

Summary of the Submission EC Amendment Bill



About the FTTX Council



- FTTX Council Africa is an independent, not for profit organisation and active member of the Fibre Council Global Alliance (FCGA) which includes FTTH Councils in Europe, Asia Pacific, Americas, LATAM and Middle East and North Africa
- We have 71 members across a range of interests including consulting, equipment manufacturers and suppliers, contractors and operators
- Our members range from MNEs and large local enterprises to SMMEs
- Our mandate extends to sub-Saharan Africa
- We have a full time staff, reporting to a Board of Directors and member constituted advisory committees

Our Beliefs



We believe that the development and deployment of fibre based broadband access networks will enhance the quality of life for citizens in South Africa and Africa as a whole, providing African countries with an infrastructure which will increase their effectiveness and competitiveness within the global marketplace

The Bill

- The draft bill is timely and important: it has the potential to reform a sector that while dynamic and evolving, has not yet reached the level of competitiveness required to deliver cost-effective, world class, innovative services and technologies to ALL citizens
- We warmly welcomes significant change to the sector that focus on:
 - Addressing barriers to competition that still persist two decades after significant policy reform was undertaken but has not yet achieved its intended results
 - Addressing skewed and disparate access to ICT services at affordable prices, throughout the country, and by all citizens
 - Creating a sector favourable to investment which in turn promotes the deployment of relevant and technologically advanced infrastructure on which innovative services can be offered.

Overarching Concerns



- May have the unintended outcome of excluding and discouraging competition in respect of electronic communications infrastructure:
 - apparent in the proposed exclusion of infrastructure competition from the objects of the ECA
- Inclusion of excessive and potentially unnecessary and possibly damaging detail:
 - Could harm the realization of the very objects of the Bill
 - Contain multiple cross-references to static documents/policies etc

Infrastructure Competition



- Process explicitly states that future policy should "shift the focus to... services based competition rather than facilities based competition"
- Focus in services competition should not be at the expense of infrastructure competition
 - Current increases in competition in services is largely due to increased and competitive infrastructure deployment
 - The WOAN and other open access initiatives do not preclude facilities based competition (in fact they will be helped by it)
- Change in legislative focus will discourage investment required to:
 - maintain and upgrade existing infrastructure
 - build and deploy new infrastructure

Unnecessary Detail



- We accept that legislative amendment to the ECA is long-overdue
- Advantage of relying on subordinate legislation detail is the relative speed with which regulations may be amended
- Careful balance needs to be struck to ensure that the regulation-making body has the requisite statutory authority
- Level of detail provided in several proposed new sections appears inappropriate and potentially defeating the objects of the ECA:
 - For example, section 20C(1), places an obligation on ICASA to “*prescribe rapid deployment regulations*”. Instead of just enabling the regulator to make regulations necessary to give effect to chapter 4 of the ECA, section 20C(1) provides an unnecessary level of detail, including – for example – the timeframe within which a landowner may object to the installation of ECNS
- Moving this detail to regulation may also allow stakeholders space to reach greater consensus

Detailed Comments



- We have made several detailed comments, mainly concerning
 - Chapter 4 – Rapid Deployment
 - Chapter 8 - Open Access
- We lack the time to engage on all of these issues. The overarching view is that the Bill proposes an omnibus amendment which carries excessive changes, many of which:
 - are not necessary or required
 - can be more speedily implemented under the current ECA and does not need amendment
- Notably the Chapter 4 guidelines on rapid deployment require nothing more than political will to be released for comment to the sector
- We suggested that DTSPS urgently engage with ICASA to finalise and release a framework on rapid deployment in order to address the many issues that have resulted in the *Link Africa* Constitutional Court decision
- It is in the interests of the sector as well as both ICASA and the DTSPS to ensure that the relevant regulations are brought into effect, rather than having the sector regulated through the courts.

Conclusion



- Competition at the infrastructure level remains critical to the sector's growth and development and this can still occur in tandem without unnecessary duplication of facilities
- The proposals to reform Chapter 4 are welcomed and largely positive. We have made detailed input in this regard and urge the DTSPS to consider an industry workshop with ICASA and SALGA to resolve many of these issues before the next draft of the Bill is finalised
- Open access principles are critical but must also take account of technical constraints and realities
- The definition of "essential facility" and "deemed entities" requires reconsideration



Questions ?