



Project Manager: Ms. Refiloe Motsoeneng
ICASA,
Pinmill Farm Block
164 Kathrine Street
Sandton, 2146,
South Africa
Sent by email to transformation@icasa.org.za

**Re: “Discussion document” of ICASA on
“Equity ownership by historically disadvantaged groups and
the application of the ICT sector code in the ICT sector
in terms of S4B of the ICASA Act 2000, as amended”**

Dear Ms. Motsoeneng:

1. Introduction:

We thank the Independent Communications Authority of South Africa (“the Authority”) for the opportunity to submit comments on the Discussion Document. We firmly support the promotion of Broad-Based Black Economic Empowerment (“BBBEE”) and the country’s corresponding equity ownership objectives for Historically Disadvantaged Groups (“HDGs”).

This submission was prepared with the objective of informing the Authority of issues to bear in mind when new or modified regulations are being considered. Feedback is not provided on each question raised in the Discussion Document but rather focuses on items of collective interest.

The Business Carrier Coalition (“BCC”) is an industry coalition representing the interests of a number of international telecommunications providers, namely AT&T, BT, Orange Business and Verizon. The BCC provides a forum for issues of common interest to its members to be raised and presented to relevant regulatory stakeholders across Europe, the Middle-East and Africa.



The BCC provides predominantly large business users (primarily local affiliates of multinational companies) with advanced electronic communications services across South Africa, Africa and the rest of the world.

As the BCC represents international telecommunications providers that have a limited local presence in South Africa, our comments focus specifically on concerns related to our specific business operations.

BCC members are committed to diversity globally and this commitment is demonstrated in our company policies that focus on fostering an inclusive and diverse working environment relative to our employee hiring and supplier selection practices.

As a general statement, BCC members recommend a light-touch approach to regulation.

2. Public Consultation Questions

2.1 Question 5.1.2 – Should class licensees have HDG equity requirements similar to those of Individual licensees? Explain the rationale for the position proposed. In your opinion, how should the equity requirement be imposed on class licensees?

The BCC proposes that the minimum ownership requirements, as provided for in the legislation, remain as is. As highlighted in the Discussion Document, there is a high level of non-compliance, and efforts should focus on attaining the current compliance requirements instead of increasing the equity ownership requirements. Extending the scope of obligations will not solve the non-compliance issue, and actually may potentially exacerbate the likelihood of continued non-compliance. Also, the current environment balances the ability of business to meet BBEE objectives and mandatory HDG objectives without being overly prescriptive.

2.2 Question 5.1.4 – Should the minimum legislated requirement remain at 30% or should it be increased? If so, what targets do you propose and why?

As with Question 5.1.2 above, the BCC proposes that the minimum ownership requirements, as provided for in the legislation, remain as is. As highlighted in the Discussion Document, there is a high level of non-compliance, and therefore efforts should focus on bringing licensees into compliance with the current requirements instead of increasing the equity ownership obligations.



2.3 Question 6.4.1 – What proof should the Authority consider appropriate to confirm compliance with the HDG requirements?

The BCC wishes to highlight that the legislation is not prescriptive in this regard. Therefore, we propose that the Authority should retain flexibility in determining the proof it requires on an individual case basis. Also, the Compliance Procedure Manual Regulations, Form 1, already requires licensees to submit information about ownership, this should be sufficient.

2.4 Question 8.2 – Should the Authority apply the Codes to all applications i.e. including service, spectrum, type-approval and number applications?

The BCC does not believe that it is necessary to apply the Codes to all applications. This approach would be overly prescriptive and may have unintended consequences on the ability of licensees to continue to provide services to customers. Additionally, as the Amended ICT Sector Code only recently came into operation, the industry needs time to adapt to the more stringent requirements contained therein. Finally, and critically, a comprehensive regulatory impact assessment is necessary to evaluate all potential business impacts, as well as any potential unintended consequences, before making the Codes applicable to applications.

2.5 Question 8.3 Should the Authority require BBEE certificates to be submitted as part of a licensees' annual compliance requirements?

The Compliance Procedure Manual Regulations, Form 1, already requires licensees to submit information about ownership. This could be reviewed in order to determine if more information is required.

2.6 Question 9.3.4 – What should be the minimum level of BBEE certification?

The Authority should not determine a minimum level of BBEE certification, as there is sufficient commercial incentive for licensees to achieve the best possible BBEE scores based on their unique business operations and capabilities.



3. Conclusion

We thank the Authority for the opportunity to make a submission and have our comments taken into consideration. We believe that with the correct light-touch regulatory framework in place, the Authority can advance BBEE and HDG goals while creating conditions to encourage a sustainable competitive environment. We do not request an opportunity to make oral submissions in this regard.

Respectfully submitted on June 30, 2017.

For more information, please contact:

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