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GENERAL NOTICE

NOTICE 724 OF 2012



Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
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GENERAL NOTICE – EXPLANATORY MEMORANDUM ON UNDER-SERVICED AREAS DEFINITION REGULATIONS

1. On 06 October 2011 in Notice No.715 in Government Gazette Number 34662, the Authority published draft Under-Serviced Areas Definition regulations for public comment.
2. The closing date for submissions was 28 October 2011 and hearings were held on 09 February 2012 where parties interested to participate in oral hearings were afforded an opportunity.
3. The Authority hereby publishes the attached explanatory memorandum and reasons thereof.

DR STEPHEN MNCUBE

Chairperson

ICASA

EXPLANATORY MEMORANDUM

A. INTRODUCTION & BACKGROUND

- (1) This Explanatory Memorandum seeks to contextualize the proposed draft definition of Under-Serviced Areas as contained in the regulations. The definition is required in terms of section 88(2) of the Electronic Communications, 2005 (Act 36 of 2005)(Act) as amended. The definition is necessary in order to ensure that there is assistance for needy persons towards the cost of the provision to, or the use by them of broadcasting and electronic communications services¹.
- (2) For purposes of section 88(2) of the Act, an area will be under-serviced if the targets for universal access have not been achieved.
- (3) The determination of what constitutes universal access was published by the Minister of Communications (“Minister”) in terms of section 82(3) of the Act, on 8 February 2010 in Government Gazette No 32939.
- (4) The Universal Service and Access Agency of South Africa (“USAASA”) had undertaken a public process to determine what constitutes “universal access” and “universal service” in terms of section 82(3) of the Act and make recommendations to the Minister in that regard.
- (5) The formulation of the definition in the regulation took into account the work of USAASA. As a result, the work done by USAASA was helpful in the formulation of the definition.
- (6) In March 2009, in close collaboration with the Department of Communications (“DoC”), ICASA and MDDA, USAASA published² a Draft Position Paper and Invitation to a Consultative Workshop, which included refined draft definitions.

¹ Section 88(1)(a) of the Act

² Notice 319 of 2009, Government Gazette 32048 dated 20 March 2009

- (7) Section 88(2) of the Electronic Communication Act No 36 of 2005 (ECA) requires the Independent Communications Authority of South Africa (“the Authority”) to define under-serviced areas. In 2009 Council resolved to establish a Council Committee to prescribe the definition of Under-Serviced Areas in terms of section 88(2) of the ECA.
- (8) The Authority aims to harmonize its approach to the definition of Under-Serviced Areas with the approach adopted by USAASA and the Minister, in the determinations of “universal service” and “universal access”. It is against this background that the Authority has taken into account the work done by USAASA.
- (9) Further, the list of Under-Serviced Areas is based on the definition, read with the universal access targets contained in the Ministerial determinations.
- (10) The statistics used to compile the list of under-serviced areas are based on the 2007 household survey carried out by Statistics South Africa.

B. REASONS

- (11) The STATS SA data provided for the basis of outlining how areas can be measured in terms of what ICT services are available in the area per given population of the inhabited areas. The data showed ICT availability per District and Local Municipality including the percentage of population which can access ICT services. This attached list of under-serviced areas shall be reviewed and updated at least bi-annually as per Section 88(3) of the Act.
- (12) The data used from STATS SA in compiling the list of under-serviced areas, the Authority believes that it is still valid. According to STATS SA any data that they have collected is deemed valid and usable if used within five (5) years of publication. Given that determination of an Under-Serviced Area is always a moving target, the Authority decided to use the STATS SA data of that time since it would have been the most current data of the time.

- (13) The Authority came up with draft Regulations and included a list of identified under-serviced areas. The list was taken from the work that USAASA had embarked on in 2008, which included using Stats SA household survey data. The Authority had to firstly, verify if the list provided conformed to the new municipal boundaries and secondly, if indeed these areas are under-served areas.
- (14) In July 2011 the Authority set about organising Consultative Workshops in five provinces namely, Limpopo, North West, Mpumalanga, KwaZulu Natal and the Eastern Cape.
- (15) The Consultative Workshops were conducted from the 17 to the 26 of August 2011. Prior to attending the workshop each Municipality was requested to answer a questionnaire with a set of questions with emphasis of ICT service availability within their Municipal jurisdiction. Subsequent to the workshops Municipalities made submissions as requested and all the submissions were analysed.
- (16) The Authority engaged with the Municipal Demarcation Board of South Africa in verifying the municipal boundaries, which affirmed them as correctly captured.
- (17) On 6 October 2011 the Authority published the Draft Definition of Under-Serviced Areas Regulations for public comment. On 28 December 2011 the Authority published in a Gazette an invitation to stakeholders to a public hearing process on the Draft Definition of Under-Serviced Areas Regulations. Public hearings were held from 17 to 26 August 2011. The following licensees made oral presentations at the hearings; Vodacom, MTN, Cell C, SABC, Neotel and Telkom.
- (18) The Authority decided to use District and Local Municipalities as areas for defining what an under-serviced area can be, as municipal wards are already included within the municipal structures. It would be difficult to restrict certain communication services such as broadcasting services to ward level because of the scope of coverage which literally covers an entire District or Local Municipality. The Authority realised that it would create an administrative

burden and would complicate the roll-out process towards implementing Universal Service and Universal Access projects, if wards level were to be used.

(19) Stakeholders were of the opinion that coverage of any area should be linked to the population. The Authority is of the view that, the regulation already makes reference and covers same by stating **regulation 1 (ii)** "...coverage of the inhabited parts of the area" with the key word inhabited.

(20) The Regulation is for defining under-serviced areas, the Authority has taken the decision that affordability and other economic aspects cannot be addressed by this regulation.

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