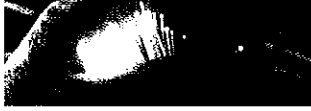


Broadband  
**Infraco**



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18 January 2010

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Dear Madam,

**BROADBAND INFRACO'S SUBMISSIONS ON THE AUTHORITY'S INTENTION TO AMEND REGULATIONS IN TERMS OF SECTIONS 73(3) AND (4) OF THE ECA IN RESPECT OF E-RATE**

Attached please find Broadband Infraco (Pty) Ltd's submissions to the Authority on the Authority's intention to amend the regulations in terms of sections 73(3) and (4) of the ECA in respect of E-rate.

We trust that our submissions will be of assistance to the Authority in the deliberations and finalization of this process.

Should you have any queries to raise in respect of these submissions, please do not hesitate to contact the writer hereof at the contact details provided above.

Yours Sincerely,

**Klaas Motlhabane**  
General Counsel

**Registered Address:** 9 Simba Road, Block B, Sunninghill Place, Sunninghill, 2157  
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**Directors:** A F B Mthembu (Chairperson) C Groesbeek S N Koyana N Letele S T Mabalayo S A U Meer W T Magasa  
S Maharaj (CFO) M J Singer-Saul R D Smith (CEO)  
**Company Secretary:** F Mohamed

*Company Registration Number: 1989/001763/07*

**BROADBAND INFRACO'S SUBMISSIONS ON THE AUTHORITY'S INTENTION TO AMEND REGULATIONS IN TERMS OF SECTIONS 73(3) AND (4) OF THE ECA IN RESPECT OF E-RATE**

**1. Introduction**

Broadband Infraco (Pty) Ltd ("Broadband Infraco") would like to thank the Independent Communications Authority of South Africa (the "Authority") for the opportunity to make submissions on 'the Authority's notice of intention to amend the regulations in terms of section 73(3) and (4) of the Electronic Communications Act No. 36 of 2005 (the "ECA") in respect of E-Rate ("the E-Rate Regulations").

As is well known to the Authority, Broadband Infraco has just been issued with an Electronic Communications and Network Services ("ECNS") licence. Despite our belated entry into the sector, Broadband Infraco is intimately aware of South Africa's developments regarding E-Rate as espoused almost 10 years ago [in 2001] in the then Telecommunications Act.

Our submissions are divided into 'General Comments' and 'Specific Comments'.

**2. General Comments**

Broadband Infraco is a state owned entity formed through the enactment of the Broadband Act No. 33 of 2007 (the "Infraco Act"). The Infraco Act came into force on 1 February 2008. Broadband Infraco derives its statutory mandate from section 4(1) of the Infraco Act, which provides that:

*"The main objects of Broadband Infraco are to expand the availability and affordability of access to electronic communications, including but not limited to underdeveloped and under serviced areas, in accordance with the Electronic Communications Act and commensurate with international best practice and pricing, through the provision of-*  
*(a) electronic communications network services; and*  
*(b) electronic communications services."*

Broadband Infraco believes that its mandate already satisfies the goal that the E-Rate Regulations seeks to achieve, i.e. to expand the availability and affordability of access to electronic communications in accordance with the ECA.

Broadband Infraco has undertaken in its application to the Authority for both the ECNS and the Electronic Communications Service ("ECS") licences that it plans to provide access to electronic communications to the South African market at significantly lower price levels than those currently being levied by commercial operators. Its target customers will include other ECNS or ECS licensed and licensed exempt entities with a need for high capacity managed connectivity services.

Broadband Infraco will not be providing retail services directly to end-users as defined in the ECA, but rather wholesale services to other licensed and license-exempt entities. Customers of Broadband Infraco will be able to integrate the Broadband Infraco long distance network service offerings with their own local, metro, or last mile networks, to provide end to end solutions to end users.

Broadband Infraco is therefore statutorily mandated and obliged to offer discounted prices to its customers, who in turn should transfer these discounts to their end-users including schools, clinics, hospitals, etc. Broadband Infraco will therefore not be able to offer a further discount (as contemplated in the E-Rate Regulations) without harming its own financial sustainability.

### **3. Specific Comments**

#### **4.1. AD Para 1 of the Regulations - “DEFINITIONS”**

Broadband Infraco would like to propose that the definition of “**Upstream Licensee**” be amended to say; “*a licensee, **other than a state-owned licensee with a statutory mandate to expand the availability and affordability of access to electronic communications**, who provides ECS or ECNS to a licensee who in turn provides Internet services to public schools or further education and training colleges or independent schools that qualify for the E-rate discount.*”

#### **4.2. AD Para 2 of the Regulations - “PURPOSE, SCOPE AND APPLICATION OF THE REGULATIONS”**

Broadband Infraco would like to propose the insertion of sub-Para (3) which should read as follows:

(3) These Regulations do not apply to a state-owned licensee with a statutory mandate to expand the availability and affordability of access to electronic communications.

### **4. Conclusions**

Broadband Infraco would like to emphasize to the Authority that it is not our intention to avoid the application of the Regulations on Broadband Infraco, but rather to ensure that the Regulations are implemented appropriately and efficiently.

Broadband Infraco supports the E-Rate Regulations, and we trust that the Authority will consider our submissions in the finalisation of these regulations.