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13 November 2015

**BROADBAND INFRACO - SUBMISSION TO THE NOTICE REGARDING THE DRAFT
INFRASTRUCTURE SHARING FOR CONSULTATION**

Dear Mr Mongalo,

Broadband Infraco SOC Limited ("Broadband Infraco") would like to thank the Authority for providing it with the opportunity to make this written submission to the Discussion Document on the Draft Notice regarding Infrastructure Sharing (the "Discussion Document").

General Comments

Broadband Infraco's notes the absence of a *Problem Statement* which the the Discussion Document seeks to address. The *Purpose* of the Discussion Document is *to solicit input on a regulatory framework that will provide certainty on infrastructure sharing holistically to include facilities leasing, interconnection and other matters relevant to access to broadband services within the Republic.*

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Company Secretary: F Mohamed

In principle, Broadband Infraco does not see the need for the Discussion Document as the issues raised therein should be dealt with in the Facilities Leasing and Interconnection regulations (the "Regulations"). To the extent that the Authority is of the view that this is not the case, Broadband Infraco implores the Authority to rather initiate a process of reviewing the Regulations; especially as the concept of *infrastructure sharing* is not defined in any applicable legislation. Although Broadband Infraco remains a strong advocate of the Authority exercising its discretionary powers in terms of regulation-making, the Company's support in this regard is strictly limited to obvious lacunas in the Electronic Communications Act, No. 36 of 2005, as amended (the "Act"). In the absence of such gaps in the Act, Broadband Infraco reiterates its view that the issues canvassed in the Discussion Document be dealt with in a review process of the Regulations.

Specific Comments

1. **Question – Do you agree that infrastructure sharing will encourage the deployment of networks to rural and sparsely populated areas? If not, please provide the reason(s) for your answer.**

Response: Broadband Infraco is of the view that a wholesale open access provider, supported by USAF, may stimulate wireless access investment and roll-out in rural areas. If this service provider is granted sufficient bandwidth in available wireless access frequency bands to re-sell to other operators, it would secure anchor tenants via off-take Agreements for bandwidth capacity.

2. Introduction and background

- 2.1 **Question – In your opinion, how do you think infrastructure sharing will encourage service-based competition?**

2.1.1 To the extent that electronic communications network facilities are appropriately regulated at the wholesale level, an opportunity exists for service-based licensees to lease wholesale broadband capacity from ECNS licensees with the intention of providing MVNO or other non-infrastructure based services. It is therefore not adequate to just regulate facilities leasing or infrastructure sharing. There is a further need to also regulate wholesale prices.

2.1.2 In an environment where infrastructure sharing and wholesale prices are adequately regulated, service-based competition may:

2.1.2.1 expedite market entry for new licensees;

2.1.2.2 enable new licensees to focus on refining their service offerings; and

2.1.2.3 free up financial resources for market differentiation and improved service-delivery and customer care.

3. Objectives of infrastructure sharing

3.1 **Question** – To what extent do you believe the objectives of infrastructure sharing are reached?

3.1.1 Cell C's historical Roaming Agreement with Vodacom (as governed by the Facilities Leasing Regulations) was a form of infrastructure sharing. The nature of the Agreement enabled Cell C to compete somewhat with incumbent cellular operators.

3.1.2 The Roaming Agreement also avoided some duplication of infrastructure, although for a mobile cellular operator that is just launching, duplication of infrastructure can not be avoided.

3.1.3 In the absence of effective cost-regulation, there is not enough evidence to unequivocally demonstrate whether facilities leasing / infrastructure sharing actually reduced the cost of services.

3.1.4 Theoretically, one would expect facilities leasing / infrastructure sharing to enable service-based operators to realise universal access objectives but again there is insufficient evidence to substantiate this assertion.

4. Purpose of the Discussion Document

- 4.1 **Question** – Do you think the Authority should deal with infrastructure sharing in one regulation?

As per our statement in the General Comments of this submission Broadband Infraco does not see the need for the Discussion Document as the issues it seeks to address should rather be dealt with in the Regulations.

5. Legislative and Policy Analysis – South Africa’s Broadband Policy

- 5.1 **Question** – Do you think that it is necessary for the Authority to regulate for “one-build” civil works and mast erections at this time? Please state your reasons?

Broadband Infraco believes that this aspect of the ICT industry is adequately regulated including from an Environmental law and Occupational Health and Safety perspective/

- 5.2 **Question** – In your view, what incentives will encourage infrastructure sharing in general?

Facilities leasing is a commercial imperative for operational efficiency and business sustainability. The behaviour of Facilities Providers needs to be better regulated in terms of wholesale access pricing and principles .

- 5.3 **Question** – In your view, how can the Authority improve on its intervention in terms of non-discriminatory access to infrastructure?

Please refer to our general comments mentioned above.

6. Facilities Leasing Regulations

- 6.1 **Question** – Would you say that the Facilities Leasing Regulations adequately cater for infrastructure sharing needs in South Africa? If not, please state the areas that have not been covered.
- 6.2 Facilities Providers co-location tariffs for both access and electricity supply should be regulated under wholesale access regulations;
- 6.3 The Facilities Leasing Regulations should contain penalties for Facilities Providers failing to grant access to their sites where the Facilities Seeker's electronic communications network equipment is located in a timeous manner;
- 6.4 The Facilities Leasing Regulations should contain penalties for Facilities Providers withholding information needed by the Facilities Seeker's to commission new customers on its network via the Facilities Provider's sites; and
- 6.5 The Facilities Leasing Regulations should contain penalties for Facilities Providers compelling Facilities Seeker's to use the allocated co-location space inefficiently;
- 6.6 The Facilities Leasing Regulations should contain penalties for Facilities Providers compelling Facilities Seekers to take bundled services where the Facilities Seeker has, as per a Facilities Leasing / Co-location Agreement, asked for unbundled services.

7. Infrastructure Sharing Models – Passive Infrastructure Sharing

- 7.1 **Question** – Do you agree with the Authority on the definition of passive infrastructure? If not, please provide an alternative definition.
- 7.2 Broadband Infraco agrees with the Authority's definition of *passive infrastructure* but questions whether the distinction between active and passive infrastructure is necessary.
- 7.3 **Question** – Please state the advantages and disadvantages of passive infrastructure sharing?

7.4 The advantages of facilities leasing / infrastructure sharing are as enumerated by the Authority in section 4 – Benefits of Infrastructure Sharing.

8. Infrastructure Sharing Practices in South Africa

8.1 **Question** – Please provide examples of how active and passive infrastructure is being shared in South Africa?

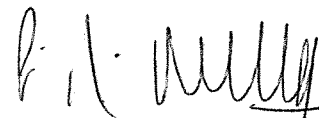
8.2 Roaming and Co-location Agreements are examples of facilities leasing / infrastructure sharing.

9. Conclusion

9.1 Broadband Infraco welcomes the Authority's attempt to better regulate this critical aspect of the ICT sector. However, given the existence of both the Facilities Leasing and Interconnection Regulations of 2010, Broadband Infraco believes that these two Regulations are the appropriate context in which the Authority should attempt to achieve the desired objective of this Discussion Document.

9.2 Broadband Infraco would welcome the opportunity to engage the Authority via oral representations in the event that a public hearing is held.

Yours sincerely,



Klaas Motlhabane
Executive: Legal & Regulatory Department