



Our Ref No: BM/ 17701

Independent Communications Authority of South Africa
Department of Environmental Affairs
Private Bag X 447
PRETORIA
0001

For Attention: Mr Christian Mhlanga

Per Email: CMhlanga@icasa.org.za

Dear Sir

COMMENTS: DRAFT "BITSTREAM AND SHARED/FULL LOOP" REGULATIONS

1. Transnet SOC Ltd ("Transnet") wishes to express its appreciation for being afforded the opportunity to comment on the Draft "Bitstream and Shared/full Loop" Regulations (hereinafter referred to as "the Draft Regulations") published in Government Gazette No 36840.
2. Please find our comments below.

General Comments:

3. The Draft Regulations appear to be premised on an assumption that sites and electronic facilities are always owned by telecommunications operators. Unfortunately this is not the case. There are several examples where sites are owned by non-telecommunications companies or dedicated real estate owners, and the sites have multiple licensed telecommunications operators co-locating on the property. Consequently, clarity is required as to how the Draft Regulations would accommodate (pure) real estate owners that provide physical space for telecommunications operators – would such real estate owners be required to have an ECNS licence?
4. Transnet has local telecommunications networks that fit the definition of "Local Loop". However, these networks are used exclusively for train authorization and infrastructure conditioning monitoring systems. These networks are not commercial telecommunications networks, and are safety critical for train operations. Consequently, Transnet cannot share these networks with other parties and ICASA is requested to grant Transnet an exemption from being required to share these networks with other users.

Transnet SOC Ltd
Registration Number
1990/000900/30

Carlton Centre
150 Commissioner
Street
Johannesburg
2001

P.O. Box 72501
Parkview, Johannesburg
South Africa, 2122
T +27 11 308 2313
F +27 11 308 2315

Ad clause 5, read with clause 2 of the Regulations:

5. The reference to "section 43(4)" of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (the "Act") in clause 5(a) of the Draft Regulations appears to be inappropriate and ultra vires section 38(1) of the Act in terms of which the Regulations are said to be issued. Section 43 of the Act deals with facility leasing and not interconnectivity, and any regulations dealing with facility leasing must meet the requirements of section 44 of the Act. It would, therefore, also follow that clause 2 of the Draft Regulations should be reviewed to reflect the purposes of regulations under section 38 of the Act, which deals with interconnectivity, rather than the purposes of section 44 of the Act, which deals with facility leasing.

We thank you for this opportunity to comment to the Draft Regulations. We trust that our submissions will assist.

Kind regards

A handwritten signature in black ink, appearing to read "Brian Molefe", written over a large, stylized graphic element that resembles a signature or a logo.

Brian Molefe

Group Chief Executive

Date: 30.9.13.

Cc: Mr Tshediso Matona
Director General: Department of Public Enterprises
Fax no: (012) 431-1040