



**SUBMISSION BY MWEB IN RESPONSE TO THE NOTICE
IN RESPECT OF THE AMENDED E-RATE REGULATIONS**

1 INTRODUCTION

- 1.1 MWEB thanks the Independent Communications Authority of South Africa ("**the Authority**") for giving it the opportunity to furnish the Authority with its comments on the Authority's Notice in terms of section 4(4) of the Electronic Communications Act 36 of 2005 ("**the ECA**") of its intention to amend regulations in terms of section 73(3) and (4) in respect of the E-Rate ("**the Notice**")¹.
- 1.2 MWEB records that it would like to make oral submissions to the Authority on the Notice, if public hearings are to be held as part of the consultative and participative process to be undertaken by the Authority on the Notice.

2 COMMENTS

2.1 Regulation 1 - Definitions

- 2.1.1 For clarity and consistence throughout the Notice, MWEB proposes that the following definition of "schools" be inserted:

"Schools" mean:

- (i) *public schools as defined in the South African Schools Act, 1996 (No. 84 of 1996);*

¹ Notice 1610 of 2009 published in Government Gazette No 32789 dated 7 December 2009.

- (ii) *public colleges as defined in the Further Education and Training Colleges Act, 2006 (No. 16 of 2006); and*
- (iii) *independent schools or private further education and training institutions as declared by the Minister, in consultation with the Minister responsible for Education in terms of section 73(5) of the Act.*

2.1.2 **Regulation 1(3) - "E-Rate"**

2.1.2.1 MWEB is concerned that the proposed definition for "*E-rate*" in regulation 1(3) does not accurately reflect what is stated in section 73(2) of the ECA. In order to ensure that proper effect is given to the aforesaid section in the ECA, MWEB proposes that the definition for "*E-rate*" be amended to read as follows –

"E-rate" *means the minimum discounted rate of 50% to be applied to the total charge (as described in section 73(2) of the Act) levied by a licensee (whether ECS and/or ECNS) for the provision of Internet services to Schools."*

2.1.2.2 The definition in the regulations as well as the suggested amended definition of "*E-rate*" is based on the understanding that the E-rate is the rate charged by a licensee to the institution (School) concerned. It is not the rate charged by Upstream Licensees to licensees (providing Internet services) for facilities.

2.1.3 Reference is made in the regulations to an "*E-rate agreement*". This agreement must be distinguished from the agreement concluded between licensees in terms of section 73(3). MWEB therefore proposes the insertion of a new definition for E-Rate Agreement –

"E-rate agreement" *means the agreement concluded between licensees and Schools in terms of which the licensees agree to provide Internet services to Schools at the E-rate."*

2.1.4 **Regulation 1(6) - "Retail Rate"**

2.1.4.1 MWEB is also concerned that the definition of "Retail rate" in regulation 1(6) does not reflect what is meant by the ECA in sections 73(1) and 73(3). MWEB therefore proposes the following amendment to the definition –

"Retail Rate" means, in circumstances where the licensee who is providing Internet services to Schools obtains electronic communications facilities from Upstream Licensees, the lowest charge levied by the Upstream Licensee to the licensee for the electronic communications facilities provided by it".

2.1.5 **Regulation 1(7)"Upstream Licensee"**

2.1.5.1 In order to bring this definition in line with section 73(3) of the ECA, MWEB proposes the following amended definition -

"Upstream Licensee" means an electronic communications network service licensee who provides electronic communications facilities for the provision of Internet services to the licensee who provides Internet services to Schools."

2.2 **Regulation 3 - Implementation of the E-Rate**

2.2.1 **Regulation 3(1) - Requirements**

MWEB is of the view that regulation 3(1) does not capture the requirements for the application of the E-rate as set out in both sections 73(1) and 73(3). MWEB suggests the following insertion and amendments to regulation 3(1):

"(1) Requirements

(a) A licensee providing Internet services to Schools shall, subject to the provisions of regulation 3(1)(b) and (c) below, provide such Internet services at the E-rate.

(b) An Upstream Licensee must meet another licensee's request to provide an E-rate to Schools.

(c) An Upstream Licensee shall grant a 50% (fifty percent) discount off the Retail rate charged for all electronic communication facilities and/or services provided by a licensee to other licensees used for the provision of Internet services to Schools.

2.2.2 **Regulation 3(2) - Application processes / guiding principles**

2.2.2.1 Regulation 3(2) only deals with applications by licensees to Upstream Licensees for 50% off the Retail rate but does not deal with applications by Schools to licensees for the E-rate for Internet services. MWEB therefore proposes that regulation 3(2) be amended to include the following provisions –

3(2) Application processes / guiding principles

(a) Applications to licensees by Schools

- (i) Schools wishing to be charged the E-rate must apply in writing to a licensee providing Internet services for provision of those services at the E-rate;*
- (ii) all applications made in terms of regulation 3(2)(a)(i) shall be accompanied by proof of the School's status as either a public school or public college or independent school or private further education and training institution, as declared by the Minister, in consultation with the Minister responsible for Education in terms of section 73(5) of the Act.*

2.3 Regulation 4 – Record keeping

MWEB is not sure what is meant by regulation 4(1)(e) “resumption date should the service be cancelled”?

2.4 Regulation 5 - Penalties

2.4.1 It should be clear in the regulations that a person who contravenes the regulations will only be guilty of an offence where that person fails to comply with a decision made by the Authority in terms of section 17E of the ICASA Act, MWEB believes that regulation 5 should be amended to read as follows –

"A person who contravenes these regulations shall be guilty of an offence which may result in a fine not exceeding R500,000 (five hundred thousand rand), if that person fails to comply with a decision made by the Authority in terms of section 17E of the ICASA Act."

3 CONCLUSION

3.1 MWEB once again thanks the Authority for giving it this opportunity to comment on the Notice and confirms that it would like an opportunity to make oral representations to the Authority on the Notice.

3.2 Please do not hesitate to contact Calvo Mawela on 082 372 0113 should you have any queries or should you require any additional information from MWEB in respect of this submission.

DATED AT RANDBURG THIS 21ST DAY OF JANUARY 2010