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Submission LLU

SACU (South African Communications Union) is a registered Trade Union that is affiliated to FEDUSA, organizing in the communication and information technology industry.Therefore we believe that we are very familiar with the nature of telecommunications regulation as it has evolved in South Africa and is knowledgeable about its strengths and weaknesses.

We have welcomed ICASA`s strategic review of telecommunications because we believe that it is essential that the ITC develops at an early stage in its operation an overall vision for the future of telecommunications regulation against which it can benchmark particular policies and decisions. This will provide more predictability and consistency for the ICT industry and is more likely to produce a regulation that is proactive and not reactive.

We have however found that the ICASA consultation LLU document (**"ICASA Framework for introducing Local Loop Unbundling Discussion paper for public comment"),** lacks something of an overarching narrative and does not set the context for the detailed questions which it poses. In our view, the record of approximately 15 years of telecoms competition in South Africa is not a qualified success. Unquestionably competition has resulted in more consumer choice. Prices are flat and quality of service has not improved significantly to justify further liberalization. Increased competition does not always result in advances in technology.

The obsession with promoting network competition has had negative consequences for capital investment and led to duplication of infrastructure and not produced the desired level of innovative services on the network. It is has resulted in huge jobs losses and **very few jobs** has been **created as result liberalization**. ICASA`s regulations has not always been detailed. Contrary to earlier expectations of a phasing down of interventions, this is a persistent and costly feature of the telecommunications scene. There has been a lack of regulatory strategy and insufficient focus on creating a world-class national broadband infrastructure to enhance the international competitiveness of ITC in South Africa.

We have a new opportunity with the new ECA and the regulator ICASA has new duties. During the implementation passage of the ECA (Electronic Communications Bill) and specifically the LLU we need to campaign not just to consumers but for all South Africans. The LLU is the first real opportunity for the regulator (ICASA) to strike a new and appropriate balance between the interests of the public of South Africa and consumers. While the narrower interest of consumers might suggest the provision of the maximum competition, the broader interest of the South African public requires more consultation, innovation and investment. LLU (Local loop unbundling) to use the terminology of the consultation document - is not an easy or obvious one.

We need a new settlement in telecoms regulation. Therefore, our responses to the specific questions posed by ICASA with the implementation of LLU in the LLU document are to be shaped by the broad principles, which we believe should underlie telecommunications regulation over the next few years:

1. **LLU Regulation should take account of the interests of those who work in the industry and the need to work with trade unions to secure skills and training at the highest levels and promote decent labor standards and practices throughout the ITC industry**
2. **LLU Regulation should support the delivery of the strategic needs of South African public in as a whole**

3. **LLU Regulation should focus less on attempting to promote network competition, but more on securing the necessary investment in the network designed to facilitate universal access and the production for new innovative products and services**

4. **LLU Regulation should be based on telecommunications as a global market and not simply a South African one**

5. **LLU Regulation should be less telecommunications sector-specific and more generic with more reliance on competition act and move towards a strategic model that promotes investment, innovation and development in the network**

6. **LLU Regulation should be less tactical and intrusive and more strategic and enabling**

7. **LLU Regulation must deliver effective funding arrangements for universal access to ever-increasing bandwidths speeds and ensure that minimum standards on quality of service are maintained throughout the ITC sector**

8. **LLU Regulation should be less mechanistic and more humanistic, empowering workers in the ITC sector and creating sustainable employment**

9. **LLU Regulation should take account of the interests of those who work in the industry and not the exclusive interest that of business**

Is ICASA's proposed approach to unbundling the local loop through the implementation of the facilities leasing regulations reasonable, feasible and acceptable?

It would be technically and organizationally extremely difficult to define and implement. It is a simple matter to state that the local loop should be unbundled from the main network, but giving precision to such unbundling would be immensely complicated and require very clear lines to be drawn. Furthermore, if one could make a clean, rational and workable division between local loops and the network, we must ensure that such a division would remain appropriate?

Geographic diversity and technological change to cite an example of LLU, sub – loop unbundling could soon render any dividing line inappropriate. The LLU (Local Loop Unbundling) could then become a continual one about where the line should be drawn. This could lead to divergence of effort away from the key issues of investing in new networks and services and meeting consumer needs.

Even if the LLU was implemented by the current incumbent (Telkom SA) if this could be achieved technically, the SA Government being the main shareholder would find it extremely difficult to supplement the shareholder dividend that it is paid by Telkom SA. It is one thing to contemplate LLU of the incumbent operator when it is partially owned (38%) by the South African Government and indirectly the South African population; as well institutional and small shareholders – with no obvious consumer gain.

LLU would undermine foreign investment and innovation in the fixed line network. In the periods of 2007 -2009 saw a collapse in investor confidence and in capital availability for telecommunications (global prevalence). Slowly confidence and investment are starting to return. The uncertainties surrounding LLU and the difficulty in ensuring an adequate return on risky investments would reduce the flow of capital into ITC industry. If local loops were unbundled and entirely separated from the backbone network, there would be less incentive to innovate, upgrade and invest in the fixed line network, since the incumbent itself would not gain directly from such innovation and investment.

LLU would delay significantly the roll-out of the universal access and broadband services. South Africa is now doing well in broadband terms and Telkom SA is at the heart of this relative success. Fixed line (affordable service) ADSL broadband subscribers now number around 760 000.

However, if ICASA was to enforce the LLU upon the fixed line operators, it would be effectively slowing down (fixed lined – ADSL) broadband roll-out. To make LLU work, Telkom SA would be restructured as the reengineering of the operational systems and processes of the entire access network and local switching facilities will ***lead to innumerable job losses***.

The 4 options as illustrated by ICASA;
Bitstream
Shared loop unbundling
Whole loop unbundling
Sub –loop unbundling

None of these unbundling option models has been shown to work anywhere else in the global ITC industry/arena. If ICASA adopts any LLU model it would venture down uncertain roads, it would be reassuring to have international experience to show that LLU is feasible and effective. But there is no such experience. To pursue network separation in such circumstances is to promote hope over experience. The world leader in broadband provision is South Korea. South Korea has reached this position through the very model that the advocates of LLU wish to overturn, namely a vertically integrated incumbent.

The timing of LLU is premature given the slow pace of global economic recovery.

"In the early 1980's when BT (British Telecom - United Kingdom) telecommunications market was liberalized by their Government, it was decided that the best means of promoting competition was to support alternative infrastructures and interconnection between competing networks. It did not choose to take the route of LLU. Investors were invited to purchase British Telecom or back its competitors on that basis".

In 1991 Telkom SA was formed as a company. Telkom SA was later listed on the JSE & NYE stock exchanges, investors were invited to "purchase" Telkom SA in the form of shareholding. Thereafter the ECA was promulgamated that paved the way for promoting competition within the ITC in South Africa. Alternative infrastructures were built by Neotel.

Interconnection fees were regulated between competing network operators. To introduce LLU now would be a complete reversal of policy and a betrayal of investors, customers and employees - for no good reason.

In short, ICASA has no cogent arguments that will support LLU implementation. It is time to put the LLU issue to bed and concentrate on increasing investment and choice and rolling out enhanced and new services to all geographic areas within South Africa.

What form of local loop unbundling do stakeholders realistically favour in the South African market?

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In our view, historically ICASA has put too much emphasis on attempting to create network competition. This has resulted in duplications of investment, surplus transmission capacity, and some corporate crises, and is in danger of undermining future investments. We believe that it would be better to focus on service competition, providing more rapid and more innovative offerings to consumers. The regulatory focus should shift from competition between networks to the creation of greater choice and reliability of services and to higher up the content/volume/wholesale chain.

- What other cost items should be included in each form of local loop unbundling?
- Should a standardised ordering and specifications system be developed?
- In the event that an access line deficit is identified, would you be willing to contribute to an access line deficit recovery scheme?

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There should be overall competition; however it is not sustainable to have masses of underutilized pipes in the ground. In the context of evolving products and services the civil infrastructure should therefore be considered passive. Regulation and competition technologies have weaken the incumbent "grip" on the "last mile" and are heavily impacting on its voice revenues which have traditionally accounted for the significant part of its total revenues and profits.

A key question to ICASA - how will infrastructure be maintained and developed if the incumbent, ICASA has continuously destroyed universal service, this has severely weakened access to affordable telephony to rural communities. While the mobile market is generally competitive at the retail entry end, ICASA is right to address the issue of call termination charges.

However, we would question the merits and justification of the access line deficit. This is a direct surcharge on fixed line users to subsidize mobile users, but with no equivalent to the fixed line users. However, effective and sustainable competition is not simply about having a choice of network operator or service provider. It is also about consumers having easy and understandable access to information on prices and quality, which is both transparent and comparable. Consumers are bewildered by the range of choice and the complexity of tariff structures. In our view, empowerment of consumers is as important as provision of choice.

This does not necessarily mean that the range of choice should be taken away from the consumer by ICASA in the drive to improve broadband access; rather the emphasis should be on ease of access to and clear presentation of information on the choices available. We consider it is an important part of informed consumer choice that easily comparable information be readily available. Consumers must be able to look at price and quality of service together if they are to make a truly informed choice.

Noting, the slow pace of broadband rollout; in South Africa what are the regulatory implications of such growth? In part, the speed of take-up of broadband depends on the regulatory process itself. It is important that

ICASA does not inhibit the costly investments in the technologies which are making broadband available to ever more homes.

However, so far, most of those who have actually taken up broadband were analogue to ADSL conversions. Consumer is using broadband to do essentially the same things as they did with dial up connections, but with the convenience of an always-on connection, a flat-rate subscription and faster speed. Substantial take-up of broadband requires that such an option provides new, compelling services and/or content to drive consumer demand. In terms of digital content is there sufficient capacity for digital content providers to develop new innovative services and take the risk in investment? The current available bandwidth capacity may provide a bottleneck to the growth of broadband services. The availability of VoIP on broadband could be the first such driver.

To date regulation has not been effective in contributing to the delivery of such services or content. Rapid growth will be influenced by the freedom to recoup investments in areas of development and deployment of innovative products and services. The impact of the ECA limit the potential to secure a return on high-risk investment will therefore directly influence the growth in broadband take up. It is imperative, therefore, that ICASA should not try to foresee or determine a market.

If take-up of VoIP services becomes substantial - as we think, then regulation can be scaled back, except there will be considerations in respect of universal service obligation.

In the event of competing broadband platforms which technologies are most likely to be used? These are hard questions to answer because technological developments are so difficult to predict.

However, in our view, ICASA should work on the assumption that there will be competing broadband platforms, both fixed (DSL) and mobile (3G & LTE), both wired (optical fiber) and wireless (Wi-Fi & Wi-Max networks). What the operators are most likely to deploy is a basket of differing technologies best suited for the location, density and type of customers.

Therefore, the regulator should not base decisions on assumptions about the availability of any particular technology or platform on any particular timetable. Instead, it should endeavor to create a climate, which promotes technological innovation and market experimentation. Also, it should address the issue of inter-operability between all such networks.

Although it is existing technology, if sustainable or if it can be allowed to be, the return on investment on Fibre to the Premise will be a significant development providing a stepped increase in available bandwidth.

Will LLU increase the demand for broadband services, based on ICASA assumptions, how will such infrastructure be supplied? The experience of countries like Korea, Singapore and Japan suggests that there will be a demand for 'broadband' services and that the current bandwidths in South Africa will be found inadequate (if they are not already). In the residential marketplace, the future probably lies in bandwidth on demand ie consumers will purchase bandwidth based on daily usage. IP networks are much more flexible than PSTN and should be capable of providing enhanced services.

Once again this is a cost/benefit analysis for operators in terms of rate of return in what may be a risky investment or has a longer pick up term. This may be influenced by ICASA and consumer demand by topography and market segmentation.

Impact of LLU on investment decisions in telecoms in South Africa, competition does not necessarily promote investment. Excessive initial costs can slow-down infrastructure investment - the startup cost of Neotel is a case in point. Since telecommunications is a global industry, investment in the sector is influenced by international factors.

As a general rule, however, investment is maximized when the regulator, ICASA is stable and predictable and a reasonable return can then be confidently expected on investments. ICASA should be cautious with regard to new markets and should not try to predict and determine outcomes. ICASA should not seek to create artificial markets except in relation to the interest in the universal service obligation.

CONCLUSION

We need to empower consumers to make informed choices through the provision of information that will permit meaningful comparisons of costs and quality of service.

The ECA and LLU should focus more on service, choice and reliability rather than network competition. ICASA must adopt a strategic framework sufficiently clear and stable to encourage substantial network investments and to permit a fair return on these investments.

Above all, we need ICASA to provide a clear vision of how electronic telecommunications regulation will evolve, so that it becomes less intrusive and tactical, more predictable and strategic, and delivers to in South Africa where ever their geographical, social or economic location.

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