USAO Compliance Review of Licensees for ICASA

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1. USAO COMPLIANCE REVIEW OF LICENSEES FOR ICASA

Methodology

This report contains findings from a compliance review conducted in respect of the relevant licensees. The review was preceded by the review of the actual licences for which a separate report was prepared and submitted to ICASA. Licensees were given a questionnaire relating to their compliance with USAOs and requested to answer questions on the questionnaire. The questionnaire was signed-off by ICASA. Some operators provided detailed responses whilst others provided short answers, not backed up by any supporting documentation. In some cases, operators indicated the information we requested from them was submitted to and therefore we should obtain same from ICASA.

The review was done on the following licensees:

- Telkom
- Vodacom
- MTN
- Cell C
- Sentech
- iBurst
- Neotel

With regards to issues relating to reporting by the licensees and compliance monitoring and evaluation, generally, the licensees are required to submit reports to ICASA on services provided by them including on progress in achieving USAOs. Specifically for mobile operators, licensees were required to submit compliance reports within two months after the end of each rollout period in relation to internet access/connectivity (clause 2.3 of schedule 5), ICASA and the licensees could agree on performance indicators to assess compliance with schedule 5 obligations (clause 3.9) and ICASA is authorised to periodically assess the mobile operators' level of compliance with their schedule 5 obligations (clause 3.7).

Mainly because of the problems associated with the implementation of the USAOs, based on the documentation that has been provided to us, it does not appear that monitoring and evaluation of the operators' compliance with the USAOs was ever done. Some operators stated in their response to our questions that they have submitted compliance reports to ICASA but that no response (feedback) was given by ICASA.

With regards to compliance with USAOs, note that no verification of whether the licensees did comply or not, was done, nor have the answers been checked against the annual compliance reports of the licensees which are provided to ICASA in terms of legislation and/or the operators' respective licences. Accordingly, the findings in

this report, unless the context otherwise indicates, are based solely on the answers provided by the licensees.

Telkom, Neotel, Cell C, MTN, Vodacom, iBurst and Sentech all had obligations under their previous licences. Telkom had obligations under the PSTS licence, but none with regard to spectrum licences. VANS and broadcasters did not have universal service obligations but broadcasters did have general obligations, including language, local content and general programming obligations.

The previous USAO model before the ECA seems to have come about in a reactionary way as South Africa evolved from a monopolistic environment to a more liberalised environment where more competition came into the market. As more operators were licensed, obligations were given to them.

Generally, there has been very minimal compliance with the USAOs. It is a common course that Telkom did not comply with its obligations in full. With regards to CSTs, all the three mobile operators exceeded their roll out targets. With regards to sim-cards and handsets, none of the mobile operators has rolled out, with regards to roll out of internet connectivity / access and terminal equipment to public schools, the operators had done some roll-out, although not generally fully compliant and not within the prescribed time periods. With regards to internet connectivity/access and terminal equipment to rural clinics/hospitals as well as to IPWDs, there has generally been no compliance.

All the operators cite problems relating to the development of the USAOs and to the implementation and co-ordinations thereof as major reasons for non-compliance. These issues range from legislative / regulatory issues (such as lack of definition of key concepts such as rural areas) to implementation issues (such as unresearched / "thumb-suck allocation of obligations and lack of allocation of roles and responsibilities for the implementation of the USAOs).

The section below reviews the individual licensees.

Compliance or non-compliance of licensees' USAOs

Telkom

Table 1
Telkom

Description of USAO	Compliance	Reason for non-compliance / Comment
Telkom had a network rollout obligation of 2,690,000 in respect of the total number of new access lines over a 5 year period comprising of 1,676,000 lines in respect of under serviced areas, and 3,304 in respect of Village targets. Telkom had a further obligation to roll out 20,264 lines in respect of Priority Customers, 120,000 in respect of public payphones and 1,252,000 replacement lines.	Telkom failed to meet its total line target by 16,448 lines, and rollout all of its total line and village line target and its village target by 505 lines. Telkom was penalised and paid a penalty of R10,183,285 for failure to meet these targets.	Telkom did not rollout in its last year of exclusivity on the basis that it was not economical to do so.

Telkom had a waiting list service target of 600 per 1,000 fault rate in respect to residential lines in 1997/1998 which would be reduced to 399 per 1,000 by 2001/2002. With respect to business lines the service target was 580 to 370 in the same period as with the residential lines. Further waiting list targets in respect of public payphones.	Telkom failed to comply with the fault rate per 1,000 lines for residential customers. For this failure, Telkom paid a further penalty of R383,199.	In its report, Telkom cites, "factors beyond reasonable management control" as the cause for non-compliance.

Source: Telkom, BMI-T, 2010

Vodacom

Table 2 Vodacom		
Description of USAO	**Compliance**	**Reason for non-compliance / Comment**
For network rollout obligations, Vodacom was required to cover 60% of the population within 2 years (31/5/1996) and 70% of the population within 4 years (31 May 1998).	Vodacom did not deal with this obligation in its response.	
Required to roll out 22,000 CSTs in underserviced areas and community centres situated in underserviced areas within 5 years of licence (by 31 May 1999)	Complied Vodacom indicated that it has rolled out 115,713 CSTs which are active.	
Provision of 2.5 sim cards in underserviced or unserviced areas identified by ICASA within 5 years of issue of spectrum licence	Vodacom was silent on whether this was complied with.	It appears that this obligation has not been complied with. Note that Vodacom believes that this obligation has now lapsed as it has not been carried over into its ECNS licence.
Provision of 125,000 terminal equipments (handsets) within 5 years of issue of spectrum licence in accordance with implementation plan approved by ICASA	Vodacom was silent on whether this was complied with.	It appears that this obligation has not been complied with. Note that Vodacom believes that this obligation has now lapsed as it has not been carried over into its ECNS licence.
Provision of internet access to 140 IPWDs within 3 years of issue of spectrum licence	Vodacom was silent on whether this was complied with.	It appears that this obligation has not been complied with. Note that Vodacom believes that this obligation has now lapsed as it has not been carried over into its ECNS licence.
Provision of internet access to 5,000 public schools within 8 years of issue of spectrum licence	Vodacom indicated that the licence required it to provide 625 but ICASA imposed 713 in the first year. It provided 706 schools, with a shortfall of 7 schools.	Vodacom stated that it could not fully comply with this because some schools did not have electricity and other schools were covered by other operators. Vodacom cites a number of reasons that generally contributed towards its failure to comply fully with its obligations in general.

Table 2 Vodacom		
		These include lack of adequate training and exposure to computer usage at the schools, no funding for schools to cover running expenses, the support structures that Vodacom put in place (such as infrastructure maintenance) did not work, some schools already had internet connectivity, some schools were allocated outside its coverage area, ICASA failed to provide a list of schools in certain instances, ICASA failed to approve implementation plans on time, some schools were closed down, some did not have electricity, some did not have the requisite facility to house the computers and some teachers did not attend computer training.
Provision of 1400 terminal equipment (e.g PCs) to IPWDs and public schools	Vodacom was silent on whether this was complied with.	It appears that this obligation has not been complied with. Note that Vodacom believes that this obligation has now lapsed as it has not been carried over into its ECNS licence.

Source: Vodacom, BMI-T, 2010

MTN

Table 3 MTN		
Description of USAO	**Compliance**	**Reason for non-compliance / Comment**
For network rollout obligations, MTN was required to cover 60% of the population within 2 years (31/5/1996) and 70% of the population within 4 years (31 May 1998).	MTN did not deal with this obligation in its response.	
Required to roll out 7,500 CSTs in underserviced areas and community centres situated in underserviced areas within 5 years of licence (by 31 May 1999)	Complied MTN indicated that it has rolled out 20,000 CSTs.	
Provision of 2.5 sim cards in underserviced or unserviced areas identified by ICASA within 5 years of issue of spectrum licence	Did not comply	MTN stated that it submitted an implementation plan to ICASA in accordance with the distribution framework document developed by the Department of Communications, and requires the list of beneficiaries (government departments), which the Department has not provided yet. MTN also states that it requires beneficiaries to provide their personal details (names, ID and address) in terms of RICA.

Table 3 MTN		
Provision of 125,000 terminal equipments (handsets) within 5 years of issue of spectrum licence in accordance with implementation plan approved by ICASA	Did not comply	MTN stated that it submitted an implementation plan to ICASA in accordance with the distribution framework document developed by the Department of Communications, and requires the list of beneficiaries (government departments), which the Department has not provided yet.
Provision of internet access to 140 IPWDs within 3 years of issue of spectrum licence	Did not comply	MTN requires ICASA to provide a list of IPWDs.
Provision of internet access to 5,000 public schools within 8 years of issue of spectrum licence	Not fully compliant MTN indicated that it has covered 486 schools.	MTN stated that it has not been provided with names of any further schools and therefore has not been able to roll out to further schools.
Provision of 1,400 terminal equipment (e.g PCs) to IPWDs and public schools	Not complied with	MTN requires ICASA to provide a list of IPWDs. The response is silent about the rollout of equipment to public schools.
General		Based on ICASA's discussion of MTN's Implementation Plan, MTN raised a number of problems associated with the obligations relating to access to spectrum (1800 MHz and 3G). These included that MTN wanted the education department (DOE) to give them a list of schools which required internet access (note that the obligation to develop the implementation plan lies with MTN), DOE failed to co-ordinate this process which resulted in delays in finalising implementation plan of MTN, there was no formula guiding MTN, ICASA and DOE in doing the allocation among public schools, the health department got involved at a later stage and therefore Implementation Plan could not be completed. Basically because departments could not submit allocations, then Implementation plans could not be finalised and therefore MTN could not start implementing its obligations.

Source: MTN, BMI-T, 2010

Cell C

Table 4 Cell C		
Description of USAO	**Compliance**	**Reason for non-compliance / Comment**
For network rollout obligations, Cell C was required to cover 65% of South Africa and 40% of the total population within 2 years of Commercial Date, to cover 8% of South Africa and 60% of the total population within 5 years.	Cell C did not deal with this obligation in its response.	
Cell C required to roll out 52,000 CSTs within 7 years of licence (by 31 May 1999)	Complied	
Provision of 2.5 sim cards in underserviced or unserviced areas identified by ICASA within 5 years of issue of spectrum licence	Did not comply	Cell C states that it did not comply because there was no proper consultation between the Department of Communications and ICASA, there was no impact assessment before the allocation of the obligations and as a result, it was impractical to implement. It states that its implementation plan is in the process of being amended.
Provision of 125,000 terminal equipments (handsets) within 5 years of issue of spectrum licence in accordance with implementation plan approved by ICASA	Did not comply	Same reasons as for rollout of sim cards.
Provision of internet access to 140 IPWDs within 3 years of issue of spectrum licence	Cell C was silent on whether this was complied with.	It appears that this obligation has not been complied with. Cell C stated that it has submitted its rollout implementation reports to ICASA.
Provision of internet access to 5,000 public schools within 8 years of issue of spectrum licence	Cell C was silent on whether this was complied with. It appears Cell C did do some rollout in this regard. It stated that it has submitted its rollout implementation reports to ICASA and that some schools already had internet connectivity through the Gauteng Online Project.	Cell C stated that there were numerous challenges in implementing the school rollout, least of which was a change in approach by ICASA in the allocation of schools, agreed upon with the DOE. Cell C also states that no impact assessment study was conducted prior to the allocation of the school rollout obligation.
Provision of 1,400 terminal equipment (e.g. PCs) to IPWDs and public schools	Cell C was silent on whether this was complied with.	It appears that this obligation has not been complied with. It stated that it has submitted its rollout implementation reports to ICASA.

Source: Cell C, BMI-T, 2010

Neotel

Table 5 Neotel		
Description of USAO	**Compliance**	**Reason for non-compliance / Comment**
For network rollout obligations, Neotel was required to cover 50% of population in the specified municipal areas within 5 years (8 February 2011) and 80% of population within 10 years (8 February 2016).	Neotel did not deal with this obligation in its response	
To provide internet connectivity to 2,500 public schools	Not fully compliant Neotel stated that it rolled out to 50 FETs, 2 public schools and 20 schools. Note that these were rolled out pursuant to a commercial agreement (tender) and not within the context of the implementation plan. Note further that although the licence did not include FETs and private schools, ICASA approved the inclusion of FETs in the implementation plan.	Neotel cites non-allocation of schools by ICASA as the reason for non-compliance. It states that unlike other operators, it has not been allocated even a single school. ICASA in a letter dated 28/11/07, indicated that the allocation will be done by DOE. Neotel mentioned other challenges, including lack of hardware and associated development and maintenance support, the internet connectivity programme seems to have not taken into account the other government initiatives such as Gauteng Online and Khanya project (which have reduced the number of schools not covered), the "no-fee schools" are unable to pay for the services, the collapse of the working group which was meant to co-ordinate allocation of schools, lack of support infrastructure such as terminals (PCs), thin client terminals, laptops, computer laboratories to house and secure terminals, the reduction of number of schools by DOE through mergers.
To provide internet connectivity to 2,500 rural public clinics and rural public hospitals (Note that rural public hospitals were not in the old PSTS licence)	Not complied with	In the approval of the rollout plan for the schools, ICASA deferred the rollout to rural public clinics and public hospitals pending the establishment of the working group on public clinics and further consultation with the Department of Health. Neotel identified some implementation challenges on the rollout to rural public clinics including that there are no rural public clinics falling within its coverage area, there has been no allocation of rural clinics agreed with Neotel and that that DOH wants internet connectivity to be provided free of charge.

Table 5 Neotel		
General		Neotel seems to have engaged with ICASA extensively with a view to resolving the problem of non-allocation of schools and rural public clinics. In the engagements Neotel raised a number of challenges that it was facing in the development of its implementation plan. These included, firstly, that the number of public schools not covered by other operators is less than the 2,500 that it has to cover, secondly, the public schools lack basic infrastructure such as power, PC and buildings, thirdly, there are only 3,050 public clinics nationwide, of which 1,000 are rural and therefore less than its target of 2,500 (note rural public hospitals seem to have been included in the ECNS following this complaint), fourthly, all of the 1,000 rural public clinics do not fall within its coverage areas. Neotel then requested reduction of number of public schools and rural public clinics and substitution thereof with CSTs, Thusong Centres, internet cafes and internet connectivity at public libraries. ICASA requested that this be sought by way of a formal licence amendment.

Source: Neotel, BMI-T, 2010

Sentech

Table 6 Sentech		
Description of USAO	**Compliance**	**Reason for non-compliance / Comment**
To roll out internet access at the e-rate to 1,500 rural public schools over a period of 9 years (Note: Sentech indicated its multimedia services licence was amended to remove other obligations. We were not provided with a copy of this licence.)	Not fully compliant Sentech indicated that it has provided internet connectivity to schools in Gauteng under the Gauteng Online Project and has submitted the rollout reports to ICASA, to which it has not received any response as to whether such schools are covered under the 1,500 target. It states that it therefore does not know whether it is compliant or not.	Sentech refers to a number of challenges that it has encountered in trying to implement the obligations, which include that its multimedia licence has not been converted yet and that it is not clear whether it still carries the obligations; it was initially given obligations that had nothing to do with their core business of signal distribution including provision of furniture, workstations, secure computer laboratories and refurbishment and upgrading of buildings; the obligations are thumb-suck because the costs associated therewith have not been scientifically determined by ICASA; lack of infrastructure at the schools such as electricity; in some areas, schools preferred other operators who provided connectivity free of charge; lack of communication and information dissemination by DOE to schools and lack of feed back from ICASA on its reports including on whether it has complied with its obligations or not.

Source: Sentech, BMI-T, 2010

iBurst

Table 7 iBurst		
Description of USAO	**Compliance**	**Reason for non-compliance / Comment**
To provide internet access to no less than 1,000 rural and urban public schools by 2011 (within 7 years) – (200 within 2 years, 700 within 5 years and 1,000 within 7 years) In its response, iBurst indicated that it has an obligation to provide to "clinics in poorer areas" as well. This is not covered in its licence and we were not able to ascertain from the documentation we were provided on what basis iBurst also covers these areas.	Not fully compliant iBurst provided a list of 180 schools it has rolled out to. The list has one private (independent) school that has been covered.	iBurst's response does not provide any reasons for non-compliance. However, it does indicate that there were shortcomings, but without providing any details thereof.

Source: iBurst, BMI-T, 2010

2. SUMMARY OF LICENSEE RESPONSES TO THE QUESTIONNAIRE ON UNIVERSAL SERVICE ACCESS OBLIGATIONS UNDER THE TELECOMMUNICATIONS ACT

Licensees under the Telecommunications Act were sent a questionnaire about their compliance to USAOs as well as their views on the USAO framework.

Of the seven operators, five have universal service obligations for voice services, six for internet, and one for multimedia services. Three have obligations for equipment in terms of handsets, sim cards, desktops, etc.

Base obligations (e.g. directories and emergency services)

In terms of the ECNS Licence, Telkom has an obligation to provide directory services inclusive of directory enquiries, and printed directories of other subscribers. Neotel, Cell C, MTN, Vodacom and iBurst have licence obligations to provide directory services. Neotel, MTN and Vodacom mentioned emergency services obligations as prescribed by the ECA. iBurst stated that in terms of its licence, the licensee must provide a help line whereby any customer may receive assistance with the sending or reception of any message or information about any aspect of the licensee's service. Sentech's licences do not provide for any base obligations.

Network rollout obligations

Telkom had obligations under the PSTS licence, but none with regard to spectrum licences. Over a period from 1997 to 2002, Telkom was obliged to roll out 2,690,000 new access lines (including 1,676,000 access lines to 3,204 villages in defined Underserviced Areas, and 20,246 access lines to Priority Customers), 120,000 new payphones, and 1,252,000 replacement lines.

Neotel is obliged to cover 50% of population in the specified municipal areas (predominantly metros and urban) within five years (to 8 February 2011) and 80% of population in the same specified metros within 10 years (to 8 February 2016). Cell C is required to rollout its network to 65% of South Africa and 40% of the total population within two years of commencing operations, and, within five years, to cover 8% of South Africa and 60% of the total population.

MTN and Vodacom were required to each cover 60% of the population within two years (to 31/5/1996) and 70% of the population within four years (to 31 May 1998).

iBurst and Sentech have no network rollout obligations.

Universal Service Obligations

A summary of USAOs fulfilled

The table below collates the obligations the operators have reported that they have fulfilled (excluding Telkom). As can be seen below the three mobile operators have managed to fulfill their CST obligations but all the operators were seriously lagging in their obligations to schools and no handset or sim card obligations had even commenced.

Table 8 Fulfilment of rollout of obligations				
	Internet access to schools	**Internet access to FETs**	**CSTs**	**Handsets/sim cards**
Neotel	20	48		
Cell C			Over 52,000	-
Vodacom	706		115,713	-
MTN	486		Over 7,500	-
iBurst	179			
Sentech	Gauteng Online		20,000	

Source: BMI-T, 2010

In Telkom's case this includes the provision of basic telephone services, public pay telephones services, emergency call services, and the arrangement for services for users with special needs and the promotion of affordability. However, Neotel was required to provide basic PSTS upon request. Further, it was required to provide internet connectivity to 2,500 public schools and 2,500 rural public clinics and rural public hospitals in stipulated municipal areas.

Cell C had an obligation for the construction, operation and maintenance of 52,000 CSTs in underserved areas. MTN was required to roll out 7,500 CSTs, and Vodacom 22,000 CSTs, in underserviced areas and community centres situated in underserviced areas within five years of licence (by 31 May 1999).

iBurst must provide internet access to no less than 1,000 rural and urban schools by 2011 (within seven years). (Note: although iBurst USOs are contained in the service licence they relate to access to spectrum.)

In terms of its MMS licence, Sentech had community service obligations to establish and maintain school internet laboratories and computer laboratories in 500 schools in rural areas in five years. Sentech also had an obligation to provide local area networks, workstations with enhanced functionality, furniture, secure and scalable computer laboratories, technical training and the refurbishment and upgrading of buildings. Sentech had a further obligation to roll out internet access at the e-rate to 1500 rural public schools over a period of nine years according to a rollout programme to be attached to the licence.

Spectrum allocation obligations

Cell C, MTN and Vodacom had to provide sim cards, handsets, internet access and terminal equipment, as detailed earlier in this report. Sim cards were for underserviced areas, and the internet access and equipment was for schools and IPWDs, but the distribution areas for handsets was not stipulated. iBurst is required to provide internet access to schools.

Broadcaster obligations

Historically the concepts of "universal access" and "universal service" were applied to the telecommunications sector and not in the broadcasting sector, where universal service obligations were set for operators following deregulation and market liberalisation.

However SABC has had initiatives for universal access as part of its public broadcaster mandate despite not being obliged to do so in an era when it did not have licences or

any competitor broadcasters. The provision of such universal access in the pre-1994 dispensation was of course heavily racially skewed in favour of a white minority. In the post-democratic era, the SABC continued these initiatives and developed an internal policy for universal access to set right the imbalances of the past as a priority.

The 1998 White Paper on Broadcasting Policy said that the key goals of broadcasting policy were to ensure that policy intervention would redress past imbalances and "recognise the special character of language broadcasting and provide for technical parameters that suit the different languages". In terms of the Broadcasting Act of 1999, the SABC had to work towards making its services available throughout South Africa. Also, national policy is expected to "prioritise the provision of services in languages of choice where applicable". Again, the inaugural SABC Policy on Universal Access addressed these issues.

Pre-conversion, e.tv's broadcasting licence contained its spectrum allocation which was attached as a schedule to the licence. This licence contained minimum population coverage obligations (77%).

In addition to this, e.tv's licence also set various other obligations, including language, local content and general programming obligations.

Details of obligations per operator

Neotel

Neotel had obligations carried over into its converted license, as per clause 5 of its ECNS Licence, dated the 16 January 2009. This was to provide internet access to no less than 2,500 public schools or FET institutions at discounted rates (as per Section 73 of the ECA); provide internet access to no less than 2,500 prescribed rural public clinics or public hospitals. Internet access in this case included the provision of two-way connectivity, and does not include and other IT infrastructure, equipment or facilities. The licence calls for a detailed Implementation Plan giving a rollout timeline. Initial rollout would be limited to the following municipal areas: City of Tshwane, City of Johannesburg, Ekurhuleni Metropolitan Council, Mogale City Local Municipality, Ethekwini Metropolitan Council, Msunduzi Municipality, City of Cape Town, Nelson Mandela Metropolitan Council, Buffalo City, Mangaung Local Municipality, Sol Plaatje Municipality, Polokwane Municipality and Mbombela Municipality.

Cell C

For Cell C, the obligations contained in the 2001 MCTS licence were 52,000 community service telephone (CST) licences. The amended MCTS licence issued to Cell C in 14 June 2005 contained the following obligations:

- 3G licence obligations to provide internet connectivity to no less than 140 Institutions for people with disabilities within three years from the effective date of 1 November 2006

- provision of internet access to no less than 5,000 public schools within eight years, priority to be given to schools in rural, underserviced and unserviced areas

- provision of equipment - 10 terminals to each institution for people with disabilities within three years
- provision of internet access at 50% discount rate (e-rate)
- provision of 2.5 million sim card connection packages
- provision of 125,000 handsets

Regulations allowed for Cell C to pay 0.2% of annual turnover to the Universal Service Fund.

MTN

MTN's previous licences, originally issued in 1993 and re-issued in terms of the Telecommunications Act, contained rollout and coverage obligations, including the grade of service obligations.

The 1993 licence required the rollout of 7,500 CSTs in defined underserviced areas.

The 2004 3G spectrum licence stipulated the following obligations:

- provision of internet access to 140 institutions for peoples with disabilities (IPWDs) according to a rollout timetable over three years (excluding any IPWD that has existing internet access)
- provision of internet access to no less than 5,000 public schools within eight years according to a rollout timetable of 625 schools per year (excluding and school that has existing internet access)
- internet access in both access listed above should be made available at a discount of 50%
- provision of 1,400 desktop computers to IPWDs over three years at a rate of 500 a year

All of the above should take place according to an approved Implementation Plan.

In terms of its 1800 MHz spectrum licence of 2004, MTN was obliged to

- roll out 125,000 handsets within five years of the effective date of the licence, according to an approved implementation timetable
- provide 2,500,000 sim card connection packages within five years of the effective date, in accordance with an approved implementation timeline.

Vodacom

Vodacom's MCTS licence, issued in 2004 in terms of section 37(1) and amended in terms of section 48 of the Telecommunications Act, 103 of 1996, required, in Schedule 3, that 22,000 CSTs should be provide in underserviced areas.

Schedule 5 of the 2004 MCTS licence imposed universal service obligations for access to the 3G radio frequency spectrum as follows:

- provision of internet access to 140 IPWDs

- provision of internet connectivity to 5,000 public schools in rural, underserved and non-serviced areas

Schedule 4 of the 2004 MCTS licence imposed USOs for access to the 1800 MHz radio frequency spectrum band as follows:

- provision of 125,000 terminal equipments
- 1,400 terminal equipments to IPWDs
- 2,500,000 sim card connection packages in underserviced/non-serviced areas.

iBurst

iBurst had to provide internet services (i.e. iBurst Modems) provided to schools and clinics in poorer areas. iBurst must, within two years from the date on which a radio frequency licence for access to other frequency bands, in addition to those it already has ("effective date"), provide internet access to 200 rural and urban public schools; within 5 years from effective date, provide 700 rural and urban public schools with internet access; within 7 years provide internet access to 1,000 rural and urban schools.

Sentech

Prior to the ECA, Sentech had community service obligations (CSOs) to provide internet access to 1,500 rural public schools over a period of nine years under its amended multimedia service licence (Multimedia service licence, issued under the Telecommunications Act No.103 of 1996, now repealed). Sentech did not have universal or CSOs attached to its broadcasting signal distribution licence (Broadcasting signal distribution, issued under the Independent Broadcasting Act No.153 of 1993, now repealed), carrier of carrier licences (International gateway service licence allowing it to operate as carrier of carriers, issued under the Telecommunications Act No.103 of 1996, now repealed) and various radio frequency spectrum licences.

Other obligations

Telkom had waiting list service targets: 600 per 1,000 fault rate in respect to residential lines in 1997/1998 which was required to be reduced to 399 by 2001/2002; a target of 580 to 370 with respect to business lines; and further waiting list targets for public payphones.

Whilst Neotel, MTN and Vodacom have no other obligations, Cell C has a commitment to spend R1billion over 10 years in respect of Joint Economic Development Plan (JDE) it has entered into with ICASA. This JED places obligations on Cell C to assist the government in economic development through job creation, local exports, boosting foreign investment, forging international linkages, R&D, training local personnel, establishing regional headquarters in RSA and developing local value added technology. Sentech has a requirement to participate in the development of the telecommunications industry; supporting independent contractors from historically disadvantaged groups and to support industry initiatives. There is no information as to this Joint Economic development Plan (JDE) between Cell C and ICASA

Universal service fund payments

All operators had obligations to pay to the fund. Under the Telecommunications Act, in terms of section 67(2), not more than 0.5% of the licensees' respective annual turnovers could be contributed. ICASA was required to prescribe the exact percentage, which it set at 0.2% of the annual turnover. The Authority promotes the attainment of universal service and access by putting requirements in operator's licenses to roll out services in under-serviced areas and ensuring that licensees contribute to the Universal Service Fund. ICASA does not however administer the Universal Service Fund, but merely receives monies on behalf of the Universal Service and Access Agency of South Africa. At the time of the review the amounts received by ICASA from the operators were not made known to us. There does not seem to be any ongoing audit on the moneys received for the USF and the money USAASA gets from the fund

Amended obligations

Neotel's USOs obligations in terms of clause 5 of the ECNS licence have been modified by adding "public hospitals".

On the 29 October 2004, ICASA amended Vodacom's and MTN's MCTS licences by including Schedules 4 and 5, which specify USOs associated with their right to use the 1800 MHz spectrum and 3G spectrum, respectively.

While Cell C did not have any amendments, there have been discussions between the industry and ICASA about the practicality of the obligation to roll-out 2.5 million sim cards. While these issues are unresolved, the implementation of the obligations has been delayed.

The obligations were also changed by the introduction of payment into the USF. The introduction was as a result of section 67(1) of the Telecommunications Act, 103 of 1996 and the regulations promulgated in terms of that section. In the first instance it was at a rate of 0.16% of turnover which was later increased to 0.2% of turnover of the licensee.

Implementation plans

Implementation plans for the rollout of obligations are submitted by the licensees to ICASA, and then these have to be approved. It does not seem as if these plans have been e monitored on a regular basis to check compliance.

The implementation plan was given to Telkom in the schedules to the PSTS licence. Neotel, Cell C, MTN, Vodacom, iBurst and Sentech all submitted implementation plans to ICASA. Cell C's implementation plan is in the process of being amended and a final plan will be submitted as soon as the amendments are finalised with ICASA.

Neotel proposed a revised Implementation Plan in December 2008, regarding the absence of an allocation of schools, which was preventing them from fulfilling their CSO obligations.

Targets of obligations

The primary objective of universal service obligations is to address US and UA gaps. These gaps are normally caused due to lack of affordability, and remote areas which are not adequately addressed by market forces. Ideally the county should have a

Universal Service and Access Strategy that has been informed by a needs analysis, but this has not been the case in the past. There is no evidence of a systematic approach to identifying these gaps and addressing them appropriately through universal service obligations. A rather haphazard approach seems to be adopted that has emanated through the license holders discussing possible universal obligations with either ICASA or the Ministry and then coming up with a set of obligations. This has led to poorly thought out obligations that have been beset with a myriad of different types of problems.

All but one operator said that this was not clearly set out in the licence, the exception being Neotel, who stated that this was to be determined at consortium level in due course. MTN and Vodacom pointed out that the areas considered as underserviced at the time of the licence, were identified.

By and large this has led to very few obligations actually implemented. The CST roll out has been the most successful of all of them but even this obligation was beset with problems due to inconsistent wording and definitions used in the different licenses.

The section below describes the different aspects of the obligations

Affordability

Telkom had the general obligation to promote affordability. MTN and Vodacom were required by the terms of their spectrum licences, to provide service to CSTs at a 50% discounted rate. iBurst is also obligated to provide internet access to urban and rural public schools at the discounted rate of 50%.

Underserviced/unserved

Telkom's target included underserviced areas, including specifically identified villages, and provision to “Priority Customers”. For Neotel, there is no requirement to roll out in underserviced areas. Cell C had to roll out 52,000 CSTs in underserviced areas. Vodacom and MTN were required to provide CSTs and discounted related services in specified underserviced areas and under the spectrum licence, provide sim cards in defined underserviced or unserved areas. iBurst is required to provide internet services to rural and urban public schools in underserviced and subserviced areas or other approved schools or further education and training institutions, but prioritising rural public schools over urban public schools.

Rural

Neotel’s targets comprised schools, defined only as public schools, and clinics, defined as rural public clinics. MTN and Vodacom were to prioritise IPWDs based in the rural areas, underserviced or unserved areas above those in the urban areas. iBurst is required to prioritise rural public schools over urban. Sentech had to provide computer laboratories in rural areas

Geographic and population percentage coverage

Geographic and population coverage were targets for Cell C, who were required to cover 8% of the geographical area and 60% of the population within 5 years of service (or under any roaming agreements with other service providers, to cover 40% of geographical area and 80% of population within 1 year).

Minority groups

In the provision of internet access, MTN and Vodacom were to prioritise institutions for people with disabilities above public schools, and in turn prioritise IPWDs based in the rural areas, underserviced or unserved areas above those in the urban areas. Sentech had obligations to support initiatives of independent contractors from historically disadvantaged groups (HDGs).

Derivation of obligations

In all cases, the operators had a fixed benchmark; some had both types. Telkom, Neotel, iBurst and Sentech had only fixed benchmarks. Cell C, MTN and Vodacom had proportional benchmarks with respect to network rollout, while the sim card, handset and internet access benchmarks for MTN and Vodacom were fixed, as was the CST rollout obligation for Cell C. MTN and Vodacom are obliged to service institutions for people with disabilities. Sentech is required to support initiatives of historically disadvantaged groups in respect of both the MMS and the CoC licences.

Neotel is to roll out in specified municipal areas. For Vodacom and MTN, under the service licence, the CSTs had to be rolled out in the then four provinces and in some specified areas therein. For access to spectrum, Vodacom and MTN were required to provide an implementation plan that, inter alia, reflects a geographic spread. The other operators' licences were not specific as to geographic areas.

In the old PSTS, Neotel was required to ensure that equitable distribution of access to PSTS is achieved in the population of areas where it was required to roll out the PSTN. This requirement has been dropped in the ECNS licence.

Implemented USAOs

Telkom has completed all required USOs, Cell C and MTN have completed their CST obligations, and the rollout of internet access to education institutions is underway by all relevant operators. With regard to the provision of internet access to IPWDs, and of sim cards and handsets, the operators are all awaiting implementation lists from ICASA or DoC. Vodacom and Sentech have challenges underway with ICASA regarding their USOs, in light of their interpretation of the licences.

Telkom

Telkom finalised its obligations during the five year period of exclusivity, paying the relevant penalties for those targets that were not met, in accordance with the licence obligations.

Neotel

The rollout of Neotel's obligations is underway, having commenced with internet connectivity for FETs.

Cell C

Cell C having rolled out "about 52,000 CST lines … in line with the set target". It appears to be engaged in negotiations and challenges with ICASA and other operators over the other obligations.

MTN

MTN has complied with the community phone USAOs contained in Schedule 2B of the 1993 licence. Currently the number of community service payphones in underserviced areas is over 20,000, in comparison with the minimum obligation of 7,500.

MTN is currently still awaiting the provision of a list of approved IPWDs, which ICASA was required to provide, in order to complete the Implementation Plan. For this reason, the IPWD obligation has not yet been fulfilled.

With regard to the public school obligations, there was a working group between the operators, the Department of Education and ICASA and this has been discontinued. Based on this allocation procedure, MTN has rolled out internet access to 486 public schools (20 ub Gauteng, 32 in North West, 68 in Limpopo, 116 in KwaZulu-Natal and 250 in the Eastern Cape). All these schools receive a 50% discounted rate.

Based on the Taurus report, the draft framework for distribution of sim cards and handsets, MTN submitted its implementation plan to ICASA in October 2005. MTN is currently awaiting the receipt of the required list of recipients from the Department of Communications. MTN has requested ICASA to intervene in this matter.

Vodacom

"Vodacom is of the view that the USOs that have not been implemented and were not implemented as of the date of conversion of the MCTS licence are of no force and effect under the new EC Act licence regime. This view is based on the wording of clause 4 of Vodacom's I-ECNIS licence which provides that "the licensee shall continue to maintain previously implemented USOs until reviewed by the Authority in terms of section 82, 88, 89 and 90 of the Act".” It is Vodacom's view that the effect of clause 4 of the I-ECNS licence is that any USOs actually implemented and or rolled out by Vodacom as of the effective date of the converted licence are deemed to be valid and must continue to be maintained under the EC Act licensing regime until reviewed by the Authority. According to clause 4 it is those USOs which have been 'previously implemented' that are required to be maintained until reviewed. Any USOs that were still outstanding (i.e. not implemented) at the time of licence conversion are, by virtue of section 93(5)(b) of the EC Act read with clause 4 of Vodacom's I-ECNS licence, of no force and effect under the EC Act licence regime. It should be noted that this view is somewhat moderate compared to the view adopted by the Authority on the status of pre-EC Act USOs. In dealing with the issue of Cell C's compliance with its CST USOs, the Authority appears to have taken the view that all USOs that preceded the EC Act licensing regime are no longer of any force and effect. Please refer to paragraph 7 of the attached letter from the Authority to Vodacom dated 30 November 2009 (attached as Annexure F).

iBurst

iBurst is implementing internet services provided to schools, extending till 2012.

Sentech

It is Sentech’s belief that it provided a discounted rate when providing internet connectivity to schools in Gauteng on behalf of Gauteng Department of Education (GDE) under the project Gauteng-Online (GOL).

Section 45(3) of the Telecommunications Act No.103 of 1996, now repealed, placed an obligation on entities like Sentech to grant a 50% discount to all public schools

from a date determined by the Minister. According to section 45(3) the 50% discount relates to,

"(a) all telecommunication calls to an internet service provider; and

"(b) any connection or similar fees or charges levied by an internet service provider for accessing the internet or transmitting and receiving any signals via the internet or for such access and transmission and reception".

The Minister of Communications through a policy directive issued on 3 September 2004 in Government Gazette no. 30308 determined 18 January 2005 as the date from which all public schools and all public further education and training institutions shall be entitled to a 50% discount as described above.

Unfortunately, the determination of the Minister did not prescribe internet access components on which 50% discount has to be levied. It has been difficult and still is for Sentech to understand what components of accessing the internet or transmission thereof are entitled to a 50% e-rate.

On 13 May 2005, Sentech sent a letter to ICASA in response to the ICASA letter of 4 May 2005 outlining its challenges associated with e-rate implementation.

Sentech does not know at this point how to proceed with CSOs as its multimedia service licence has not been converted by ICASA in terms of the ECA.

Monitoring and evaluation

Neither the Telecommunications Act 1996 nor its regulations, not the EC Act 2005 makes specific provision for monitoring of compliance with USOs.

Telkom had extensive internal monitoring mechanisms in place in order to achieve compliance reporting, during the period of exclusivity, but it seems as if the authority did not do any monitoring or audit during the Exclusivity Period of Telkom and had to rely on information that Telkom provided mainly through its annual reports. Telkom submitted its 2002 obligation report to ICASA. Cell C has not submitted any official documentation regarding USOs, and MTN and Vodacom have done so. MTN and Vodacom suggest that ICASA can supply this information. We were unable to get any verification

Cell C replied that in terms of the licence, there was monitoring which the Authority could or should do. However, there is no documentation to suggestion that it was done. No other operators responded. Cell C saw no signs of any evaluation. Sentech is not sure whether the implementation body was ever established and accordingly whether there was any evaluation done.

All operators were required to send regular compliance reports which contained an annual roll-out plan and a repair and maintenance report but we were unable to get any copies of these from ICASA as these records have not been kept.

Under Vodacom's MCTS licence the following monitoring mechanisms exist; Vodacom must:

- (Clause 22) report, on a bi-annual basis, to the Authority on the services provided and on progress in achieving its commitment regarding community and USOs. Vodacom submitted the reports on a continuous basis until the I-ECNS / I-ECS came into force.

- (Schedule 5, clause 2.3) submit a compliance report to the Authority relating to the provision and rollout of internet access and service to public schools, within 2 months after the end of each rollout period.

- (Schedule 5, Clause 3.7) entitled the Authority to periodically assess Vodacom's level of compliance with its obligations to provide internet access to institutions for people with disabilities and public schools.

- (Schedule 5, clauses 3.9 and 4.6) the Authority and Vodacom can agree on the performance indicators to be used to determine the extent to which Vodacom has complied with its USOs.

Vodacom stated that it conducts voluntary monitoring of its implementation of CSTs and internet connectivity to schools. This takes place by default through monthly usage and recharge review or and through self-imposed audit review. Vodacom conducts voluntary monitoring of its implementation of CSTs and internet connectivity to schools. This takes place by default through monthly usage and recharge review or and through self-imposed audit review.

Sentech has submitted a compliance list and believes that it might have been accepted by ICASA but has no feedback.

MTN has stated in its 3G USO provincial implementation plans, the timelines relating to the rollout of internet access to public schools, which forms the basis for performance monitoring. MTN receives from each school a signed off compliance report. Feedback was provided to ICASA on the status of MTN's public schools internet access rollout. The agenda of the 3G USO working group meetings does include the discussion of progress/ performance monitoring.

Neotel observed that there is no monitoring mechanism presently, previously there was a Working Group consisting of ICASA, USAASA, DOE, DOC that had been established to discuss and assist in the implementation of USOs; however that structure had collapsed and was never replaced by any other structure.

Penalties imposed for non compliance of obligations

In 2002 Telkom, by failing to roll out all of its total line and village line target, was penalised and paid a penalty of R10 183 285. In addition, Telkom paid a further penalty of R383 199 in respect to the service target for fault rate per 1000 lines for residential customers.

Impact of other policies on the implementation of your USAOs

Telkom experienced no impact, while Neotel and Cell C were impacted by the lack of definition of USOs. MTN has experienced restrictions on the fulfillment of its USOs towards schools, IPWDs and sim card distribution, because of lack of cooperation in the provision of information by ICASA, the DoE and the DOC. Vodacom has experienced no impact.

Sentech believes that the policy directive of September 2004 which allowed VANs to self-provide and to provide voice using any protocol including voice over internet protocol (VoIP) eroded Sentech's market share and impacted negatively on its ability to provide CSOs.

Neotel felt that there has been an impact on them in that in the period under review there has not been an integrated approach towards universal service and access policy. This has led to varying interpretation of the obligations by various beneficiaries. Different understanding has led differing interpretations e.g. the Department of Health interprets the USAOs to mean that they are to be provided for free. This has negatively impacted on Neotel's obligation to rollout internet connectivity to "rural public clinics and public hospitals'.

Cell C felt the impact of the abandonment of the process of defining “needy persons” by USAASA, which has been a challenge and an impediment in the rollout process. In the implementation process of the roll-out Cell C learnt that there was a lack of communication between ICASA and the DOC, as some of the schools that are allocated to Cell C for e-rate where already connected as part of the Gauteng Online schools connectivity venture. Initially ICASA and the DOC worked together in the allocation of schools to ensure just allocation of schools, however ICASA withdrew from this process. This created difficulties and confusion with the roll-out process as there is no definite and proper channel to follow.

MTN has been constrained in extending the fulfillment of its USOs with regard to provision of internet access to schools beyond 486 schools, since it has not been given any further lists of schools from either the ICASA or DoE.

The amended Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2008 (“RICA Act) requires information to be recorded, stored and verified in respect of each sim card in order for the sim card to be activated on the MTN network. MTN has to comply with these obligations both as it relates to the 2.5 m sim cards as well as the connectivity to schools. In order for MTN to comply with this provision in relation to the distribution of 2,500,000 activated sim cards, MTN requires the list of recipients from the various governmental departments to begin the distribution process. The DoC has not provided this list to MTN.

Reasons for obligations not being fulfilled

All operators had difficulties with terms and definition, in particular the lack of clarity in the definitions of the target areas and persons for the USOs, and in the absence of definitions altogether.

Their difficulties are summarised below.

Telkom questioned the definition of underserviced areas, which includes the term “any township” which it feels contradicts the ‘village’ target. The term ‘village’ is included in the network rollout target area, although not included in the USA definition. Township implies a place of residence of HDGs.

Telkom had difficulties in with a lack of definition of the roll-out target for schools, which were part of the Priority Customer target, in spite of the fact that different penalties applied to schools. Telkom, therefore, had to derive the school target from the underlying information, as is explained in the obligation report. Sentech had a problem with the definition of the provision of e-rate.

Neotel has the following problems with definitions in its licence:

- unlike other licences, no reference is made to underserviced areas

- unlike other licences, the effective date, the definition of rural public clinic and roll out period have to be set out in the Implementation Plan, which has to be developed by the licensee

- unlike other licences, Neotel is not required to prioritise public schools in the rural areas in the provision of internet connectivity

- the areas in which Neotel has to provide services are not necessarily underserviced or rural. They are predominantly metros and towns (urban)

Cell C claimed that the definition of USA contained in the Cell C licence caused much debate. The definition generally proved to be difficult to apply and implement appropriately.

- the definition made reference to Annexure A2 which did not form part of the licence nor was ever supplied

- regarding the reduced interconnection fee that Cell C was entitled to pay. i.e whether in respect to calls placed from any CST that fell within an approved plan vis a vis necessary places to roll out. it was unclear on what determined the necessity to toll out CSTs.

- there was also an issue whether the persons who commuted from place to place and were thus in transit were qualified to be counted in the number of inhabitants in the area within the meaning of the definition.

- The definition also culminated in compliance with the criteria in the definition is to be tested. i.e. particularly how the reference to 10% of inhabitants is to be counted.

- the reference to "any part thereof" also proved to be problematic in that it was questionable as to which part of the various forms of settlement which displayed the feature that 10% of the inhabitants had the requisite access.

- the reference to "inhabitant" also proved problematic in that it could not be easily determined whether a person was an inhabitant of an area / ward particularly where there was a question about the degree of permanency of the "inhabitant".

- The issue surrounding access at home, work orr public payphone caused the uncertainty whether people who had access only when they were at work could be counted when making a determination in respect to the 10%.

- There was further uncertainly on how inhabitants of a particular area were to be counted, whether by magisterial district or sub place area or the like.

- The definition of "any part thereof" also seems to contradict the 10% requirement that is being imposed.

Vodacom has encountered challenges that relate to the:

- failure of ICASA to identify beneficiaries for the purpose of rolling out the required 250 000 terminal equipments and the 2,5 million sim cards.

- failure to approve the implementation plan relating to the 1800 MHz US obligations

Vodacom picked up some issues relating to some wording or definitions:

- Under the service licence, reference is made to underserviced area and is defined as a city, town, township, shantytown, location, village or human settlement or any part thereof as prescribed by ICASA.

- Under access to spectrum, reference is made to not only underserviced area, but also to unserved areas, a concept which is not defined.

- Whilst sim cards are required to be distributed in underserviced areas, no such obligation exists in relation to the handsets.

- There are two different definitions of terminal equipment under same licence, one under the section that deals with CSTs and the other under access to 3G.

- The requirement to provide a compliance report , the requirement to co-ordinate with USAASA and the requirement to develop performance indicators are limited to the provision of internet access only (thus does not extend to provision of sim cards, CSTs and handsets)

- MTN found that the areas of roll out of Universal Access Services of MTN's licence were not consistent with those of Vodacom's licence. The underserviced areas as set out for Vodacom and MTN were different, there was some overlap, but MTN had a lot more areas to cover than Vodacom. There seemed to be no rational basis for this.

- MTN disputes the definition of an underserviced area in the Cell C licence - as a place "where less than 100% of the inhabitants of the area have access to PSTS exchange lines at the date of issue and…" MTN submitted that access and teledensity are two different concepts and quantities. It was argued that Cell C's licence must be amended and what are to be measured is inhabitants with access to PSTN lines, and not PSTN lines per inhabitant (teledensity).

- Since the "old dispensation" there have been no clear definitions for Universal access, Universal services, Categories of needy people, and Underserviced areas, until, on the 8th February 2010, the Government Gazette (No. 32939) containing a determination in respect of universal access. MTN has concerns as to whether due process was followed in connection with this policy as published, and considers that the determinations that have been issued still need interpretation. There is no determination on categories of needy people or underserviced areas.

- In respect of e-rate gazette number: 31979, MTN submits that the draft regulations do not define an 'internet service'. The definition of 'internet and internet protocol' is not accurate, and is also not useful in defining the services that fall within the ambit of the e-rate regulations. MTN finds that the accuracy of these definitions affects the interpretation of its obligations, and gives considerable detail of this.

Shortcomings of obligations

Most operators had difficulties, largely with recipient's lack of infrastructure, abilities, funds and willingness to cooperate. Other problems included lack of coordination and cooperation with national and provincial departments as well as with ICASA and other operators. There appeared to be a lack of information about the targets of the obligations.

Telkom found that there were high rates of discontinuation of lines due to economic reasons, particularly in rural areas. In certain instances frequency spectrum that was planned to be used for the provision of service was not available when required. Telkom was frequently forced to replan and redeploy radio equipment in areas where other users of spectrum had not yet migrated out of the relevant frequency bands. Other challenges to roll-out included the entry of Telkom staff into “unsafe” areas, continued cable theft and extreme weather conditions. These issues affected both the roll-out and service targets.

Telkom also believes that there are various enabling regulations that must still be put in place. Telkom is of the view that the promulgation of these regulations must be expedited and the necessary processes for accessing the fund be put in place by USAASA.

Neotel states that there has been an impact in that in the period under review there has not been an integrated approach towards universal service and access policy. This has led to varying interpretation of the obligations by various beneficiaries. Different understanding has led differing interpretations e.g. the Department of Health interprets the USAOs to mean that they are to be provided for free. This has negatively impacted on Neotel's obligation to rollout Internet connectivity to "rural public clinics and public hospitals'. There is no monitoring mechanism presently, previously there was a Working Group consisting of ICASA, USAASA DOE, DOC that had been established to discuss and assist in the implementation of USOs, however that structure had collapsed and was never replaced by any other structure.

Neotel found that a sizeable number of schools lack basic infrastructure, and many no-fee schools that lack the ability to pay any amount of money. There is a lack of coordination and subsequent overlap with provincial projects such as Gauteng Online, the Khanya Project and well as DoC Dinaledi Schools and also e-NEPAD schools projects. Neotel’s development of the implementation plan was delayed because of failure by Dept of Education to provide allocations of public schools, and the Dept of Health failed to provide a list and allocation of rural public clinics. Neotel then found that,

- the number of public schools not covered by other operators is less than the 2500 that it has to cover
- the public schools lack basic infrastructure such as power, PC and buildings
- there are only 3,050 public clinics nationwide, of which 1,000 are rural and therefore less than its target of 2,500 (although rural public hospitals seem to have been included in the ECNS following this complaint)
- all of the 1,000 rural public clinics do not fall within the metros and cities in which it operates.

Neotel then requested reduction of number of public schools and rural public clinics and substitution thereof with CSTs, Thusong Centres, internet cafes and internet connectivity at public libraries. ICASA requested that this be sought by way of a formal licence amendment. This has still not been finalised

MTN is currently still awaiting the provision of a list of approved IPWDs, which ICASA was required to provide, in order to complete the Implementation Plan. For this reason, the IPWD obligation has not yet been fulfilled. Certain public schools (allocated to MTN) did not have computer equipment, while some schools already had internet access. An important risk to note is that the national DoE does not know for certain, which schools have internet access and which schools have no computer equipment. Every failed attempt (where a school does have internet access or no computer equipment) to rollout internet access to a public school, there is a cost impact to MTN. MTN also found that accessibility makes CST phones prone to vandalism and theft.

MTN says that the challenges are that of efficient and effective delivery of targets. Initiatives often fail as a result; telecentres, free SIMs and USALs are examples of such failure as a result of inappropriate packaging, distribution of funding mechanism. MTN considers that demand side issues are being addressed with supply side subsidies such as below cost CST interconnect and USAL funding, which create market distortions and fail to address the primary objectives. MTN would like to see a more focused approach. MTN is concerned about sustainability of its rollout of internet access to 486 schools and would like to see USAASA funding this on a monthly basis. MTN has contributed considerably to this fund.

MTN's perception that there are several institutions created under the empowering provision of the Act to carry out its mandate in accordance with the ECA. It is submitted that there is no clear and coordinated strategy with respect to the rollout and implementation of universal service. There are differing universal service and access obligations as defined by the Authority, which makes management and monitoring very difficult. There are also other government initiatives, which take place in silos, hence the lack of a clear vision and or strategy.

With respect to the USF, MTN and other operators have experienced no success in accessing such funds in order to use same to implement network in underserviced areas. There is also uncertainty as to what amount of money is in fact in the Universal Service Fund. MTN is not aware of any recent reports as to how much money is in the USAF and how those funds have been and is to be utilised.

Vodacom found:

- Lack of adequate training and exposure to computer usage for both teachers & learners
- No funding for schools to cover running expenses and/or maintenance costs
- Other schools have access but no usage
- Schools see the provision of internet access even at reduced e-rate, as an expense for which they derive no benefit nor profit.

- Despite Vodacom's organising Sahara Computers to provide technical support to schools the schools did not use this facility.

- When Vodacom's equipment warranty of 12 months expired schools could not afford to sign any ongoing support agreements to cover the equipment.

- Vodacom's teacher training was not adequate as most of the teachers were computer illiterate, or there were issues with time, cost and distance.

- Some schools that were chosen by the DoE were found to have existing connectivity.

- Schools were allocated by ICASA where there was no 3G coverage.

- ICASA failed to provide a list of schools for rollout purposes in the Western Cape, Northern Cape, Free State and Mpumalanga. In some provinces it was found that one or two schools had closed down

- Some schools did not have electricity while others did not have the requisite rooms and equipment to house the computers, or the connectivity was requested by the school to be installed in the principal, deputy principal or secretary's office failing which they refused installation.

- In KZN specifically, some schools initially refused to sign Vodacom's indemnity forms being concerned that they would be locked into a contractual obligation.

Vodacom is of the view that the EC Act has not implemented a drastically different USO framework compared to the one that was in place under the Telecommunications Act. In fact apart from a few provisions such as for example section 8(2)(g) which provides for the Authority to take into account USOs when prescribing standard terms and conditions, and section 8 (4) which empowers the Authority to designate specific licensees as USO providers, the provisions of the EC Act on USOs and on the USAF overall are almost identical with those under the repealed Telecommunications Act. As such the question of whether the EC Act will be efficient in promoting US and UA and appropriate usage of the USAF is not a matter of the legislative provisions. It is rather one of implementation.

Cell C believes that its CST obligation has had a major impact, but that the school rollout would not have had much impact. The sim card obligation was never rolled out. A significant amount was collected in the USF, although this is largely unspent.

Cell C believes that despite certain challenges in the ECA, it has no bearing in the implementation of Universal Service and Access obligations. The challenges that are encountered are with the implementation and enforcement of the Act and institutional managerial challenges. These challenges apply to both ICASA and USAASA. In particular, as explained above, the Universal Service Fund was created to find ways to achieve universal service and manage the Universal Service Fund which was set up to define "needy persons" and to subsidies needy persons towards use of telecommunications services. The USAASA abandoned the process of defining "needy persons". This created difficulties with the roll-out process as there is no proper channel to follow. Lack of management stability remains a major challenge with the roll-out process.

Sentech also had difficulties with lack of infrastructure and abilities, and with lack of coordination with the DoE, including the need to obtain authorisation to accept Sentech's offering. Sentech found that other operators were targeting the same schools. Sentech in an application to the Authority to amend its MMS licence, challenged the relevance of its CSOs particularly its extent and cost. Sentech was of a view that the CSOs imposed on it were not related to its licence activities, for example, the irrelevance of refurbishing buildings and such like.

Sentech and iBurst believe that there is general concern in the ICT sector that it is difficult to implement e-rate even under the ECA.

Operators appear to be of the opinion that the ECA does not significantly change the USAO landscape, except in the creation of certain bodies. Effective and efficient implementation is still a problem, with no mechanisms in place to affect this. It is necessary to create a process to enable access to the Fund. Details are given below.

Summary of operator responses to USAOs carried over under the ECA

Telkom says that it has either completed its obligations or paid penalties for non conformity. Telkom states that no further specific obligations have been imposed. However, Condition 4 of the I-ECNS licence provides that Telkom “shall maintain previously implemented USOs until reviewed by the Authority”. Telkom assumes that this Condition is common to all converted licences.

Neotel is required to continue to implement its USAOs, but would like to see an improvement in terms of the guidance given in the licences for implementation purposes. Neotel says that it has been constrained in fulfilling its obligations due to the fact that there has never been an allocation of schools by the Authority to Neotel. Neotel lists in detail other constraints such as duplication, lack of infrastructure, facilities and security. With regard to clinics, there are not clinics within Neotel’s footprint, Neotel has not received the approved list, and the DoH anticipates provision of service at no cost to itself.

Cell C has to maintain already implemented obligations. They are uncertain whether the outstanding obligations of Cell C as at date on converted licenses have been met.

In terms of the ECNS, Vodacom and MTN are required to "continue to maintain previously implemented USOs". This basically means those obligations which were not implemented at the time of conversion are not carried over into the ECNS. Whilst the periods within which Vodacom was required to implement its obligations generally had already lapsed at the time of conversion, the problem would arise where Vodacom failed to implement those obligations within such periods and had not rectified such failure at the time of conversion.

One area which is problematic is the requirement to provide internet access to 5000 public schools within 8 years from date of issue of 3G spectrum licence. The 8 years will only expire in or after 2012. If at the time of conversion of the licence, all 5000 public schools had not been covered, then it no longer has an obligation, strictly speaking, to cover the remaining schools. Delays in finalising the Implementation Plans may probably have affected rollout as well.

The language in which the spectrum licences for MTN, Vodacom and iBurst is couched is unclear as to when the obligation should commence. In addition, the 3G licence requires the licensee to prioritise rural areas, underserviced area or unserved

areas in preference to in urban areas, suggesting that underserviced areas cannot be found in urban areas.

iBurst's ECNS licence requires the licensee to "maintain previously implemented USOs". This means that obligations not implemented at the time of conversion lapse (i.e 15 January 2009), i.e are not carried over into the ECNS. The service licence requires that within 7 years iBurst has to have provided 1000 rural and urban public schools with internet access. This 7 year period expires at the end of 2011. As at the date of conversion (15/01/2009), if the licensee had not met all its USOs, then it no longer has an obligation to roll-out the outstanding obligations. iBurst's obligation extends until 2010 in accordance with its licence.

Sentech has submitted a list of schools to ICASA. It is not clear if there are additional CSOs that Sentech has to comply with. Sentech has not received converted licences yet.

Recommendations for Proposed new USAO framework under the ECA

Overall, the operators recommend a competitive tendering process, implementing Section 90 of the ECA, with subsidisation from the USA Fund. Sentech proposes that USOs be specific to the operators' core interests. More detail is given below.

Telkom is of the view that consideration must now be given to an environment in which literally hundreds of entities have the same licences as Telkom. Due to the enormous cost of provisioning infrastructure, particularly for broadband access, and the fact that there are now numerous licensees in the market, Telkom is of the view that Section 90 of the ECA must be fully implemented. This would allow for the competitive tender for universal service and access projects, with the necessary subsidies to be paid out of the USA Fund. If this is successful, there should be no requirement for further US obligations to be imposed, other than the current contributions to the US fund.

Neotel also proposes a competitive process, supported by a structured approach to subsidisation by the USA Fund, and a monitoring mechanism to access progress. Neotel feels that there is "no efficiency to begin with"; the Act lacks provisions or guidelines on how such obligations should be established, lacks clear mechanism for reviewing or addressing changes in environment, and no process in place for consultation and co-ordination with other relevant Ministries.

Cell C recommends a thorough assessment and evaluation of USAASA recent research findings in order to establish the existing USAOs, the extent to which they have been complied with and how to address challenges encountered. All operators should be entitled to access the Fund through a meticulous process.

MTN proposes competitive activity, citing the success of competition in the provision of mobile telephony. MTN further proposes reducing contributions to the USA Fund since there is no evidence that the Fund has been effectively or efficiently applied to USA provision. It is uncommon in international jurisdictions to pay and play, such as is required in South Africa. Therefore expecting operators to pay and play is punitive and unfair.

Vodacom proposes a competitive bidding process, subsidised by the USA Fund. A consequence would be the likely rollout of additional services in the underserved areas.

Sentech is of the view that CSOs fund should be in line with the core business of a licensee. It will be appropriate for ICASA to allocate CSOs in the broadcasting signal distribution space for Sentech. ICASA should also consider allowing entities to opt for contribution to the USF rather than having CSOs attached to its licence.