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SOUTH AFRICA



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## GENERAL NOTICE

### NOTICE 1309 OF 1997



#### SOUTH AFRICAN TELECOMMUNICATIONS REGULATORY AUTHORITY

Block B, Pin Mill Farm  
164 Katherine Street  
Sandton  
2196

Tel: 27-11-448 2497  
Fax: 27-11-448 2499

**REGULATION SR-0001****NOTICE OF A REGULATION TO BE FOLLOWED IN ADJUDICATING THE DISPUTE ON WHETHER OR NOT INTERNET PROTOCOL FALLS WITHIN THE EXCLUSIVE RIGHTS VESTED IN TELKOM SA LTD—THIS REGULATION IS MADE IN TERMS OF SECTION 96 (5) (b) OF THE TELECOMMUNICATIONS ACT, No. 103 OF 1996, TO BE FOLLOWED**

In terms of section 96 (5) (b) of the Telecommunications Act, 1996 (Act No. 103 of 1996) ("the Act"), the South African Telecommunications Regulatory Authority ("the Authority") hereby prescribes the manner and procedure for investigating and adjudicating on the dispute of whether or not Internet Protocol ("IP") falls within the exclusive rights vested in Telkom SA Limited ("Telkom").

The basis for making this regulation, in terms of section 96 (5) (b) of the Act, effective from Friday, 5 September 1997, is set out under paragraph B hereunder.

**A. THE PROCEDURE**

The procedure and the manner shall be as follows:

1. The Authority shall establish an Advisory Committee in terms of section 21 of the Act.
2. This Advisory Committee shall assist the Authority to continually update the "Discussion Document" and to solicit information from members of public. Members of public will be free to contact members of this Advisory Committee directly to provide any information.
3. The Authority shall by way of a notice in the *Government Gazette* on Friday, 5 September 1997—
  - 3.1 publish the names and contact details of members of the Advisory Committee;
  - 3.2 invite, from any member of the public, written representation on whether or not IP falls within the exclusive rights vested in Telkom in terms of the Act and the Public Switched Telecommunications Service ("PSTS") Licence duly issued to Telkom;
  - 3.3 publish a "Discussion Document" which will, as a departure point, set out questions, issues and/or considerations intended to form the basis of the adjudication result.
4. It shall neither be a requirement that representations must address all the points set out in the "Discussion Document", nor should such representations be restricted to the said points.
5. The "Discussion Document" may be continually updated and such update shall be made known to the members of public.
6. Written representations shall be submitted by no later than 16:00 on Tuesday, 30 September 1997 to the Authority for the attention of Mr S. Munitz, SATRA, Private Bag X1, Marlboro, 2063; or by telefax at number (011) 448-2499. Hand delivery may also be made to SATRA, Block B, Pin Mill Farm, 164 Katherine Street, Sandton, 2196.
7. All representations and documents lodged with the Authority pursuant to the above-mentioned notice shall be open for public inspection by interested parties during the normal office hours of the Authority from Monday, 15 September 1997 until Friday, 3 October 1997.
8. Representations and documents, which the Authority considers to be confidential, will not be available for public inspection. Persons submitting representation that they believe are confidential should so indicate clearly, together with their reasons. The Authority may, on receiving such requests, determine that such documents shall not be open for public inspection. If a request for confidentiality is refused, the person making the request will be allowed to withdraw the document in question, but the representation will nevertheless be noted.
9. The Authority may, by written notice, summon any person to give oral testimony or to produce documents or any material which it may deem necessary for the making of an appropriate determination as contemplated in paragraph 1 above.
10. The Authority shall make a determination, and publish such a determination, in the *Government Gazette* on Tuesday, 14 October 1997 or so soon thereafter as is practically possible having regard to the possibility that the Authority may deem it necessary to invite further representations between 30 September 1997 and 14 October 1997."

**B. THE BASIS FOR MAKING THIS REGULATION IN TERMS OF SECTION 96 (5) (b) OF THE ACT**

It is in the public interest that the Authority ensures that there is certainty in the telecommunications industry.

Internet as an industry is important for a variety of reasons, and its successful operation is dependent on the telecommunications facilities.



It therefore becomes even urgent to ensure that there is certainty with respect to an important industry such as Internet, in which the uncertainty arising essentially out of this dispute has existed for over a year. The Authority was established in February 1997. The transfer of regulatory functions, staff and capacity from the Department of Communications to the Authority, as well as the establishment of the administrative capacity of the Authority, are now in their final stages.

The Authority is resolute that its present administrative capacity now permits for this dispute to be settled without any further delay.

Consequently the Authority resolved to specially prescribe the procedure and manner that will enable the investigation and adjudication on this dispute without any further delay as contemplated under section 96 (5) (b) of the Act.

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The Authority is resolved to ensure that its present a financial and capacity now permits for this dispute to be settled without any further delay.

Consequently the Authority resolved to specially proceed in the procedure and manner that will ensure the investigation and adjudication on this dispute and any further delay as contemplated under section 96 (5) (b) of the Act.

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