



**A SUBMISSION AND COMMENTARY  
On specific Chapters of the ECA Amendment Bill  
As Gazetted on 17 November, 2017**



**telecommunications  
& postal services**

Department:  
Telecommunications and Postal Services  
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## 1. A SUBMISSION AND COMMENTARY TO THE ECA AMENDMENT BILL

### 1.1. Background and Introduction

1.2. The ICT SMME Chamber appreciates this opportunity to contribute to the amendment of the Electronic Communications Act. We appreciate and welcome the spirit emanating from the ICT Integrated White Paper process. It was at this stage of the White Paper that discourse became robust as sectors took positions on various provisions of the White Paper.

1.3. As a Chamber, we are extremely satisfied with the level of public consultations, generally, and industry stakeholder engagements, specifically. The review process of has been as thorough as well as it was extended. Going forward, the ICT SMMEs pledge to support and protect the spirit of the ECA Amendment Bill and its process right through to its enactment as Law.

1.4. We shall be available to holding continual talks, workshops or other engagements that seek to improve both the understanding and the policing of the final Bill and its actual implementation. More than anything, only a radical transformation of this converging information communication technologies' space shall assuage the anxieties and frustrations of the ICT small business in South Africa.

1.5. The Chamber appreciates the elaborate and elongated consultative approach pursued by the National ICT Integrated Policy White Paper process as it made for easier drafting stage in which we are now in. No doubt, the preceding Integrated Policy process assisted in informing the general public and create much needed dialogue between and among the varied stakeholders.

1.6. As a Chamber we are acutely aware of the voices of concern among the citizenry, if there exists –rightly or wrongly– allegations of rushing through a policy process without adequate debate and consultation. The recent public uproar on e-Tolls serves as a fresh lesson on what damage such perceptions may lead to; hence the Chamber's praise for the Department of Telecommunications and Postal Services and its managing the ECA Draft Bill.

1.7. Find the ICT SMME Chamber Organizational Profile [here](#)

## 2. THE SUBMISSION

2.1. Our inputs and comments specific to the Chapters of the ECA Amendment Bill that we listed here-under:

### 2.2. Specific ICT SMME Chamber Comments

2.2.1. On **Transformation of South Africa's ICT Sector**, the ICT SMME Chamber representing its constituent ICT SMME formations welcomes the spirit and the expressed objectives of the ECA Amendment Bill insofar as these align the current ECA with the White Paper.

2.2.2. Members of the SMME Chamber have been involved with the White Paper process at various levels of proximity and capacities. As such, all ICT small businessmen and women, the practitioners, entrepreneurs and their chosen ICT SMME formations are encouraged at seeing the enabling provisions for the ICT sector transformation being enforced in a more precise and urgent legal framework.

2.2.3. The ICT SMME Chamber has always supported the provisions of the Broad-based Black Economic Empowerment (BBB-EE) on the one hand, whilst being displeased with the apparent failure as displayed by both government/public and private sectors to implement BBB-EE ideals with the efficacy they would implement their other business imperatives. SMMEs in this sector have ventilated their problems with each and every ICT stakeholder, at some point or another.

2.2.4. We believe that the BBB-EE Act together with all other supporting policies has been ineffective and inefficient in promoting the achievement of the right to equality, increase the broad-based and effective participation of Black people generally and the ICT SMME practitioners especially in the economy, promote equal opportunity and equal access to government services.

2.2.5. Our view with regards the lacklustre treatment of the ICT Charter by State-owned Companies (SOCs) is as dim as the perception we hold for the private sector operators' equally dismal transformation record. We look forward to the new, amended ECA for bringing about urgent and genuine ICT SMME empowerment.

### 2.3. Lowering the Cost to Communicate

*"... telecommunications policies affect not only telecommunications..., but also the economic development... and social, cultural and political growth."*

**Pekka Tarjanne, Secretary General of the ITU, 1989 to 1999**

2.3.1. The ICT SMME Chamber notes and welcomes "Lowering of Cost to Communicate" as an objective of the ECA Amendment Bill. It is now generally accepted that expanded telecommunications investment is essential in South Africa, not only for our economic growth, but also for us to be competitive within the global economy.

2.3.2. The high cost of telecommunications, including for services as well as the devices, are prohibitive to SMME growth and sustainability in South Africa. This status quo only benefits established big business generally, and the telecommunications operators, specifically, none of whom have the same leverage as SMMEs to absorb the 27.7% (Stats SA, 2017) unemployed youth in South Africa.

2.3.3. The ICT SMME Chamber backs the calls from **#DataMustFall** movement as well as we shall fight against the high transactions costs which represent a "barrier to business entry" for new SMMEs and a killer-punch for those who are struggling to survive. Our small businessmen and women are asserting that the Law must regulate in their favour and, as such, the ICT Chamber endorses this objective.

2.3.4. Whilst the SMME sector has been following the ongoing processes currently underway to make data more affordable with great interest, we want it noted that the small businessman and woman cannot wait forever. We are aware of the frustrations that Independent Communications Authority of SA (ICASA) has been experiencing in their consultation with the industry, particularly the operators.

2.3.5. ICASA's approach with the National Consumer Commission and the Competition Commission among others had been going on since 2016. ***The Chamber submits*** therefore ***that, parallel to this process, the Amendment Bill's provisions for lowering cost to communicate must stand and be enforced.***

#### 2.4. The Wireless Open Access Network (WOAN)

2.4.1. The ICT SMME Chamber welcomes the formation of a Wireless/Wholesale Open Access Network (WOAN) that is designed to achieve the key objectives of discouraging infrastructure duplications by the industry, enabling ease of entry for small businessmen and women in the telecommunication to partake of the new wave of telecommunications opportunities, promote service-based competition, just among others, in South Africa.

2.4.2. The ICT SMME Chamber asserts through this submission that, following the awarding of a GSM license in 1993 to the entity today known as Vodacom and in , it is now about time to review and amend the ECA such that South Africa adequately beefs up for the new converged information communication technologies and usher in the new ICT players which are drawn mainly from the black, women and Youth categories of our population. The WOAN shall present the next wave of opportunity by amalgamating all the high-demand spectrum.

2.4.3. We note that many of the policy and legislative initiatives intended for transformation to promote black ownership have been absolute failures. Such failure has been due to poor Policy implementation by the government agencies, generally, and the Department of Telecommunications and Postal Services, particularly.

- 2.4.4. ***The Chamber submits, contrary to popular belief, that the WOAN is a single network will be an additional, albeit differently-purposed network.*** The WOAN stands to re-invigorate market competition, contribute towards lowering the cost of services. ***The Chamber submit that the WOAN shall neither replace nor be built at the expense of other currently, privately-owned networks.***
- 2.4.5. On the other hand, there is ample recorded evidence proving that some business, in both private and public sectors, have been shoddy at best or cheating the system, at worst, in “implementing” their own transformation policies.
- 2.4.6. The failure of the USALs of mid 2000 is proved to be nothing more than tick-box case. The lack of monitoring and follow-through by both business and government make the ***ICT SMME Chamber hereby submits that SMMEs must be coopted into the anticipated future Authority.***
- 2.4.7. In July 2017 the department had correctly arranged for the ICT industry to make inputs into, and engagement with, the CSIR on a spectrum study that was designed to establish, among others, the quantities, categories and values of the available spectrum.
- 2.4.8. Six months later, the department has not taken us, as industry, into its confidence with the findings and recommendation of that Study. The ICT SMME Chamber believes that it is not ideal for the industry to contribute to the draft Amendments in total absence circumstance of the Study.
- 2.4.9. Whilst we understand that the CSIR Study results can be incorporated at later stage as and when they become announced, we would like express displeasure at having to respond to the ECA Amendment Bill without this very important piece of information. Such lack of transparency by the department only attracts innuendo and controversy. The Chamber uses the opportunity of this submission to urge the department to release the findings of CSIR Study without any further delay.

- 2.4.10. The ICT SMME Chamber hereby puts on the record that, the period December 2016 leading up to June 2017, saw the ICT industry stakeholders being involved in the National Integrated ICT White Paper Policy discussions, with a particular focus on the WOAN. The Minister of Telecommunications and Postal Services would not accept anything other than one model demanding of the industry to negotiate and find each other and then present him with one agreed model. This was duly achieved on the eve of the Minister's Budget Vote presentation.
- 2.4.11. We note the absence of any reference to the agreed business model in the Amendment Bill. Such absence concerns us, as a Chamber, as it may be interpreted to mean that there was no common agreement reached on the WOAN model; which was actually not the case.
- 2.4.12. The ICT SMME Chamber supports the WOAN and is ready to lead in the development of its detailed business model with other interested stakeholders.
- 2.4.13. The Chamber has noted with grave concern, both subtle and elaborate manoeuvres by big telecommunications operators and ISPs, the activities that are designed to render the WOAN stillborn at worst, or ineffectual, at least. The Chamber has some irrefutable evidence in this regard and plans to use it in the event of compelling need.
- 2.4.14. Based on our observations (here-above), the Chamber therefore ***submits that, unlike the failed examples of WOANs in other countries which examples are bandied about with glee by those who resist to change and transform, the South African WOAN model has been well-consider with global references and case studies and it shall be as sturdy as it will fulfil its set objective.*** Our nation boasts records of such successes; we do not believe the WOAN will fail unless, of course, the acts of malice and sabotage by its detractors succeed.
- 2.4.15. South Africa's duopoly of telecommunications is dutybound to be seen to be working for the upliftment and empowerment of the ICT SMMEs. This duopoly had the establishment of the seven the underserved area licences (USALs) cannibalised and suffocated to death in the mid-2000s.

2.4.16. The mobile virtual network operators (MVNOs) model presented a real opportunity for the telecommunications operators to effect real, genuine black economic empowerment and ICT sector transformation. Instead of trusting black entrepreneurs with the MVNOs the telcos posturing and paying lip-service to the idea today.

2.4.17. about assisting SMMEs deploying has a duty to cleanse its history as pertaining to their failed USALs in the mid-2000s. They cannot be rushing and screaming for the high-demand spectrum of 700 MHz, 800 MHz and 2 500 MHz and holding the industry and the country at large, at ransom.

2.4.18. The Chamber believes that the ECA Amendment Bill begins to attach a meaning of radical economic transformation to the ECA. We welcome and endorse this notion indeed. The telecommunications industry woes are partly to do with the lack of desire to transform, as demonstrated by the big business who have hogged rather than shared the growing “ICT pie”.

2.4.19. The duopoly particularly and the top six generally have not exactly covered themselves in glory to be entrusted with the spectrum to the exclusion of the WOAN. The WOAN is aimed at driving the changes in the way the ICTs are owned and operated in a South Africa where business has been exclusive and bulled its way to benefit a few. Black ICT SMMEs have been excluded from the control-levers of the telecoms and technology economy.

2.4.20. Based on its promise to the small businessman and woman, the ICT SMME Chamber ***submits that the WOAN be carried through to its successful establishment.***

## 2.5. Rapid Deployment of Electronic Communications Facilities.

- 2.5.1. Chapter 4 of the Amendment Bill incorporates a governance framework which includes a Rapid Deployment Steering Committee as well as a Rapid Deployment National Coordinating Centre.
- 2.5.2. The ICT SMME Chamber welcomes the drafting in of the Rapid Deployment of Electronic Communications Networks and, or, Facilities into the Bill as this promises to optimize coordination of operations and assist in speeding up the process of infrastructure deployment in the country.
- 2.5.3. 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.
- 2.5.4. With regards to this Framework, the ICT SMME Chamber supports both amendments in so far as
- 2.5.4.1. mandating the Minister to provide oversight in consultation with other relevant Ministers and
- 2.5.4.2. mandating the Minister to establish a Rapid Deployment National Coordinating Centre and a Rapid Deployment Steering Committee to oversee the operations of the Coordinating Centre.
- 2.5.5. The ICT SMME Chamber here-in ***submits that the inclusion of the ICT small businessman and woman in the anticipated Rapid Deployment Steering Committee be drafted into the wording*** to ensure unhindered representation of the ICT SMME sector.

### 3. Provisions for Allocating Scarce Resources Including High Demand Spectrum on Open Access Principles

- 3.1. The ICT SMME Chamber welcomes the Chapter 5 amendments in so far as they set apart the roles and functions of the Minister from those of the new Authority, as anticipated in the Bill. The Chamber supports these amendments as they are going to remove or minimize the ever present operational bureaucratic bottlenecks in the system of spectrum allocation and licensing the License applicants.
- 3.2. The Chamber moves that the Authority be capacitated sufficiently to administer or manage the assignment of spectrum without favour. Also, its issuance of operating licenses, monitoring and enforcing spectrum use has to be sensitive to the ideals of transforming the sector.
- 3.3. The Chamber moves that the provision of 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 enhance market diversity and competition, consumer benefit and protection as well as industry transformation and fulfil the objectives of black economic empowerment.

### 4. Spectrum to be Returned

- 4.1. With regards the provisions of 31.E(6) of the Bill, the ICT SMME Chamber does not encourage the notion of operators having to return their spectrum holding. Such a threat has a real likelihood of turning off the investors, today and in the long-term future, with damaging consequences to the growth of the ICTs in South Africa.
- 4.2. We are fully conversant with the challenges presented by the spectrum scarcity to the operators and we urge the Department to expedite the setting up of the WOAN so as to bring stability and certainty to the investors.

4.3. Now, since the industry had already found consensus on that **not all** the spectrum will, or can, be reserved for the WOAN the Chamber would therefore ***submits that the Minister considers the release of some portion of the spectrum to the affected telecommunications operators on (i) an urgent basis, (ii) fair commercial terms and (iii) be tied to stringent SMME participation and radical empowerment conditions whilst the country awaits the finalisation of the CSIR spectrum study.***

## 5. THE CONCLUSION

5.1. The ICT SMME Chamber shall not wait for the law-making process to complete as we shall be visiting peers and counterparts to find a common ground with them. We shall be challenging private sector with the same zeal as we will be doing the public sector on their “tick-box”, gimmickry in the guise of enterprise supplier development plans. We have used our submission here-in to express our real fatigue with the 30% token empowerment deals. We are using the Bill to express how SMMEs shall take to power rather than await to be empowered as it has been the case in the last 23 years.

5.2. Our specified reservations, proposed additions/deletions/alterations and our commentary notwithstanding, the Chamber is pleased with effort of the ECA Amendment Bill.

5.3. The ICT SMME Chamber reserves its right of augmenting, improving or adding to this our submission at any given opportunity in the future such as on the occasion of the oral presentations.

The ICT SMME Chamber ends its written submission.

**Centurion, GP, 31 January 2018**