



28 February 2012

Ms Yolisa Kedama  
Independent Communications Authority of South Africa  
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Dear Ms. Kedama

**COMMENTS REGARDING THE DRAFT SPECTRUM ASSIGNMENT PLAN FOR THE COMBINED LICENSING OF THE 800 MHZ AND 2.6 GHZ BANDS AND COMMENTS REGARDING THE DRAFT INVITATION TO APPLY FOR RADIO FREQUENCY SPECTRUM, GOVERNMENT GAZETTE No. 34872, NOTICES 911 AND 912 OF 2011**

Kawuleza Connect (Pty) Ltd (“**Kawuleza**”) has been invited to furnish written submission on the proposed draft Spectrum Assignment Plan for the radio frequency range 790 – 862 MHz (800 MHz) and 2500 – 2690 MHz (2.6 GHz) for Electronic Communications Services in the above Gazette. Kawuleza further presumes the Authority should like the comments invited in the proposed draft Invitation to Apply for Radio Frequency Spectrum Licence in the same Gazette to be submitted along with the comments for the draft Spectrum Assignment Plan.

Kawuleza should like to congratulate the Authority on a draft Spectrum Assignment Plan that we feel if implemented correctly should boost competition in the sector and greatly promote and improve broadband access to all. Kawuleza feels that the 800 MHz and 2.6 GHz spectrum if allocated to the incumbents will likely stay dormant longer than if allocated to new operators:

1. Kawuleza is of the opinion that new incumbents will need to rollout an operational network in the above spectrum a lot sooner and spectrally a lot more efficient in order to be able to gain market share, compete against existing incumbents and make their business model profitable. Existing



incumbents on the other hand already have a strong footprint in the South African telecommunication market and are therefore not commercially under pressure to build a new network, which would delay the rollout of that network. As an example, Kawuleza plans to use the Spectrum to offer fully mobile high speed data services with a guaranteed minimum service speed in confined urban areas at competitive pricings. Kawuleza's business model would thus require using the Spectrum in the best technically possible and efficient way for the delivery of high service speeds to consumers, whilst at the same time minimising the time to operational start for the biggest differentiating impact in the consumer service market. This can then ensure the highest profitability of its network deployment.

2. Kawuleza also believes that it is in the incumbents' interest to capitalize from their existing 3G networks as long as possible, which would naturally delay a 4G network rollout and thus leave consumers with limited broadband access for some time.

The Gazette was split into two notices, Notice 911 labeled "The 800 MHz and 2.6 GHz draft Spectrum Assignment Plan in terms of section 31(3) of the ECA and regulations 3 and 7 of the Radio Frequency Spectrum Regulations of March 2011" (the "**First Notice**") and Notice 912 labeled "Draft Invitation to Apply for Radio Frequency Spectrum Licence to provide Mobile Broadband Wireless Access Service for urban and rural areas using the Complimentary Bands, 800 MHz and 2.6 Ghz" (the "**Second Notice**") and Kawuleza should like to follow the same format in providing this written submission.

**First Notice: The 800 MHz and 2.6 GHz draft Spectrum Assignment Plan in terms of section 31(3) of the ECA and regulations 3 and 7 of the Radio Frequency Spectrum Regulations of March 2011**

Kawuleza agrees with the principle that "broadband to all citizens" could be achieved mainly through mobile telecommunication technologies as stated in section 4.5. Kawuleza would however like to point out that it is highly dependent on the definition of "broadband" speed and that mobile telecommunication technologies will not necessarily be the most cost efficient solution of high speed internet access for everyone. Kawuleza therefore suggests to generalize the statement in section 4.5 and change mobile telecommunication technologies to wireless broadband technologies. However, Kawuleza agrees that the 800 MHz and 2.6 GHz bands should be used to provide a mobile service.



Kawuleza believes that the licensing of the 800MHz band prior to expected spectrum release in 2015 as stated in section 7.2 limits bidders to plan for rural area coverage properly. It will delay the time to market in certain areas where agreements with broadcasters fail and therefore give existing operators in lower IMT bands a competitive advantage and thus increase their footprint in these areas while successful bidders are waiting for the final 800 MHz spectrum release. Furthermore, Kawuleza is of the opinion that planning ahead for a future network deployment in the 800 MHz spectrum in 2015 will be difficult as technology is rapidly changing and it would therefore be a lot easier to only start planning when the spectrum is available.

Kawuleza agrees with the principle of the Wholesale Open Access model but believes that two Wholesale Open Access operators as suggested in sections 9.4.1 and 9.4.4 are likely to not be cost efficient in certain areas, as both operators will build infrastructure in order to stay competitive and meet their licence obligations. This could lead to overcapitalization in some areas especially in areas with low population density and hence lead to a higher broadband price to the consumer. Kawuleza suggests that there should be a mechanism to encourage infrastructure sharing whilst also leading to the same competitive outcome.

Without a mechanism similar to that suggested above, Kawuleza sees the risk that Wholesale Open Access operators are less likely to pass market related rates down to retail operators and therefore to the consumer due to limited competition in the building of infrastructure and thus limited price pressure especially in the 800 MHz spectrum with less new entrants. Kawuleza would like to submit that a similar model has been tried with regards to national fibre links without hardly any improvement for the consumer. Kawuleza therefore believes that in order to increase price pressure for Wholesale Open Access operators the Authority should consider implementing a mechanism that guarantees fair and market related network service pricing to operators whilst at the same time guaranteeing a minimum standard of service delivery.



Second Notice: Draft Invitation to Apply for Radio Frequency Spectrum Licence to Provide Mobile Broadband Wireless Access Service for Urban and Rural Areas Using the Complimentary Bands, 800 MHz and 2.6 Ghz

Kawuleza suggests to define the term “financial credibility” in schedule A sections 1.31, 1.32 and 6 as well as “proof of funding” in schedule B(A1). The credibility needs to go into greater detail and specifically state which documents are accepted to prove this. Kawuleza would like to comment that although some applicants might be able to show strong balance sheets, this does not necessarily mean the balance sheet is appropriate for the project and that the company related to the balance sheet is willing to back the project. Kawuleza believes that a solid funding plan attracting the correct capital commitments to various stages of the overall project is a more appropriate way to demonstrate the financial credibility of an applicant.

Another point that could be taken into consideration by the Authority is the applicant’s ability to demonstrate the manageability and delivery of successful large projects in analogy with schedule B(C1). Kawuleza suggests the Authority add a requirement of proof of managerial expertise to the prequalification criteria in combination with the proof of financial credibility.

Kawuleza would also like to point out that there is no clear scoring scale for the required 65% overall scoring and the 50% minimum scoring per criteria as stated in schedule A section 1.35. Kawuleza suggests to include a detailed description on how the Authority intends to evaluate the scoring of an applicant for each of the criteria stated in schedule A section 1.34.

Kawuleza believes that in general the application process as stated in the draft ITA is fair but would like to suggest in order to improve transparency to announce the other successful bidders in the Sealed bid phase in schedule A section 1.38 before the Authority calls for further bids from those bidders.

Kawuleza would furthermore like to suggest that there is no definition or description of how to determine the terms: “percentage of population covered by the service”, “degree of rural geographic coverage” and “split between the urban and rural” in schedule A section 3.4.4. Kawuleza suggests the Authority specifically define when a person or area is regarded covered or not and the minimum service level required. Kawuleza furthermore suggests to give more information and/or examples on



the requirements listed in schedule B section E, Technical Information (Radio System Design) in order to avoid confusion.

Kawuleza believes as mentioned in the introduction above that new operators will use the spectrum sooner and more efficiently than existing incumbents. Kawuleza would therefore like to suggest the Authority add a paragraph to schedule A section 7.1 that specifically disqualifies applicants that are trying to structure around the restrictions set out in the Gazette. It is suggested such a paragraph could disqualify applicants that have any ownership or will have any ownership by any disqualified entities, where such disqualified entities have spectrum in the designated IMT bands or are disqualified for any other reason.

Kawuleza would like to thank the Authority for the opportunity to comment on the First Notice and Second Notice and wish to assure the Authority of Kawuleza's continued full support and cooperation at all times. Kawuleza will further appreciate the opportunity to make an oral presentation at any further hearings held by the Authority pursuant to the First Notice and Second Notice.

Yours Faithfully

William Whittaker  
KAWULEZA CONNECT (PTY) LTD  
Director