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**The Acting Deputy-Director-General  
ICT Policy and Strategy Development  
Department of Telecommunications and Postal Services**  
iParioli Office Park  
1166 Park Street,  
Hatfield, Pretoria  
0001

Attention: **Ms. M Masemola**

By email: <mailto:ecabill@dtps.gov.za>

31 January 2018

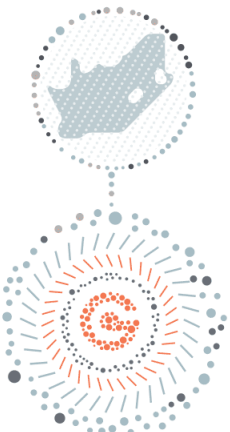
Dear Ms Masemola,

**WRITTEN SUBMISSION - ELECTRONIC COMMUNICATIONS  
AMENDMENT BILL**

Convergence Partners Investments and FibreCo Telecommunications ("**Convergence Group**") hereby submits written comments on the above Electronic Communications Amendment Bill published in Government Gazette No. 41261 on 17 November 2017 by the Department of Telecommunications and Postal Services ("**DTPS**").

Convergence Group would like to make further representations on this Bill and hereby indicates its willingness to participate in any hearings to be held pursuant to this phase of the consultation process.

Convergence Group welcomes the opportunity afforded to the industry and key stakeholders in commenting on a critical piece of legislation that aims to transform the sector. We have split our submission into three sections as follows: i) general and overarching remarks; ii) specific comments in relation to the proposed amendments; and iii) recommendations.





### General:

1. Convergence Group supports the pro-competitive nature of the proposed amendment and welcomes the focus of the DTSP on increasing access to information and communications technology (“ICT”) through competitive market forces and intervention where market failures are evident.
2. In addressing the underserved areas, more detail is required especially in relation to the application of smart subsidies to support the roll out of services as is the case in several international jurisdictions (both developed and developing economies). The intention of these smart subsidies should be to support the pro-competitive nature of the legislation by creating opportunities for new entrants to compete for funding to support their entry into the market including in underserved areas.
3. A focus on service competition is important, however based on the significant backlog that exists in infrastructure deployment across the country and in particular underserved areas infrastructure-based competition should not be left out of the legislative framework. However service-based competition aligns to the Open Access principle of which the Convergence Group (specifically FibreCo) has been a prime promoter and arch custodian as it enables smaller operators to bundle competitive service offers over pre-existing infrastructure without the burden of discriminatory exclusions.

### Comments:

1. The provision in clause 30. Wholesale open access regulations: The determination and definition of “deemed entities” needs to be more clear to ensure that no unintended consequences result that may place an unfair burden on entities that do not have any significant market power on a national or provincial level or which are servicing underserved areas. The regulations that are to flow from this provision needs to take into account this possible overreach/unintended consequence.
2. In establishing the WOAN, consideration should be given to engaging entities that have shown a track record of delivering quality and cost effective services on an open access basis. This will reassure existing network operators and potential customers as to the quality and reliability of the network that will be offered. In having a broader universe of customers, the WOAN will improve its



financial sustainability. Convergence Group supports the approach by Government require existing operators to secure off-take agreements for the WOAN to ensure its financial sustainability thereby reducing the risk of undercapitalisation and potential failure. Trade offs between spectrum allocations and reservations have to be concluded in a pragmatic fashion.

3. In considering the WOAN and requirements for committed capacity offtakes by the mobile operators, the mechanics thereof needs to be clarified in relation the 30% requirement as the current formulation may be the subject of misinterpretation. It is not clear to Convergence how the committed capacity is to be applied (i.e. 30% split between operators or each to acquire 30% of their capacity requirements?) These offtakes need to be supplemented by commitments from government entities, especially in supporting the delivery of services in rural and underserved areas. The application of government demand in rural areas will ensure that capacity demand is spread across the national grip as opposed to be focused on urban centres and thereby ensure adequate investment in rural and underserved areas.
4. More detailed recommendations with regard to the structure and financing of this entity is being worked through and Convergence Group would appreciate an opportunity to submit further inputs on the subject of the possible business models to be applied. In particular, sustainable and cost effective public private partnerships to deliver broadband services and connectivity to the marginalised communities in our country. Public sector ICT infrastructure in the form of assets within BBI; Sentech; Eskom; etc also need to be considered to contribute to the success of the WOAN.
5. In defining IMT spectrum and related matters, the DTSPS needs to ensure that it uses internationally agreed upon terminology as set out by the ITU, IEEE, ETSI and other bodies as this will avoid any ambiguity and possible unintended consequences of locking in entities to spectrum bands that may not be part of the 5G roadmap to be decided at ITU World Radiocommunications Conference, 2019 (WRC-19).
6. On the Rapid Deployment Framework, Convergence Group agrees that this will improve the efficiency and speed of deployment of broadband infrastructure. The critical stumbling block at this time remains the challenges experienced with private and public landowners in gaining fair access to these properties. It is critical



that the issue of access and fair pricing of high sites, fibre deployments and other electronic communications services is adequately addressed in the framework. The use of industry self-regulatory models in managing this process needs to be given further thought and consideration by the DTPS. Convergence and relevant industry bodies would be happy to assist in formulating this type of arrangement.

**Recommendations:**

1. The DTPS should avoid retrospective application of legislation and regulation as this may create an opportunity for the instigation of legal challenges to the Bill which will unduly delay its progress.
2. Consideration to be given to the mobile device. The DTPS should ensure that no operator is able to lock a customer in to a device via payment terms or other mechanisms. The digital future the DTPS is looking to achieve will revolve around the end user device.
3. The DTPS needs to ensure that a clear timeframe is set for the phasing out of feature phones as a digital future is not possible where many users still operate on feature phones.
4. Clarity and alignment needs to be considered in ensuring that the proposed restructuring of the regulatory landscape (including the establishment of new or merging of existing entities) does not unduly delay the implementation of the legislation. It is critical that the legislation and resultant regulatory framework is implemented with the necessary speed to maximise the benefits that the legislation will provide to the South African ICT landscape.

Yours sincerely,

Convergence Partners

**Please refer any questions or comments to:**

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