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Mr Mandla Mchunu
Manager: Spectrum Management
Independent Communications Authority of South Africa
Pinmill Farm, Block A
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29 May 2009

Dear Mr Mchunu,

BROADBAND INFRACO (PTY) LTD – SUBMISSION TO NOTICE 304 OF GOVERNMENT GAZETTE 32029 – DRAFT RADIO FREQUENCY SPECTRUM FEE REGULATIONS

Introduction:

Broadband Infraco (Pty) Ltd ("Broadband Infraco") would like to thank the Independent Communications Authority of South Africa (the "Authority") for this opportunity to make comments on Notice 304 contained in Government Gazette 32029 regarding the draft radio frequency spectrum fee regulations (the "Draft Regulations"). In the event that the Authority decides to hold public hearings on the draft regulations, Broadband Infraco would request a time-slot of 30 minutes to make an oral presentation.

1 General Comments:

- 1.1 Broadband Infraco notes the Authority's rationale underpinning why the Radio Frequency Spectrum Fees need to be reviewed. Broadband Infraco agrees generally with the Authority's rationale that the Authority's regulatory activities must not result in an under-recovery of expenses incurred as a result of it executing its mandate. Broadband Infraco also agrees with the Authority that spectrum fees should cover the administrative costs required to plan, manage

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- and monitor the use of radio frequency spectrum. The added benefit of incentive based pricing, which encourages licensees to migrate to lesser populated or demanded spectrum is also a potential advantage for adopting the methodology contemplated in the Draft Regulations. However, Broadband Infraco cautions that the Authority should place the policy emphasis of these Draft Regulations primarily on the need to improve spectrum pricing as a means of promoting more efficient spectrum allocation and management, rather than as a tool to increase the amount of funds collected from spectrum licence fees.
- 1.2 Broadband Infraco is also concerned that an inconsistency of spectrum fees will engender spectrum hoarding of less expensive but highly coveted radio frequency spectrum. This is especially so in the current market where scarce radio frequency spectrum is now in great demand as a result of amongst other reasons, the significant market liberalisation that has occurred and has seen over 200 new infrastructure-based operators entering the market.
- 1.3 At a time when spectrum is more in demand for both access services and backhaul use, it is also critical that the Authority implement radio frequency regulations that encourage efficient use of frequency spectrum. However, in doing so, it is important to remember that setting administrative determined fees is not always a simple exercise. Fees that are too high will discourage investment and fees that are too low will lead to spectrum hoarding and possibly congestion.
- 1.4 Fortunately, the Authority has recognised this scenario and is seeking to implement incentive-based spectrum pricing to both improve efficiency and discourage hoarding. In this regard and in line with this new proposed spectrum pricing methodology, Broadband Infraco would like to know whether the Authority will apply the “use-it-or-lose-it” principle to both historical and new frequency allocations. For example, will the Authority re-distribute frequencies allocated in the 6 GHz frequency band to make it consistent with this new spectrum management principle? Broadband suggests that the Authority compel users of current bandwidth to use it more efficiently or relinquish their unused allocation.
- 1.5 Broadband Infraco proposes that the Authority should, as part of this spectrum price review process, also consider introducing a discount factor for fixed links used to service under-served areas. The fixed links used to service under-served areas will not enjoy a return on investment similar to those used to service higher congested areas, even though the useful life of the former will be similar to fixed links in higher congested areas.
- 1.6 As a means to off-set the loss that licensees will experience to deploy fixed links in under-served areas, a discount factor on spectrum fees for such fixed links should be considered.

- 1.7 Finally, Broadband Infraco would like the Authority to clarify what licence application process a newly licensed operator would need to follow to apply for a spectrum licence. For example, would the Authority continue to assign new spectrum licences on the same basis as is currently in place?

2 Specific Comments

2.1 Section 3 of the Discussion Document - Methods of Spectrum Pricing

2.1.1 Broadband Infraco recommends that the Authority only resort to 'auctions' as a fall-back option and only in limited applications. The Authority should consider employing auctions for radio frequencies that are utilised for mobile ECNS/ECS services where geographic coverage is the major issue, and the radio frequency will be utilised for commercial gain.

2.1.2 Broadband Infraco suggests that licensees that win an allocation of bandwidth as a result of a spectrum auction should also be given universal service obligations to either provide services or roll-out appropriate infrastructure in areas designated and agreed to with the Authority.

2.1.3 Broadband Infraco would like to know on what basis the Authority will assign spectrum where no auction has taken place to award the frequency. Will the Authority assign such spectrum on a first come, first served basis, or will the Authority use some other criteria?

2.2 Section 5.2 of the Discussion Document – Application Fees

2.2.1 At section 5.2 of the discussion document to the Draft Regulations, the Authority comments that "*the Application fees may be adjusted periodically to reflect significant changes in the cost of processing applications or in response to expected changes in the cost of processing applications or in response to expected changes in nominal costs reflected in the Consumer Price Index*". Given the extent to which the Authority has provided clarity, for example, on how long multi-year licences will be valid for (see section 7.4 of the discussion document), it would be consistent with the transparency mentioned in this section and the statement mentioned in relation to the annual licence fees (that such fees will not be subject to any price increases during the multi year licence period) for the Authority to mention how often Application fees may be adjusted. For example Ofcom, in its *Spectrum Pricing statement of 23 February 2005*, provides for a three (3) year review period¹. Moreover, in terms of the Electronic Communications Act, No. 36 of 2005, the Authority is empowered to undertake market

¹ Ofcom, *Spectrum Pricing: A statement on proposals for setting Wireless Telegraphy Act licence fees*, at page 17, 23 February 2005.

reviews to determine degrees of competition in the sector every three (3) years. An open-ended time-frame for adjusting Application fees does not provide licensees with the necessary certainty they require for planning purposes. Consequently, it would be appreciated if the Authority could provide a time-band as to how often it intends adjusting Application fees.

2.2.2 Broadband Infraco notes that Ofcom does give itself some latitude in this respect by pointing out that reviews may be undertaken earlier if circumstances warrant.²

2.3 **Section 7.2.3 of the Discussion Document - Geographic factor (GEO)**

The Authority proposes, in this section, that where a spectrum assignment covers more than one type of area, for example a highly congested area and an area with less congestion, the GEO factor will reflect the higher value area. This ruling will also apply to nationwide assignments. Broadband Infraco suggests that the Authority apply a GEO factor based upon an average of the higher congested area and the lesser congested area, as this methodology will result in a more accurate and fair calculation of the final spectrum fee payable by licensees. Broadband Infraco also believes that an average GEO factor of the two areas will not serve as a deterrent to investment, as will a GEO factor calculation based solely on the GEO factor of the higher congested area.

2.4 **Section 7.4 of the Discussion Document - Multi-year licenses**

2.4.1 Broadband Infraco supports a move from annual licence fee payments to multi-year spectrum licences as this migration will potentially reduce the burden of administering licences for both the Authority and licensees alike. Broadband Infraco also agrees with the Authority regarding the advantages for the licensees of multi-year licences.

2.4.2 Broadband Infraco believes that there are possible advantages to the Authority issuing bulk licences over an extended period, one reason being a licensee's ability to commit to a technology deployment during this period without the concern of not being able to secure licences for a particular area. As a result, a viable recommendation may be that national ECNS licence holders should be able to secure national coverage bulk licences.

2.4.3 Broadband Infraco would like to know how the Authority will monitor, prevent and share with other licensees the underutilisation of spectrum of bulk users with multi-year licences.

2.4.4 In keeping with the spirit of lessening the Authority's administrative burden in relation to spectrum management, Broadband Infraco suggests that the Authority consider migrating all

² Ofcom, *Spectrum Pricing: A statement on proposals for setting Wireless Telegraphy Act licence fees*, at pages 17 and 18, 23 February 2005.

spectrum licence fee payment dates to the same date, even in the case of multi-year licences. To facilitate this migration, licensees would have to pay the pro-rated balance on their spectrum licences for the existing year upfront and then only pay their multi-year licence fee on an anniversary date agreed with the Authority.

2.5 Section 7.5.3 of the Discussion Document - HOPMINI Formula

2.5.1 Broadband Infraco seeks clarity from the Authority in respect of the Point-to-Point formula specifically in relation to the HOPMINI factor calculation. Broadband Infraco would like to know whether the factor would be less than one (1) for a hop-length greater than the minimum specified for the band in accordance with the HOPMINI formula.

2.5.2 For example, for a 155 MHz system in the 8 GHz frequency band with a hop-length of 53 (fifty-three) kilometres, the HOPMINI calculates to be 0.5138.

Conclusion

Broadband Infraco commends the Authority for initiating this review of the country's spectrum licence fees. Broadband Infraco concurs with the general methodology employed by the Authority to recalculate spectrum licence fees. Key considerations by the Authority, such as migrating to multi-year spectrum licences bode well for spectrum management going forward.

In implementing Administrative Incentive Pricing ("AIP") as a spectrum pricing methodology, the Authority should aim to balance the need to set higher fees (which may have the potential of discouraging investment) against fees that are too low (which may lead to spectrum hoarding and possibly congestion).

Lastly, Broadband Infraco reiterates its request for clarity of the spectrum licence application process post implementation of the new spectrum pricing regime. In addition, Broadband Infraco would appreciate the Authority considering the granting of a spectrum licence fee discount for licensees that deploy fixed point-to-point links in under-served areas. For reasons canvassed earlier, Broadband Infraco believes that such a discount would encourage larger amounts of infrastructure-based investment to service under-served areas.

Sincerely yours,



Mr Klaas Motlhabane
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Legal and Regulatory Department