

30 January 2018

The Director-General  
Department of Telecommunications and Postal Services  
Private Bag X 860  
PRETORIA  
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**Attention: Ms Masemola**

**COMMENTS ON THE PROPOSED ELECTRONIC COMMUNICATIONS AMENDMENT BILL.**

This serves to provide comments on the ECA Amendments as per the gazette No 41261 dated 17 November 2017. There three key and overriding comments that needs to be catered for by the DTSP if the Bill is to be the “game changer” for the industry. Firstly, it is not clear how the Bill will lead to creation of more jobs and skills as well as innovation in the industry. Secondly, the DTSP need to specifically engage or involve the Government Information Technology Officer’s Council (GITOC) on this amendment and other future policies and or legislation given the implications on the work of other Departments as well as alignment within government. Importantly, GITOC is a government structure.

**Specific comments:**

The chronology of comments provided is based on the current document released for public comments.

**Section 8 of Act 36 of 2005**

In order to counteract possible information asymmetry between the industry and users, it is proposed that this section should read as follows:

(b) (111A) informing subscribers and end-users about the quality of service standards **in a manner understood by end-users**, as contemplated in section 69A;

### **Chapter 3A of Act 36 of 2005**

19A (1) The idea behind a Wireless Open Access Network is supported. This would have to be licensed in a manner that improves universal service and access to ICT services by the majority of South Africans including those in remote and rural areas

### **Section 20C. 1 of Act 36 of 2005**

(d) It is proposed that landowners be given 21 instead of 14 days to object to the Authority.

### **Section 20C. 3 of Act 36 of 2005**

It is proposed that this section read as follows:

(e) comply with health and environmental requirements

### **Section 20H of Act 36 of 2005**

This section should be moved to the definitions section of the Act

### **Section 20I of Act 36 of 2005**

It is proposed that the issue of excess capacity be regulated given that, in some instances or as a general practice, licencees may opt to provide marginal excess capacity in a veiled act of being anti-competitive. The regulations will also attempt to address the financial implications associated with excess capacity.

### **Section 20J of Act 36 of 2005**

(1)It is proposed that this section reads:

Government entities in all spheres of government that have rights of way for the construction of infrastructure such as roads, power lines, water pipes, sewer pipes and railways must, subject to feasibility, permit electronic communications network service licensees to use such rights of way to deploy electronic communications networks and facilities.

### **Section 20M of Act 36 of 2005**

(1)It is proposed that this section be moved to the definitions sections of the Act.

### **Section 20N of Act 36 of 2005**

It is proposed that emergency be defined somewhere or somehow. Otherwise, poor planning can lead to or be referred to as being an "emergency" situation.

### **Section 20O of Act 36 of 2005**

It is proposed that this section be moved and dealt with as regulations for ease of amendment, amongst other things, when necessary.

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**Section 20P of Act 36 of 2005**

(7) It is proposed that this section be amended or removed. If amended, deployment must be subject to agreement by parties based on compensation determined by the Authority. Otherwise, the clause neglect negotiations in good faith and exposes property owners to being bullied by suppliers.

**Section 25 of Act 36 of 2005**

(7) It is proposed that this section be reviewed as it might face constitutional challenges. The section negative interferes with property rights and or ownership. It gives licensees right over individual property which might be open to abuse despite the spirit contemplated by the law.

**Section 30. 1 of Act 36 of 2005**

(c) It is proposed that this section be amended to cater/ include e-government services or government services.

(e) It is proposed that this section be amended to cater/ include e-government services or government services.

**Section 31 of Act 36 of 2005**

(8) It is proposed this section refers to 12 consecutive months instead of one year.

**Section 31A of Act 36 of 2005**

(2) It is proposed that a new section be inserted to allow for fluidity or changing or "trading" of US and UA obligations. This is owing to the rate of technology changes taking place. A specific technology can quickly become outdated if not obsolete. This could be done in consultation with the affected licensee(s)/ obligations and will allow for negotiations and provision of specific solutions that would further public interests.

It is hoped that the above comments will receive your favorable consideration.

Yours sincerely

  
**MANDLA NGCOBO**

DATE: 30/01/2018.....