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(GAUTENG DIVISION, PRETORIA)

Case No. \_\_\_\_\_

In the matter between:

**THE MINISTER OF TELECOMMUNICATIONS AND  
POSTAL SERVICES**

Applicant

and

**ACTING CHAIRPERSON OF THE INDEPENDENT  
COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

First Respondent

**INDEPENDENT COMMUNICATIONS AUTHORITY  
OF SOUTH AFRICA**

Second Respondent

**VODACOM (PTY) LIMITED**

Third Respondent

**MTN (PTY) LIMITED**

Fourth Respondent

**NEOTEL (PTY) LIMITED**

Fifth Respondent

**TELKOM SOC LIMITED**

Sixth Respondent

**CELL C (PTY) LIMITED**

Seventh Respondent

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**APPLICANT'S CONFIRMATORY AFFIDAVIT**

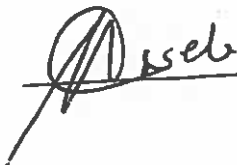
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I, the undersigned,

**DR SIYABONGA CYPRIAN CWELE**

do hereby make oath and say that:

1. I am the Minister of Telecommunications and Postal Services, appointed in terms of section 91(2) of the Constitution, Act No. 108 of 1996 ("the Constitution") on 25 May 2014. I depose to this affidavit in my capacity as the applicant in this matter.
  
2. The facts contained herein are, unless otherwise stated or contrary appears from the context, within my personal knowledge and both true and correct.
  
3. I have read the founding affidavit deposed to by Sipho Johannes Mjwara ('Mjwara') and confirm that its contents are true and correct insofar as they pertain to me. I have authorised Mjwara to depose to the founding affidavit.

  
\_\_\_\_\_  
DEPONENT



8/6

The deponent has acknowledged that he knows and understands the contents of this affidavit. He has no objection to taking the prescribed oath and he regards the prescribed oath as binding upon his conscience.



COMMISSIONER OF OATHS

Full name: *ALFRED TEMBANDO*

Address: *1119 BURNETT STREET, PRETORIA*

Designation: *AREA MANAGER*

Area: *PRETORIA*



SC *Alt*

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B1/172488(Z19E)



**PROCLAMATION**  
by the  
*President of the Republic of South Africa*

N. R. ...., 2014

**TRANSFER OF ADMINISTRATION OF AND POWERS AND FUNCTIONS  
ENTRUSTED BY LEGISLATION TO CERTAIN CABINET MEMBERS IN TERMS OF  
SECTION 97 OF THE CONSTITUTION**

In terms of Section 97 of the constitution of the Republic of South Africa, 1996, I hereby transfer the administration of and the powers and functions entrusted by the specified legislation and all amendments thereto, to the specified Cabinet member as set out in the Schedule with effect from the date of publication of this Proclamation in the *Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at ..*Pretoria*.....  
on this *25*..... day of ..*November*..... Two Thousand and Fourteen.

Handwritten signature of the President of the Republic of South Africa.

PRESIDENT

Handwritten signature of the Minister of the Cabinet.  
MINISTER OF THE CABINETHandwritten signature of the Minister of the Cabinet.  
MINISTER OF THE CABINET

Handwritten initials in the bottom right corner.

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No. 38280 3

**PROCLAMATION**

*by the  
President of the Republic of South Africa*

No. 79, 2014

**TRANSFER OF ADMINISTRATION OF AND POWERS AND FUNCTIONS  
ENTRUSTED BY LEGISLATION TO CERTAIN CABINET MEMBERS IN TERMS OF  
SECTION 97 OF THE CONSTITUTION**

In terms of Section 97 of the constitution of the Republic of South Africa, 1996, I hereby transfer the administration of and the powers and functions entrusted by the specified legislation and all amendments thereto, to the specified Cabinet member as set out in the Schedule with effect from the date of publication of this Proclamation in the *Gazette*.

Given under my Hand and the Seal of the Republic of South Africa at *Pretoria*.....  
on this *25*..... day of *November*..... Two Thousand and Fourteen.



PRESIDENT



MINISTER OF THE CABINET



MINISTER OF THE CABINET



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SCHEDULE

1. The administration of and powers and functions entrusted by the legislation, mentioned in Column 1 of the table below, to a Cabinet member mentioned in Column 2 of that table, are hereby transferred to the Cabinet member mentioned in Column 3 of the table.

2. Column 3 of the table below states the relevant Minister and the extent of transfer of the administration of and powers and functions entrusted by legislation to that Minister.

Column 1	Column 2	Column 3
Legislation	Cabinet member responsible	Cabinet member to whom function is transferred and extent of transfer
Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 4(3)(a)	Minister of Communications	1. The Minister of Communications in so far as the Independent Communications Authority may make recommendations to that Minister on policy matters and amendments to the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), and the Broadcasting Act, 1999 (Act No. 4 of 1999), which accord with the objects of these Acts to promote development in

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		<p>the broadcasting sector.</p> <p>2. The Minister of Telecommunications and Postal Services, in so far as the Independent Communications Authority may make recommendations to that Minister on policy matters and amendments to the Electronic Communications Act, 2005 (Act No. 36 of 2005), and the Postal Services Act, 1998 (Act No. 124 of 1998), which accord with the objects of these Acts to promote development in the electronic transactions, postal and electronic communications sectors.</p>
<p>Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 4(3)(c)</p>	<p>Minister of Communications</p>	<p>Minister of Telecommunications and Postal Services: The administration of the section referred to in Column 1.</p>

see

<p><b>Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 4(3A)(a)</b></p>	<p><b>Minister of Communications</b></p>	<p>1. The Minister of Communications in so far as policy made, and policy directions issued, by that Minister in terms of the Broadcasting Act, 1999 (Act No. 4 of 1999), the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), and any other applicable law.</p> <p>2. The Minister of Telecommunications and Postal Services in so far as policy made, and policy directions issued, by that Minister in terms of the Postal Services Act, 1998 (Act No. 124 of 1998), the Electronic Communications Act, 2005 (Act No. 36 of 2005), and any other applicable law.</p>
<p><b>Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 6A(2)(a) and (b)</b></p>	<p><b>Minister of Communications</b></p>	<p>1. The Minister of Communications in so far as appropriate key performance indicators and measurable performance targets contemplated in the section</p>

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		<p>referred to in Column 1 relate to the laws administered by that Minister.</p> <p>2. The Minister of Telecommunications and Postal Services in so far as appropriate key performance indicators and measurable performance targets contemplated in the section referred to in Column 1 relate to the laws administered by that Minister.</p>
<p><b>Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 15(1A)</b></p>	<p><b>Minister of Communications</b></p>	<p>1. The Minister of Communications in so far as the administration of and powers and functions entrusted by the section referred to in Column 1 relate to the laws administered by that Minister.</p> <p>2. The Minister of Telecommunications and Postal Services in so far as the administration of and powers and functions entrusted by the section</p>

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		referred to in Column 1 relate to the laws administered by that Minister.
Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000): Section 16(1) and (2)	Minister of Communications	The Minister of Communications and the Minister of Telecommunications and Postal Services: The administration of and powers and functions entrusted by the section referred to in Column 1.
Electronic Communications Act, 2005 (Act No. 36 of 2005): Section 3	Minister of Telecommunications	<p>1. The Minister of Communications in so far as policies contemplated in the section referred to in Column 1 relate to the Broadcasting Act, 1999 (Act No. 4 of 1999), and the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000).</p> <p>2. The Minister of Telecommunications and Postal Services in so far as policies contemplated in the section referred to in Column</p>

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		1 relate to the Electronic Communications Act, 2005 (Act No. 36 of 2005).
Electronic Communications Act, 2005 (Act No. 36 of 2005): Section 4(5)	Minister of Telecommunications	<p>1. The Minister of Communications in so far as regulations proposed in terms of the section referred to Column 1 relate to the Broadcasting Act, 1999 (Act No. 4 of 1999), and the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000).</p> <p>2. The Minister of Telecommunications and Postal Services in so far as regulations proposed in terms of the section referred to Column 1 relate to the Electronic Communications Act, 2005 (Act No. 36 of 2005).</p>
Electronic Communications Act, 2005 (Act No. 36 of 2005): Section 5(6)	Minister of Telecommunications	1. The Minister of Communications in so far as a policy direction contemplated in the section

*guc*  
*ATM*

*llt* *[Signature]*

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		<p>referred to Column 1 relates to the Broadcasting Act, 1999 (Act No. 4 of 1999), and the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000).</p> <p>2. The Minister of Telecommunications and Postal Services in so far as a policy direction contemplated in the section referred to Column 1 relates to the Electronic Communications Act, 2005 (Act No. 36 of 2005).</p>
<p>Electronic Communications Act, 2005 (Act No. 36 of 2005): Chapter 9</p>	<p>Minister of Telecommunications</p>	<p>The Minister of Communications: The administration of the Chapter referred to in Column 1.</p>
<p>Electronic Communications Act, 2005 (Act No. 36 of 2005): Section 79B</p>	<p>Minister of Telecommunications</p>	<p>1. The Minister of Communications in so far as the administration of and powers and functions entrusted by the section referred to in Column 1 relates to the functions of the Minister.</p>

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		<p>2. The Minister of Telecommunications and Postal Services in so far as the administration of and powers and functions entrusted by the section referred to in Column 1 relates to the functions of the Minister.</p>
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Aby

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**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE MINISTER OF COMMUNICATIONS**

**AND**

**THE MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES**

**ON THE IMPLEMENTATION OF CERTAIN MATTERS RELATING TO THE  
TRANSFER OF POWERS AND FUNCTIONS UNDER THE INDEPENDENT  
COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ACT, 2000  
(ACT NO. 13 OF 2000), AND THE ELECTRONIC COMMUNICATIONS ACT, 2005  
(ACT NO. 36 OF 2005)**



PREAMBLE

CONSIDERING the statement made by the President on 25 May 2014 in which he referred to the fast growing telecommunications sector of our country and to the developmental value of the Post Office and that a new department will ensure that the Republic derives more value out of the booming information communications and technology industry and the postal services sector; and

CONSIDERING that the President further stated that a new Communications Ministry has been established which will be responsible for overarching communication policy and strategy, information dissemination and publicity as well as the branding of the country abroad and that improved communication and marketing will promote an informed citizenry and also assist the country to promote investments, economic growth and job creation; and

SINCE the Minister of Telecommunications and Postal Services is entrusted with the administration of the Electronic Communications Authority Act, 2005 (Act No 36 of 2005), and the Postal Services Act, 1998 (Act No. 124 of 1998), amongst others, and the Minister of Communications is entrusted with the administration of the Independent Communications Authority Act (Act No 19 of 2000), and the Broadcasting Act, 1998 (Act No 4 of 1998), amongst others, and since the said Acts are interrelated and interdependent, and

SINCE section 41 of the Constitution of the Republic of South Africa calls upon all spheres of government and all organs of state within each sphere to co-operate with one another in mutual trust and good faith by—

- (a) fostering friendly relations;
- (b) assisting and supporting one another
- (c) informing one another of, and consulting one another on, matters of common interest;
- (d) co-ordinating their actions and legislation with one another;
- (e) adhering to agreed procedures; and
- (f) avoiding legal proceedings against one another.

the Minister of Telecommunications and Postal Services and the Minister of Communications agree as follows:—

**CLAUSE 1**

**Parties to MOU**

- 1. The Parties to this Memorandum of Understanding (MOU) are
  - (a) The Minister of Communications (MoC); and
  - (b) The Minister of Telecommunications and Postal Services (MOTPS).

**CLAUSE 2**

**Objectives**

- 2. The MOU is concluded with the aim of creating a framework
  - (a) within which the Parties can co-operate on the implementation of certain matters relating to the assignment of powers and functions under the Independent Communications Authority of South Africa Act, 2000 (Act No. 13

of 2000) (ICASA Act), and the Electronic Communications Act, 2005 (Act No 36 of 2005) (ECA);

- (b) to regulate their relationship and mutual co-operation regarding the laws assigned to them; and
- (c) to assist the Parties in giving effect to the constitutional obligation of implementing national legislation; developing and implementing national policy, and coordinating functions entrusted to them.

**CLAUSE 3**

**Duration**

3. The MoU shall commence on the date of signature, and unless otherwise provided herein shall terminate on the date as agreed in writing between the Parties

**CLAUSE 4**

**Undertakings and responsibilities**

4. (1) The Parties hereby undertake to administer the powers and functions assigned to the Parties by Proclamation in accordance with the terms of this MoU

(2) Part A of this MoU deals with the following provisions of the

ICASA Act:

- (a) Section 4(3)(c);
- (b) section 4(3A)(a);
- (c) section 5(1B);
- (d) section 5(3)(b)(ii)

- (d) section 6A(2)(a) and (b);
- (e) section 7(1)(b);
- (g) section 8(3),
- (h) section 9(2)(b);
- (i) section 10,
- (j) section 15(1A); and
- (k) section 16(1) and (2).

(3) Part B of this MoU deals with the following provisions of the

ECA:

- (a) Section 3;
- (b) section 34(2), (7)(c) and (10) and
- (c) Chapter 9.

**PART A**

**(Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000))**

**CLAUSE 6**

**Section 4(3)(a)**

6. (1) (a) The function of the Minister referred to in section 4(3)(a) of the ICASA Act is allocated to the MoC in so far as the Independent Communications Authority (ICASA) may make recommendations to that Minister on policy matters and amendments to the ICASA Act and the Broadcasting Act 1999 (Act No. 4 of 1999), which accord with the objects of these Acts to promote development in the communications sectors

*[Handwritten signature]*

(b) The function of the Minister referred to in section 4(3)(a) of the ICASA Act is allocated to the MoTPS, in so far as ICASA may make recommendations to that Minister on policy matters and amendments to the ECA and the Postal Services Act, 1998 (Act No. 124 of 1998), which accord with the objects of these Acts to promote development in the postal and communications sectors

(c) The Parties undertake to align their respective policies in order to avoid any possible conflict and to cooperate in order to achieve the objectives of this MoU

**Section 4(3A)(a)**

(2) (a) The MoC undertakes to make policy and issue policy directives in terms of the Broadcasting Act, 1999 (Act No. 4 of 1999), the ICASA Act and any other applicable law and to refer such policy and policy directions to ICASA for consideration

(b) The MoTPS undertakes to make policy and issue policy directives in terms of the Postal Services Act, 1998 (Act No. 124 of 1998), the ECA and any other applicable law and to refer such policy and policy directions to ICASA for consideration

(c) The Parties undertake to align their respective policies and policy directions in order to avoid any possible conflict and to cooperate in order to achieve the objectives of this MoU

CLAUSE 6

Section 5(1B)

6. (1) The MoC undertakes to consult the MoTPS before making a recommendation to the National Assembly contemplated in section 5(1B) of the ICASA Act

Section 5(3)(b)(ii)

(2) The MoC undertakes to consult the MoTPS in determining the qualifications, expertise and experience required of persons to be appointed to the Council of ICASA in terms of section 5(3)(b)(ii) of the ICASA Act.

CLAUSE 7

Section 6A(2)(a) and (b)

7. (1) The MoC undertakes to consult with the MoTPS on the performance management system with reference to appropriate key performance indicators and measurable performance targets for councillors of ICASA

(2) The MoTPS must provide appropriate key performance indicators and measurable performance targets in respect of the legislation administered by that Minister and the MoC must likewise provide appropriate key performance indicators and measurable performance targets in respect of the legislation administered by that Minister

CLAUSE 8

Section 7(1)(b)

8. The MoC undertakes to consult the MoTPS before making a recommendation for the reappointment of the chairperson of the Council of ICASA in terms of section 5 of the ICASA Act

CLAUSE 9

Section 8(3)

9. The MoC undertakes to consult the MoTPS if the MoC contemplates recommending to the National Assembly that a councillor be removed from office in terms of section 8(2) or if the MoC contemplates suspending a councillor in terms of section 8(3)(a) of the ICASA Act.

CLAUSE 10

Section 9(2)(a)

10. The MoC undertakes to consult the MoTPS before filling a vacancy in the Council of ICASA or before extending the term of office of a councillor who is filling a vacancy.

CLAUSE 11

Section 10

11. The MoC undertakes to consult the MoTPS before determining the remuneration, allowances and benefits of the chairperson and other councillors with the concurrence of the Minister of Finance.

CLAUSE 12

Section 15(1A)

12. The Parties undertake to apply section 15(1A) with due consideration of the relevant laws they administer.

CLAUSE 13

Section 16(1) and (2)

13. (1) The Parties undertake to share the information and particulars supplied by the Council in relation to the activities of the Authority

(2) The Parties undertake to share information supplied by the Council for incorporation in the annual report before the report is tabled in Parliament by the MoC

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PART B

(Electronic Communications Act, 2005 (Act No. 36 of 2005))

CLAUSE 14

Section 3

14. (1) The function of the Minister referred to in section 3 of the ECA is allocated to the MoC in so far as policies contemplated in that section relate to the Broadcasting Act, 1999 (Act No. 4 of 1999), and the ICASA Act

(2) The function of the Minister referred to in section 3 of the ECA is allocated to the MOTPS in so far as policies contemplated in that section relate to the ECA

(3) The Parties undertake to align their respective policies in order to avoid any possible conflict and to cooperate in order to achieve the objectives of this MoU.

(4) The parties specifically undertake to guard against any unbundling of the converged information, communications and technology sector.

CLAUSE 15

Section 34(2)

15. (1) The MOTPS undertakes to consult the MoC before approving the national radio frequency plan contemplated in section 34(2), in so far as the plan relates to broadcasting radio frequency bands

Section 34(7)(c) and (10)

(2) The MoTSPS undertakes to consult the MoC when administering section 34(7)(c) in so far as it relates to broadcasting radio frequency bands or the migration of broadcasting users

CLAUSE 16

Chapter 9 (sections 48 to 66)

16. The MoC undertakes to consult the MoTSPS where the administration of Chapter 9 may affect the functions of the MoTSPS and in order to give effect to the objectives this MoU

CLAUSE 17

Institution of legal proceedings

17. Each Party undertakes, in so far as any legal proceedings may be instituted by or against that Party in relation to functions performed under the laws administered by that Party, to inform and to cooperate with the other Party in so far as the legal proceedings may relate to or affect functions performed under the laws administered by the other Party.

CLAUSE 18

Amendment of MoU

18. The Parties may amend the MoU by written agreement and such amendment shall take effect on the date of the last signature

CLAUSE 19

Undertaking by Parties

19. Both Parties undertake, in the national interest, to at all times exercise good faith in all dealings with one another, to cooperate fully and to take all necessary and reasonable steps in order to comply with the spirit and letter of this MoU at all times, in order to--

- (a) achieve the objectives of the National Development Plan
- (b) comply with the policies developed by the Cabinet and
- (c) implement smoothly and efficiently the legislation administered by the Parties

CLAUSE 20

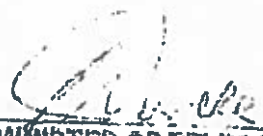
Settlement of disputes

20. (1) Any dispute between the Parties must be settled in an amicable manner by way of consultations or by mediation through <sup>a person appointed by the President</sup> ~~a mutually-agreed person~~

*[Handwritten signature]*

(2) In the event of a dispute which cannot be resolved as contemplated in subclause (1) the matter must be referred to the <sup>President</sup> Cabinet for a decision

Signed at \_\_\_\_\_ on 12th January 2012  
  
MINISTER OF COMMUNICATIONS  
WITNESS

Signed at \_\_\_\_\_ on 12th January 2012  
  
MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES  
WITNESS



110  
FAS**GENERAL NOTICES • ALGEMENE KENNISGEWINGS****INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA  
NOTICE 438 OF 2016****INVITATION TO APPLY FOR A RADIO FREQUENCY SPECTRUM LICENCE TO  
PROVIDE MOBILE BROADBAND WIRELESS ACCESS SERVICES FOR URBAN AND  
RURAL AREAS USING THE COMPLIMENTARY BANDS, 700MHz, 800MHz AND  
2.6GHz.**

1. The Independent Communications Authority of South Africa ("the Authority") hereby, in terms of Section 31(3) (a) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended, read with regulations 6 and 7 of the Radio Frequency Spectrum Regulations 2015, published in Government Gazette number 38641 (Notice number 279 of 2015), invite applications for the radio frequency spectrum licenses within the designated range, 2500 – 2690MHz ("the 2.6GHz band") and 790 – 862 MHz ("the 800 MHz band") and 694 – 790 MHz ("the 700MHz band") for the purposes of providing national broadband wireless access services.
2. Interested persons are hereby invited to submit enquiries, including an electronic version of the enquiry in Microsoft Word, on the Invitation To Apply for a Radio Frequency Spectrum Licence to provide Mobile Broadband Wireless Access Services for Urban and Rural areas using the complimentary bands, 700 MHz, 800 MHz and 2.6 GHz by no later than 16h00 Thursday, 04/08/2016

Cll

3. Written enquiries may be directed to:

The Independent Communications Authority of South Africa (ICASA)

*Pinmill Farm Block A*

*164 Katherine Street*

*South Africa*

*or*

Private Bag XI0002

Sandton

2146

**Attention:**

Spectrum Resources

e-mail: [spectrumresources@icasa.org.za](mailto:spectrumresources@icasa.org.za)

4. All written enquiries submitted to the Authority pursuant to this notice shall be made available for inspection by interested persons at the Authority's Library or website and copies of such enquiries will be obtainable on payment of a fee.
5. Interested persons are hereby invited to submit their applications, including an electronic version of the application in Microsoft Word, on the Invitation To Apply for a Radio Frequency Spectrum Licence to provide Mobile Broadband Wireless Access Services for Urban and Rural areas using the complimentary bands, 700 MHz, 800 MHz and 2.6 GHz from 09h00 to 15h00 on the Application Date, Monday 03/10/2016, and
6. the Application must be in writing, contained in an envelope addressed to the Chairperson, Independent Communications Authority of South Africa, 164 Katherine Street, Sandton, Johannesburg.

**Attention:**

Spectrum Resources:

7. All applications will be assessed based on criteria set out in this Invitation to Apply ("ITA"), requirements in the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the Act") and the Radio Frequency Spectrum Regulations, 2015.

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8. Where applicants require that the application or part thereof be treated as confidential information, then an application in terms of Section 4D of the ICASA Act, 2000 (Act No. 13 of 2000), must be lodged during the submission/lodging of the application with the Authority. Applicants must separate any confidential material into a clearly marked confidential annexure. If, however the request for confidentiality is refused, the person making the request will be allowed to withdraw the information subject to the confidentiality request.
9. Section 4D (4) of the ICASA Act requires the Authority to treat information listed therein as confidential. It is thus incumbent upon the applicant to prove to the Authority why confidentiality must be granted in terms of section 4D (4) of the ICASA Act, instead of merely indicating that the information qualifies as confidential under par (a) to (e) of the aforementioned section of the ICASA Act.
10. Applicants must carefully read the Time Schedule, the notes under appendix and also refer to the regulations and the relevant provisions of the Electronic Communications Act, 2005 (Act No. 36 of 2005)



**Nomvuyiso Batri**  
**Councillor**

C.B.  
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## 1. DEFINITIONS

For the purposes of this document, the terms set out below must have the following meanings:

<b>Applicant</b>	An I-ECNS licensee that has lodged an application in accordance with this ITA
<b>Application</b>	Documentation lodged by an Applicant in accordance with this ITA
<b>Application Date</b>	03/10/2016: Due date for the receipt of Applications
<b>Activity Points</b>	The number of points associated with each Lot during the auction stage
<b>Activity</b>	The sum of the Activity Points for each Lot on which a Bidder places a Bid in a Round, combined with the Activity Points of Lots on which the Bidder is Standing Highest Bidder, defines the total Activity of the Bidder within the Round.
<b>Auction Fee</b>	The amount due and payable by a winning Bidder, and calculated as the sum of the Standing High Bid on the Lot which the Bidder has won.
<b>Authorised Representative</b>	A representative with Power of Attorney appointed by the Applicant/Bidder
<b>Authority</b>	The Independent Communications Authority of South Africa
<b>Bid</b>	A binding offer by the Applicant to acquire a Lot at a certain price
<b>Bidder</b>	An Applicant who has successfully passed the Qualification Stage
<b>Licence</b>	A radio frequency spectrum licence issued pursuant to this ITA

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<b>Lot</b>	A pre-packaged amount of spectrum available for award
<b>Mobile Virtual Network Operators (MVNO)</b>	Is a wireless communications services provider that does not own the wireless network infrastructure over which the MVNO provides services to its customers.
<b>Prohibited Practices</b>	Any practice prohibited in terms of section 4(1)(b) of the Competition Act, 1998 (Act No. 89 of 1998)
<b>Reserve Price</b>	The minimum price for a Lot that must be accepted during the Initial Bid Stage. This is also the starting price of a Lot in the first Round, should the award proceed to the Auction Stage
<b>Round</b>	A period during which each Bidder is invited to submit one Bid Entry Form. Each Round will end after the allotted round time has expired, regardless of whether all Bidders have submitted Bids, following which the Round results will be announced
<b>Rural</b>	Any area that is not classified urban. Rural areas are subdivided into tribal areas and commercial farms
<b>SMRA</b>	Simultaneous Multi-Round Ascending Auction
<b>Standing High Bid</b>	The highest bid submitted for a Lot in a round.
<b>Standing High Bidder</b>	The Bidder in a Round with the Standing High Bid

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## 2. OVERVIEW

1. The Authority commenced a process of licensing the International Mobile Telecommunications (IMT) spectrum on the 2.6 and 3.5 GHz bands, back in 2006<sup>1</sup>. In 2011, the Authority developed the licensing process by publishing a draft Spectrum Licensing Plan and a draft Invitation to apply<sup>2</sup> for a combined licensing of the 800 and 2600 MHz bands in terms of the Radio Frequency Spectrum Regulations<sup>3</sup> 2011.
2. In 2013, South Africa Connect (SA Connect)<sup>4</sup>, a broadband policy was published. South Africa Connect gives expression to the vision set out in the National Development Plan of a “seamless information infrastructure by 2030 that will underpin a dynamic and connected vibrant information society and a knowledge economy that is more inclusive, equitable and prosperous”. The focus remains on education, health and government services. It is further seen to operationalise the New Growth Path and the Strategic Integrated Project (SIP) 15<sup>5</sup>, which deals with expanding access to communications technology by ensuring universal service and access to affordable and secure broadband services by all South Africans, prioritising rural and under-serviced areas and stimulating economic growth.
3. South Africa Connect acknowledges that the slow deployment of fixed broadband services such as the Asymmetric Digital Subscriber Line (ADSL), and its relatively high cost, has meant that over the last five years mobile broadband rapidly became the primary form of broadband access rather than providing a complementary service to fixed broadband services as it has done in more developed economies.
4. Mobile services play a crucial role in providing communication services (voice and data) to consumers but also to many enterprises, especially small enterprises. Additionally, various econometric analyses have demonstrated that broadband has a positive impact on economic growth in both developing and developed markets. World Bank statistics show that in developing markets an expansion of broadband access (population penetration) of ten percentage points can result in expansion of the GDP by 1.4 percentage points<sup>6</sup>. Also every 1000 new subscribers to broadband internet services can result in the creation of 80 new jobs. These indicators are critical to South Africa, which needs to breach the digital divide, improve its economic growth and create new jobs.
5. In order to realise the Government’s rollout targets for broadband services in line with SA Connect Policy, the Authority is publishing the ITA for the licensing process for International Mobile Telecommunications (IMT) spectrum bands.

<sup>1</sup> The High Demand Radio Frequency Spectrum Licensing Framework Regulations promulgated by Government Notice R. 469, dated 28th May 2010 as amended,

<sup>2</sup> The process has been through a Notice published in Government Gazette 39179

<sup>3</sup> Government Gazette Number 34172 (Notice 184 and 185 of 2011)

<sup>4</sup> Notice No 953, Government Gazette No 37119 dated 6 December 2013

<sup>5</sup> Expanding Access to Communications Technologies

<sup>6</sup> A comprehensive review of the literature in this area by Christine Qiang, Carlo Rossotto & Kaoru Kimura, Economic impact of broadband, Information and Communication for Development, World Bank, 2009, pp. 35-50

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6. The mobile telecommunication technologies are a critical component in achieving the goal of 'broadband for all citizens' in South Africa.

### 3. INTRODUCTION

7. South Africa experiences continued growth in demand for more Spectrum as a result in significant growth in data traffic. The lack of availability of Spectrum for IMT brings constraints and challenges in the provision of broadband services. In order to address South Africa's bandwidth deficiency, the current allocated bandwidth of 567 MHz IMT spectrum needs to be increased.
8. There is a need to achieve a minimum of 1011 MHz for use by IMT including the Global System for Mobile Communications (GSM) by 2020 in order to achieve SA Connect Targets. It is the Authority's view that the licensing of 700, 800 and 2600 MHz will contribute a total bandwidth of 816 MHz towards achieving the SA connect Targets.
9. The 700 MHz, 800MHz and 2.6 GHz bands have been identified worldwide for International Mobile Telecommunication (IMT) services.
10. These bands complement each other in the sense that they fulfil the requirements for capacity and coverage which make them suitable for rural and urban areas and for bridging the digital divide.
11. It is for the above reasons that the Authority has decided on the simultaneous licensing of the 700 MHz, 800MHz and 2.6 GHz bands, to enhance competition and to increase broadband coverage, and in so doing bridge the digital divide and disparities between urban and rural access to broadband networks.

### 4. OBJECTIVE OF THE ITA

12. The main aim of licensing 700MHz, 800MHz and 2600MHz is to ensure nationwide broadband access for all citizens by 2020. This will be achieved by:
  - 12.1. Increasing universal service and access by ensuring rural connectivity
  - 12.2. Give consumers more choice,
  - 12.3. Promote Investment in the sector and economic growth,
  - 12.4. Ensure quality of service and experience, and
  - 12.5. Ensure affordability of services

### 5. LEGAL FRAMEWORK

13. The Constitution of the Republic of South Africa, 1996 and the Independent Communications Authority of South Africa (Act No. 13 of 2000): Section 192 of the Constitution empowers the Authority to regulate broadcasting in the public interest; whereas section 2 of the ICASA Act empowers the Authority to, amongst others, regulate electronic communications in the public interest.

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14. The Electronic Communications Act (Act No. 36 of 2005): Section 31(3) (a) of the ECA gives the Authority a discretion to develop regulations setting out the procedures and criteria for radio frequency spectrum licenses in instances where there is insufficient spectrum available to accommodate demand.
15. The Radio Frequency Spectrum Regulations 2015<sup>7</sup>: regulation 7 establishes a framework for the licensing of high demand radio frequency spectrum (i.e. where there is insufficient spectrum available to accommodate demand).
16. The National Radio Frequency Plan 2013<sup>8</sup>: allocated radio frequency spectrum for mobile broadband including IMT.

## 6. POLICY FRAMEWORK

17. National Development Plan: which agitates for a seamless information infrastructure that meets the needs of citizens, business and public sector; and provides access to the wide range of services required for effective economic and social participation by 2030.
18. South Africa Connect: 100% broadband access to all Citizens by 2020 and Universal download speed of 100 Mbps by 2030.
19. National Radio Frequency Spectrum Policy 2010<sup>9</sup>: it directs that management of spectrum should ensure efficient, effective, and transparent of spectrum based on fair pricing principles. Spectrum planning to ensure that all assignments serve the national interest. Spectrum availability for government services, scientific research and emergency services.
20. Broadcasting Digital Migration Policy 2020 as amended: sets the process in motion for the migration of analogue Television to digital TV thus releasing spectrum for IMT services.

## 7. SPECTRUM TO BE AWARDED AND LICENCE CONDITIONS

21. This section details the spectrum to be awarded in this process, and the licence conditions to which successful bidders will be subjected.

### 7.1. Spectrum to be awarded

22. The spectrum available for assignment is as follows:
  - 22.1. 2×30MHz in the 700MHz band (703MHz-733MHz/758-788MHz)
  - 22.2. 2×25MHz in the 800MHz band (796-801MHz/837-842MHz)
  - 22.3. 2×70MHz and 1×25MHz in the 2.6GHz band (2500-2570MHz/2620-2690MHz and 2595-2615MHz)

<sup>7</sup> The Radio Frequency Migration Plan Government Gazette Number 36334 (Notice Number 352 and 353 of 2013) of 03 April 2015

<sup>8</sup> National Radio Frequency Plan, Government Gazette Number 36336 (Notice 354 of 2013) of 28 June 2013

<sup>9</sup> Government Gazette Number 33246

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23. This spectrum will be awarded on a national basis covering the entire territory of South Africa.

24. The spectrum available for award is packaged into Four (4) Lots as follows:

Lots	700MHz	800MHz	2.6GHz
Lot A (To be awarded through a separate process)	2 x 15MHz (703-718MHz/ 758-773MHz)		25MHz (2595-2620MHz)
Lot B	2 x 5MHz (718- 723MHz/ 773- 778MHz)	2 x 5MHz (796-801MHz/ 837-842MHz)	2 x 20MHz (2500-2520MHz/ 2620-2640MHz)
Lot C		2 x 10MHz (801-811MHz/ 842-852MHz)	2 x 20MHz (2520- 2540MHz/2640- 2660MHz)
Lot D		2 x 10MHz (811-821MHz/ 852-862MHz)	2 x 20MHz (2540-2560MHz/ 2660-2680MHz)
Lot E	2 x 10MHz (723- 733MHz/ 778- 788MHz)		2 x 10MHz (2560- 2570MHz/ 2680-2690MHz)

**7.2. Diagram of spectrum packaging within each band**

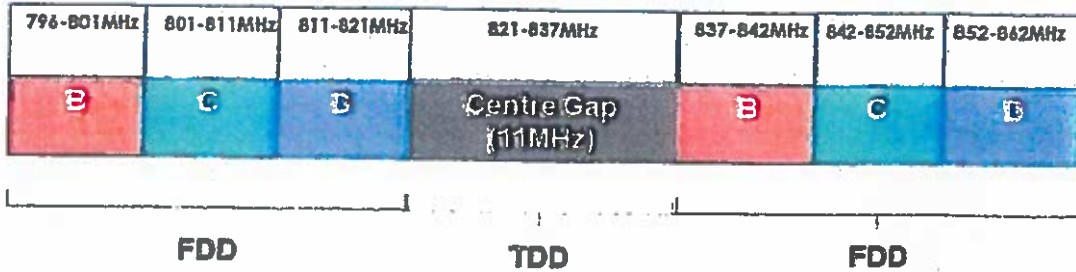
700MHz



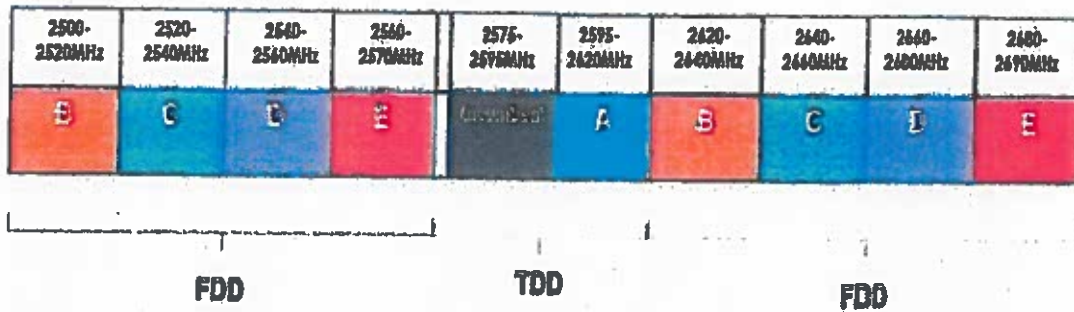
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800MHz



2600MHz



7.3. Lot Categories

25. The four (4) Lots, excluding Lot A, are grouped follows:



26. An Applicant will qualify to only bid on one of the Lots (excluding Lot A).

27. An Applicant will be free to switch between Lots during the auction stage.

7.4. Reserve Prices

28. The Reserve Price of the Lots is Three Billion South African Rands (ZAR 3 Billion).

7.5. Term of the Licences

29. A Licence is valid for fifteen (15) years from the date of issue.

30. A Licence renewable on an annual basis upon payment of the prescribed annual licence fee in accordance with regulation 10 of the Radio Frequency Spectrum Regulations, 2015.

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**7.6. Technologies to be allowed**

31. All Licences will be technology-neutral and service-neutral.

**7.7. Spectrum Caps**

32. A Spectrum cap is a limit placed on the amount of spectrum a Bidder can bid for in each bid round in an auction.
33. An Applicant will be allowed to bid for only one of Lots B, C, D and E.

**7.8. Annual fees**

34. Annual licence fees are payable by all Licensees in accordance with the "Spectrum Fees Regulations" published by the Authority.

**7.9. Technical conditions – 700MHz band**

35. The conditions of use must be in accordance with the rules for services as stipulated in the Radio Frequency Spectrum Assignment Plan<sup>10</sup> 2015.
36. The usage restrictions as defined in CEPT Report 53<sup>11</sup> will apply to frequencies in the 700MHz band.

**7.10. Technical conditions – 800MHz band**

37. The conditions of use must be in accordance with the rules for services as stipulated in the Radio Frequency Spectrum Assignment Plan<sup>12</sup> 2015.
38. Usage restrictions as defined in European Commission Decision No. 2010/267/EU<sup>13</sup> must apply to frequencies in the 800MHz band. The following parameters will apply regarding block edge masks:
- 38.1. Duplex mode: FDD
- 38.2. The highest average EIRP for out-of-block base stations must be in accordance with Case A (for TV channels where broadcasting is protected) of Table 4 "Baseline requirements

<sup>10</sup> Government Gazette Number 38640 (Notices 271 of 2015)

<sup>11</sup> Report A from CEPT to the European Commission in response to the Mandate "To develop harmonised technical conditions for the 694-790 MHz (700 MHz) frequency band in the EU for the provision of wireless broadband and other uses in support of EU spectrum policy objectives". Report approved on 28 November 2014 by the ECC 1 Provisional lower band edge subject to precise definition within the scope of this Mandate D.

<sup>12</sup> Government Gazette Number 38640 (Notices 273 of 2015)

<sup>13</sup> European Commission, 'Commission Decision of 6 May 2010 on harmonised technical conditions of use in the 790-862MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union', Official Journal of the European Union, 11 May 2010.

-- BS BEM out-of-block EIRP limits over frequencies below 790 MHz' of chapter B of the Annex.

#### 7.11. Technical conditions – 2.6GHz band

39. The conditions of use must be in accordance with the rules for services as stipulated in the Radio Frequency Spectrum Assignment Plan<sup>14</sup> 2015
40. The usage restrictions as defined in European Commission Decision No. 2008/477/EC<sup>15</sup> must apply to frequencies in the 2.6GHz band.
41. Within the band, frequencies are defined as either 'restricted' or 'unrestricted'. The Block Edge Masks (BEMs) differ between restricted and unrestricted blocks as follows:
  - 41.1. unrestricted blocks: maximum EIRP = 61dBm/5 MHz
  - 41.2. restricted blocks: maximum EIRP = 25dBm/5 MHz
42. 'Restricted' BEMs will apply to the following frequencies:
  - 42.1. 2615–2620MHz – the highest 5MHz of the unpaired 2.6GHz spectrum within Lot E
  - 42.2. 2595-2600MHz may be designated as a guard band.
43. All other frequencies within the 2.6GHzband, excluding those referred to in item 42 above, are unrestricted.

#### 8. OBLIGATIONS

44. The following obligations will form part of the license conditions of the Radio Frequency Spectrum License to be issued:

##### 8.1. Uplink and throughput obligations

45. SA Connect set the broadband user throughput target of 100Mbps for 50% of the population by 2020.
46. According to the OpenSignal's State of LTE report of February 2016<sup>16</sup>, the country with greater LTE coverage, 97% of the population, has an average download speed of 29Mbps, whereas the country with the highest average download throughput of 35Mbps has an LTE population coverage of 83%.

<sup>14</sup> Government Gazette Number 38640 (Notices 277 of 2015)

<sup>15</sup> European Commission, 'Commission Decision of 13 June 2008 on the harmonisation of the 2500-2690MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community', Official Journal of the European Union, 24 June 2008.

<sup>16</sup> <http://opensignal.com/reports/2016/02/state-of-lte-q4-2015/>

- 47. A Licensee must provide data services across the country with an average uplink of 15Mbit/s and the downlink user experience throughput of at least 30 Mbit/s to 100% of the population of South Africa by 2020.
- 48. A Licensee must submit documents to demonstrate progress to-date in sufficiently meeting the criteria of the uplink and throughput speed obligations. This information should be provided at intervals of 12, 18, 24, 30 and 36 months following the date that the 700MHz/800MHz spectrum is made available for network rollout based on commissioning date by the Licensees.
- 49. The documents to be submitted must demonstrate that the uplink and throughput speed obligations have been met. Should the Authority have any concerns about the accuracy of the information provided, it reserves the right to commission audits confirming the results of the analysis submitted by the Licensee. In this respect, please note that greater consideration will be given to measurements of actual performance instead of theoretical estimations of network performance.

**8.2. Open access obligations**

- 50. A Licensee is required to provide open access to a minimum of three Mobile Virtual Network Operators (3 X MVNO).
- 51. MVNO must have more than 51% of ownership held by persons from Historically Disadvantaged Groups. A Licensee will have a maximum of three years from the date that the 700MHz/800MHz spectrum becomes available to provide services in line with the set obligations.
- 52. If a Licensee fails to meet the obligations as set out in items 47 and 50 above, this will be regarded as a serious breach of the licence conditions and the radio frequency spectrum licence may be withdrawn by the Authority with immediate effect, subject to a determination by the Complaints and Compliance Committee for non-compliance.

**9. OVERVIEW OF APPLICATION PROCESS AND GENERAL TIMING**

- 53. This section provides an overview of the award process, including an indicative timetable for the completion of the auction.

**9.1. The award process**

- 54. The award will consist of three stages, as illustrated on the diagram below:



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**Diagram of award process**

55. The award will be a three stage process which will include qualification, Auction and Licensing Stages.
56. In the Qualification Stage, parties are invited to submit applications, in which they must state on which Lot Categories (Lot B/C/D/E) they may wish to place Bids during the award process. The identities of all applicants will be announced. The Applications will then be assessed by the Authority, and Applicants who meet the requirements specified in section 12.
57. Following Qualification Stage, the Auction Stage will commence. Qualified applicants (Bidders) will be requested to submit Bids for the Lots that they would be prepared to acquire at Reserve Prices. The Auction Stage will take the form of a SMRA auction, which will be conducted as described in Section 13.
58. Following the Auction Stage, Licences will be issued to winning Bidders, subject to the payment of the Auction Fee as described in section 14.

**9.2. The time schedule**

59. The table below provides an indicative timeframe for the award process. Note that given the nature of the SMRA, it is not possible to pre-determine the timetable for the Auction Stage.
60. The Authority reserves the right to alter any part of the auction timetable, including the Application Date, at any time. Except in extraordinary circumstances, the Authority will make any changes to the schedule for a specific event at least 24 hours in advance of the previously scheduled time.

**10. TIMEFRAME FOR THE AWARD PROCESS**

Day	Task Name	Start	Finish	Comments
X	Publication in Government Gazette -of the Invitation To Apply (ITA) for International Mobile Telecommunications	Fri 15/7/2016	Fri 15/07/2016	
X + 14	Deadline for enquiries regarding ITA by Public	Tue 19/07/2016	Thu 04/08/2016	
X + 28	Deadline to respond to enquiries by the public	Fri 05/08/2016	Wed 24/08/2016	
X + 56	Application Date	Mon 03/10/2016	Mon 03/10/2016	Start Time: 09h00 Closing Time: 15h00
X + 70	Publication of list of Applicants	Fri 21/10/2016	Fri 21/10/2016	
X + 84	Submission of queries/clarifications to	Mon 24/10/2016	Thu 10/11/2016	

	Applicants regarding their Applications			
X + 98	Announcement of Applicants qualified as Bidders	Wed 30/11/2016	Wed 30/11/2016	
X + 112	Bidder seminar and mock auction	Mon 12/12/2016	Wed 14/12/2016	Date Brought Forward to take into consideration, the start of the Festive Season
X + 119	Start of auction	Tue 17/01/2017	Tue 17/01/2017	Date Moved Forward to take into consideration, the end of the Festive Season
Y	End of auction	Tue 17/01/2017	Monday 30/01/2017	Duration has been estimated since the process may be shorter or longer and the Authority reserves the right to adjust as appropriate
Y + 1	Announcement of auction result	Tue 31/01/2016	Tue 31/01/2016	Duration has been estimated since the process may be shorter or longer and the Authority reserves the right to adjust as appropriate
Y + 31	Deadline for payment of auction fee	Tue 31/01/2016	Tue 14/03/2017	Duration has been estimated since the process may be shorter or longer and the Authority reserves the right to adjust as appropriate
Z	Issuing of the Licenses	Tue 14/03/2017	Tue 28/03/2017	Duration has been estimated since the process may be shorter or longer and the Authority reserves the right to adjust as appropriate

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## 11. GENERAL RULES

### 11.1. Prohibited Practice and other disruption to the auction

61. Until the conclusion of the award process (i.e. once Licences have been issued) Applicants must not:
  - 61.1. Disclose any Confidential Information to other Applicants,
  - 61.2. Enter into agreements with other Applicants in relation to the award process, or
  - 61.3. Undertake any action that may adversely affect the award process.
62. Disclosure of information of any nature, which, directly or indirectly, concerns a Bid submitted by an applicant or a Bid that an applicant considers submitting, if such information could affect the price that an applicant would offer. Confidential Information must include any non-published information about an applicant's strategy, including the Bid that an applicant is willing to submit, which may affect the applicant's price or submission of a Bid, and which may influence the applicant's fulfilment of its Bid, as well as information about financing the Bid sum.

### 11.2. Groups or Consortiums

63. If multiple Individual Electronic Communications Network Service (ECNS) licensees have an arrangement to form a group/consortium in order to partake in the licensing process, only one is allowed to partake in the process. No group/consortium must have as a member, a person that does not have an Individual ECNS licence
64. An Applicant is required to notify the Authority of the members of a group/consortium and any change to the membership subsequent the application date.

### 11.3. Sanctions

65. In the event that an Applicant breaches the auction rules, the Applicant can either be fined but permitted to continue in the award process, or be fined and excluded from the award process, depending on the severity of the breach. If an applicant is excluded from the award process, the Authority reserves the right to annul the entire award process.

## 12. QUALIFICATION STAGE

66. This section describes the Qualification Stage of the award process.

### 12.1. Entities that are eligible to submit an application

67. In order to submit an application, Applicants must:
  - 67.1. Be an Individual ECNS licensee in South Africa

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- 67.2. Have a minimum 30% (thirty percent) equity ownership held by persons from Historically Disadvantaged Groups.

**12.2. Submission of Applications**

68. The Application must be in writing, contained in an envelope addressed to the Chairperson, Independent Communications Authority of South Africa, 164 Katherine Street, Sandton, Johannesburg.
69. The envelope must be sealed and signed across the envelope join by one of the Applicant's Authorised Representatives.
70. The Application must be deposited in the Bid Box situated at: Block B, Pinmill Farm, 164 Katherine Street, Sandton, Johannesburg between 9:00 and 15:00 on the application date (i.e. Mon 03/10/2016)
71. An auctioneer to be appointed by the Authority will manage the process of receiving the Applications.
72. An Applicant that submits an application during the specified time window will receive a receipt to acknowledge submission of the application. Applications received after the specified times or delivered to the wrong address or block will not be accepted.
73. An applicant is only permitted to submit one Application.
74. The closing date for receipt of applications is Mon 03/10/2016 at 15:00 sharp.

**12.3. Application Fee**

75. Each Applicant must pay a non-refundable application fee of Three Million Rands (ZAR 3 000 000.00). The payment must be in the form of an electronic transfer or via a direct deposit into the following ICASA bank account:

**76. ICASA Banking Details**

BANK : Nedbank  
BRANCH : Nedbank Corporate Investment Banking  
BRANCH CODE: 198765  
ACCOUNT NO : 1462002927  
Swift Code : NEDSZAJJ  
REFERENCE: Applicant Name

**12.4. Application content**

77. The application must consist of the following documents:
- 77.1. A completed and signed Application Form.
- 77.2. A certified copy of the applicant's registration certificate.

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- 77.3. A certified copy of the applicant's Individual ECNS licence.
  - 77.4. A detailed, clear and exhaustive description of the ownership structure of the Applicant.
  - 77.5. A brief profile of the applicant and details of historic investments and operations in the South African telecommunications market (and/or other international telecommunications markets)
  - 77.6. Business plan(s) for exploitation of the Lot(s) covering a period of at least 10 years from the award of the Licence(s).
  - 77.7. Proof of financial capability of the Applicant – including historic financial statements and evidence of the ability to meet the funding requirements of the Applicant's business plan(s).
  - 77.8. Proof of technical capability of the Applicant – Details of managerial and organisational capability to deploy the planned communications network; as well as details of the network deployment including technology(ies) to be deployed, sites on which new radio equipment is to be deployed, details of new sites, schedule for deployment of the network and the provision of coverage maps.
  - 77.9. Power of Attorney that empowers the three Authorised Representatives to sign for the Applicant or who are otherwise authorised to bind the Applicant in any respect regarding the Application and the auction.
  - 77.10. A bank guarantee for an amount equal to ZAR100 000 000.00 (One Hundred Million Rands), which will act as a guarantee during the Qualification Stage.
  - 77.11. A copy of an Applicant Declaration signed by one of the Applicant's Authorised Representatives. A copy of this provided in Appendix D.
  - 77.12. Proof of payment of the Application Fee.
78. The Application must be in English and be properly bound and paginated. Five (5) copies of the Application must accompany the Application.
79. Applicants are also requested to provide a CD-ROM/DVD with pdf copies of all documents submitted.

#### 12.5. Application Form

80. The applicant must complete the Application Form as set out in Appendix B, which must contain the following information:
- 80.1. The applicant's name and an address in South Africa, telephone number and e-mail address where the Applicant may be contacted on weekdays between 09.00 and 17.00 hours (Central African Time). This will serve as the applicant's official address for this procedure and intended for the delivery of documents, communications and notifications.
  - 80.2. An exhaustive list of the names, positions, and addresses of the Applicant's members of the board of management and board of directors or, in the absence of such, similar bodies.

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- 80.3. Details of the names, positions and signatures of the three (3) Authorised Representatives who are empowered to sign for the applicant or who are otherwise authorised to bind the applicant in any respect regarding the application and the auction.
- 80.4. Details of the names, positions and signatures of up to five (5) Auction Representatives that may be present at the auction location during the Auction Stage. Note that these are in addition to the Authorised Representatives, who will also be permitted entry to the auction location during the Auction Stage.

**12.6. Business plan(s)**

- 81. In undertaking the evaluation of the Business Plan(s) of the applicant, the Authority will be seeking evidence that the Business Plan:
  - 81.1. Is based on a realistic assessment of the evolution of the South African mobile telecommunications market and the applicant's role within it (in terms of subscriber take-up of data services, evolution of customer expenditure, estimation of market shares (wholesale/retail as appropriate) of the Applicant)
  - 81.2. Has sufficient allowance for expenditure to meet the network coverage and capacity requirements necessary to achieve the forecast revenues in the business plan
  - 81.3. Has sufficient allowance for network expenditure to meet any obligations associated with the Lot(s)
  - 81.4. Includes the upfront and annual licence fees associated with the relevant spectrum Lot(s) as well as other regulatory costs (the upfront cost of the spectrum should be included in the Business Plan at the reserve price for the Lot(s) in question)
  - 81.5. Has sufficient allowance for cost of sales and operating expenses associated with customer acquisition, marketing, customer service, network operations and maintenance including the employment costs of staff in the business
  - 81.6. Realistically assesses the peak funding requirement of the business and the timing over which funds are needed and will be repaid
  - 81.7. Identifies key risks to the business plan and includes a sensitivity analysis of the impact of these risks on the plan.
- 82. The applicant should submit sufficient detail in the Business Plan to the Authority to enable it to make a positive assessment. The Profit & Loss forecast, Balance Sheet forecast and cash flow forecast for at least 10 years should be included in the Business Plan, together with supporting assumptions and calculations. The Business Plan(s) should be provided by the Applicant in both hardcopy and Microsoft Excel format.

**12.7. Proof of financial capability**

- 83. In undertaking the evaluation of the financial capability of the applicant, the Authority will seek assurance that the business plan of the applicant is fully funded, in particular the peak funding requirement for the business. The applicant should submit all appropriate documentation that

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demonstrates this – which could include a mixture of historic financial statements for the applicant (and/or key shareholders in the event that the applicant is a new organisation/consortium) as well as proof of funding (e.g. from recognised financial institutions in relation to anticipated debt).

#### 12.8. Proof of technical capability

84. In undertaking the evaluation of the technical capability of the applicant, the Authority will seek assurance that the applicant has the technical, managerial and organisational capability to deploy the planned communications network and that the Applicant's planned network deployment (areas to be covered, timeline) is fully aligned with the requirements of the applicant's Business Plan as well as any coverage obligations associated with the Lot(s) which the Applicant intends to apply for. The applicant should submit all appropriate documentation that demonstrates this – as a minimum, this should include the documents relating to technical capability as detailed in 77.8.

#### 12.9. Bank guarantee

85. Each applicant must submit a bank guarantee as part of its application (see template in Appendix C). The amount guaranteed by the bank should be equal to ZAR100 000 000.00 (One Hundred Million Rands). It should be valid for 90 days after the application Date.
86. The Authority may draw down on the guarantee in order to cover penalties or compensation that accrue during the Application Stage.
87. The Authority may require increases in the bank guarantee during the Auction Stage. The amount and the deadline for submission of the additional guarantees will be communicated to each Bidder. The bidding process will then be suspended until the deadline.
88. Applicants that cannot provide the required bank guarantee will be disqualified from the Auction Process.
89. The bank guarantee must not accrue interest.
90. The guarantee shall be released by the Authority in the following cases:
- 90.1. At the end of the Auction Stage, if a Bidder is unsuccessful in winning a Licence
  - 90.2. Once a winning Bidder has fulfilled the payment terms.

#### 12.10. Opening and initial review of Applications

91. After expiry of the deadline for applications, the Authority will proceed to open all the applications received.
92. The Authority will also undertake an initial review of the applications in order to determine whether the applications are submitted in accordance with the specified rules and contain the correct information and documentation.

93. If the Authority finds that the application has not been completed correctly, the Authority will request the applicant to correct the application within seven (7) days.
94. If the applicant has not corrected the application within seven (7) days, the Authority will reject the application or grant a further extension to correct the matter.

#### **12.11. Publication of list of applicants**

95. Following the initial review of the applications, the Authority will notify all applicants of the identity of all other applicants whose applications have not been rejected and their ownership structure, providing the date by which applicants must confirm in writing if they are in the same Relevant Group as another Applicant.
96. The identity of the applicants and their ownership structure will also be published on the Authority's website.
97. Other than the identity of applicants, their ownership structure and their requested Lot, no further information from Applications will be published.
98. Each applicant is required to review the list of applicants and their ownership structures and notify the Authority in writing if they are in the same Relevant Group as another applicant.
99. If a group of applicants are found to be in the same Relevant Group, they will be given until the last day for Withdrawals to resolve the situation by either changing their relationship such that they are no longer in the same Relevant Group, or by one of the applicants withdrawing from further participation in the auction.
100. Applicants that do not resolve the situation will have their application rejected.
101. Applicants that withdraw on or before the last day for withdrawal will not be subject to any penalties.

#### **12.12. Assessment of the applications**

102. Following the submission of the application, the Authority will conduct an assessment of the Application to determine:
103. Whether the Bidder has qualified to participate in the Auction Stage
104. As part of this process, the Authority may ask for clarifications on any aspect of the applications, particularly the financial and technical aspects.
105. Applicants must respond to the clarification request in terms of item 104 within seven (7) days from receipt thereof.

#### **12.13. Announcement of applicants qualified as Bidders**

106. Following the assessment of all applications, the Authority will publish a list of all applicants qualified as Bidders on its website.,

107. If no applicants qualify as Bidders, the award process will be discontinued.

#### 12.14. Amendments and correction of applications

108. At any stage during the award process, applicants are required to notify the Authority immediately of any changes in the information provided as part of their application, or if applicants realise that the information provided is inaccurate and/or incomplete.

109. On receiving such notifications, the Authority will assess whether the applicant / Bidder can continue to take part in the process.

### 13. AUCTION STAGE

110. The format selected for the Auction Stage is a Simultaneous SMRA auction.

110.1. The auction may consist of one or more Rounds. It will continue until there is a Round in which no new Bids are placed and no Waivers are used.

110.2. In each Round, Bidders will have the opportunity to place Bids on any of the available Lots, providing those Bids do not break the Activity Rules and Spectrum Caps.

#### 13.1. Bid Rounds

111. Before each Round begins, the Authority will communicate to all Bidders the Standing High Bid and Standing High Bidders amount on each Lot, as well as the price options available for each Lot that can be Bid on in the current Round.

112. Each Bidder (other than Bidders which have already withdrawn from the auction) is invited to submit one Bid Entry Form (see example Bid Entry Form in Appendix E) stating on which Lots it wishes to place a Bid, and selecting exactly one price option for each Lot.

113. If a Bidder wishes to submit a Bid, it is free to choose which Lots to Bid for, subject to Eligibility, the Spectrum Caps, and the Lot Categories on which they have qualified to bid. However, a Bidder is not permitted to bid on Lots on which it is currently the Standing High Bidder.

114. Instead of submitting a Bid, a Bidder may:

114.1. Use a Waiver (see 13.4 for further details)

114.2. Submit a 'No Bid' Bid (see 130 for further details), or

114.3. Actively withdraw from the auction (see 127 for further details).

115. Each Round will end after the allotted round time has expired, regardless of whether all Bidders have submitted Bids.

116. Once the Round is finished, the new Standing High Bidders and Standing High Bid amounts will be determined, based on the highest Bid placed on each Lot.

116.1. If one or more Lots have received Bids from multiple Bidders of value equal to the maximum bid value of the Round, the Standing High Bidder will be selected by means of a tie-break.

116.2. Each Bidder that placed a Bid equal to the maximum Bid for the Lot will have an equal chance of being selected as the Standing High Bidder.

117. The status of Standing High Bidder on a particular Lot is maintained until another Bidder places a Bid for that Lot in a subsequent Round at a higher price.

**13.2. Bid options**

118. For each Round, the Authority will specify four (4) bid amount options which may be placed on each Lot.

119. The bid amount options for each Lot will be decided by the Authority.

120. The percentage increments (i.e. the difference between the Standing High Bid amount and the bid amount options) for all Rounds will be communicated to all Bidders at the end of the day.

121. Bid Increments will be in the range of 1%-20% of the Standing High Bid on each Lot. Bid Increments will not necessarily be the same for all Lots (in percentage or absolute terms).

122. Bid amount options will be rounded up to the nearest ZAR100 000 (One Hundred Thousand Rands).

**13.3. Eligibility and Activity**

123. A Bidder's Eligibility describes the maximum of Lots on which it may place Bids in the current Round.

124. A Bidder's Activity describes the number of Lots on which it is either Standing High Bidder or places a new Bid on in the current Round.

125. In each Round, a Bidder will receive a certain Eligibility, based on its Initial Bid and Activity in the previous Round.

126. In the first Round, a Bidder's Eligibility is equal to its Activity in its Initial Bid

127. Each Lot has an associated number of Activity Points as follows:

Activity Points	3	3	3	3
-----------------	---	---	---	---

128. The sum of the Activity Points of each Lot on which a Bidder places a Bid in a Round, combined with the Activity Points of Lots on which the Bidder is Standing High Bidder, defines the total Activity of the Bidder within the Round.

13e

129. Eligibility in the following Round is set equal to the Bidder's Activity in the current Round. Thus, it is not possible for a Bidder's Eligibility to increase.
130. If a Bidder is Standing High Bidder on Lots which have a combined Activity Points level equal to the Bidder's Eligibility for the Round, it must submit a "no Bid" Bid, to identify that it does not wish to use a Waiver.
131. If a Bidder submits a "no Bid" in Round when it is Standing High Bidder on Lots which have a combined Activity Points of less than the Bidder's Eligibility, then its Eligibility will reduce for the next Round (as per the usual Eligibility rule described in 129).

#### 13.4. Waivers

132. The use of a Waiver enables a Bidder to maintain its Eligibility in the next Round, without submitting a new bid in the current Round.
133. Each Bidder is allowed a maximum of six (6) Waivers during the auction.
134. In any Round, a Bidder may choose to submit a Waiver in place of any new Bids on Lots, provided it has at least one Waiver remaining, and has not withdrawn from the auction.
135. If a Bidder is Standing High Bidder on any Lots when it uses a Waiver, it will remain Standing High Bidder unless another Bidder places a Bid of greater value on those Lots.
136. When a Waiver is used, the Bidder retains the same level of Eligibility for the next Round as it had in the current Round.
137. If a Bidder does not submit a valid Bid before the end of the Round, then a Waiver is automatically used for that Round, provided the Bidder has a Waiver remaining.

#### 13.5. Withdrawal from the auction

138. In any Round, Bidders have the opportunity to withdraw from the auction.
139. If a Bidder chooses to submit a Withdrawal, it will no longer be eligible to submit Bids in the auction. It is not possible for a Bidder to submit Bids and a Withdrawal in the same Round.
140. If a Bidder withdraws whilst it is Standing High Bidder on any Lot, it will remain Standing High Bidder until another Bidder places a higher Bid on that Lot. As a result, it is possible for a Bidder that has withdrawn to win Lots which it had bid on before the Withdrawal, provided no other Bidders place further Bids on those Lots.
141. If a Bidder fails to submit a valid Bid before the end of the Round, and has no remaining Waivers, it will automatically be withdrawn from the auction.
142. It is not possible for a Bidder to withdraw Bids that it has previously placed in the auction. This includes any Standing High Bids the Bidder has at the point of Withdrawal.

#### 13.6. Submission of Bids

143. For a submitted Bid to be valid, it must satisfy a number of criteria:

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- 143.1. The Activity points associated with the Bid must not exceed the Bidder's current Eligibility.
  - 143.2. The Bid must not exceed the Spectrum Caps set out in 32.
  - 143.3. The Bid must have selected at most one (1) price option for each Lot.
  - 143.4. The Bidder must have qualified to Bid in the Qualification Stage on all Lot Categories for which it is submitting a Bid.
  - 143.5. The Bid must be submitted within the Round time limit.
  - 143.6. A Bid is considered submitted once it has been placed in the designated Bid Box.
  - 143.7. The Bid must be the only Bid submitted by the Bidder in the current Round.
  - 143.8. If a Bidder submits multiple bid forms in a Round, all Bid forms from the Bidder will be deemed invalid.
  - 143.9. The Bid must be signed by one of the Authorised Representatives of the Bidder.
  - 143.10. The 'Total Value of New Bids' field must be filled in correctly.
  - 143.11. This should include the combined value of all new Bids in the Round.
  - 143.12. This should not include Standing High Bid values from the previous Round.
  - 143.13. If the total value does not match the combined value of all new Bids submitted by the Bidder in the Round, the Bid will be deemed invalid.
  - 143.14. If a Bidder is submitting a "No Bid" Bid, it must not also submit Bids for any Lots.
  - 143.15. If the Bidder is submitting a Waiver, it must not also submit Bids for any Lots.
  - 143.16. If the Bidder is submitting a Waiver, it must not also submit a "No Bid" Bid.
  - 143.17. If the Bidder is withdrawing from the auction, it must not also submit Bids for any Lots.
  - 143.18. If the Bidder is withdrawing from the auction, it must not also submit a "No Bid" Bid.
  - 143.19. If the Bidder is withdrawing from the auction, it must not also submit a Waiver.
144. If the above criteria are not met, the Bidder will automatically use a Waiver or, if no Waivers remain, be withdrawn from the auction.
145. Once a Bid has been submitted, it may not be removed.

### 13.7. Information provided to Bidders

146. After the end of each Round, Bidders will be provided with the following information for each Lot:
- 146.1. The Bids submitted by each Bidder
  - 146.2. The Standing High Bid amount

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146.3. The identity of the Standing High Bidder

146.4. The bid amount options allowed in the following Round

147. Bidders will also be provided the following additional information:

147.1. The identity of any Bidders that used a Waiver or withdrew in the previous Round

147.2. The number of Waivers each Bidder has remaining

147.3. The Eligibility of each Bidder in the following Round

147.4. The start time of the following Round

147.5. The duration of the following Round.

### 13.8. Closure of the auction

148. The auction will close once a bid Round has been completed in which no new Bids were placed (excluding "No Bid" Bids) and no Waivers were used.

149. Once the auction has closed, the Standing High Bidders on each Lot will be designated the winners of those Lots.

150. Following this, each Bidder's auction fee is calculated as the sum of the Standing High Bids on the Lots which the Bidder has won.

### 13.9. Auction location

151. The auction will take place in Johannesburg, with all Bidders co-located in the same building. The exact location of the auction will be communicated nearer to the auction date.

152. Each Bidder will be provided its own private room in which it may make its bid decisions.

153. The bid rooms will contain the following equipment:

153.1. Internet access

153.2. Telephone line

154. The Authority takes no responsibility for the operation of the equipment, including the internet connection, so each Bidder may wish to organise its own ICASA approved back-up systems if required e.g. via wireless connections

155. Bidders are also free to bring additional ICASA approved equipment as required, such as computers, laptops, mobile phones and printers.

156. Bids will be submitted in a public room, by means of placing a completed bid entry form in the designated 'Bid Box'.

157. During the auction, the auction location will be electronically surveyed by means of audio-video equipment.

158. The surveillance will not include the interior of the bid rooms and is limited to the 'Public Areas' (including the access ways to the bid rooms) and to the rooms used by the Authority.

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159. The records will be used in view of monitoring the observance of the auction rules and will be archived by the Authority after the procedure is completed.
160. 'Public Areas' will be accessible to The Authority, its Advisors, an independent auditor, and all Bidder Representatives. The general public will not have access to any part of the auction location.

**13.10. Bidder representatives**

161. During the auction, at least one Authorised Representative per Bidder must be present at the auction location for the duration of each bidding day.
162. Each Bidder will be allowed up to a maximum of five (5) persons at the auction location each day, including the Authorised Representative(s).

**13.11. Auction timing**

163. The Authority has complete discretion over the scheduling of Rounds:
  - 163.1. There is no minimum or maximum number of Rounds that may be scheduled each day.
  - 163.2. The minimum duration of each Round is one (1) hour.
  - 163.3. There is no maximum duration for each Round, although the Authority does not expect any Round to last longer than two (2) hours.
164. To assist Bidders in their planning for the auction, the following parameters provide a guide to the Authority's current intentions regarding the scheduling of Rounds:
  - 164.1. Rounds will be scheduled between 09.00 and 17.00 (Central African time) on business days only.
  - 164.2. The last Round of the day will start prior to 17.00 (Central African time) but may end after that time.
  - 164.3. The Authority anticipates running between 3 and 6 Rounds on each day.
  - 164.4. There will be a minimum time gap of 20 minutes between Rounds.
  - 164.5. At the end of each bidding day, The Authority will announce an indicative schedule for the following bidding day's Rounds.
  - 164.6. The start of any particular Round may be delayed, but no Round will be scheduled earlier than in the previously published schedule.
  - 164.7. At the end of each bidding day, The Authority will also announce the percentage Bid Increments to be used to calculate the bid amount options for each Lot throughout the following bidding day.

**13.12. Sustenance**

165. Bidder representatives will be provided lunch each bidding day, in their respective bid rooms.

166. Drinking water will be available as required throughout each bidding day.

### 13.13. Bid round process

167. The Authority will issue each Bidder with one (1) bid entry form and an official envelope for the following Round, which Bidders must use to submit their Bid for that Round.
168. An illustrative Bid Entry Form may be seen in Appendix E.
169. If a Bidder incorrectly fills in their bid entry form, The Authority will issue a replacement, on the following conditions:
- 169.1. There is at least fifteen (15) minutes remaining in the current Round.
  - 169.2. The Bidder has not submitted the incorrect form.
170. Once the Round commences, Bidders will have the Round duration to make their bid decision and submit their bid forms.
171. If necessary, Bidders may communicate electronically with persons outside of the bid room to assist in the decision making.
172. Once a bid decision has been made, the bid entry form must be completed.
173. The Bidder should place a cross (X) in the box which relates to its selected price for each Lot it wishes to bid on.
174. The Bidder should take care to ensure that it does not exceed its current eligibility level.
175. The Bidder should then enter the total value of all new Bids it has placed in the Round into the Total Value of New Bids field.
176. This should be equal to the sum of all Bids marked with a cross on the bid entry form.
177. This should not include the value of Bids placed in previous Rounds, even if they are Standing High Bids.
178. If the Bidder wishes to submit a Waiver, place a 'No Bid' Bid (as a result of being Standing High Bidder on all Lots it wishes to purchase), or withdraw from the auction, it should mark the relevant box with a cross (X)
179. The Bidder should not mark any other boxes on the Bid Form in this case.
180. The Total Value of New Bids field should also be left blank in this case.
181. Following this, the bid entry form should be signed by one of the Bidder's Authorised Representatives.
182. The bid entry form must then be placed into the official envelope and the Authorised Representative must sign across the envelope join. This must be undertaken in the bid room
183. The bid entry form may then be placed into the Bid Box in the public area.
184. A Bid is considered as submitted once it has been placed into the Bid Box.
185. Once a Bid has been submitted it cannot be withdrawn or removed from the Bid Box.

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186. On submission of the Bid, the Bidder will receive a receipt to acknowledge submission of the Bid.

#### 13.14. Opening of Bids

187. Once the Round has ended, the opening of the Bids will occur in the public area.
188. Each Bidder's bid entry form will be presented in front of all representatives in the room.
189. After all Bids have been announced, the Bids will be assessed to determine which Bidder becomes the Standing High Bidder on each Lot, and the associated Standing High Bid.
190. In case of a tie-break situation, the tie-break will be undertaken in the public area.
191. If the auction is not complete, the timing of the next Round will then be announced, along with all other information.

#### 13.15. Exceptional circumstances

192. In case exceptional circumstances occur during the auction, the Authority may take one of the following decisions:

- 192.1. Postpone the end of a Round in progress or the release of results of a Round.
- 192.2. Pause the auction.
- 192.3. Cancel a Round that is either underway or that has finished but for which Round results have not yet been released, and reschedule that Round.
- 192.4. Void one or more Rounds (in which case any Bids, Waivers, or Withdrawals from those Rounds are void as well), and resume the auction from an earlier Round.
- 192.5. Void all Bids received in the auction, and either suspend the auction or restart the auction.
- 192.6. Take any other steps or measures in running the auction that are appropriate and proportionate to the exceptional circumstances that have arisen and that further the objectives of the award process.

193. The occurrence of an exceptional circumstance is to be assessed by the Authority.

194. Such circumstances may include, for example:

- 194.1. The occurrence of natural catastrophes, demonstrations, strikes, violent conflicts or incidents of any kind
- 194.2. Technical faults or any other exceptional events that may disturb or hinder the activities carried out by the Authority
- 194.3. The occurrence of indications or acknowledgements of breaches of the rules regarding the participation in the selection procedure by one or several Bidders
- 194.4. Any other exceptional circumstances that may in any way endanger the carrying out of the auction.

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195. The Bidders are obliged to immediately inform the Authority about the occurrence or imminence of an exceptional situation

196. A representative of the Bidder announcing this situation must proceed directly to the room reserved for the Authority.

#### **13.16. Independent auditor**

197. An independent auditor will be appointed by the Authority to oversee the auction process

198. The auditor will be permitted access to all public areas, but not to the private bid rooms of each Bidder.

#### **13.17. Media coverage**

199. At the end of each bidding day, The Authority will publish the current Standing High Bidders and Standing High Bids.

#### **13.18. Announcement of award process results**

200. Upon conclusion of the Auction Stage (or the Qualification Stage if the Auction Stage is not required), the Authority will make a public announcement comprising:

200.1. The Bidders that participated in the auction.

200.2. The identity of the winning Bidders.

200.3. The frequencies assigned to the winning Bidders.

200.4. The Auction Fee to be paid by each winning Bidder.

### **14. LICENSING STAGE AND LICENSE DURATION**

201. Following the completion of the Auction Stage, payment of the Auction Fee will be requested from the winners of the Lots.

#### **14.1. Payment of the Auction Fee**

202. The Auction Fee payable by each winning Bidder will be the Standing High Bids on the Lots which the Bidders has won.

203. Any penalties incurred during the award process must be paid in full at the same time as the payment of the Auction Fee.

204. It is the responsibility of the participants to arrange their own finance in order to pay the Auction Fee.

205. The payment of the Auction Fee must be paid into The Authority's bank account within thirty (30) working days after the public announcement of the award process results by The Authority.

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Instructions for the payment of the Auction Fee will be sent in due course to the winning Bidders.

206. Non-payment, late or incomplete payment of the Auction Fee may lead to the non-issuing of the Licence.

**14.2. Issue of Licences**

207. Once the payment of the Auction Fee has been received by the Authority, the Licences will be issued to the winning Bidders.

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APPENDIX A – OVERVIEW OF SOUTH AFRICA TELECOMS MARKET

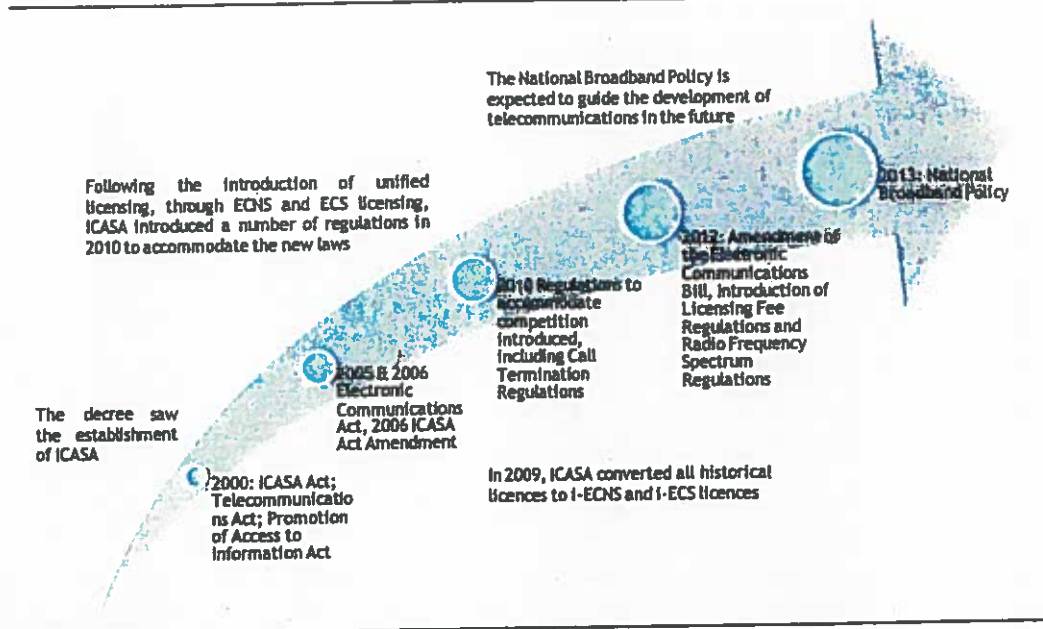
1) MARKET OVERVIEW

Regulatory Evolution

The South African telecommunications market has been undergoing a process of liberalisation since the turn of the century. The introduction of successive Acts and Amendments is designed to create greater competition in the market and drive market efficiencies.

A timeline of key legal and regulatory developments is presented below.

Telecoms services market revenue growth (in ZAR billions)



Source: Africa Analysis, 2014

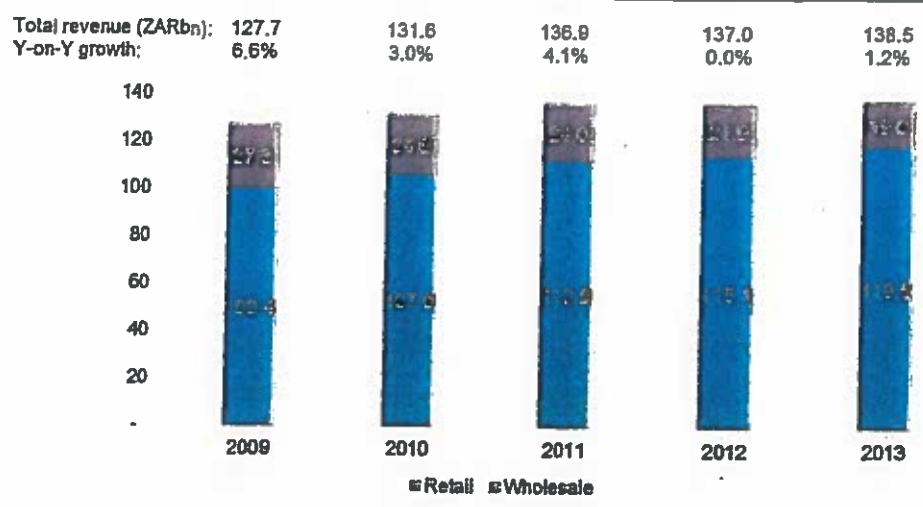
The National Broadband Policy was finalised in December 2013. The Policy provides a broad framework for achieving complete broadband penetration in South Africa by 2030 and sets out a number of milestones that need to be achieved in the intervening period of time. Currently, the government of South Africa is developing an implementation plan for the Broadband Policy.

Market Revenue

The South African telecommunications services market was worth ZAR138.5 billion at the end of 2013. Retail services accounted for approximately 86% of the total revenue, with wholesale revenue having been in decline since 2010 due to competitive and regulatory (in the case of interconnect) downward pressure on wholesale pricing. Market revenue growth stagnated in 2012, but began to recover in 2013. Services revenue growth over the past five years is presented below.

Telecoms services market revenue growth (in ZAR billions)

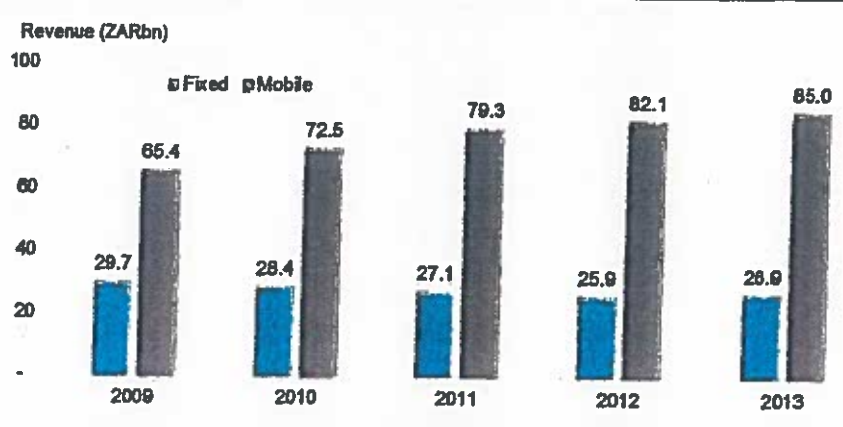
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Source: Africa Analysis, 2014

Within the retail environment, mobile services revenue accounts for approximately 61% of all revenue (end 2013) and has been growing its share of the total. The comparison between mobile and fixed line revenue growth is provided below. (Note that it excludes 'other' retail revenue, not directly associated with either the mobile or the fixed line operators.) Negative fixed line growth is attributable to the decline of Telkom's revenue, although more recently, Telkom has begun to recover. Neotel has been growing at a healthy rate, although from a comparatively very low base.

**Telecoms retail services market revenue growth (in ZAR billions)**



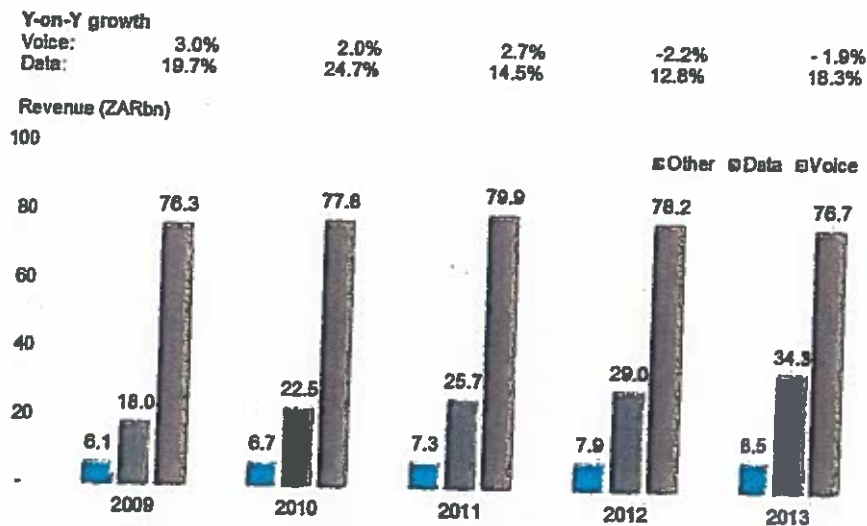
Source: Africa Analysis, 2014

The share of data revenue generated from retail sales has been growing, while voice revenue has been in decline since 2011. In particular, fixed line voice has been declining for the past several years, although mobile voice began to demonstrate negative revenue growth in 2012. This is the result of the intensifying price war between the mobile operators. Competition is driving the voice value out of the market.

In contrast, data revenue has been increasing, although fixed line data has been growing in low single digits year-on-year, with somewhat stronger growth in 2013. On the other hand, mobile data revenue shows strong growth, with approximately 30% year-on-year growth, and accounts for about 75% of combined fixed line and mobile data revenue (end 2013).

Although both voice and data retail prices have declined significantly over the past two years, the additional use of voice services does not compensate for the rate of price decline, whilst the opposite is true for data services. Retail voice and data revenues for the total market over the past five years are presented below. Voice continues to account for 64% of retail services revenue (2013) despite its decline.

#### Retail voice and data services revenue growth (in ZAR billions)

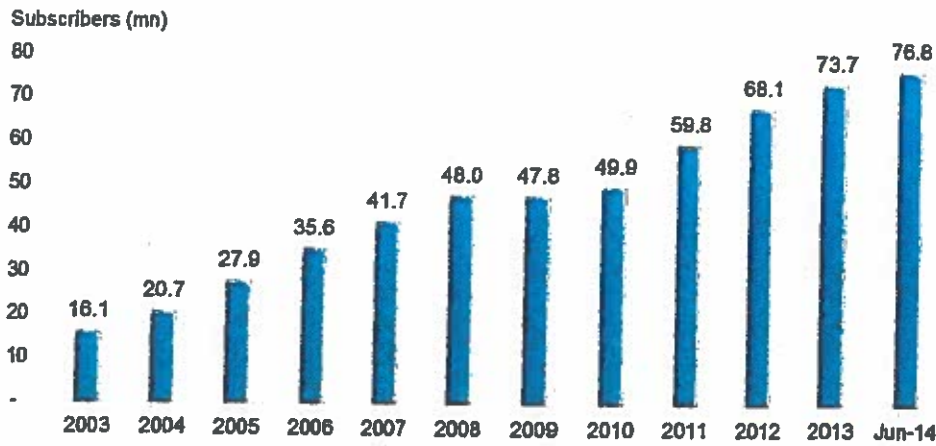


Source: Africa Analysis, 2014

#### Mobile Market

Mobile telecommunications were introduced to South Africa with the licensing of Vodacom and MTN in 1993, both using the 900MHz spectrum for 2G services. The launch of prepaid services made mobile services more accessible to larger segments of the population and stimulated market growth. The market remained a duopoly until 2001 when the third competitor, Cell C began to offer services. Telkom Mobile (formerly 8ta), the fourth operator, entered the market in 2010. Mobile subscriber growth over the past ten years is presented in the following exhibit.

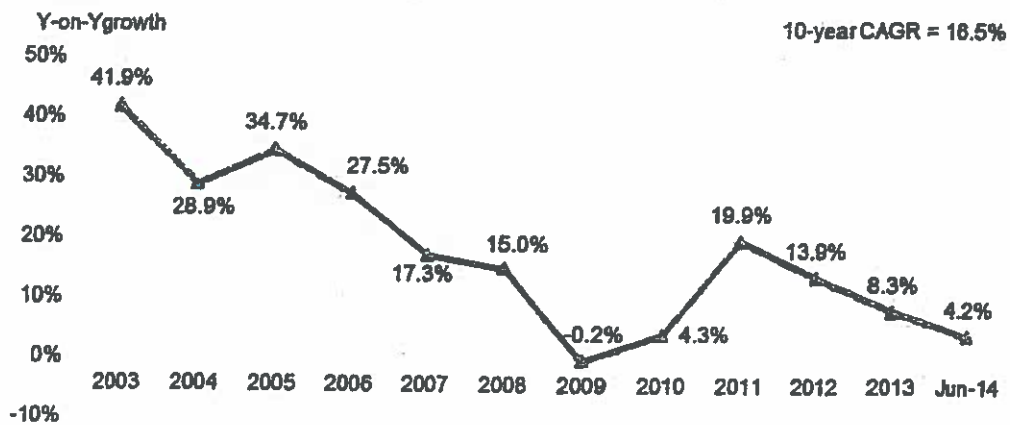
Mobile subscriber growth (in millions)



Source: Africa Analysis, 2014

The year-on-year market growth is presented in the following exhibit. The 2009 market growth decline was due to the implementation of the prepaid SIM card registration requirement and the consequent deregistration of "ghost" SIM cards. Annual market growth is declining and stabilising – a sign of market maturity.

Mobile market year-on-year growth



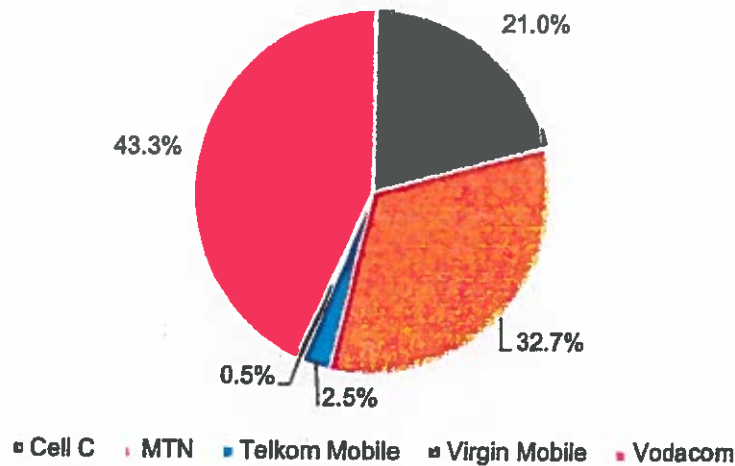
Source: Africa Analysis, 2014

The South African mobile market is mature and highly penetrated. By March 2014, mobile population penetration reached 140%. The split between prepaid and post-paid subscribers is approximately 82%/18%. The growing teledensity is driven by multi-SIM ownership (by subscribers) due to the increasing variety of mobile devices (handsets, tablets, dongles), as well as telemetry and machine-to-machine (M2M) SIM cards. The latter are estimated to have reached 2.7 million by mid-2014.

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Currently, the market consists of four mobile network operators (MNOs) – Cell C, MTN, Telkom Mobile and Vodacom – and one true mobile virtual network operator (MVNO) – Virgin Mobile. Apart from these operators, there are also a number of resellers (dealers) of mobile services in the market, with Altech Autopage Cellular and Nashua Mobile<sup>17</sup> as the largest. Over the past several years, the mobile operators have been reducing the resell chain commission (as part of cost savings) and driving market consolidation through their own in-house service providers. The respective market shares of the five mobile operators are presented below.

#### Mobile operator market share at June 2014

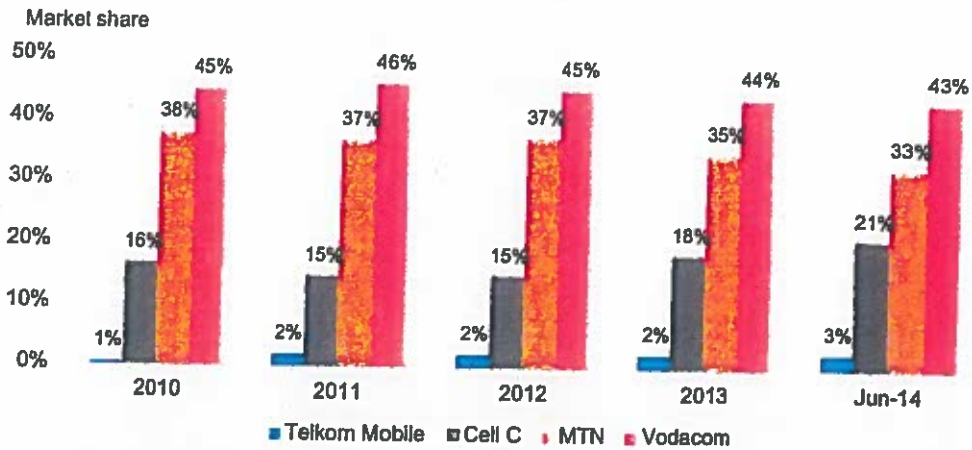


Source: Africa Analysis, 2014

Due largely to its strategy of competing on price, Cell C has been the largest market share net gainer over the past two years. Cell C's (and Telkom Mobile's) voice and data price competition has resulted in a significant decrease of retail prices across all mobile service providers. The evolution of market share between the four MNOs over the past four years is presented below. Virgin Mobile's market share has remained unchanged at approximately 0.5%.

<sup>17</sup> In April 2014 Reunert, the 100% shareholder of Nashua Mobile, announced its exit from the mobile communications market. It is selling Nashua Mobile customers on the MTN and Vodacom packages to the respective network service providers, and customers on Cell C packages to Altech Autopage Cellular.

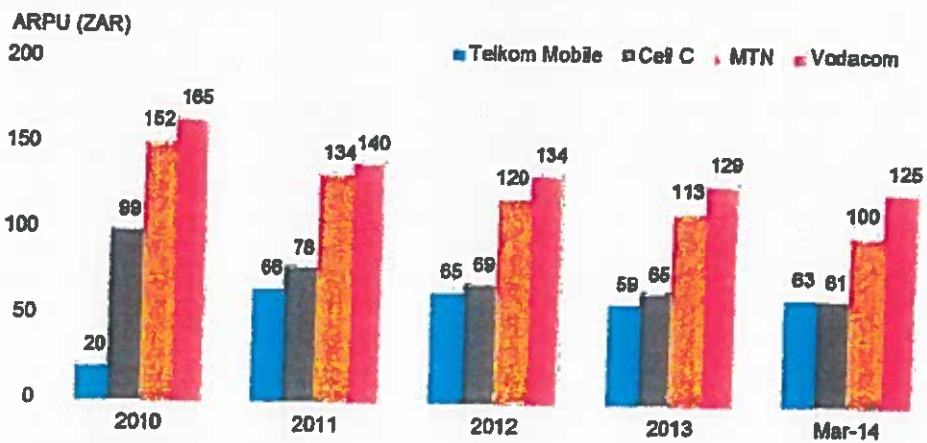
**Mobile operator market share evolution (subscribers)**



Source: Africa Analysis, 2014

Blended average revenue per user (ARPU) has been declining due to the dilution of the quality of the subscriber base (high level of penetration in the low end of the market and telemetry services), as well as the more recent price wars. Cell C and Telkom Mobile ARPU is significantly lower than that of the large MNOs. On average, post-paid ARPU is almost five times higher than prepaid ARPU. ARPU evolution across the four MNOs is presented in the exhibit below.

**Mobile blended ARPU evolution (ZAR)**



Source: Africa Analysis, 2014

**Fixed Line Market**

The fixed line telecommunications market remains less competitive than the mobile market in terms of infrastructure, with Telkom SOC SA as the incumbent fixed line operator owning most of the

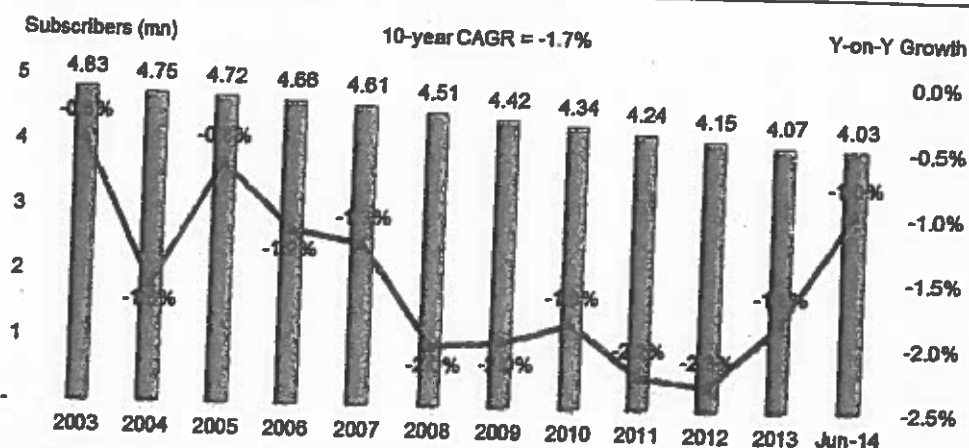
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infrastructure. The incumbent's monopoly over fixed line services was technically broken in 2002 when regulators mandated public utilities Eskom, Transtel and Sentech to leverage their infrastructure to support the country's telecoms sector. Telkom retained a tight control over the local loop and the majority of the transport links. In December 2005, the second national operator (SNO) Neotel was granted a 25-year PSTN operator licence. At launch, the operator did not own any network infrastructure and was forced to operate via a wholesale agreement with Telkom for its first year of operation. In March 2008, Neotel finally acquired its own network infrastructure when it purchased Transtel. Despite being a "national operator", Neotel's focus has been far greater on the provision of wholesale and enterprise retail services than on consumer services. Thus, the vast majority of consumers have continued to rely on Telkom for fixed voice (and initially) also data infrastructure and services.

As at mid-2014, there were just over 4 million fixed line channels in South Africa; a population penetration rate of just over 7%. The fixed line market has been in decline, primarily due to the fixed-mobile substitution (a global phenomenon). However, within the fixed line market, Telkom has been losing subscribers on an annual basis, while the smaller service providers (Neotel and VoIP operators) have been gaining subscribers. The growth of the South African fixed line market in terms of channels (PSTN and VoIP) is presented below.

#### Fixed line market growth – channels (PSTN + VoIP)

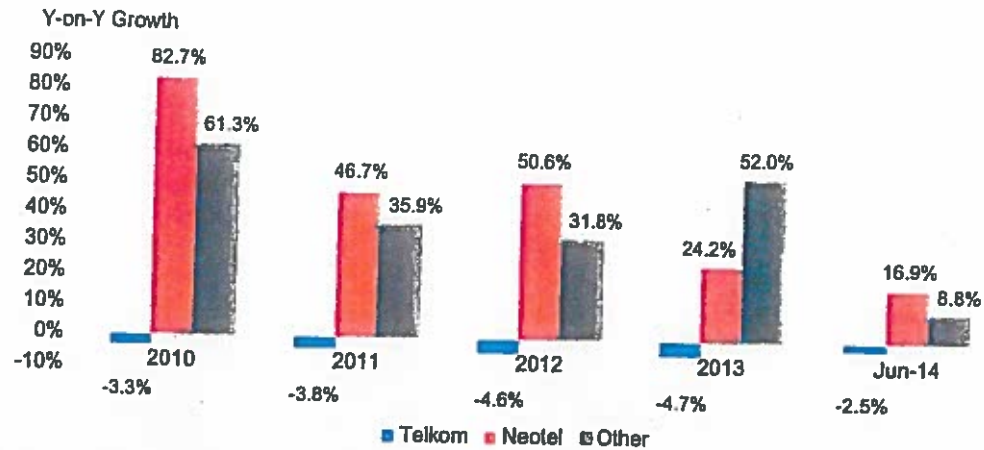


Source: Africa Analysis, 2014

The following exhibit illustrates year-on-year growth of the fixed line market over the past few years among the main fixed line service providers. The "Other" represents pure VoIP service providers, although Telkom and Neotel also provide VoIP services.

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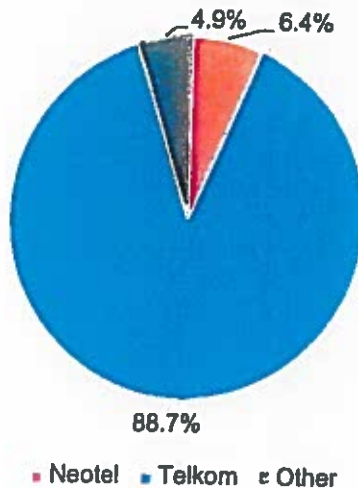
**Fixed line operator growth (PSTN + VoIP)**



Source: Africa Analysis, 2014

However, in terms of market share, Telkom continues to dominate the market as far as voice connectivity is concerned. Telkom's market share has been in decline since 2007, with the growth of competition. Market shares in the fixed line market, based on channels, are presented below. In mid-2014, VoIP channels accounted for approximately 6% of all channels in the market.

**Fixed line market share at June 2014 – channels (PSTN + VoIP)**



Source: Africa Analysis, 2014

In terms of fixed line services, especially voice, the enterprise market is more competitive than the consumer market, with a number of larger ISPs (as well as MTN Business and Vodacom Business)

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participating in this market segment. A range of products and services is sold to the enterprises, from simple voice and data connectivity to managed services and IT services.

Metro and national infrastructure has experienced significant growth over the past few years, breaking Telkom's traditional monopoly in those market segments. In 2008, Altech won a legal challenge to the Department of Communications' (DoC) approach to liberalising the fixed line sector. The court's ruling allowed all licensed service providers (VANS – Value Added Network Service providers) to deploy their own networks. Through the licence conversion process, these licences were converted in January 2009 into individual Electronic Communications Network Services (i-ECNS) and individual Electronic Communications Services (i-ECS) licences. ICASA, the market regulator, granted a total of 544 i-ECNS licences to firms, including multi-tenant properties, gated communities and business parks.

Apart from the large operators who have been deploying their own metro infrastructure (Telkom, Neotel, MTN and Vodacom), a number of independent infrastructure operators have also entered the market, building fibre optic cable infrastructure in the metro and access geographies, as well as on national routes. The most notable is Dark Fibre Africa (DFA), which began operations in 2007 and (apart from Telkom) has the most extensive metro infrastructure. DFA has close to 8000 km of open access fibre infrastructure nationwide. Its infrastructure is used by all major telecommunications operators, as well as smaller service providers.

The national long-haul market has four main competitors deploying infrastructure, mainly between the major urban centres in the country and to the subsea cable landing points. These are: Telkom, Broadband Infracore (a state-owned operator focusing on the wholesale of long-haul services only), FibreCo (with Cell C, Internet Solutions and BT SA as the key anchor clients), and the NLD consortium (consisting of Neotel, MTN and Vodacom).

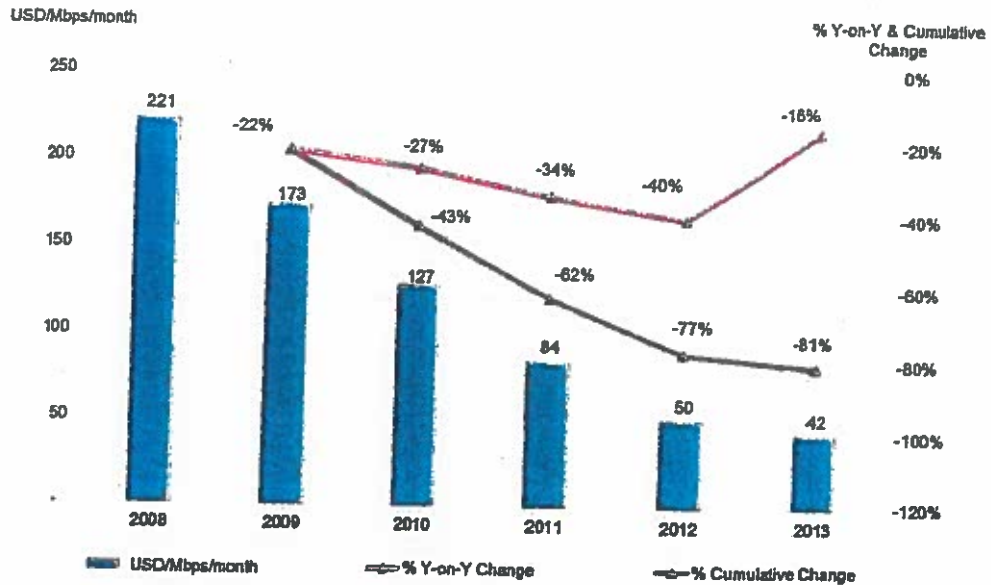
In terms of international capacity, South Africa is serviced by five submarine cables, linking it directly to Europe and Asia, as well as various countries along the west and east coasts of Africa. The five cable systems are: SAT-3, SAFE, EASSy, SEACOM and WACS.

The growth in telecommunications infrastructure, and the corresponding competition, has resulted in significant reductions in the wholesale cost of telecommunications products, and as a result of this also in retail prices of voice and data services. Decreasing data prices have contributed to the unlocking of the South African market in terms of data consumption.

The impact of the additional submarine cables (competitors to the historical SAT-3/SAFE Telkom system) on the cost of international bandwidth is illustrated below. The introduction of new cables is marked in grey blocks. Over the past four years, the cost has declined by over 80% in USD terms (on the example of an STM-4 link from Johannesburg to London), and continued to decline.

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Average price in USD for Mbps/month on a STM-4 link (Johannesburg – London route, 1:1)



Source: Africa Analysis, 2014

**Broadband Market**

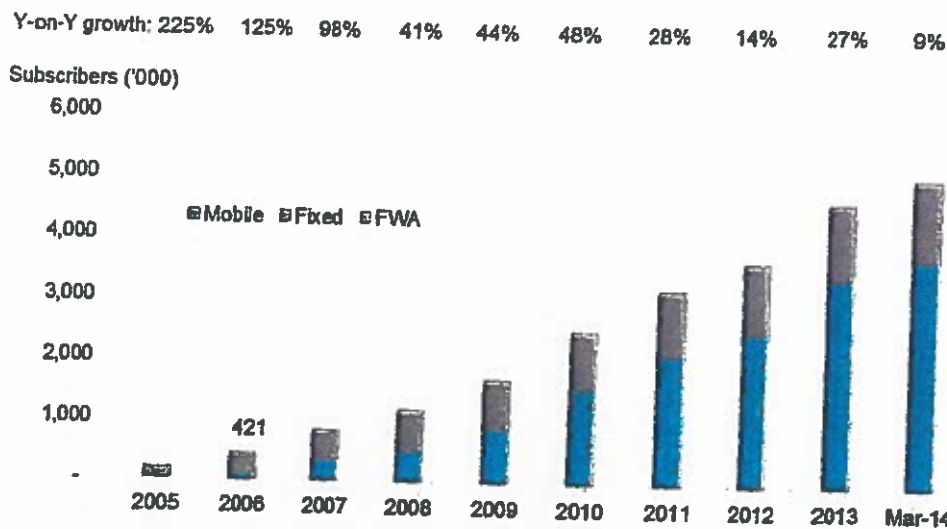
The South African broadband market consists of fixed, mobile and FWA (fixed wireless access or nomadic) access technologies. Apart from service providers with their own infrastructure, a number of other larger service providers exist, reselling fixed and mobile broadband services. In the fixed line space, Telkom provides the DSL infrastructure on a wholesale basis to service providers.

The broadband market has over 5 million subscribers (as at Q1 2014) and is now dominated by mobile subscribers<sup>18</sup>. This represents a population penetration of 9%. Growth is led by the mobile operators with 3G, and more recently 4G, offerings. As of Q1 2014, mobile broadband subscriptions represented 74% of the total broadband market. Historical broadband subscriber growth is presented in the following exhibit.

<sup>18</sup> Mobile broadband is defined as 3G/4G SIMs inserted into dongles, 3G modems and tablets.

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**Broadband subscriber growth (in thousands)**

Source: Africa Analysis, 2014

Mobile broadband services began to be offered in South Africa with the launch of 3G networks by Vodacom (end 2004) and MTN (mid-2005). Cell C initially followed a "voice strategy", targeting the low end of the market, and only launched its 3G network in 2010. As at mid-2014, 3G population coverage is around 90%. Starting in Q4 2012 (Vodacom and MTN), the mobile operators have also begun to deploy 4G/LTE networks, using primarily re-farmed spectrum they already have access to and have been using for the provision of 3G services. However, re-farming existing spectrum is limiting the operators in the extent of the 4G networks and the quality of service they are able to provide. It is estimated that by mid-2014, devices on the LTE (4G) networks in South Africa constituted just under 5% of the total 3G/4G device installed base.

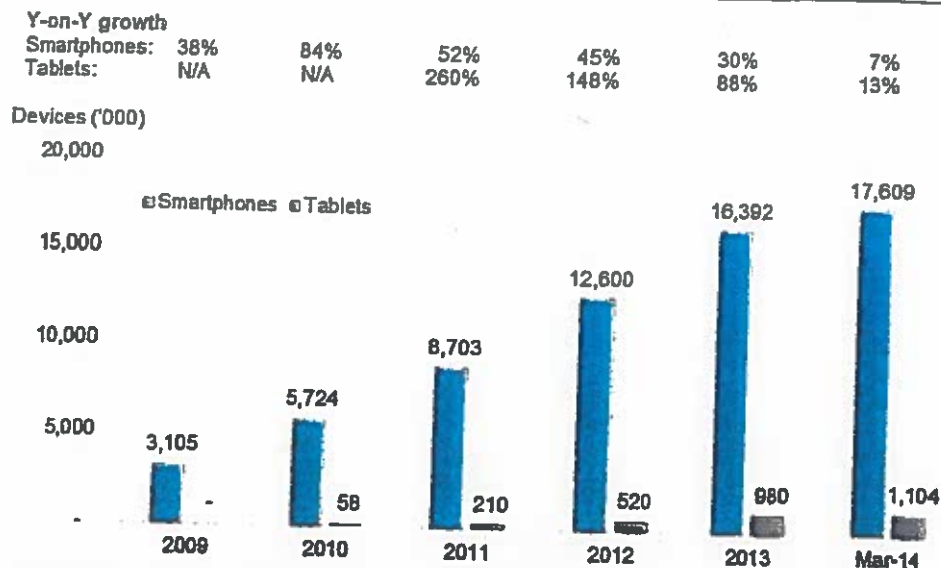
As part of their mobile broadband deployment, the MNOs have been deploying fibre to their 4G and many of the 3G sites (FTTS) for backhaul purposes. Most of these sites in the larger urban areas already have fibre connected to them.

Mobile operators have been actively pursuing a strategy of smartphone deployment into their respective subscriber bases, in order to drive data consumption. To this extent, they have been bringing increasingly lower cost smartphones into the market. Not all smartphones with 3G/4G SIM cards in them are used for broadband connectivity (internet access / use of data services). However, over time, the ratio of active broadband users to the total smartphone installed base is likely to increase.

Growth of the smartphone and tablet market in South Africa is illustrated below. Smartphones and tablets already represent a quarter of all active SIM cards in the market. Tablets have been the fastest growing mobile devices over the past two years, albeit from a low base.

**Smartphone and tablet growth (in thousands)**

ll



Source: Africa Analysis, 2014

Given the significantly higher number of broadband subscribers on the mobile networks, and the wider geographic reach of mobile broadband infrastructure, the anticipation is that mobile broadband infrastructure will be a key element in achieving the national goals of 100% broadband penetration in South Africa. However, fixed line broadband is also a key component of the broadband environment and crucial to certain segments of the user market.

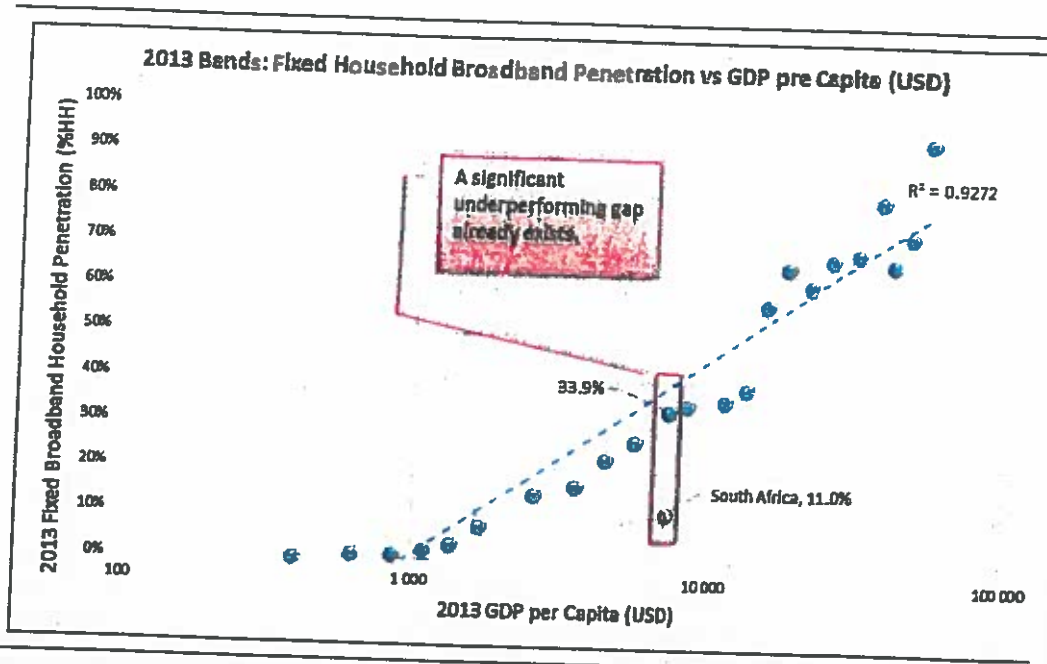
In the fixed line market, Telkom is the only provider of DSL broadband access to the market. There are other broadband access providers, however, as at the end of 2013, Telkom controls 83% of the infrastructure supply. Most of the broadband access supply is provided through retail DSL and not wholesale DSL. In the broadband account market share (also referred to as the ISP accounts), Telkom holds 32% market share. Prior to 2007, Telkom did not provide any wholesale DSL services.

A number of other service providers offer fixed broadband services using wireless access technologies – WiMAX, iBurst, CDMA EV-DO, Wi-Fi and satellite (VSAT). However, the total market share of fixed wireless access technologies is relatively small.

Analysis of the fixed broadband penetration per household as a function of the GDP per capita (USD) shows that South Africa is underperforming by global standards. The following graph shows this analysis.

**Fixed Broadband vs. GDP/capita (USD)**

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Source: Data sourced from TeleGeography, Africa Analysis workings, 2014

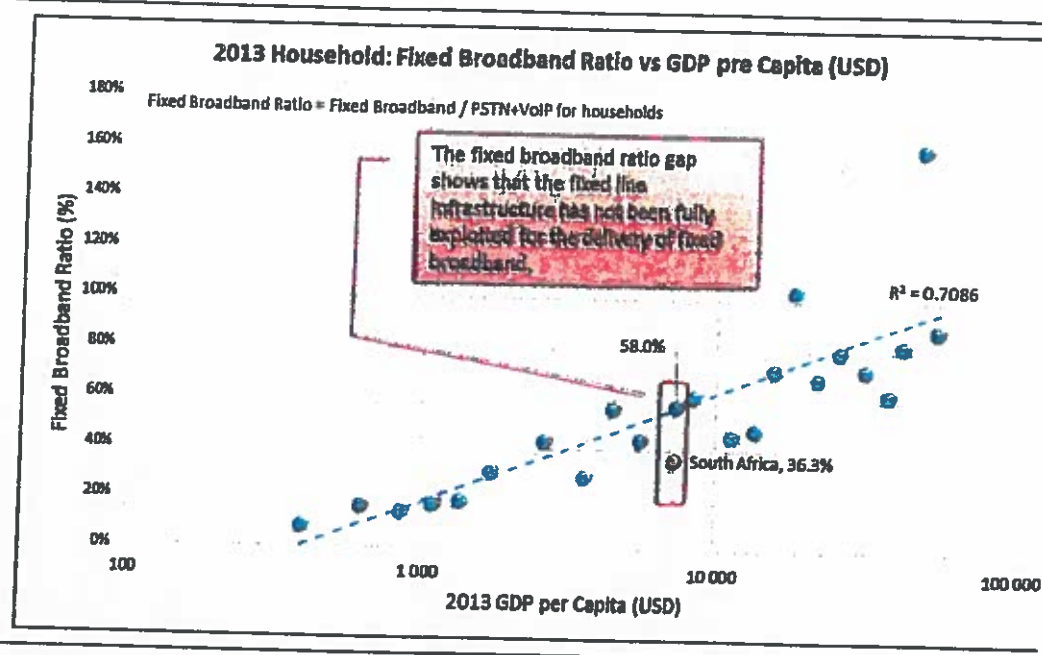
The average fixed household broadband penetration for countries reporting a GDP per capita of between USD7000 and USD8000 report a penetration of 34%. South Africa, with a GDP per capita of USD7257, reports a penetration of 11%.

The broadband challenge is about the lack of converting the current PSTN to broadband, along with a significant under-adoption of PSTN in the country. The following exhibit shows the fixed broadband ratio.

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## Fixed Broadband Ratios vs. GDP/capita (USD)



Source: Data sourced from TeleGeography, Africa Analysis workings, 2014

The average fixed household broadband ratio for countries reporting a GDP per capita of between USD7000 and USD8000 is 58%. South Africa reports a ratio of 36%. This shows that South Africa has not exploited the existing PSTN infrastructure. The incumbent, Telkom SOC SA, has failed to exploit the opportunity to grow the broadband infrastructure through the conversion of the existing PSTN infrastructure to broadband.

The planned implementation of local loop unbundling (LLU), still in development as of mid-2014, failed to materialise and alternative providers are still finding it difficult to compete with Telkom, especially in the residential sector.

In the meantime, fibre deployment has been gathering pace, with the larger operators expanding their focus from FTTS and FTTB deployment to FTTH deployment. A number of the operators have announced plans to make FTTH deployment one of their key strategic initiatives in 2014 and 2015.

## 2) LEGAL AND REGULATORY LANDSCAPE

South Africa falls in International Telecommunications Union (ITU) Region 1, and generally follows Region 1 recommendations - deviations are typically minor and can be found in the Spectrum Table of Frequency Allocations for South Africa. In terms of the Electronic Communications Act (ECA), as amended, the Minister of Communications is responsible for setting broad policy and policy directions regarding spectrum management.

The Department of Communications is also responsible for international coordination and approval of regional radio frequency spectrum plans and the allocation of spectrum nationally - i.e.

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determining which spectrum bands may be used for which purposes. This includes the allocation of spectrum for government and for the security services.

Chapter 5 of the ECA deals with the radio frequency spectrum and empowers ICASA to control, plan, administer and manage the use and licensing of the radiofrequency spectrum. This is critical, as in terms of the ECA, no person may transmit radio signals in South Africa without a radio frequency spectrum licence. In exercising this power, ICASA must consider the ITU recommendations, existing allocations including those for security services, and the principles of efficiency and effectiveness.

In March 2011, ICASA published the Radio Frequency Spectrum Regulations, Gazette No. (34172), which apply generally to all areas of radio frequency spectrum and to all types of licensed services, and are applicable to all frequency bands. These regulations establish the framework through which ICASA may allocate and assign radio frequency spectrum under the Spectrum Table of Frequency Allocations for South Africa ("National Radio Frequency Plan"). The Radio Frequency Spectrum Regulations also set out the procedure and criteria for awarding spectrum licences for competing applications, or instances where there is insufficient spectrum available (i.e. "high demand spectrum"). They seek to ensure transparent, fair and efficient procedures for radio frequency spectrum licence applications, and allow greater flexibility such that special conditions and procedures for specific frequency bands may be applied.

Historically, ICASA has issued licenses through administrative processes. The initial 900MHz spectrum licenses that were awarded to Vodacom and MTN in 1993/4 were issued subject to a competitive bidding/'beauty contest' process. Similarly, in 2001, the third cellular licensing process, where Cell C was awarded dual band 900/1800MHz spectrum was done in terms of a competitive bidding process. The spectrum in the 1800MHz band was awarded to Vodacom and MTN only on a temporary basis in 2003. It was only in 2005, and after some negotiation between the operators and ICASA, and a public consultation process; that MTN and Vodacom were awarded the licences to operate in the 1800MHz band. The 1800MHz spectrum was assigned subject to additional universal service obligations.

Similarly, in 2004, additional 3G/2100MHz spectrum was awarded to all three existing mobile licensees, as well as Telkom and Neotel, through a legislative amendment, and subject to universal service obligations, namely a SIM card obligation and rollout to schools. In October 2006 ICASA opened up the application process for 800MHz spectrum (at the time for fixed wireless services), and in March 2007 Neotel was granted the 800MHz spectrum licence to operate fixed wireless services. An initial fee of ZAR100 million was paid by all mobile licensees. In addition annual spectrum fees are paid based on the spectrum assigned. No additional fixed fee was levied when additional spectrum was issued, however as indicated above, universal service obligations were imposed; in some cases BEE requirements were also included.

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**APPENDIX B – APPLICATION FORM**

When filling in the application form, ensure all pages are signed by all Authorised Representatives.

**APPLICATION FORM FOR 700MHz, 800MHz and 2.6GHz SPECTRUM AWARD PROCESS**

<b>Applicant Details</b>
<b>Applicant Name:</b>
<b>Contact details (during business days 09.00 to 17.00 Central African time):</b>
<b>Address:</b>
<b>Telephone No.:</b>
<b>E-mail:</b>

**If additional space is required, please insert duplicate sheets**

**Authorised Representative 1:**

**Signature:**

**Printed name:**

**Authorised Representative 2:**

**Signature:**

**Printed name:**

**Authorised Representative 3:**

**Signature:**

**Printed name:**

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Authorised Representatives		
Name:	Position:	Signature:

Auction Representatives		
Name:	Position:	Signature:

Authorised Representative 1:

Signature:

Printed name:

Authorised Representative 2:

Signature:

Printed name:

Authorised Representative 3:

Signature:

Printed name:

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Lot Categories Applicant wishes to qualify to bid on in Auction Stage			
Lots B/C/D/E/F			
B	C	D	E

Please mark with a cross (X) all lot categories which the Applicant wishes to qualify to bid on in Auction Stage.

Authorised Representative 1:

Signature:

Printed name:

Authorised Representative 2:

Signature:

Printed name:

Authorised Representative 3:

Signature:

Printed name:

**APPENDIX C – TEMPLATE FOR BANK GUARANTEE**

**SPECIMEN TEMPLATE FOR BANK GUARANTEES**

Bank guarantee should be issued by a bank authorised according to Nedbank Corporate Investment Banking with a place of business in South Africa in favour of the South African Government represented by the Independent Communications Authority of South Africa, Block B, Pinmill Farm, 164 Katherine Street, Sandton, 2146.

*Ull*

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BANK GUARANTEE FOR 700MHz, 800MHz and 2.6GHz SPECTRUM AWARD PROCESS

..... (company) is a candidate for the award of radio frequency spectrum licenses in the 700MHz, 800MHz and 2.6GHz bands in South Africa by the Independent Communications Authority of South Africa (ICASA).

We, ..... (bank), undertake herewith irrevocably to pay the South African Government represented by ICASA on first demand, irrespective of the validity and legal effects of the above-mentioned award process, and waiving any objections and please, all amounts up to a maximum of:

ZAR xxx

upon receipt of ICASA's written request for payment, including a declaration according to which

- a) ..... (company) has been awarded a Licence and on the due date, ICASA has received no payment or incomplete payment for the amount demanded.

OR

- b) ..... (company) has violated in another way the rules of the award process.

All payments made under this guarantee reduce our liability by an equivalent amount.

**Our guarantee is valid until .....(date) and is automatically cancelled in full, if you do not avail yourselves of it by this date, irrespective of whether or not this is a bank working day.**

**South African Law must apply to this bank guarantee, legal domicile being South Africa.**

Bank .....

(signatures)

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Remarks:

The above bank guarantee is a specimen only. Exactly the same wording does not necessarily have to be used.

However, the following minimum content is mandatory for the bank guarantee which is submitted:

- Denomination and content of an irrevocably guarantee in case of default payment
- Name of the bank issuing the guarantee, which must be a bank authorised according to Nedbank Corporate Investment Banking with a place of business in South Africa;
- Name of the Independent Communications Authority of South Africa, Block B, Pinmill Farm, 164 Katherine Street, Sandton, 2146 as the beneficiary;
- Name of the company participating in the auction;
- Irrevocable obligation to pay as soon as the beneficiary makes the demand, irrespective of the validity and legal effects of the auction, and waiving any objections and pleas, upon receipt of a written request for payment, including a declaration according to which:
  - a) ..... (company) has been awarded a Licence and on the due date, the beneficiary has received no payment for the amount demanded
  - or
  - c) .....(company) has violated in another way the rules of the award process;
- Indication of the amount guaranteed, which must comply with the amounts stated.
- Period of validity of the guarantee. For the guarantee for the Application Stage this should be at least 90 days after the Application Date. For the guarantee for the Auction Stage this should be at least one year after the Initial Bid Date;
- South African Law designated as the applicable law;
- Legal domicile in South Africa.

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APPENDIX D – APPLICANT DECLARATION FORM

APPLICANT DECLARATION

I..... (duly authorised person)

Have prepared and/ or compiled, or directly supervised those who have prepared all or parts of this application and/or information constituting this application.

To the best of my knowledge, the application information contained herein, and any attachment thereto, is accurate and not misleading.

I understand that should any information included herein be found to be false or misleading the entire application will be disqualified and the applicant precluded from further consideration within the application process.

I understand that should there be any changes to the information included herein, the Independent Communications Authority of South Africa (ICASA) should be notified immediately.

Name and title of the person authorised to sign this undertaking:

Authorised Signature: \_\_\_\_\_

Date: \_\_\_ / \_\_\_ / 2016

I certify that this declaration was signed and sworn to before me at ..... on the ..... day of ..... 2016, by the deponent who acknowledged that he/she: knows and understands the contents hereof;

has no objection to taking the prescribed oath or affirmation; and considers this oath or affirmation to be truthful and binding on his/her conscience.

\_\_\_\_\_  
COMMISSIONER OF OATHS

Name:

Address:

Capacity:

Alt

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APPENDIX E – BID ENTRY FORM

The following page provides a draft version of the Bid Entry Form. The Authority reserves the right to modify this form if appropriate.

Bidders should note that the bid prices displayed are purely illustrative – Bidders should not consider these as any indicative of the final Reserve Prices.

**ICASA** 2015 auction of 700MHz, 800MHz and 2.6GHz frequency bands Illustrative  
**Bid Entry Form**

Bidder Identity	Bidder 1	Round	2	Waivers remaining	8	Current eligibility	5
-----------------	----------	-------	---	-------------------	---	---------------------	---

Lot	Activity Points	Standing High Bidder	Standing High Bid (ZAR)	Bid amount options (ZAR) Please enter at most one bid per lot			
<b>A</b> 700MHz: 2x30MHz 2.6GHz: 1x50MHz	3	Bidder 1	300 000 000	305 000 000	306 000 000	315 000 000	330 000 000
<b>B</b> 800MHz: 2x10MHz 2.6GHz: 2x20MHz	3	Bidder 5	400 000 000	404 000 000	408 000 000	420 000 000	440 000 000
<b>C</b> 800MHz: 2x10MHz 2.6GHz: 2x20MHz	3	-	-	303 000 000	306 000 000	315 000 000	330 000 000
<b>D</b> 800MHz: 2x10MHz 2.6GHz: 2x20MHz	3	Bidder 2	600 000 000	609 000 000	612 000 000	630 000 000	660 000 000
<b>E</b> 2.6GHz: 2x5MHz	1	Bidder 2	100 000 000	101 000 000	102 000 000	105 000 000	110 000 000
<b>F</b> 2.6GHz: 2x5MHz	1	Bidder 4	100 000 000	101 000 000	102 000 000	105 000 000	110 000 000

Waiver	No bid	Withdraw from auction	Total value of new bids (ZAR)
Authorized signature	Print name		



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FAB

**Independent Communications Authority of South Africa**  
Pinmill Farm, 164 Katherine Street, Sandton  
Private Bag X10002, Sandton, 2146

Office of the Chairperson  
Tel: +27 11 566 3007  
Fax: +27 11 566 3008  
Email: [chairperson@icasa.org.za](mailto:chairperson@icasa.org.za)

Ref no: 14/2/2/1/IMT ITA

**Dr Siyabonga Cyprian Cwele, MP**

Minister of Telecommunications and Postal Services

Private Bag x860

Pretoria

0001

Per email: [smdletshe@dtps.gov.za](mailto:smdletshe@dtps.gov.za)

Dear Honourable Minister,

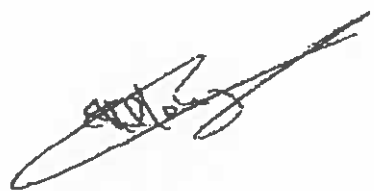
**RE: INVITATION TO APPLY FOR RADIO FREQUENCY SPECTRUM LICENCEES TO PROVIDE MOBILE BROADBAND WIRELESS ACCESS SERVICES FOR URBAN AND RURAL AREAS USING THE COMPLIMENTARY BANDS, 700MHz, 800MHz AND 2.6GHz.**

1. The letter of The Independent Communications Authority of South Africa ("the Authority") dated 02 September 2015 refers.
2. On the 11 September 2015 the Authority published the Information Memorandum on Government Gazette Number 39203 (Notice 914 of 2015).
3. The Information Memorandum was to inform and guide the Authority in the development and finalisation of the Invitation to Apply (ITA) process for International Mobile Telecommunications (IMT) Systems for the provision of mobile broadband wireless access services for urban and rural areas using the complimentary bands, 700 MHz, 800 MHz and 2.6 GHz.

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4. The honourable Minister is hereby advised that the Authority has published the ITA Notice for a radio frequency spectrum licence to provide mobile broadband wireless access services for urban and rural areas using the complimentary bands, 700 MHz, 800 MHz and 2.6 GHz.
5. A copy of the Government Gazette Number 40145 (Notice 438 of 2016) is hereby attached for the honourable Minister's information.

Yours sincerely,



---

**Ruben Mohlaloga**  
**Acting Chairperson**

**Date: 15 / 07 / 2016**



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FA7**GENERAL NOTICES • ALGEMENE KENNISGEWINGS****INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA  
NOTICE 914 OF 2015****INFORMATION MEMORANDUM****FOR****RADIO FREQUENCY SPECTRUM PROSPECTIVE LICENCE****TO PROVIDE MOBILE BROADBAND WIRELESS ACCESS SERVICES FOR URBAN  
AND RURAL AREAS USING THE COMPLIMENTARY BANDS, 700MHz, 800MHz AND  
2.6GHz.**

The Independent Communications Authority of South Africa ("the Authority") hereby, in terms of Section 31(3) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) read with the Radio Frequency Spectrum Regulations 2015 Government Gazette number 38641 (Notice number 279 of 2015) hereby publishes a notice for the purpose of providing information to prospective applicants intending to apply for the radio frequency spectrum licenses within the designated range, 2500 – 2690MHz ("the 2.6GHz band") and 790 – 862 MHz ("the 800 MHz band") and 703 – 790 MHz ("the 700MHz band") for the purposes of providing national broadband wireless access services.

On 15 December 2011 the Authority published a draft an ITA <sup>1</sup>on the combined licensing of 800 MHz and 2.6 GHz bands for broadband wireless access services. This was done in terms of section 31(3) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the Act") read with Regulation 7 of the Radio Frequency Spectrum Regulations 2011, published in Government Gazette

<sup>1</sup> Government Gazette number 34872 (Notice Number 912 of 2011)

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No. 34172, Notice 184 of 2011 (the regulations). The Authority through Government Gazette number 35123 (Notice Number 193 of 2012, deferred the process until further notice.

On the 14 November 2014, the Authority published the final International Mobile Telecommunications (IMT) Roadmap 2014 and on the 30<sup>th</sup> of March 2015, the Authority also published the Final Radio Frequency Spectrum Assignment Plan for the specific IMT frequency bands, setting out the rules for systems operating in specific bands.

**The Authority hereby issues an Information Memorandum in order to provide guidance to prospective applicants regarding the process and criteria to be applied by the Authority in the licensing process.**

All prospective applicants will be assessed based on criteria set out in the Invitation to Apply ("ITA"), the Electronic Communications Act, and applicable Regulations, including the National Radio Frequency Plan<sup>2</sup> 2013, Radio Frequency Spectrum Regulations<sup>3</sup> 2015 (as amended<sup>4</sup>), the Frequency Migration Regulation<sup>5</sup> 2013, the Radio Frequency Spectrum Fees Regulations<sup>6</sup> 2010 (as amended) and Radio Frequency Spectrum Assignment Plans (RFSAP)<sup>7</sup> for International Mobile Telecommunications (IMT).

Electronic copies of the Information Memorandum are available on the Authority's website ([www.icasa.org.za](http://www.icasa.org.za)).

Interested persons are hereby invited to submit written representations, including an electronic version of the representation in Microsoft Word, by no later than 16h00 on Friday, 16 October 2015

Written representations or enquiries may be directed to:

Contact person: Mr Joseph Dikgale

Tel: 011 566 3365

E-mail: [JDikgale@icasa.org.za](mailto:JDikgale@icasa.org.za)

Physical Address: Pinmill Farm Block A, 164 Katherine Street, Sandton,

Postal Address: Private Bag XI0002, Sandton, 2146, South Africa

<sup>2</sup> Government Gazette Number 36336 (Notice 354 of 2013) of 28 June 2013

<sup>3</sup> Government Gazette Number 38641 (Notice Number 279 of 2015) of 30 March 2015

<sup>4</sup> Government Gazette Number 38754 (Notice Number 386 of 2015) of 30 April 2015

<sup>5</sup> Government Gazette Number 36334 (Notice Number 352 and 353 of 2013) of 03 April 2015

<sup>6</sup> Government Gazette Number 33495 (Notice 754 of 2010) of 27 August 2010


<sup>7</sup> Government Gazette Number 38640 (Notice 270 to 278 of 2015) of 30 April 2015

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All written representations submitted to the Authority pursuant to this notice shall be made available for inspection by interested persons at the ICASA Library or website and copies of such representations and documents will be obtainable on payment of a fee.

Where respondents require that the representation or part thereof be treated confidential, then an application in terms of section 4D of the ICASA Act, Act No. 13 of 2000, must be lodged during the submission of representations. Respondents are requested to separate any confidential material into a clearly marked confidential annexure. If, however, the request for confidentiality is refused, the person making the request will be allowed to withdraw the representation or document in question.

  
\_\_\_\_\_  
NOMVUYISO RATYI  
COUNCILLOR  
ICASA



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8. AUCTION	15

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## 1. OVERVIEW

- 1.1. The Authority started a process of licensing the International Mobile Telecommunications (IMT) spectrum on the 2.6 and 3.5 GHz bands, back in 2006. In 2011, the Authority developed the licensing process by publishing a draft Spectrum Licensing Plan and a draft Invitation to apply for a combined licensing of the 800 and 2600 MHz bands in terms of the Radio Frequency Spectrum Regulations 2011.
- 1.2. In 2013, South Africa Connect, a broadband policy was published. South Africa Connect gives expression to the vision set out in the National Development Plan of a *“seamless information infrastructure by 2030 that will underpin a dynamic and connected vibrant information society and a knowledge economy that is more inclusive, equitable and prosperous”*. The focus remains on education, health and government services. It is further seen to operationalise the New Growth Path and the Strategic Integrated Project<sup>8</sup> (SIP) 15, which deals with expanding access to communications technology by ensuring universal service and access to affordable and secure broadband services by all South Africans, prioritising rural and under-serviced areas and stimulating economic growth.
- 1.3. South Africa Connect acknowledges that the slow deployment of fixed broadband services (e.g. ADSL), and its relatively high cost, has meant that over the last five years mobile broadband rapidly became the primary form of broadband access rather than providing a complementary service to fixed broadband services as it has done in more developed economies.
- 1.4. Mobile services play a crucial role in providing communication services (voice and data) to consumers but also to many enterprises, especially small offices. Additionally, various econometric analyses have demonstrated that broadband has a positive impact on economic growth in both developing and developed markets. World Bank statistics show that in developing markets an expansion of broadband access (population penetration) of ten percentage points can result in expansion of the GDP by 1.4 percentage points. Also every 1000 new subscribers to broadband internet services can result in the creation of 80 new jobs. These indicators are critical to South Africa, which needs to breach the digital divide, improve its economic growth and create new jobs.
- 1.5. In order to realise the Government’s rollout targets for broadband services in line with SA-Connect Policy, the Authority is to commence with the licensing process for International Mobile Telecommunications (IMT) spectrum bands.

<sup>8</sup> Expanding Access to Communications Technologies

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The Authority has concluded that mobile telecommunication technologies are a critical component in achieving the goal of 'broadband for all citizens' in South Africa.

## 2. INTRODUCTION

- 2.1. South Africa experiences continued growth in demand for more Spectrum as a result in significant growth in traffic. The lack of availability of Spectrum for IMT brings constraints and challenges in the provision of broadband services. In order to address South Africa's bandwidth deficiency, the current assignment of 374 MHz used for IMT and 80 MHz for GSM needs to be increased.
- 2.2. There is a need to achieve a minimum 1011 MHz and a maximum of 1036 MHz for use by IMT (incl. GSM) by 2020 in order to achieve SA Connect Targets. It is the Authority's view that the licensing of 700, 800 and 2600 MHz will contribute towards achieving the SA connect Targets.
- 2.3. The 700 MHz, 800MHz and 2.6 GHz bands have been identified worldwide for International Mobile Telecommunication (IMT) services.
- 2.4. These bands complement each other in the sense that they fulfil the requirements for capacity and coverage which make them suitable for rural and urban areas and for bridging the digital divide.
- 2.5. It is for the above reasons that the Authority has decided on the simultaneous licensing of the 700 MHz, 800MHz and 2.6 GHz bands, to enhance competition and to increase broadband coverage, and in so doing bridge the digital divide and disparities between urban and rural access to broadband networks.

## 3. OBJECTIVES

The main aim of licensing 700MHz, 800MHz and 2600MHz is to ensure nationwide broadband access for all citizens by 2020. This will be achieved by:

- increasing universal service and access by ensuring rural connectivity
- giving consumers more choice,
- introducing a wholesale open access network, and
- Promote Investment in the sector and economic growth
- Ensure quality of service and experience
- Ensure affordability of services

## 4. LEGAL FRAME WORK



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- 4.1. This Information Memorandum is guided broadly by the provisions set out in the Independent Communications Authority of South Africa Act 13 of 2000 (ICASA Act), Electronic Communications Act, Act 36 of 2005 (ECA), National Radio Frequency Plan 2013<sup>9</sup> (NRFP), the Radio Frequency Spectrum Regulations<sup>10</sup> 2015 (RFSR), as well as the broader policy objectives of South Africa as set out in amongst other documents the National Development Plan and South Africa Connect (National Broadband Policy), Broadcasting Digital Migration Policy 2008 (as amended) Radio Frequency Spectrum Policy 2010<sup>11</sup>.
- 4.2. Section 31(3) (a) of the ECA mandates the Authority to develop regulations setting out the procedures and criteria for radio frequency spectrum licenses in instances where there is insufficient spectrum available to accommodate demand.
- 4.3. The RFSR, apply generally to all areas of radio frequency spectrum and to all types of Radiocommunications services. The RFSR established the framework through which the Authority may allocate and assign radio frequency spectrum under the Spectrum Table of Frequency Allocations for South Africa (National Radio Frequency Plan 2013). The RFSR also sets out the procedure and criteria for awarding spectrum licenses in instances where there is insufficient spectrum available to accommodate demand. The RFSR seek to ensure transparent, fair and efficient procedures for radio frequency spectrum license applications, and allow greater flexibility such that special conditions and procedures for specific frequency bands may be applied.
- 4.4. On 04 April 2013, the Authority published the Radio Frequency Migration Regulations and Plan 2013<sup>12</sup> which sets out the regulatory procedure and process for the migration of use and users of Spectrum, and on 30 March 2015, the Authority published the Radio Frequency Spectrum Assignment Plans<sup>13</sup> (RFSAP) for International Mobile Telecommunications (IMT) 2015 which sets out the Technical Conditions on the use of IMT Spectrum.
- 4.5. Section 192 of the Constitution of the Republic of South Africa, 1996<sup>14</sup> gives the Authority the sole mandate to regulate broadcasting [and Electronic Communications] in the public interest. Furthermore, Section 30(2) of the ECA, mandates the Authority to control, plan, administer, manage, license and assign the use of radio frequency spectrum. In executing the afore mentioned exclusive mandate, the Authority

<sup>9</sup> Government Gazette Number 36336 (Notice 354 of 2013)

<sup>10</sup> Government Gazette number 38641 (Notice number 279 of 2015)

<sup>11</sup> Government Gazette number 33116 of 16 April 2010

<sup>12</sup> Government Gazette Number 36334 (Notice Number 352 and 353 of 2013)

<sup>13</sup> Government Gazette Number 38640 (Notice 270 to 278 of 2015)

<sup>14</sup> Section 192; of the Constitution of South Africa

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must ensure compliance with applicable standards and requirements of the International Telecommunications Union's (ITU) Radio Regulations, and the National Radio Frequency Plan.

4.6. It is important to adopt global harmonization channel arrangement and alignment with other regional agreements on the appropriate channel plans for the 700, 800 and 2600 MHz frequency bands for the ITU Region 1 in order to achieve economies of scale, global roaming and the maturity of the ecosystem.

4.7. The Southern African Development Community (SADC) Frequency Allocation Plan (FAP) of 2013 creates a framework for harmonization across SADC on the use of the radio frequency spectrum. The 2010 SADC FAP was developed taking into account international best practice in the development of Frequency Band Plans and considering the needs of the SADC Members.

**5. SPECTRUM FOR THE AWARD**

5.1. The spectrum available for assignment in this process will be as follows:

5.1.1 2x30MHz in the 700MHz band (703MHz-733MHz/758-788MHz)

5.1.2 2x29.305MHz in the 800MHz band (791-821MHz/832.695-862MHz)

5.1.3 2x70MHz and 1x25MHz in the 2.6GHz band (2500-2570MHz/2620-2690MHz and 2595-2615MHz)

5.2. The spectrum will be awarded on a national basis covering the entire territory of South Africa.

5.3. The spectrum available for award is packaged into two (2) Lot Categories and six (6) Lots as follows:

Lot Category	Lot	700MHz	800MHz	2.6GHz
Lot A (Wholesale Open Access)	Lot A	2 x 20MHz (703-723MHz/ 758-778MHz)		
Lots B/C/D/E/F (Operators)	Lot B		2 x 9.305MHz (791-801MHz/ 832.695-842MHz)	2 x 20MHz (2500-2520MHz/ 2620-2640MHz)

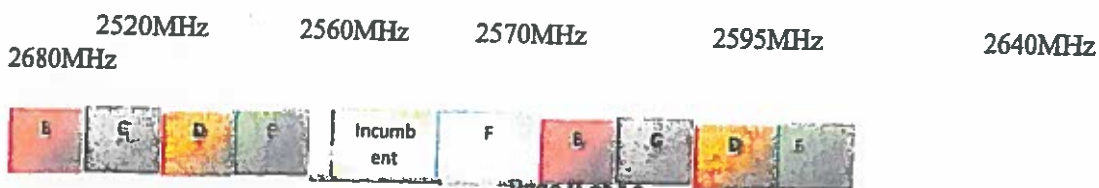
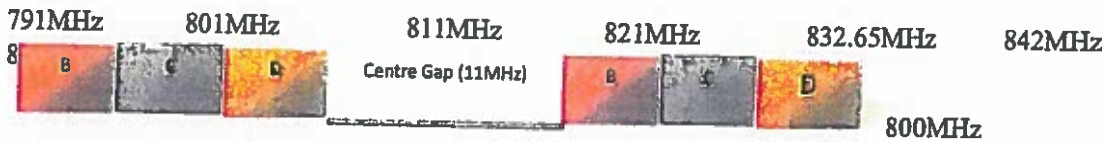
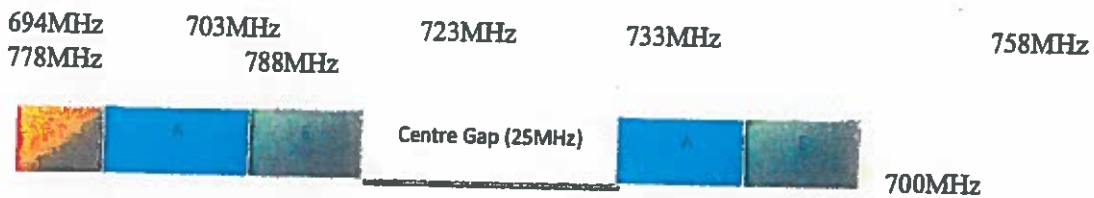
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	Lot C		2 x 10MHz (801-811MHz/ 842-852MHz)	2 x 20MHz (2520- 2540MHz/2640- 2660MHz)
	Lot D		2 x 10MHz (811-821MHz/ 852-862MHz)	2 x 20MHz (2540-2560MHz/ 2660-2680MHz)
	Lot E	1 x 10MHz (723- 733MHz/ 778- 788MHz)		2 x 10MHz (2560- 2570MHz/ 2680-2690MHz)
	Lot F			25MHz(2595- 2620MHz)

Note: Lot A is to be licensed though a separate process. Also see item 5.5 of this information memorandum.

Diagram of proposed spectrum packaging within each band



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- 6.1.4. Licensees will be required to provide sufficient quality of network coverage to provide data services in the areas with an average downlink user throughput of 30Mbit/s in the period from 07:00 to 20:00 (time in the local region). This time period has been chosen to cover the vast majority of mobile data usage in the public area.
- 6.1.5. The holders of Lots B, C, D and E will each have a maximum of three years from the date that the 700MHz/800MHz spectrum becomes available to provide services to all identified underserved areas. If the holder fails to meet this obligation, this will be regarded as a serious breach of the licence conditions.
- 6.2. Wholesale Open a Wireless wholesale open access obligation**
- 6.2.1. One of the objectives of the Authority is to stimulate competition in the provision of broadband services while ensuring innovative, affordable and universally accessible at acceptable quality levels.
- 6.2.2. The auction of the 700MHz spectrum is important for the future of broadband services in South Africa.
- 6.2.3. The 700MHz spectrum has much better propagation characteristics, which enables better coverage at relatively lower cost of network deployment suitable for sparsely populated areas.
- 6.2.4. The 700MHz spectrum is important in shaping the future and role of the ICT industry in ensuring that South Africa meet broadband targets set out in the SA Connect Broadband Policy.
- 6.2.5. An important provision contained in the broadband policy is the vision of the creation of a wholesale wireless broadband network. Although a detailed roadmap regarding its development has not been finalised, it is expected to address structural constraints in the market and enhance service- based competition.
- 6.2.6. The wireless wholesale open access network is becoming even more relevant now given the recent wave of market consolidation in the ICT industry, which might reverse competition gains introduced in the market since the implementation of the ECA.
- 6.2.7. The wireless wholesale open access network operator would be expected to deploy wholesale Radio Access Network (RAN) for mobile broadband.

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- 6.2.8. The Authority is of the view that the proposed 2x20MHz band would be sufficient to deploy wholesale RAN nationally.
- 6.2.9. The wireless open access network shall be given 3 years of obligation holiday from paying radio frequency spectrum license fees with regard to the 700MHz spectrum license.
- 6.2.10. The winner of Lot A must provide wholesale open access services on the following basis:
- Non-discriminations access;
  - Transparency;
  - Fair and reasonable pricing; and
  - Cost oriented with reasonable rate of return.

### 6.3. Digital Terrestrial Television (DTT) Obligations

- 6.3.1. In order to fast track the DTT migration project and utilisation of 700/800 MHz, applicants awarded this spectrum are obliged to provide set-top-boxes free of charge to households for Free To Air Terrestrial Television Service, to who may not qualify for the subsidy scheme for ownership for poor television owning household in the affected areas
- 6.3.2. The cost to provide set top boxes free of charge will be offset against the auction price.

### 6.4. BBBEE OBLIGATIONS

- 6.4.1 A licensee must achieve BBBEE level 2 status within twenty four (24) months from date of issue of the Radio Frequency Spectrum Licence; or
- 6.4.2 A licensee must increase equity ownership by Historically Disadvantaged Persons (HDP) by three percent (3%) within twenty four (24) months from date of issue of the Radio Frequency Spectrum Licence

## 7. THE AWARD PROCESS

- 7.1. This section provides an overview of the award process, including an indicative timetable for the completion of the auction.

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### The award process

7.2. The award will consist of three stages, as illustrated on the diagram below:

#### Diagram of award process



- 7.3. The award will be a three stage process which will include qualification, Auction and Licensing Stages.
- 7.4. In the Qualification Stage, parties are invited to submit applications, in which they must state on which Lot Categories (Lot B/C/D/E/F) they may wish to place Bids during the award process. The identities of all applicants will be announced. The Applications will then be assessed by the Authority, and Applicants who meet the requirements will be qualified.
- 7.5. Following Qualification Stage, the Auction Stage will commence. Qualified applicants (Bidders) will be requested to submit a Bid for the Lots that they would be prepared to acquire at Reserve Prices. The Auction Stage will take the form of a 'Simultaneous Multi-Round Ascending' (SMRA) auction.
- 7.6. Applicants will be free to switch between Lots within the Lot Categories for which they are qualified to bid during the SMRA auction process.
- 7.7. Following the Auction Stage, Licences will be issued to winning Bidders, subject to the payment of the Auction Fee.

## 8. AUCTION

- 8.1. Spectrum auctions has proven to be a "best practice" for assigning spectrum where demand exceeds supply.

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8.2. The Authority has been following auction formats which has been used worldwide when licensing spectrum where demand exceed supply, and it is considering to use the SMRA auction or the Combinatory Clock Auction (CCA) with generic lots.

### 8.3. SMRA FORMAT

8.3.1. The SMRA is an open ascending multi-unit auction that takes place over a number of rounds. In this format, bids are placed for individual lots, and the auction proceeds in successive rounds with increasing prices, until there are no new bids. A points-based activity rule is often used, under which bidders may only decrease or maintain their level of demand from one round to the other, as measured by the number of eligibility points<sup>15</sup>. In each round, the highest bid placed on each lot is called a Standing High Bid. When the auction ends Standing High Bids become winning bids and the bidders pay the amounts they bid. The traditional implementation of the SMRA allows bidders to place bids for specific frequency lots.

8.3.2. The SMRA with generic lots has been used in several recent multi-band spectrum awards in Europe. Examples include Germany, Italy, Spain, Portugal, Greece and the Czech Republic.

8.4. The Reserve Price of each Lot will be published in the ITA.

8.5. The auction will take place in Johannesburg, with all Bidders co-located in the same building. The exact location of the auction will be communicated nearer to the auction date.

End/

<sup>15</sup> A Bidder's Eligibility describes the maximum of Lots on which it may place Bids in the current Round.



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Ref no: 14/2/2/1/INT information Memorandum

Hon. Azwihangwisi Faith Muthambi, MP  
Minister of Communications  
Tshedimosetso House  
1035 Frances Baard & Festival Street  
Hatfield  
Pretoria

Per email: [freddy@doc.gov.za](mailto:freddy@doc.gov.za)

Dear Honourable Minister,

**RE: INFORMATION MEMORANDUM FOR RADIO FREQUENCY SPECTRUM TO PROSPECTIVE LICENCEES TO PROVIDE MOBILE BROADBAND WIRELESS ACCESS SERVICES FOR URBAN AND RURAL AREAS USING THE COMPLIMENTARY BANDS, 700MHz, 800MHz AND 2.6GHz**

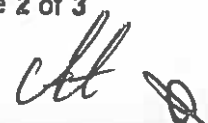
1. The Independent Communications Authority of South Africa ("the Authority"), hereby acknowledges the honourable Minister's letter dated 22 September 2015, which was received on 21 October 2015.
2. In the above letter the Minister advised that "the Authority must withdraw the document as published until such time that the Government has finalized policy directives regarding the licensing of the 700mhz, 800mhz and 2.6Ghz".
3. On 8 September 2015, the Authority advised the Minister, on its consultative process with respect to the Information Memorandum and the Authority published

NA Batyi, MR Mochaloga, KGS Pillay (Councillors),  
PK Pongwana (CEO)

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the Information Memorandum on the 14 September 2015. Subsequent to this, during the bilateral meeting of 18 September 2015, we further stated our intention to publish the Information Memorandum. The closing date for the written comments was 30 October 2015.

4. During our bilateral with the Honourable Minister, the ICASA clarified its intention of the publication of the Information Memorandum. The Information Memorandum is the first stage of consultation on what the ITA eventually will resemble - accordingly, it is preparatory work.
5. The growth of data increases and exacerbates the demand for spectrum, especially spectrum to support the capacity required. The Authority is very aware of the link between broadband rollout, the realisation of SA Connect and economic growth. ICASA is very concerned about the impact of this.
6. Further, the licensing process is complex and technical and requires much preparatory work. In this regard the Authority is attempting to do as much preparatory work as is possible, albeit any policy promulgated in this regard may impact our preparatory work which will need revisions to ICASA's frameworks. However, this in our estimation will take a shorter time than if we had not done the preparatory work and initial consultations.
7. ICASA followed the same approach with digital migration - there had been several preparatory initiatives so that regulatory framework would be ready in the shortest possible time once the appropriate policy frameworks had been completed.
8. The Authority adopted this approach in the two examples quoted above due to the economic and social impact of both of these processes.
9. Further, the information memorandum is a deliverable in the Authority's business for the financial year 2015/16.



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10. As we understand our role as the Authority, in addition to our responsibility to develop the appropriate regulatory frameworks, we are required to advise on policy matters where necessary.

11. In this regard, ICASA will bring any pertinent policy issues emanating from this consultation to the attention of the Minister.

12. The honorable Minister is respectfully referred to the attached Annexure A for further substantial information.

Yours sincerely,



**Rubben Mohlala**  
**Acting Chairperson**

Date: 02 / 11 / 2015

ANNEXURE A: INFORMATION MEMORANDUM

1. OVERVIEW

The Council of the Independent Communications Authority of South Africa (hereafter referred to as "The Authority") Initiated the Market Approach System in the licensing of the International Mobile Telecommunications Spectrum (IMT), for the purpose of providing this initiate is to ensure national broadband wireless access.

This innovation recognise the critical component mobile telecommunication technologies play in achieving the goals of 'broadband for all citizens' in SA The goal is to ensure that prioritized IMT spectrum, more specifically the IMT700, IMT800 which are very good for coverage complimented by the IMT2600 which is very good for capacity are licensed during the 2015/2016 financial year.

The licensing of IMT spectrum has been prioritised and forms part of the ICASA Business Plan 2015/2106 approved by Parliament and it is critical that this milestone and deliverable is achieved.

The Authority has concluded that mobile telecommunication technologies are a critical component in achieving the goal of 'broadband for all citizens' in South Africa.

2. PURPOSE

The Information Memorandum is to inform and guide the prospective licensees in the application process during the licensing process for International Mobile Telecommunications (IMT) Systems for the provision of mobile broadband wireless access services for urban and rural areas using the complimentary bands, 700 MHz, 800 MHz and 2.6 GHz.

## ANNEXURE A: INFORMATION MEMORANDUM

The process be effected through the publication of an Invitation to Apply (ITA) in terms of regulation 7 of the Radio Frequency Spectrum Regulations 2015, "Procedure in respect of section 31(3) of the ECA".

### 3. SCOPE

- 3.1 The scope of the Licensing process through an ITA is to:
- 3.2 Provide mobile broadband wireless access services for urban and rural areas
- 3.3 Provide for coverage and capacity through the complimentary bands in IMT700, IMT800 and IMT2600
- 3.4 Provide suitable harmonised Channel Arrangements to achieve economies of scale in a matured ecosystem
- 3.5 Provide the award process with available lots for a suitable auction process and indicative timelines thereof,
- 3.6 To provide for Universal Obligations and ensure affordable access.

### 4. OBJECTIVES

The key objectives of the licensing process is to fulfil the requirements for capacity and coverage, Bridge the Digital Divide and to meet the Rollout Targets for Broadband Services, thus ensuring Nationwide Broadband Access for All Citizens by 2020 by;

- 4.1 Increasing universal service and access thus ensuring rural connectivity
- 4.2 Giving consumers more choice,
- 4.3 Introducing a Wholesale Open Access Network,
- 4.4 Promoting investment in the sector and economic growth
- 4.5 Ensuring quality of service and experience
- 4.6 Ensuring affordability of services

ANNEXURE A: INFORMATION MEMORANDUM

5 GUIDING PRINCIPLES

The development of information memorandum which is to give effect to the ITA during the third quarter of 2015/2016 financial year is guided by the Constitution of the Republic of South Africa, SA Connect policy, National Development Plan (NDP), Government Priority outcomes (SIP 15), Spectrum Policy, and the digital migration policy framework.

- 5.1 The Constitution Section 192 of the Constitution of the Republic of South Africa, 1996<sup>1</sup> gives the Authority the **sole mandate to regulate** broadcasting [and Electronic Communications] in the public interest.
- 5.2 Section 30(2) of the ECA, mandates the Authority to control, plan, administer, manage, license and assign the use of radio frequency spectrum. In executing the afore mentioned exclusive mandate, the Authority must ensure compliance with applicable standards and requirements of the International Telecommunications Union's (ITU) Radio Regulations, and the National Radio Frequency Plan.
- 5.3 The Authority in this respect, is mandated by section 31(3) of the Electronic Communications Act, Act 6 of 20015 as amended.
- 5.4 The National Development Plan (NDP) envisioned smarter mechanisms for allocating spectrum with the use of auction and reverse bids for underserved areas with robust and transparent governance.
- 5.5 Furthermore, the NDP envisioned that Spectrum which is made available by the shift of Analogue Broadcasting to Digital, should be swiftly allocated to ensure that services expand with emerging technology
- 5.6 SA - Connect, the broadband Policy envisioned the Identification of significant amounts of otherwise underutilized spectrum to be availed for broadband use to give effect to the promise for increasing broadband capacity

<sup>1</sup> Section 192;of the Constitution of South Africa

**ANNEXURE A: INFORMATION MEMORANDUM**

- 5.7 Further, SA Connect envisaged the identification of mechanisms to release High demand spectrum required for the extension of broadband services and ensure effective and efficient use of spectrum
- 5.8 Furthermore, SA Connect, envisaged prioritising and expediting the identification and allocation of high demand spectrum
- 5.9 One the Government's Prioritized to ensure Goals as set out in the Strategic Integrated Project (SIP) 15, deals with expanding access to communications technology by ensuring universal service and access to affordable and secure broadband services by all South Africans, prioritizing rural and under-serviced areas and stimulating economic growth.
- 5.10 The Authority in this respect is guided by the goal to ensure the "expansion of Access to Communications Technologies"

**6. REGULATORY CONTEXT**

- 6.1 there has been a sequence of regulatory measures carried out by ICASA with the aim of liberating spectrum for mobile broadband
- 6.2 The 2011 Radio Frequency Spectrum Regulations update the regulations for radio spectrum and also create the framework for Radio Frequency Spectrum Assignment Plans that make rules for specific bands.
- 6.3 The 2013 update of the National Radio Frequency Plan brings it into line with the deliberations of the World Radio Conferences
- 6.4 The Radio Frequency Migration Plan 2013 identified all bands subject to migration including the identified bands for IMT and specifies whether a Radio Frequency Spectrum Assignment Plan should be developed as the next step or whether a feasibility study needs to be carried out first.
- 6.5 The IMT Roadmap 2014 has taken the process one step further by assessing the overall demand for mobile broadband and assessing how the identified IMT bands could be cleared for IMT and how they might be used. The Radio Frequency Migration Plan 2013 identified all



## ANNEXURE A: INFORMATION MEMORANDUM

bands subject to migration including the Terrestrial Broadcasting Frequency Bands

- 6.6 The Terrestrial Broadcasting Frequency Plan 2013 was published
- 6.7 The final step was the Notification of the planned entries to the ITU Radiocommunications Bureau after successful coordination within SADC and ATU Region.
- 6.8 An updated version of the Terrestrial Broadcasting Frequency Plan was published in the Government Gazette in September 2014.
- 6.9 The final step in the process from the technical point of view has been to develop RFSAP's for the IMT bands in March 2015.
- 6.10 The Information Memorandum is a key milestone in the process for the finalisation of the licensing process for IMT Spectrum through the market based mechanism.
- 6.1 The Information Memorandum is to culminate with an Invitation to Apply during the third quarter (Q3) of 2015/2016 issued for IMT Spectrum in the IMT700, IMT800 and IMT2000

### **7. Legislative Matrix**

The Authority would, from the onset, like to set out the enabling provisions of the Act that empower the Minister to initiate and undergo the process under review and comment thereon. Section 3(2) of the Electronic Communications Act, 2005 provides:

- 7.1 *The Minister may, subject to subsections (3) and (5), issue to the Authority policy directions consistent with the objects of this Act and of the related legislation in relation to-*
- 7.2 *the undertaking of an inquiry in terms of section 4B of the ICASA Act on any matter within the Authority's jurisdiction and the submission of reports to the Minister in respect of such a matter;*



ANNEXURE A: INFORMATION MEMORANDUM

- 7.3 *the determination of priorities for the development of electronics communications networks and electronic communications services or any other service contemplated in Chapter 2;*
- 7.4 *the consideration of any matter within the Authority's jurisdiction reasonably placed before it by the Minister for urgent consideration.*

The powers endowed to the Minister in terms of section 3(2) are subservient to the provisions of subsections (3) and (5). This is clearly denoted by the selective use of the expression "*subject to*" in section 3(2) of the Act. Section 3(3) of the ECA provides:

*"No policy made by the Minister in terms of subsection (1) or policy direction issued by the Minister in terms of subsection (2) may be made or issued regarding the granting, amendment, transfer, renewal, suspension or revocation of a licence, except as permitted in terms of this Act".*

A cursory glance to the provisions of section 3(3) of the ECA expressly precludes the Minister from making and issuing policy directions that deal with licensing matters. In *Altech- Autopage (Pty) Limited v ICASA, Minister of Communications and Others*<sup>2</sup>, the court made a judicial pronouncement that section 3(3) of the ECA precludes the Minister making policy with regard to the granting, amendment, transfer, renewal, suspension or revocation of a licence, except as permitted in terms of the Act. Simply put, the Minister is not allowed in law to make and issue a policy direction that deals with licensing related issues or matters connected therewith. The Minister is however permitted in terms of section 5(6) of the ECA to make and issue a policy direction to the Authority to accept and consider applications for individual electronic communications network services licences, in consideration of the implementation of the managed liberalisation policies. The Minister is therefore permitted to make and issue policy directions in respect of licensing matters only to the extent authorised in terms of section 5(6) of the ECA.

It is important to, from time to time, refer to the decision of *Altech-Autopage (Pty) Limited* as it is a landmark decision on policy directions and directives. The court in analysing the nature and content of the policy direction concluded:

<sup>2</sup> TPD (unreported) casa no. 20002/08 per Davis AJ at PARA 5.18

ANNEXURE A: INFORMATION MEMORANDUM

*"It is further clear that the directions, insofar as they constitute administrative action, seek to either interfere with or prescribe to the Second Respondent (ICASA) how the "must" obligation contained in section 93(1) regarding conversion of licenses should take place. Clearly such direction oversteps the line of interference and encroaches upon the independence of the Second Respondent. The Second Respondent's independence is entrenched in the Independent Communications Authority of South Africa Act, No. 13 of 2000. The directions therefore contravenes a law and are on this basis both ultra vires and to be struck down in terms of sections 6(2)(f)(i) and 6(2)(i) of PAJA"<sup>3</sup>*

The court went on to find:

*It is clear that the direction goes further than merely placing of the aforesaid matter before the Second Respondent (ICASA). It directs the Second Respondent also to decide not only the question in general, but whether only certain of the existing VANS licensees can be authorized to provide and operate electronic communications facilities or networks.....I find that the directions exceed the mere placing of a question before the Second Respondent as alleged in the Third Respondent's answering affidavit (Minister of Communications)<sup>4</sup>.*

It is of critical importance that whenever the Minister exercises her powers, it is ensured that it is a mirror-image of the law that empowers her/him. The control, management, planning, use and licensing of the radio frequency (RF) spectrum in South Africa is regulated in terms of the Electronic Communications Act, 2005 (Act No. 36 of 2005) and the Authority is responsible for regulating the RF spectrum.<sup>5</sup>

## 7 CONCLUSION

The Authority concurs with the South Africa (SA) Connect- Broadband Policy on the view that:

*"The efficient assignment and subsequent use of high demand spectrum to meet this demand is vital and the cost of making this spectrum available is vital and the cost of not doing so is high."*

End//

<sup>3</sup> TPD unreported decision case no. 20002/08 at PARA 5.20

<sup>4</sup> Altech-Autopage v ICASA, Minister of Communications and Others unreported decision case no. 20002/2008 at PARA 5.22.3

<sup>5</sup> See Chapter 5 of the ECA

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Mr. R Mohlaloga  
Acting Chairperson  
Independent Communications Authority of South Africa  
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**SANDTON**  
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[chairperson@icasa.org.za](mailto:chairperson@icasa.org.za)

Dear Mr. Mohlaloga

**GOVERNMENT GAZETTE NOTICE 438 OF 2016: INVITATION TO APPLY FOR  
RADIO FREQUENCY SPECTRUM LICENCES TO PROVIDE MOBILE BROADBAND  
WIRELESS ACCESS SERVICES FOR URBAN AND RURAL AREAS USING THE  
COMPLIMENTARY BANDS 700MHZ, 800MHZ AND 2.6GHZ**

It has been brought to my attention that the Independent Communications Authority of South Africa ('ICASA') published a notice in the Government Gazette Notice 438 of 2016 on 15 July 2016 ('the Notice'), calling on interested parties to apply for radio frequency spectrum licenses to provide mobile broadband wireless access services for urban and rural areas using the complimentary bands 700Mhz, 800Mhz and 2.6Ghz.

ICASA is well aware of the current ICT Policy Review process, which is not yet finalised but nonetheless it went ahead and published the Notice making reference therein to the Spectrum Policy of 2010, the National Development Plan as well as SA Connect, which documents informs the policy review process. Further, as a result of this pending policy review process, I have not as yet issued any policy direction.

As a consequence of my concern for your Notice I requested an urgent meeting on the 15 July 2016 wherein you took the position that you were entitled to issue the Notice in terms of legislative prescripts and existing policies. I am not in agreement with your view and expressed my displeasure with the Council continuous conduct in ignoring policy

A handwritten signature in black ink, appearing to be 'C. M. M.' followed by a flourish.

directives of government, failing to respond to ministerial correspondence, and to inform the Minister timeously of ICASA publications/notices.

I further place on record that at the aforesaid meeting we were unable to come to an agreement on our difference and the parties agreed to reconsider their positions and to meet again. In this regard a meeting was held on the 19 July 2016. However at this meeting ICASA persisted with its position that the publication was an administrative action and that it was not in a position to withdraw it and in fact did not intend to do so. This position, ICASA said was supported by a Council meeting of 18 July 2016.

I place on record that your conduct amounts to selective compliance of the very legislative prescripts you purport to adhere to in that you failed to inform the Executive Authority of your intention to make regulations, 30 days prior to publishing the Radio Frequency Spectrum Regulations 2015 as provided for in section 4(5) of the Electronic Communications Act ('ECA), 2005, which places the legality of this Regulation in question.

I further wish to place on record that Section 3 of the ECA mandates the Minister to make policy or policy directives on matters of national policy applicable to the ICT sector. Your Notice contains elements predetermining Government's decision on open access, the date on which analogue will be switched off and policy directions on the 700 and 800 band exclusively allocated for mobile. The awarding of these licences will hamper Government's planned interventions to ensure strategic ICT infrastructure investment and the attainment of my mandate which is to ensure that the Republic derives more value out of the booming information communications and technology industry.

Moreover your attention is drawn to paragraph 13 of the 2010 Policy (on which you rely for your Notice) which specifically provides that the Department "...shall review this Policy after every ITU World Radio communications Conference or at any time as determined by the Minister". You are well aware that this has not yet been done.

It has become clear that you refuse to withdraw the Notice despite the fact that I have explained the irreparable harm this Notice will bring to the telecommunications and broadcasting environment and the negative impact thereof on the finalisation of the policy review process.

Accordingly, since we were unable to resolve the present dispute in the meeting of 19 July 2016, I hereby recommend that we, as organs of state, subject ourselves to an Intergovernmental Relations Framework ('IGR') dispute resolution mechanism. It is

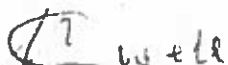
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expected that this process will suspend the operation of the Notice until the matter has been resolved.

As a last attempt to resolve this matter, I have decided to grant you a final opportunity to reconsider your position. In the above circumstances you have until Thursday, 21 July 2016, on or before close of business to inform me in writing of your decision to agree to the IGRF process. As this matter is urgent we shall insist that your Notice be suspended or withdrawn pending the finalisation of the IGR process.

Should you fail to respond by 21 July 2016 to inform me of your decision, we shall assume that you do not intend to participate in the IGR process and or to reconsider your position, in which case I shall institute legal proceedings against ICASA without further notice.

Yours Sincerely



**Dr. Siyabonga Cyprian Cwele, MP**  
**Minister of Telecommunications and Postal Services**

Date: 20 July 2016





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Ref: 15/1/15/R

Dr Siyabonga Cyprian Cwele, MP

**Honourable Minister of Telecommunications and Postal Services**

Department of Telecommunications and Postal Services

Pretoria

0001

Per email: [FMthombeni@dtps.gov.za](mailto:FMthombeni@dtps.gov.za)

Dear Honourable Minister

**RE: GOVERNMENT GAZETTE NOTICE 438 OF 2016: INVITATION TO APPLY  
FOR RADIO FREQUENCY SPECTRUM LICENCES**

1. The Authority refers to the above matter and to your letter of 20 July 2016 ("your letter").
2. The Authority has noted and considered the contents of your letter. Whilst it may not respond to every issue set out therein, its failure to do so should not be regarded as an admission that such issues are correct. The Authority reserves the right to address these issues at a future date.
3. Insofar as it may be intimated that the Authority has failed to comply with either the Electronic Communications Act, 36 of 2005 ("the EC Act") or the Independent Communications Authority of South Africa, Act 13 of 2000 ("the ICASA Act") and

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NA Batyi, P Mashile, K Modimoeng, MR Mohlaloga, BC Mokhele, KGS Pillay, PJ Zimri (Councillors),  
PK Pongwana (CEO)

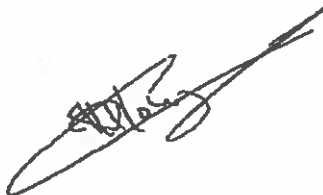
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associated regulations in discharging its mandate, the Authority wishes to place it on record that it has in fact complied fully with all the relevant requirements of both pieces of legislation.

4. Finally, whilst the Authority appreciates the Minister's efforts to resolve the matter between our respective organisations, the Authority respectfully submits that the provisions of section 2 of the Intergovernmental Relations Framework Act No. 13 of 2005 clearly excludes the Authority from the ambit of the said Act. It is the Authority's view that section 3(5) of the ICASA Act is more appropriate in the circumstances.

The Authority trusts that you find the above in order.

Yours faithfully



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**Rubben Mohlaloga**  
**Acting Chairperson**

**Date: 21/07/2016**

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