



IITPSA Comments on Electronic Communications Act Amendment Bill

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IITPSA

IITPSA (the Institute of Information Technology Professionals South Africa) was founded in 1957 as the Computer Society of South Africa and has a proud 60-year heritage of representing the interests of professional and aspiring practitioners in the South African ICT industry. With a membership base exceeding 9 000, IITPSA is engaged in promoting transformation, skills and capacity development and is an active participant in sectoral issues locally and internationally.

IITPSA members and executives represent the members in such entities as the B-BBEE ICT Sector Council, the National ICT Forum, the MICT SETA, the City of Joburg Governance Committees, the Vaal University of Technology, the Africa ICT Alliance (AfICTA) and the International Federation for Information Processing (IFIP).

IITPSA is recognised as a professional body by the South African Qualifications Authority (SAQA) and its professional membership designation (PMIITPSA) is registered on the National Qualifications Framework (NQF) and accredited by the International Professional Practice Partnership (IP3).

INTRODUCTION

IITPSA welcomes the opportunity to comment on the provisions of the ECA Amendment Bill and supports the government's intention to update the original Act. It is of vital importance to South Africa that legislation and regulation affecting the ICT sector should be progressive, facilitative and flexible to take

advantage of the potential contribution of technology to fuel socio-economic growth and transformation of our future as a knowledge-based society.

IITPSA is disappointed that this Bill in its present format not only misses the opportunity to rectify the shortcomings of the Act but also introduces new matters that are detrimental to the stated intention of using electronic communications to empower South Africans. We will elaborate our concerns in this document and urge the Minister to revise the Bill accordingly.

IITPSA COMMENTS

DEFINITION OF ALLOCATION

IITPSA is concerned that the additional words in Section 1 (a) move the responsibility for allocation of frequency bands to the Minister from the independent regulator. We contend that the expertise for allocation resides in the regulator, not in the Minister's office, and that the technical complexity of the process must be independent of political influence.

DEFINITION OF WIRELESS OPEN ACCESS NETWORK

Section 1 (p) States that the Wireless Open Access Network (WOAN) means the entity...that must provide wholesale electronic communications network services...

IITPSA contends that the use of the word "wireless" in this definition is inappropriate. The network infrastructure to which this applies is made up of a

combination of cable and wireless transmission platforms. If the intention is to give new mobile operators access to existing “backhaul” infrastructure, the definition and the explanation in the proposed Chapter 3A should say so.

In light of the discussions with industry after the publication of the White Paper, we suggest that the reference to WOAN should, in fact, be to Wholesale Open Access Network or Networks.

Experience has shown that competition at the infrastructure level is more effective in reducing prices than restricting competition to the services level. Furthermore, there are no precedents globally to indicate that the monopoly WOAN approach has been successful, in spite of government’s claims to the contrary.

MARKET ACCESS

IITPSA is concerned that the words used in Section 2 (notably paragraphs (cA), (cB) and (cD) are based on a misunderstanding of how the telecommunications market has evolved and create the misconception that the market forces are unreasonable. For example, in reference to (cB), we contend that it is entirely reasonable that infrastructure and services would be focused on high density markets and that competing suppliers would duplicate infrastructure to create greater capacity to meet the demand.

The Bill contains significant reference to the need for market analysis and reporting. Expressing this need in such detail, by inference, says that such information is currently lacking. It is therefore of great concern that this

legislation is not based on proper understanding of the market and the impact thereon.

RAPID DEPLOYMENT

IITPSA supports the measures to ensure faster rollout of network infrastructure but cautions that the ambitious plans for data collection and analysis may delay achievement of the objective.

We have read the proposed insertion into Section 8 of the Act, specifically paragraph 6 (e) (6) of the Bill and confess that we cannot see the purpose of this insertion. The language used is not definitive.

EQUITY OWNERSHIP

IITPSA is disappointed that the opportunity to fully align the transformation obligations of licensees with the targets of the Amended B-BBEE ICT Sector Code has not been taken. The differences in interpretation of the phrase “historically disadvantaged groups” have long been an issue in the telecommunications sector.

CHAPTER 3A

IITPSA is opposed to the introduction of a singular (monopolistic) WOAN, which (as already pointed out) should be more accurately described as “wholesale” rather than “wireless”. The industry has already indicated a willingness for vertically structured providers to offer wholesale access - there is no need nor justification for this to be provided by an exclusive entity.

Confusion arises from the clause 19A (3) which refers to multiple WOAN licences, whereas all other clauses refer to a singular WOAN. IITPSA has no issue with the licensing of wholesale network providers, as long as they can exist alongside existing entities.

IITPSA is of the opinion that the demand for better infrastructure sharing, the introduction of more MVNOs and improved coverage can be met without reducing the rights of existing network providers, by better regulation at the wholesale level instead of “skewing” the market by expropriation. The number of viable ISPs operating across South Africa suggests that the current model offers reasonable opportunities for entrants at this level.

Government is using its own failed process of implementing digital terrestrial television to justify interfering in the allocation of spectrum. Had the migration to DTTv been completed on time, the industry could long since have used the newly available spectrum to increase coverage, enhance quality and improve affordability.

RAPID DEPLOYMENT

By its very nature, the objective of Chapter 4 is to speed up the deployment of network infrastructure. It therefore seems absurd that the Rapid Deployment National Coordinating Centre should take up to 24 months from its establishment to develop the processes to enable rapid deployment (Clause 20F (1) refers). IITPSA is of the opinion that developing such processes can and should be completed within a much shorter time frame.

ADEQUATELY SERVED

The contents of the proposed section 20M appear to be a disincentive to invest in infrastructure by compelling all users within a defined property or premises to rely on the facilities of a single access provider. Any failure of connection within this provider would take all users in the entire premises offline. Any failure of this provider to upgrade facilities would condemn all users to substandard performance. Any retail service provider who is dissatisfied with the quality of service from the access (wholesale) provider would be unable to source an alternative.

CONTROL OR ADMINISTRATION

IITPSA is concerned that the change to Section 30 of the Act (reference section 20 of the Bill) removes control of radio frequency spectrum from the independent regulator and places it in the hands of the Minister, who is a political deployee with no requirement to have appropriate technical knowledge or experience. This also effectively reduces the role of the Authority to that of an administrator. IITPSA believes this to be unconstitutional.

LICENCE DURATION

Section 21 (c) of the Bill proposes the insertion of a clause (3A) (a) which says licences will be renewable annually, despite the duration of the licence. This makes no sense to us. Investment is predicated on the ability to generate returns over an extended period. The limitation to an annual process of renewal not only introduces an unnecessary administrative burden on both government and the licensees but reduces the incentive to invest. Licences are issued

subject to compliance (such as the referenced section 30(2)(i)) and failure to maintain compliance can result in the withdrawal or suspension of the licence at any time, following due process. IITPSA sees no need for the additional annual process.

UNIVERSAL ACCESS AND SERVICE OBLIGATIONS

Section 22 of the Bill proposes to insert clause 31A (1) that includes the words “the Authority must impose universal access and universal service obligations on existing...licensees”. IITPSA is concerned that this unilateral action deprives existing licensees of rights negotiated in good faith and protected by legal contracts and agreements.

HIGH DEMAND SPECTRUM

IITPSA has grave concerns about the approach taken by government in the White Paper and in the Bill towards the management and allocation of radio frequency spectrum. There seems to be little recognition of the dynamic changes in technology that have fundamentally changed the way in which such spectrum is applied, nor any realisation that such changes will continue in the near future.

In addition, government intends to summarily expropriate assigned spectrum from existing licensees based on vague determinations of “high demand”. The principal culprit for the lack of available spectrum is government itself, having failed to free up the spectrum used for analogue TV signals. In spite of this failure, South African operators have successfully rolled out broadband services to a very high proportion of residents. Taking back from them the spectrum they have used to deliver these services is illogical, unless it is achieved by

negotiation with existing licensees. The industry has indicated its willingness for such negotiations, but this Bill closes that door.

IITPSA is of the opinion that the whole of the proposed Section 31E must be redrawn after further consultation with the industry. It is likely to be unworkable in its present form. In addition to stalling any relocation of spectrum for two years, it is contingent on the WOAN being functional.

NATIONAL RADIO FREQUENCY PLAN (NRFP)

Section 23 of the Bill moves the responsibility for the NRFP from the Authority to the Minister. IITPSA questions whether the requisite expertise and experience will be found in the Minister's Office, whereas the Authority not only houses such skills but has the constitutional independence from political influence over a highly technical field.

SADC ROAMING

IITPSA fully supports the need for rational roaming charges imposed on end users and in particular when roaming in neighbouring territories where the same service providers operate.

However, IITPSA objects to the proposed clause 42A (1) (d) that "prices ... should not be too excessive...". This means that excessive is satisfactory. Such terminology is inappropriate in legislation.

FILING OF AGREEMENTS

IITPSA notes that the following appears in the proposed replacement of Section 45 of the Act:

45 (3)...;

This is obviously an error. Legislation cannot contain clauses with no meaning.

CONCLUSION

IITPSA members are fully committed to the application of information & communications technologies to fuel the desperately-needed socio-economic growth in South Africa. As a community, we work to enhance the enabling characteristics of technology in every field of human activity.

IITPSA urges government to actively seek light-touch approaches to the implementation of legislation and regulation that facilitate provision of affordable services through private and public sector participation, avoiding the temptation to control every aspect of a highly technical, highly dynamic industry. Getting it wrong will stifle future opportunities.

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