronic Communications Act, No. 36 of 2005 and related legislation unless otherwise specified:

- a) “**designated range**” means the unassigned frequency spectrum allocated for Mobile Television Broadcasting Service in terms of the terrestrial broadcasting frequency plan 2008
- b) “**mobile television broadcasting service**” means the provision of a television broadcasting service through a mobile device;
- c) “**mobile device**” means cellular mobile handsets or other handheld or portable devices enabled or configured to receive and/or provide mobile television broadcasting services;
- d) “**mobile TV1 multiplex**” means the multiplex designated as MDTT1 in the Terrestrial Broadcasting Frequency Plan 2008;
- e) “**mobile TV2 multiplex**” means the multiplex designated as MDTT2 in the Terrestrial Broadcasting Frequency Plan 2008;
- f) “**SABC**” means the South African Broadcasting Corporation Limited;
- g) “**simulcast**” means the simultaneous transmission of content in multiple platforms;
- h) “**Terrestrial Broadcasting Frequency Plan**” means the radio frequency spectrum plan published by the Authority in government gazette as part of the national radio frequency plan in terms of section 34 of the Act.

2. Purpose of Regulations

The purpose of these Regulations is:

- a) to provide for a regulatory framework for the licensing of radio frequency spectrum within the designated range for the provision of mobile television broadcasting services;
- b) to provide for procedures and criteria for the awarding of radio frequency spectrum licences for the provision of mobile television broadcasting services within the designated range; and
- c) to provide for other matters ancillary thereto.

3. Scope

- (a) The regulations shall apply to broadcasting service licensees who intend to apply for mobile television multiplexes to provide new broadcasting content.
- (b) Licensees who intend to simulcast using their existing DTT multiplexes, cable or satellite technologies do not have to apply for spectrum on MDTT1 and MDTT2 for the purposes of simulcast.

4. Eligibility To Apply

- (a) Any broadcasting service licensee may make an application in accordance with the terms and conditions stipulated in the ITA for use of the radio frequency spectrum within the designated range for the provision of mobile television broadcasting services.
- (b) Any broadcasting service licensee who is not a holder of an electronic communications network service to provide broadcasting signal distribution shall provide an undertaking to the satisfaction of the Authority that it will enter into a commercial arrangement with an electronic communications network service licensee to provide broadcasting signal distribution for the purposes of providing mobile television broadcasting services.
- (c) Each licensee must seek to conclude a commercial agreement with an electronic communications network services licensee to provide signal distribution services prior to the commencement of broadcast services.
- (d) The agreement concluded between a broadcasting licensee and the electronic communications network services licensee selected to provide signal distribution services shall be submitted to the Authority prior to the commencement of broadcasting services.

5. Designation of Use of Radio Frequency Spectrum

- a) Two mobile TV multiplexes of radio frequency spectrum within the designated range, namely, the MDTT1 and the MDTT2 multiplexes are hereby assigned for the provision of mobile television broadcasting services in terms of the Terrestrial Broadcasting Frequency Plan.
- b) Applicants must apply for the requisite capacity they require on the individual multiplexes for the purpose of providing mobile broadcasting. No applicant can occupy capacity in both mobile TV multiplexes. In the event that the broadcasting services enter into a partnership for the purposes of applying for capacity in the multiplex, the distribution of the capacity amongst the participating broadcasters shall not exceed 60% per broadcaster.
- c) The holder of a radio frequency spectrum licence issued in accordance with the provisions of these Regulations shall be required to utilize all the capacity available in the multiplex assigned to it within a period of twelve (12) months from the date of issue of the licence. Notwithstanding the foregoing, the Authority may, upon application and on good cause shown, grant an extension for such further period as the Authority may deem appropriate in the circumstances.
- d) In the event the Authority is of the view that a licensee has failed to utilize fully the radio frequency spectrum assigned to it, the Authority may withdraw such unused radio frequency

spectrum granted to such licensee in accordance with the provisions of section 31 (8), (9) and (10) of the Act.

- e) The holder of a radio frequency spectrum licence issued in accordance with the provisions of these Regulations shall not be allowed to sell or let the radio frequency spectrum allocated to it.

6. Application Procedures and Criteria For Awarding Radio Frequency Spectrum Licences for the Provision of Mobile Television Broadcasting Services

Applications for a radio frequency spectrum licence within the designated range shall, in instances where there are competing applications or where there has been a determination that there is insufficient radio frequency spectrum available to accommodate demand, be made in accordance with the procedures set out in Schedule 1.

7. Authorisation of Mobile TV Broadcasting Channels

- (a) All new mobile TV channels shall be authorized by the Authority subject to the following conditions:
 - (i) The submission of primary research indicating the demand for the proposed channel.
 - (ii) A motivation indicating how the proposed channel will contribute to diversity of programming and competition.
 - (iii) The provider of Mobile TV services will notify the Authority prior to broadcasting channels that are already provided to the public or segment of the public by pay television and free-to-air broadcasters.
- (b) The provider of DTT, Satellite and Cable television services who chooses to simulcast their content via mobile devices will not require authorization.

8. Duration of Licence

The radio frequency spectrum licence issued pursuant to the provisions of these Regulations shall be valid for a period concurrent to the duration of the broadcasting service licence of the applicant and can be renewed simultaneously with the broadcasting service licence subject to approval by the Authority.

9. Offences and Penalties

- (a) Failure to comply with a regulations may result in an imposition of a fine not exceeding seven hundred and fifty thousand rands (R750 000) for each offence.
- (b) In the event of repeated contravention of the regulation an additional fine not exceeding two hundred and fifty thousand (250 000.00) rands per offence may be imposed.

10. Short Title and Commencement

These Regulations are called "Mobile Television Regulations, 2010" and come into effect on the date published in the Government Gazette.

SCHEDULE 1

PROCEDURES AND CRITERIA FOR AWARDING RADIO FREQUENCY SPECTRUM FOR THE
PROVISION OF MOBILE TELEVISION BROADCASTING SERVICE

1) Definitions

In this Schedule any word or expression will have the meaning assigned to it in the Electronic Communications Act, No. 36 of 2005 and related legislation unless otherwise specified:

- a) **“application fee”** means the non-refundable fee specified by the Authority in the ITA which shall be payable by the applicant upon submission of an application;
- b) **“application process”** means the process of applying for radio frequency spectrum licences in terms of these Regulations, beginning on the date on which the ITA is published by the Authority and ending on the date on which the Authority awards radio frequency spectrum licences pursuant to the ITA;
- c) **“auction”** means an award of the radio frequency spectrum licence to the highest bidding applicant;
- d) **“control”** means the ability to direct or cause the direction of the business affairs and management policies or practices of a person and “controlled” shall have a corresponding meaning;
- e) **“deadline”** means the date and/or time by which any requirement stipulated by the Authority pursuant to these Regulations or the ITA must be fulfilled;
- f) **“reserve price”** means the minimum price payable for each lot of the radio frequency spectrum within the designated range;
- g) **“supplementary information”** means any information, which may be requested by the Authority from time to time from an applicant throughout the course of an Application Process

2) APPLICATIONS FOR RADIO FREQUENCY SPECTRUM LICENCE

- a) All applications must be submitted pursuant to an ITA.
- b) All applications must be submitted:
 - i) in writing;
 - ii) at the place stipulated in the ITA; and
 - iii) by the deadline.
- c) All applications must contain the following information:-
 - i) a document containing the information detailed in Appendix A to this Schedule and duly signed by an authorised representative;
 - ii) a document containing the information detailed in Appendix B to this Schedule and duly signed by an authorised representative; and
 - iii) Appendix C duly completed and signed by an authorised representative.
- d) An application must be accompanied by the applicable application fee as set out in the ITA.

3) INVITATION TO APPLY

The ITA shall set out the following:

- a) the subject of the ITA;
- b) the place and deadline for submission of an application;
- c) an application fee and other costs relating to the application;
- d) the selection process;
- e) the evaluation criteria including points allocation;
- f) the terms and conditions relating to the application;
- g) the proposed licence terms and conditions; and
- h) any other information or requirements the Authority may deem necessary.

4) CHANGES EFFECTED AFTER SUBMISSION OF APPLICATION

- a) An applicant who, after submitting its application, effects changes to the documents containing

the application information detailed in Appendix A must within 5 (five) days from the date that such change becomes effective, notify the Authority in writing.

- b) The Authority shall, after being notified by an applicant of the changes referred to in regulation 4(a) of this Schedule, determine whether:
 - i) it shall consider the application with or without the alterations; or
 - ii) the application, so altered, is disqualified in terms of this Schedule, from the application process.
- c) The Authority shall notify the applicant of its decision in terms of regulation 4(b) above.

5) REQUEST FOR THE SUBMISSION OF SUPPLEMENTARY INFORMATION

- a) The Authority may at any time during the application process require an applicant to prepare and submit any supplementary information regarding any aspect of its application.
- b) The Authority may direct an applicant to submit any such supplementary information within 7 (seven) days of receipt by the applicant of a notice from the Authority requiring it to do so.

6) DISQUALIFICATION OF AN APPLICANT FROM THE APPLICATION PROCESS

An applicant shall be disqualified from the application process where such applicant:

- a) is an affiliate of another applicant; or
- b) has submitted more than 1 (one) application to the Authority for the grant of a radio spectrum licence within the designated range; or
- c) has submitted an application which contains false or misleading information; or
- d) has obtained and utilised confidential information relating to another applicant; or
- e) has failed to notify the Authority of the changes referred to in regulation 4(a) of this Schedule; or
- f) has failed to comply with a request in terms of regulation 5 of this Schedule; or
- g) has failed to comply with the terms and conditions of the ITA; or
- h) Submits an incomplete application.

7) APPLICATION REQUIREMENTS

7.1 PRE-QUALIFICATION CRITERIA

The Authority shall, in evaluating the applications, and taking into account the objects of the Act, consider the following:

- a) The 30% equity ownership by persons from historically disadvantaged groups;

7.2 BUSINESS UNDERTAKINGS

The applicants shall submit following business undertakings on their proposed approach to the provision of mobile TV services:

- (a) The nature and extent of consumer benefits to be derived by the general public from award of the radio frequency spectrum licence to the applicant;
- b) The viability of the business plan of the applicant;
- c) The viability of the funding model proposed by the applicant;
- d) The viability and efficacy of the applicant's technical plan;
- e) The experience, expertise and credibility of the applicant and/or its employees in business in general and in broadcasting in particular;

Whereas the Authority will not use the content of the business undertakings for the purposes of evaluating the applications, the undertakings made by applicants shall form part of their licence conditions once they are successful.

8) AUCTIONS

Subsequent to the compliance with regulations 7(a) and (b) the Authority will invite all applicants to participate in an auction based on the following terms and conditions:

- a) The Authority shall stipulate the reserve price for the auction in the ITA.
- b) The Auction shall be held at the Johannesburg offices of the Authority on a date and time as shall be determined by the Authority and stipulated in the notice calling upon the relevant applicants to participate in the auction.
- c) The Auction shall be conducted in such a manner and procedure as shall be stipulated by the Authority in the ITA.

APPENDIX A

APPLICATION INFORMATION

1. Applicant's details

The applicant is required to provide the following details:

- 1.1 registered name;
- 1.2 registration number;
- 1.3 registered address;
- 1.4 contact address;
- 1.5 telephone number ;
- 1.6 fax number:
- 1.7 electronic mail address;
- 1.8 details and addresses of all persons directly or indirectly controlling the applicant and their respective shareholding interests;
- 1.9 details and addresses of all persons directly or indirectly controlled by the person(s) controlling the applicant and their respective shareholding interests;
- 1.10 details and addresses of all persons directly or indirectly controlled by the applicant, and/or the applicant's shareholding interest in such persons;

2. Identity of duly authorised person

The applicant is required to provide details including name and position of one person, who shall have the delegated authority to bind the applicant for all purposes relating to the application process and matters related thereto.

3. Qualification of the Applicant

The Authority requires the applicant to warrant that it has not engaged in any one of the activities that may result in the disqualification of the applicant's application in terms of regulation 6 of the Schedule.

4. Other Information

The applicant is required to provide details and certified or notarised copies of all agreements relating to the management of the applicant, including shareholders' agreement and/or consortium agreements.

APPENDIX B**SUBSTANTIVE INFORMATION**

The evaluation of the Applications will be premised on the following aspects of the information which, collectively ought to demonstrate a reasonable likelihood that the Applicant shall attain or exceed the stipulated terms and conditions of the radio frequency spectrum licence. Furthermore, applicants are required to submit binding commitments in relation to each of the factors detailed herein:

1. Consumer Benefits

The applicant is required to provide a detailed description of the anticipated benefits which the applicant would offer to consumer and / or subscribers. In this regard, application is required to provide a detailed description of the following:

(a) Service Innovation and packaging

The applicant is required to demonstrate their heightened understanding of consumer demand characteristics and unique consumer requirements for the services which the applicant intends rendering pursuant to the grant of the radio frequency spectrum licence in the designated range. Furthermore, the applicant shall present its proposed channels and programming and where applicable, the subscription charges and its plans for marketing of the mobile television broadcasting services.

(b) Quality of Service

The applicant is required to demonstrate a heightened understanding of consumer perception regarding quality of service and describing quality of service targets which serve as binding commitments. The applicant is also required to propose a methodology for the verification and attainment of quality of service targets.

2. Business Plan

2.1. The applicant is required to present a business plan analysis which is reflective of overall realistic assumptions and realistic financial forecasts for a minimum period of five years.

2.2. Furthermore, the applicant is required to provide the following details:

- a) A detailed market analysis of the impact of the mobile television broadcasting services contemplated to be offered upon the grant of a radio frequency spectrum licence;
- b) A detailed demand analysis for mobile television broadcasting services contemplated to be offered upon the grant of a radio frequency spectrum license;
- c) Forecast of market share;

- d) Forecast of the total market size and segmentation;
- e) Pricing strategies for the mobile television broadcasting services, where applicable;
- f) Investment strategy of the applicant; and
- g) Details of applicant's financing plan.

3. Technical Plan

The applicant must provide details of the following considerations relating to the implementation of the technical plan:

- a) The efficiency of network design;
- b) Details of network planning tools and design methodology;
- c) Network coverage and a detailed schedule of the rollout plans;
- d) Details of network capacity requirements;
- e) Demonstrate the efficient utilisation of the radio frequency spectrum;
- f) Details of technology solution selection;
- g) Details of the applicant's plans for network and security.

APPENDIX C

WARRANTY UNDERTAKING

I..... (duly authorised person)

Have prepared and/ or compiled, or directly supervised those who have prepared all or parts of this application and/or information constituting this application.

To the best of my knowledge, the application information contained herein, and any attachment thereto, is accurate and not misleading.

I further understand that should any information included herein be found to be false, misleading and/or inaccurate the entire application will be disqualified and the applicant precluded from further consideration within the application process.

Name and title of the person authorised to sign this undertaking:

Authorised Signature: _____

Date: ___/___/2010

I certify that this declaration was signed and sworn to before me aton the day of 2010, by the deponent who acknowledged that he/she:

1. knows and understands the contents hereof;
 2. has no objection to taking the prescribed oath or affirmation; and
 3. considers this oath or affirmation to be truthful and binding on his/her conscience.
-

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
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737
Kaapstad-tak: Tel: (021) 465-7531