



telecommunications
& postal services

Department:
Telecommunications and Postal Services
REPUBLIC OF SOUTH AFRICA



PRESENTATION - ELECTRONIC COMMUNICATIONS AMENDMENT BILL

by

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INTRODUCTION

The development of the South African telecommunications sector can be described by the following three phases –

Phase 1: Telecommunications Act, 1996

Phase 2: Electronic Communications Act, 2005

Phase 3: National Integrated ICT Policy White Paper implementation and ECA Bill.



Phase 1: Telecommunications Act, 1996

On 29 October 1993 the Postmaster-General announced the issue of licences to Vodacom and MTN as part of a multiparty implementation agreement published under General Notice No. 1078.

The licensees were authorised by the licences to construct, maintain and use a national Public Land Mobile Network (PLMN) for the Territory to-

- (a) provide a GSM national mobile radio telephony service operating in the 890 MHz to 960 MHz frequency band, and
- (b) connect fixed and mobile terminal equipment using GSM cellular radio telephony technology for the provision of service and community service telephones, and



Phase 1: Telecommunications Act, 1996

(c) interconnect with the Telkom network and with the PLMN of a similarly licensed person.

This was the commencement of a process where Government through policy, legal and regulatory instruments, enabled MTN, Vodacom and other operators to grow into the successful companies they are today.

Government also supported Vodacom through Telkom's shareholding in Vodacom. Part of these shares (15%) were sold and the remaining shares (35%) listed and distributed to Telkom shareholders by way of an unbundling around 2009.



Phase 1: Telecommunications Act, 1996

The Telecommunications Act, 1996 made new provision for the regulation of telecommunication activities. The legal framework created by Government ensured a framework for the orderly management of the radio frequency spectrum. It also ensured that an independent South African Telecommunications Regulatory Authority and a Universal Service Agency was created. Section 37 of the Act deemed Vodacom and MTN to be holders of Mobile Cellular Telecommunications Service (MCTS) licences. It enabled them to apply for the licences but incorporated their existing terms and conditions based on the 1993 licences. The Act also enabled interconnection and facilities leasing.



Phase 1: Telecommunications Act, 1996

The Act followed the White Paper on Telecommunications that made provision for managed liberalisation and envisaged a Second National Operator six years after the process in the White Paper begun.

The Act made provision for the licensing of Value Added Network Service (VANS) operators.

- **Licensing of Third Mobile Operator**

The Telecommunications Act (s. 37) provided that SATRA must conduct an inquiry relating to additional licences to provide MCTS which inquiry found two MCTS to be financially viable.



Phase 1: Telecommunications Act, 1996

The Minister for Posts, Telecommunications and Broadcasting issued an ITA for one on 26 February 1999.

Following legal challenges, the third MCTS licence was ultimately awarded to Cell C and the licence issued on 22 June 2001.

Cell C's licence was confirmed when the Telecommunications Amendment Act, 2001 was promulgated (s. 37).



Phase 1: Telecommunications Act (as amended 2001)

- **Licensing of SNO**

Section 32A was inserted in the Telecommunications Act to provide for a Second National Operator (SNO) from 7 May 2002 with no less favourable terms and conditions than Telkom. Section 32B applies to applications for the SNO licence, providing for Transnet Limited and Eskom Holding Limited to have equity interest in the SNO determined by their contributions to it, to strengthen it.

The Act provided and the Minister issued policy directions to ICASA on the SNO licensing process.



Phase 1: Telecommunications Act (as amended 2001)

The SNO would be permitted to use Telkom's telecommunications facilities until 7 May 2004. 30 percent equity interest would be allocated to Eskom and Transnet.

Neotel entered the telecommunications market as the SNO in 2006 after being awarded its licence in 2005.

In the 2001 amendment, VANS were given the right to self-provide telecommunications facilities from a future date to be determined.



Phase 1: Telecommunications Act (as amended 2001)

- **Self-provisioning by MNOs**

On 3 September 2004 the Minister determined the date contemplated in section 37(2) of the Act i.e. from which date fixed lines other than Telkom's fixed lines may be used. MNOs were enabled to self-provide from 1 Feb 2005.

- **Licensing spectrum to enable MTN & Vodacom**

New MCTS licences were issued to MTN and Vodacom by ICASA on 19 August 2002. The MCTS licensees may continue to use frequency spectrum in the 900MHz bands.



Phase 1: Telecommunications Act (as amended 2001)

The Telecommunications Act, 2001 (s.30A) provided that MCTS licensees may apply for access to the 1800 MHz radio frequency band within six months of the commencement and that ICASA shall assign it. The section also provided that Telkom and the SNO shall be deemed to hold licences in the 1800MHz band.

Section 30B provided for third generation telecommunications radio frequency licences (3G licences). It made provision for identical provisions with regard to 3G licences as section 30A did with regard to 1800 MHz licences.



Phase 1: Telecommunications Act (as amended 2001)

The Minister set the fees for the 1800 MHz and 3G spectrum in October 2003.

Between 2003 and 2005 the 1800 MHz and 3G spectrum were assigned.



Phase 2: Electronic Communications Act, 2005

The main object of the Convergence Bill, 2005 as introduced, subsequently renamed the Electronic Communications Bill was to promote convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors.

It continued to provide legal certainty and set forth the delineation of powers between the Minister and ICASA whereby the Minister formulates policy and represents the Republic in international communications fora and ICASA implements policy, issues licenses and oversees the communications sector through regulation.



Phase 2: Electronic Communications Act

The Bill further created the legal framework for issuing licenses and the attendant rights and obligations of license holders thereunder; defined the rights and obligations of communications network services licensees when entering upon public and private property for purposes of constructing, repairing or removing communications facilities; vested ICASA with authority to manage all other radio frequency spectrum; required communications network service licensees to interconnect their networks and required communications network service licensees to lease their network facilities to other licensees. The Electronic Communications Act was assented to and commenced in 2006.



Phase 2: Electronic Communications Act

- **Wholesale termination rates**

Interconnection revenues have traditionally been a major revenue stream for mobile operators. Pre 2009, fixed-mobile and mobile-mobile interconnection rates came under increasing scrutiny, and were deemed to be disproportionately high in relation to cost and to have a substantial impact on the cost to communicate.

In addition, a serious discrepancy existed between fixed and mobile networks since the termination rate on a mobile network was R1.25 compared to a termination rate of R0.23 on Telkom's network (peak rates).



Phase 2: Electronic Communications Act

These factors contributed significantly to the growth of MNOs.

Against the backdrop of persistent public outcry and that went as far as involving Parliamentary Public hearings on the high communications cost in South Africa in 2009, the Minister of Communications facilitated the voluntary reduction of the Mobile Termination Rate (MTR) from its apex point of R1.25 to R0.89 per minute.

This Ministerial facilitation which brought about the voluntary reduction of the first MTR also paved the way for regulatory interventions in the communications market.



Phase 2: Electronic Communications Act

ICASA followed up by gazetting its first Call Termination Regulation on 29 October 2010. The Regulations were amended in September 2014 and again in 2017. It also made provision for termination rates along a 'glide path' of progressive reductions, and providing for asymmetric termination pricing to ensure growth of smaller operators.

Government's intervention paved the way for a reduction of wholesale costs and enabling competition.



Phase 3: National Integrated ICT Policy White Paper implementation and Electronic Communications Amendment Bill



Introduction

The NDP provides that –

“ICT is a critical enabler of economic activity in an increasingly networked world” and that “by 2030, ICT will underpin the development of a dynamic and connected information society and a vibrant knowledge economy that is more inclusive and prosperous. A seamless information infrastructure will be universally available and accessible and will meet the needs of citizens, business and the public sector, providing access to the creation and consumption of a wide range of converged services required for effective economic and social participation – at a cost and quality at least equal to South Africa's main peers and competitors.”



Introduction

- The National Development Plan (NDP) and Medium Term Strategic Framework 2014-2019 (MTSF) emphasize that all South Africans must have access to robust, reliable, affordable and secure ICT services in order to advance socio-economic development goals. The National Integrated ICT Policy White Paper is the overarching policy framework that will ensure an inclusive and innovative digital and knowledge society for South Africa and includes interventions to reinforce fair competition and facilitate innovation, new approaches to addressing supply-side issues and infrastructure rollout including managing scarce resources, rapid deployment and open access enablement and provides for institutional frameworks required.



Introduction

The White Paper provides the objectives of Government's policy for the ICT sector that includes -

Equality; Accessibility; Social Development; Economic Growth; Innovation and Competition and Open Access.



Problem statement

- The NDP and the SA Connect have identified that, despite the policy and regulatory framework, network roll-out is skewed towards urban areas and the prospect of providers rolling out modern broadband services in rural and less affluent areas without government intervention is minimal.
- If the ineffective regulatory regime, concentrated broadband infrastructure market and high communications prices persist, these problems will perpetuate the digital divide, compromise the country's ability to meet its broadband targets set out in SA Connect, and will cause South Africa to miss the opportunity provided by broadband to improve the economy.



Problem statement: Competition

- The Regulator has not defined all markets and only one market review has been performed since 2006. Regular market definition is required taking into account substitution and new services including review of effectiveness of competition in individual markets. The interests of users must be paramount in weighing up options and determining if competition related interventions remain relevant and/or necessary.
- There is a need to strengthen the capacity of the sector regulator to function as an effective economic regulator including where necessary draw on the expertise of the competition authorities to assist it.



Problem statement: Open access

- The current infrastructure market is characterised by ineffective competition, infrastructure sharing bottlenecks, duplication of infrastructure, and inefficient use of scarce resources.
- The broadband infrastructure market is concentrated with a few very strong and vertically integrated players. Infrastructure, whether mobile or fixed, is seen as a competitive advantage rather than a facility that can be shared in order to stimulate competition.
- The cost to communicate is high as a result of the duplication of infrastructure which costs are passed on to consumers.



Problem statement: Spectrum

- The roles and responsibilities between the Minister and the Regulator are unclear resulting in institutional inefficiencies.
- There are gaps in the spectrum management regime with regard to the alignment between national universal service objectives and the licensing of frequency spectrum resources, the setting of spectrum fees, spectrum trading, sharing, re-farming and migration.
- The spectrum regime is exclusive which promotes economic growth for a few market players at the expense of broader socio-economic development, and therefore an inequitable assignment of broadband spectrum which is in high demand.



Problem statement: Rapid Deployment

- Lack of clarity about rights of Electronic Communications Network Service (ECNS) licensees to enter property to deploy critical broadband infrastructure.
- Infrastructure duplication has negative impact on environment.
- A lack of coordination exists between large numbers of affected stakeholders across different sectors.
- No consistent, simple and coordinated application process for approvals, permits and wayleaves for deployment and construction of electronic communications infrastructure.
- No dispute resolution mechanism to resolve disputes between licensees and landowners.



Objectives of the Bill

The Bill seeks to amend the Electronic Communications Act, 2005, to align the Act with the White Paper and for this purpose to –

- provide for transformation of the sector through enforcement of broad-based black economic empowerment.
- provide for lowering of cost of communications.
- reduce infrastructure duplications and encourage service-based competition through a wireless open access network.



Objectives of the Bill

- Provide a new framework for rapid deployment of electronic communications facilities.
- Provide for new approaches on scarce resources such as spectrum including the allocation of high demand spectrum on open access principles.
- Create a new framework for open access.
- Provide for the regulation of international roaming including SADC roaming to ensure regulated roaming costs, quality of service and transparency.



Objectives of the Bill

- Provide for regular market definition and review to ensure effective competition.
- Provide for improved quality of services including for persons with disabilities.
- Provide for consumer protection of different types of end-users and subscribers, including persons and institutions.
- Provide for enhanced cooperation between the National Consumer Commission and Authority as well as the Competition Commission and the Authority.



Key amendments: Rapid deployment

- Chapter 4 is amended to include a governance framework including a Rapid Deployment Steering Committee and a Rapid Deployment National Co-ordinating Centre to ensure central coordination of activities and process for rapid deployment; the role of the Authority to make regulations and resolve disputes; the role of SALGA and municipalities in promoting uniformity in process and price for approvals and wayleaves, and to make provision for ICT infrastructure when planning infrastructure at municipal level, the obligations to provide information on infrastructure for inclusion into the GIS database and the requirements for single trenching for fibre deployment.



Key amendments: Spectrum

- Chapter 5 is amended to clarify the functions of the Minister to do spectrum planning and allocation and the role of the Authority to administer and manage the assignment of spectrum, to issue licenses and to monitor and enforce spectrum use; it is further amended to provide for the ‘use it or lose it’ principle, spectrum trading, spectrum sharing and spectrum re-farming and how both unassigned and assigned high demand spectrum must be treated going forward; to provide that the Minister will be responsible for the development of the National Radio Frequency Plan and the establishment of a National Radio Frequency Planning Committee as well as a Spectrum Division.



Key amendments: WOAN

- The proposed section 19A seeks to enable the licensing of a Wireless Open Access Network to provide wholesale electronic communications network services on open access principles.
- The WOAN will be a consortium of persons that adheres to principles such as voluntary participation by interested stakeholders, diversity of ownership and control, Broad-Based Black Economic Empowerment, effective participation by targeted groups including women, youth and persons with disabilities. Though it is called a wireless network due to the assignment of high demand spectrum to it, and in accordance with the name given to it in the White Paper, it is an electronic communications network service.



Key amendments: WOAN

licensee as defined, but may only render the electronic communications network services on a wholesale basis as defined.

- The section refers to pre-requisites necessary before licensing such as the terms and conditions including universal service and access obligations which will apply to the Wireless Open Access Network. The Minister must consider incentives that may be granted to the Wireless Open Access Network.
- Thereafter, the Minister will issue a policy direction to the Authority in terms of section 5(6) of the Act to issue an invitation to apply for the Wireless Open Access Network licence.



Key amendments: Open access

- An open access framework is created in Chapter 8 to provide how networks should be shared between all licensees for the benefit of society. The amendment seeks to oblige electronic communications network service licensees to provide wholesale open access upon request, to enter into wholesale open access agreements, and to provide wholesale open access on terms that are effective, transparent and non-discriminatory.



Key amendments: Competition and International roaming

- Section 67 is amended to ensure that the Authority must define all the relevant markets within 12 months of the coming into operation of the Act. The section requires that the Authority sets out a schedule in terms of which it will conduct market reviews of the defined markets and also requires that such market definitions be reviewed every three years to address technological advancement.
- A new Chapter 7A is inserted to make provision for international roaming regulation with specific emphasis on SADC roaming.



Legislative process

- Cabinet approved the publication of the ECA Bill for comment;
- Deadline for submissions is 18 December 2017;
- Analysis of comment/ Revision of draft Bill;
- Further engagement with National Treasury, Competition Commission, DPME and Chief State Law Adviser;
- Bill submitted to Cluster, Cabinet and introduced into Parliament (Draft DTSPS Annual Performance Plan 2018/19).



Conclusion

The ECA Bill provides a foundation for the growth of electronic communications service providers, especially SMMEs similar to the enabling framework and foundation that government created for Vodacom and MTN to be the largest and most profitable operators on the continent.

Therefore issues of spectrum, WOAN, open access, competition and transformation are critical enablers for the development and growth of electronic communications service providers and the Department looks forward to the Industry's support in the legislative process ahead.



Thank you