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GENERAL NOTICE

NOTICE 748 OF 2008

*INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ("THE
AUTHORITY")*

**NOTICE OF THE AUTHORITY'S DECISION FOLLOWING THE ENQUIRY IN TERMS OF SECTION 33(3)
OF THE ELECTRONIC COMMUNICATIONS ACT DEALING WITH THE ASSIGNMENT OF THE
FREQUENCY BANDS WHERE DEMAND EXCEEDS THE AVAILABLE BANDWIDTH.**

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1 BACKGROUND

The Council of ICASA has in terms of section 17 of the ICASA Act, Act no 13 of 2000 delegated a committee of Council to deal with s31(3) of the Electronic Communications Act, Act No. 36 of 2005 (“EC Act”). The Authority then published a notice in government gazette No 29351, notice 1530 of 02 November 2006 calling for interested parties to make representations to address procedures and criteria for awarding radio frequency spectrum licences under two instances namely:

- Where there are competing applications or,
- Where the demand exceeds the availability.

This notice was published in terms of s(31)(3) of the EC Act. The Authority received 33 written representations; 20 of those submitted requested to make oral representation. On 28th, 29th and 30th March 2007, hearings were held in relation to access to the 2.6 GHz and 3.5GHz frequency spectrum bands

2 LEGISLATIVE FRAMEWORK

Section 5(9) of the ECA provides, in granting a licence, the Authority must:

- a) *ensure that electronic communications network services, broadcasting services and electronic communications services, viewed collectively, are provided by persons or groups of persons from a range of communities in the Republic; and*
- b) *promote the empowerment of historically disadvantaged persons including women and the youth and people with disabilities, in accordance with the requirements of the ICT Charter.”*

The radio frequency spectrum for wireless access technologies is currently dominated by few organizations that deploy national networks. This process affords the authority an opportunity to consider licensing new entrants to provide public broadband wireless access services.

3 ANALYSIS OF RESPONSES

3.1 THE BAND 2500 – 2690 MHZ (2.6 GHz BAND)

Part of the 2.6GHz band is currently assigned to Sentech (PTY) LTD and Wireless Business Solutions (WBS) PTY LTD.

Question A1**How should the remaining spectrum be subdivided?**

The view expressed included the following:

- There was a majority suggesting that 2.6GHz band should be subdivided into blocks of 20MHz. Other suggestions considered 10MHz, 30MHz, 40MHz and 56MHz.
- 2.3MHz to 2.4MHz band should be included.
- The majority favoured TDD as opposed to FDD.
- The majority proposed the raster of 5MHz while others proposed 7MHz.

The Authority's decision

In view of the above and taking into consideration international trends, the Authority has decided to allocate 20MHz per operator on a technology neutral basis. A separate process will be undertaken by the Authority to include the band covering 2.3MHz to 2.4MHz.

Question A2**Should the Authority consider National, Regional (geographical restricted) licences or a combination of both?**

The majority contended that national licences will achieve economics of scale and efficient utilization of spectrum. Other advocated for regional licences. Some called for a combination of national and regional licences.

The Authority's decision

The technologies being developed in the 2.6GHz band are mobile in nature and primarily based on IEEE 802.16e standard. The Authority is of the view that it would be efficient to deal with roaming where the coverage is wide. The Authority has therefore decided to allow only national operators in this band.

Question A3**How many licences can be issued within the available spectrum?**

There views expressed in this respect varied widely depending on responses in QA1 and QA2.

The Authority's decision

Following from decisions in QA1 and QA2 the Authority has decided on six additional national licences with each operator assigned 20MHz on a technology neutral basis.

Question A4

What method or criteria should the Authority use in considering applications for awarding of radio frequency spectrum licences for competing applications?

The responses varied from beauty contest to auction or some combination of the two. There were suggestions that auction be used for national licences and beauty contest for regional licences. Others suggested that operators who already have access in 3.5GHz, 2.6GHz and third generation (3G) should be excluded. Some respondents strongly felt that access to spectrum should be limited to those entities with Electronic Communications Network Service licences.

The Authority's decision

The Authority is of the view that a two-step process with starting with a pre-qualification phase of beauty contest followed by auction is most appropriate. This process will give the Authority a leverage to implement both economic and social objectives as per section 2 of the ECA.

Question A5

What method or criteria should the Authority use in considering applications for awarding of radio frequency spectrum licences where there is insufficient spectrum available to accommodate demand?

Most respondents gave the same answer as in the previous QA4.

The Authority's decision

Same as in QA4.

Question A6

Which other policy imperatives ought to guide the Authority in determining the procedures and criteria contemplated in section 31(3) of the Act specifically related to consideration of applications for the awarding of radio frequency spectrum licences for competing applications?

Most respondents were of the view that the following considerations should guide the Authority in dealing with the awarding the spectrum:

- Competition
- Broad based Black Economic Empowerment and Historical disadvantaged individuals in line with Broad-Based Black Economic Empowerment Act No 53 of 2003.
- Introduction of new players and competition
- Sound business plan
- Economically efficient and technologically effective utilization of radio frequency spectrum
- Population and geographical coverage
- Project plan and strict roll-out targets
- Use or lose it principle
- No corporate takeover within a period of 5 years after licence issue
- Technical expertise
- Consumer benefit

The Authority's decision

The Authority has decided that these issues be taken into consideration during the pre-qualification beauty contest stage. The most important issue to be prescribed in the pre-qualification beauty contest phase is the extent of inclusion of historically disadvantaged individuals (HDI's) in the following areas:

- Minimum Fifty one percent (51%) black owned with emphasis on women in line with Broad-Based Black Economic Empowerment Act No 53 of 2003.
- Levels of participation in management and control in line with Employment Equity Act No 55 of 1998
- Affirmative procurement in line with Preferential Procurement Policy Framework Act No 5 of 2000.
- Commitment to skills development of HDI's in line with Skills Development Act No 97 of 1998.

Question A7

Which other policy imperatives ought to guide the Authority in determining the procedures and criteria contemplated in section 31(3) of the Act specifically related to consideration of applications for the awarding of radio frequency spectrum licences where there is insufficient spectrum available to accommodate demand?

Most respondents gave the same reply as in the previous question QA6. There were also suggestions that considerations be given to facilities leasing and infrastructure.

The Authority's decision

Same as in QA6.

3.2 THE BAND 3400 - 3600MHz (3.5GHz BAND)

More than 80% of the 3.5GHz has been permanently assigned prior to this process. Unlike the 2.6GHz in this band there is less flexibility in accommodating reasonable number of operators.

Question B1

How should the remaining spectrum be subdivided?

The views expressed can be categorized into three proposals for subdivision.

- Two operators each assigned 2x14MHz
- One operator assigned 2x28MHz
- Two operators each assigned 2x15MHz

The Authority's decision

The Authority has decided that the remaining spectrum be considered for 2x15MHz per municipality geographic area.

Question B2

Should the Authority consider National, Regional (geographical restricted) licences or a combination of both?

There were strong views which favoured regional assignment as the band is currently dominated by National operators.

The Authority's decision

The Authority believes that smaller operators be accommodated within local municipality geographic areas.

Question B3

How many licences can be issued within the available spectrum?

The number ranged from 9 to 20.

The Authority's decision

The Authority has decided on two operators per local municipality geographic area.

Question B4

What method or criteria should the Authority use in considering applications for awarding of radio frequency spectrum licences for competing applications?

Same as in QA4

The Authority's decision

Same as in QA4

Question B5

What method or criteria should the Authority use in considering applications for awarding of radio frequency spectrum licences where there is insufficient spectrum available to accommodate demand?

Same as in QA5

The Authority's decision

Same as in QA5

Question B6

Which other policy imperatives ought to guide the Authority in determining the procedures and criteria contemplated in section 31(3) of the Act specifically related to consideration of applications for the awarding of radio frequency spectrum licences for competing applications?

Same as in QA6

The Authority's decision

Same as in QA6

Question B7

Which other policy imperatives ought to guide the Authority in determining the procedures and criteria contemplated in section 31(3) of the Act specifically related to consideration of applications for the awarding of radio frequency spectrum licences where there is insufficient spectrum available to accommodate demand?

Same as in QA7

The Authority's decision

Same as in QA7

4 SUMMARY

The Authority will use this opportunity to promote competition in the industry and to promote the empowerment of historically disadvantaged persons. The Authority has decided to allow a two phased approach – pre-qualification beauty contest phase followed by auction. This approach allows the Authority to fulfil social and economic objectives while introducing progressive market based mechanisms. The most important issue to be prescribed in the pre-qualification beauty contest phase is the extent of inclusion of historically disadvantaged individuals (HDI's) in the following areas:

- Minimum Fifty one percent (51%) black owned in line with Broad-Based Black Economic Empowerment Act No 53 of 2003.
- Levels of participation in management and control in line with Employment Equity Act No 55 of 1998
- Affirmative procurement in line with Preferential Procurement Policy Framework Act No 5 of 2000.
- Commitment to skills development of HDI's in line with Skills Development Act No 97 of 1998.

The Authority has decided to allocate the spectrum on technology and service neutral basis, while taking into account technological advances for planning purposes. The Authority has decided to allow six additional national licences on the remaining spectrum in the 2.6 GHz band and only allow regional licences on the remaining spectrum in the 3.5 GHz band.

The Authority will use this decision document as a basis for developing regulations as per s(31)(3) of the ECA.
