

Electronic Communications Amendment Bill Stakeholder Consultation Workshop

About Liquid Telecom



- Liquid Telecom previously operated under the name “Neotel” in South Africa
- Our SA business comprises the merger of the former-Neotel and Liquid Telecom Operations
- Liquid Telecom group is a leading independent data, voice and IP provider in eastern, central and southern Africa
- Our business is to supply fibre optic, satellite and international carrier services to Africa's largest mobile network operators, ISPs and businesses of all sizes

General Comments

We have several **structural concerns** around:

- Wholesale services and open access
- Spectrum management
- Independent regulation

We have **conceptual concerns** concerning:

- Drafting new legislation to provide for matters that are currently enabled by the ECA, but not implemented
- The risk of excessive reliance on inter-governmental co-operation
- The amount of re-regulation required
- The lack of institutional capacity

What we really need

- Incentive based, light touch regulatory model
- Regulation that drives costs down, not up
- Access to innovative and affordable services and platforms
- Under-serviced areas need to be finally and forever addressed
- **The market undoubtedly requires a restructure. However, this must be done in a way that does not result in the creation of single operators who can drive costs up, destroy existing wholesale business models that have painstakingly developed over time and remove the confidence investors, both local and global need to grow the sector**
- Strong resourced and effective regulator
- Avoid handing operational allocation powers to the executive
- Retains the discipline of international best practice in spectrum management
- Avoid unintended consequences through a comprehensive RIA
- Ensure clarity on exercise of access rights

Specific Comments

We are unable to explore our comments in detail in the time allocated, however some key concerns include:

- Deletion of the term “public interest”
- Static references that will require legislative amendment to change
- Universal service and access obligations are regressive and we encourage a change from “obligations” to “incentives”
- A lack of certainty around time lines
- Deletion of the requirement of notice and consultation for change in control applications

Concerns regarding the WOAN:

- will not be efficient
- will not need to innovate and it may discriminate
- it may not attract the requisite business from operators
- creates regulatory uncertainty and negatively impacting investment
- International models are either not relevant to South Africa, not advanced enough to assess and some appear to be failing
- Ignores the Section 3(3) prohibition of policy directions in respect of licenses: may blur policy formulation and implementation
- CSIR research has not been shared

One option would be to develop the WOAN in phases, the first using existing state-owned networks with strictly controlled pricing mechanisms and clear rules on access and non-discrimination

Rapid Deployment

- Tools for intervention regarding rapid deployment have been available for 11 years and are still to be implemented
- The interventions are welcome, however there are concerns:
 - Excessive detail and over-regulation
 - Single trench policy may lead to unintended adverse consequences
 - Inappropriate instruction to other sectors
 - The concept of "adequately served" requires further detail
 - The Application Procedure section requires further detail (preferably in regulations)
 - Dispute resolution needs industry assistance
 - Compensation needs further thought:
 - New structures that appear vague and overly complicated
- Need not wait for the amendment; we can proceed with regulations on many of the issues covered in the Bill **right now**

- Concerns:
 - Ministerial power regarding the determination of spectrum fees and incentives and the mixing of operational regulatory work and policy
 - Effective prohibition of transfers of licences with high demand spectrum
 - “Use it or loose it” lacks clear definitions and exemptions seem arbitrary
 - New/restructured agencies and the interaction between them
 - High-demand spectrum proposal at odds with the overall objectives of the ECA: timelines and sequencing are muddled, effectively operates as a complete barrier against any current licensee obtaining unassigned high demand spectrum for many years to come. For example:
 - 31E(5)(b) posits threshold of 30% of WOAN capacity
 - meaning there could never be more than three licensees who meet this threshold
 - any other licensee would be blocked from future access to high demand spectrum
- Welcome:
 - the progressive approach regarding spectrum trading, sharing and refarming: need not wait for legislation and with a policy direction, work could start (certainly regarding sharing)

Open Access & Competition Matters



- Always supported open access: hampered by implementation
- No longer as critical – due to infrastructure competition
- Trying to address market dominance and concentration of facilities through services-based competition is likely to have the opposite effect (and reduce incentives to build network redundancy)
- Deeming provision is not based on any rationale and may be an overreach
- Reliance on the OSI model in a IP world seems misplaced
- Expectation of the authority completing regulations in 18 months seems optimistic: given historical performance and proposed structural changes in the regulator
- The ECA currently allows ICASA to consider many of these issues without needing to wait for legislative changes: however ICASA needs the resourced to do so
- Market definition process requires public participation and the ex ante process may be better served by an ad hoc process
- Concurrent jurisdiction a concern
- Consideration of the changes proposed in the Competition Amendment Bill

Conclusion

- More consultation is required, focussed on implementation
- “If it isn’t broken, don’t fix it”: avoid drafting new legislation when the issue is implementation
- We require a complete picture of all the proposed legislative changes and a comprehensive Regulatory Impact Assessment across all of them
- Many proposals are important improvements to the ECA
 - majority of the proposals regarding rapid deployment
 - increased focus on consumer welfare and subscriber benefit
- The Bill has many positive proposals for consideration and the ECA requires considerable improvement
- Much greater consultation with the sector and all stakeholders is necessary to achieve these desired outcomes

Questions