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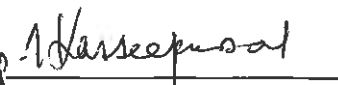
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Dear Sir

Cell C's written submission in terms of the ICASA framework for introducing local loop unbundling discussion paper as published in Government Gazette 34382, dated 22 June 2011.

1. Cell C welcomes the Authority's intention to embark on an inquiry on the process to be followed to unbundle the fixed line local loop.
2. Cell C appreciates the opportunity to provide written comments in terms of the discussion paper.
3. Cell C wishes to make an oral submission if a public hearing is convened.
4. Please find attached Cell C's written submission (7 pages) in response to the inquiry.

Yours sincerely



Mothibi Ramusi
Executive Head: Regulatory Affairs



CELL C'S COMMENTS ON ICASA'S DISCUSSION PAPER ON THE PROCESS FOR LOCAL LOOP UNBUNDLING

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1. INTRODUCTION

1.1 Cell C would like to thank ICASA for the opportunity to present these written comments, as well as for the one-on-one meeting held between Cell C and ICASA on 25 August 2011.

1.2 Cell C commends ICASA on initialising the process in establishing a framework with guidelines in realizing the then Minister of Communications, the late Honourable Dr Ivy Matsepe-Cassaburi's policy directive issued in Government Gazette 30308 dated 17 September 2007, on the unbundling process of the local loop and the implementation thereof. This requirement was re-iterated by the current Minister, the Honourable Radhakrishna Padayachie in his budget speech on 11 November 2010 where he stated that:

"The unbundling of the local loop remains a critical and important intervention. In this regard we will work closely with ICASA to ensure that the loop is unbundled by November 2011".

1.3 Cell C supports ICASA in its endeavours to develop the framework for the process of unbundling the fixed line local loop but believes it is a complex process with challenging timelines. Cell C trusts that its input into this inquiry will assist the Authority in getting closer to this milestone.

2. GENERAL COMMENTS AND CONCERNS

2.1 Cell C supports ICASA's definition of the "local loop" as contained in subsection 3.1 (1) of the discussion document. For ease of reference, the subsection reads:

"The 'local loop' is a physical circuit connecting the electronic communications network termination point at the subscribers premises to the main distribution frame or equivalent facility in an electronic communications network and/or means the physical twisted metallic pair circuit connecting the electronic communications network point at the subscribers premises to a connection point at the edge of the providers network or a specified intermediate network point".

- 2.2 Cell C further supports the formation of working groups to address technical and pricing issues associated with the fixed line local loop. However, Cell C believes that without a terms of reference for these groups, the relevant audit information (both technical and financial) of Telkom's local exchanges (used or unused), associated electronic communication facilities and subscribers information, the objective of these groups will be fruitless.

Added to the formation of the working groups, Cell C recommends that the Authority use the recommendations as contained in "The Local Loop Unbundling Committee Report of 23 May 2007" commissioned by the Department of Communications (DoC) as a guideline for the process for the implementation of the fixed line local loop.

- 2.3 Cell C is concerned that there are inconsistencies in the contents of discussion document, the media briefing on 22 June 2011, and the one-on-one meeting held with ICASA.

The covering page of the gazetted discussion document, page 3, states:

"1. The Independent Communications Authority of South Africa ... gives notice of its intention to embark on a section 4B inquiry process on local loop unbundling in terms of the Independent Communications Authority of South Africa Act, Act 13 of 2000 ("the ICASA Act").

2. The purpose of this discussion paper is to outline the Authority's initial views on the process to be followed to unbundle the "local loop".

Subsection 2.1 (5) further states:

"The purpose of this discussion paper is to outline the Independent Communications Authority of South Africa's (ICASA) initial views on the process to be followed to unbundle the fixed line 'local loop'"

Subsection 2.2.4 (2) however states:

"This inquiry into unbundling of the local loop is based on the objectives of the ECA being to introduce an open-access architecture to the interconnection to and use of existing electronic communication facilities, as defined in the ECA."

During the media briefing and the one-on-one meeting held with the Authority, the Authority indicated that it had erroneously omitted the inclusion of the "unbundling of the wireless local loop" and that the discussion document seeks comments thereof. Therefore Cell C is unclear on what exactly the purpose of this inquiry is. Cell C further requests that the Authority provide regulatory certainty as Cell C is currently in the process of rolling out a high speed data network nationally, incurring huge investment costs.



Furthermore, if the Authority erroneously omitted "the unbundling of the wireless local loop", this should have been remedied through the publication of an ERRATUM immediately after the publication of this gazette.

As indicated in the Ministers Policy directive on Local Loop Unbundling, the process is complex, and after four years, all stakeholders are finding it difficult to unpack and ensure its seamless implementation. In the case of wireless local loop unbundling, the task would be substantially more complex and require much more time and resources if indeed it is reasonable and warranted.

2.4 In considering the principles and process adopted in reaching the four (4) options for fixed line local loop unbundling, these principles cannot be carried over to an Electronic Communications Licensee like Cell C who provides services to its subscribers employing an intelligent national mobile wireless network. The technical architecture employed as compared to the fixed line network differs substantially. The key differences amongst others are that the dedicated copper lines are replaced by radio frequency spectrum air-interface (finite resource allocated by the Authority with specific transmitting rules governed by the ECA and annual radio spectrum fees), the main distribution frame and local exchange is replaced by a Base Transceiver Station (that is not local in nature) where its output information is managed by the core network. Therefore, the unbundling of network edge of a wireless network is unfeasible. Further Cell C believes that the inclusion of its network edge as part of wireless unbundling process will lead to unintended consequences on the existing regulatory environment. It must be noted that Cell C's wireless network is national and not localized like wireless WIMAX-type networks. Preliminary research has indicated that data regarding wireless network unbundling is limited and may be restricted to licensing of Mobile Virtual Network Operators (MVNO's).

2.5 Cell C believes that the Authority must encourage technological innovation and rapid network rollout. Cell C provides wholesale services to Virgin Mobile South Africa ("VMSA"). These agreements are commercial and Cell C believes that there is no need for regulatory intervention. Cell C further requests the Authority to allow the commercial implementation of Mobile Virtual Network Enablers ("MVNEs") which will address the perceived shortcomings in wireless services at the edge of the wireless mobile network.

In terms of the Carrier Select regulations, Cell C subscribers are entitled to use services of other licensees for accessing services. Therefore other licensees have a choice to provide services directly to Cell C subscribers. Cell C believes that this is an alternate choice for Cell C subscribers at this level in the market.

Cell C's new 900 HSPA+ national network rollout, covering both urban and rural geographic locations will be ably assisted if the Authority develop guidelines for the rapid deployment and provisioning of electronic communications facilities. These



guidelines are required in terms of subsection 21(1) of the Electronic Communications Act, 2005 (No. 36 of 2005) ("ECA"). Cell C is experiencing difficulties in rolling out this network with speed and high input costs due to barriers emanating from different and/or inconsistent municipal rules. These barriers amongst other are differing trenching rules, site acquisition processes and perceived environmental threats.

Cell C disagrees with subsection 3.3.2(3) which states:

"Furthermore, the approach prevents inefficient investment through preventing duplication of access networks, thus artificially increasing network operating inefficiencies. The infrastructure sharing approach also reduces the disruption of streets and the environment".

In terms of Cell C's Electronic Communications Network Service Licence (ECNS) and section 22 of the ECA, Cell C is encouraged to roll out its network. Prior to ICASA licensing conversion process, disruption on the municipal streets was absent. When trenching, Cell C follows the local municipal rules and ensure that wherever trenching takes place, it leaves the affected areas as initially found. Discussions with some municipalities indicate that the disruptions and poor up-keeping after trenching are caused by licensees who are unaware of the municipal rules or just choose to ignore them. Cell C believes that the guidelines for rapid deployment will resolve these disruptions as it would contain stringent rules for non-compliance. Cell C network rollout plan may require either trenching by itself or acquiring electronic communication facilities from other ECNS licensees. Cell C should not be restricted in any way in deciding its network rollout as the existing legislative environment provides for self-provisioning or electronic communications infrastructure sharing.

- 2.6 Cell C believes that it has sufficient choice in sharing and/or leasing BTS tower facilities with other entities. Cell C further believes that Cell C has choice in either self-provisioning or procuring transmission facilities from other licensees. Therefore Cell C believes that the "open access" approach is practiced in the sector where infrastructure sharing occurs and transmission facilities leased.

3. SPECIFIC COMMENTS

- 3.1 IS ICASA'S PROPOSED APPROACH TO UNBUNDLING THE LOCAL LOOP THROUGH THE IMPLEMENTATION OF THE FACILITIES LEASING REGULATIONS REASONABLE, FEASIBLE AND ACCEPTABLE?

Cell C believes that the Authority is guided by the Ministers directive on local loop unbundling and the current Minister's call to work closely with the Department of Communications ("DoC") in meeting the November 2011 deadline. However, in the Portfolio Committee on Communications ("PCC") meetings that took place on 2 August 2011 and 6 September 2011, the committee requested both ICASA and



the DoC to collectively complete a regulatory impact assessment on the fixed line local loop unbundling and present the results to the committee. It is therefore unclear to Cell C on the status of the process for the unbundling of the fixed line local loop.

Cell C believes that the existing regulations need to be supported by further regulations as contemplated in subsection 43(8) of the ECA. Upon pronouncement of the "fixed line local loop" as an essential facility, only then should the model terms and conditions apply.

In the absence of the relevant audit information (both technical and financial) of Telkom's local exchanges (used or unused), associated electronic communication facilities and subscribers information, it is difficult for Cell C to indicate if fixed line local loop unbundling is feasible. It therefore becomes necessary to conduct the regulatory impact assessment requested by PCC which would assist substantially in determining the feasibility of this regulatory intervention.

3.2 WHAT FORM OF LOCAL LOOP UNBUNDLING DO STAKEHOLDERS REALISTICALLY FAVOUR IN THE SOUTH AFRICAN MARKET?

The unbundling of the LLU provides a huge opportunity for TELKOM to implement an enterprise development initiative through this process. This will further empower any entity that is ready and willing to provide local services such as voice, data, video on demand to subscribers that are connected to the identified exchange. There are a number of local electronic communications service licensees who are capable and willing to provide services directly to subscribers using the local loop.

It is evident in many parts of rural South Africa that TELKOM has abandoned the maintenance of the copper lines (pictures can be shared at the public hearing, if required). Cell C is confident that outsourcing of such last mile infrastructure, particularly to the locals will enhance local economic empowerment, also bringing ownership and job creation to these areas.

TELKOM is bound to derive revenue from partnerships that includes co-location or/and sharing models.

Cell C is convinced that the local stakeholders will favor a model where they take ownership and be given space to provide innovative services to existing and/or new subscribers.

3.3 WHAT OTHER COST ITEMS SHOULD BE INCLUDED IN EACH FORM OF LOCAL LOOP UNBUNDLING?



As mentioned before, Local Loop Unbundling is a fixed line concept. Therefore, Cell C does not have visibility regarding the detailed cost elements involved in the unbundling of the fixed line local loop.

However, we foresee two main cost elements for parties requesting local loop access: once-off connection costs and monthly maintenance costs. Local loop unbundling can therefore help to reduce or even eliminate the access deficit if it exists.

3.4 SHOULD A STANDARDISED ORDERING AND SPECIFICATION SYSTEM BE DEVELOPED?

Yes, Cell C believes that an ordering system specification (OSS) be developed. Similarly, when number portability was introduced, an OSS developed by the applicable licensees, approved by the Authority, ensured the seamless implementation of mobile number portability. An OSS will ensure amongst others, the required technical interfaces to be in place prior to operation, the management procedure for accepting and processing fixed line local loop unbundling orders, the roles and responsibilities of the seeker and the provider, minimum quality of service levels and the required resources. This will avoid unnecessary disputes and ensure efficiency.

3.5 IN THE EVENT THAT AN ACCESS LINE DEFICIT IS IDENTIFIED, WOULD YOU BE WILLING TO CONTRIBUTE TO AN ACCESS LINE DEFICIT RECOVERY SCHEME?

Cell C believes that those who benefit from this regulatory intervention should pay either directly or indirectly. Furthermore, with time, as more licensees provide these services and the demand increases, the cost will reduce proportionately.

4. CONCLUSION

4.1 Cell C re-iterates its support to the Authority in finalizing the process required for unbundling the fixed line local loop.

4.2 Cell C encourages the Authority to ensure that an enabling environment is created to allow MVNO's and MVNE's to prosper. Furthermore, Cell C proposes that the Authority as priority, embark on fulfilling the requirement for the rapid rollout of infrastructure.

4.3 Cell C supports the formation of special committees to continue with establishing a framework for ensuring that fixed line local loop unbundling takes place. Cell C recommends in addition to the above, that the Authority utilize the recommendations developed by the Local Loop Unbundling Committee.

4.4 Due to the complexity, the directed timelines and the interest of the public, the Authority must only focus on the process for the implementation of fixed line local



loop unbundling. Any deviation will lead to a delay and other unintended consequences.

- 4.5 Lastly, to ensure regulatory certainty, the Authority must continue engaging with the DoC and the PCC to develop regulations that are aligned with policy.