
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TELECOMMUNICATIONS AND POSTAL SERVICES

NO. 1003

27 SEPTEMBER 2018

**ELECTRONIC COMMUNICATIONS ACT, 2005
(ACT NO. 36 OF 2005)****INVITATION TO PROVIDE WRITTEN COMMENTS ON PROPOSED POLICY AND
POLICY DIRECTIONS TO THE AUTHORITY ON LICENSING OF UNASSIGNED HIGH
DEMAND SPECTRUM**

- 1.1 On 28 September 2016 Cabinet approved the National Integrated ICT Policy White Paper (White Paper) that was published on 03 October 2016 (*Government Gazette* 40325, Government Notice No. 1212).
- 1.2 Chapter 9 of the White Paper deals with the policy frameworks to address the supply side challenges to transform South Africa into an inclusive, people-centred and developmental digital society. It addresses open access policy, radio frequency spectrum policy, rapid deployment policy and licencing frameworks.
- 1.3 A framework is also established for the licencing of unassigned high demand spectrum to a wireless open access network in line with the new open access regime.
- 1.4 The Minister of Telecommunications and Postal Services (the Minister) intends to issue the policy directions in the Schedule to the Independent Communications Authority of South Africa (the Authority) in terms of section 3(2) read with section 5(6) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (the ECA). The purpose of the proposed policy directions is to direct the Authority to urgently consider the licensing of unassigned high demand spectrum.
- 1.5 As soon as possible after public consultation, the Minister will issue a final policy direction to the Authority.

- 1.6 Interested persons are invited to provide written comments on the proposed policy directions, within 30 working days of the date of publication, addressed to –

The Director-General, Department of Telecommunications and Postal Services
For attention: Mr. T Ngobeni, The Deputy Director-General, Infrastructure Support
First Floor, Block A2, iParioli Office Park, 1166 Park Street, Hatfield, Pretoria
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2. Comments received after the closing date may be disregarded.



Dr Siyabonga Cyprian Cwele, MP
Minister of Telecommunications and Postal Services

SCHEDULE

PROPOSED POLICY AND POLICY DIRECTIONS TO THE AUTHORITY ON LICENSING OF UNASSIGNED HIGH DEMAND SPECTRUM

1. WHOLESALE ELECTRONIC COMMUNICATIONS NETWORK SERVICE

1.1 Chapter 9 of the National Integrated ICT Policy White Paper, 2016 (the White Paper) sets out the open access policy, spectrum policy and a policy framework to address the assignment of high demand spectrum to a wireless open access network. The goals of the open access policy in the White Paper include -

- a) To allow for effective service-based competition and to ensure accessible, affordable, high quality and reliable services for consumers;
- b) To increase network coverage, and enable the rapid deployment of broadband infrastructure and services across all areas of the country;
- c) To promote shared and equal access to broadband infrastructure;
- d) To remove barriers to competition and innovation in the provision of broadband services; and
- e) To foster innovation and development of applications and services.

1.2 The White Paper states that Government fully supports wireless open access as a means to meet the public policy objectives such as lowering of the cost of communications, reducing last mile infrastructure duplication and encouraging service-based competition.

1.3 Mindful of the fact that the Electronic Communications Act, 2005 (Act No. 36 of 2005) (the ECA) does not have a license type for a wireless open access network, but that the Minister may direct the Authority to accept and consider applications for individual electronic communications network service licences, an electronic communications network service licensee that provide wholesale electronic communications network services (hereinafter referred to as the wholesale open access network or WOAN), is contemplated. The term WOAN is used for descriptive purposes in accordance with the White Paper and in line with the wholesale open access obligations proposed for it.

1.4 Moving forward, the new spectrum management regime set out in the White Paper encourages that licensees work together as far as it is practicable, including through the deployment of a WOAN. The White Paper states that in bands where demand exceeds the amount of spectrum available, assignment of spectrum must be on a non-exclusive basis. The value of sharing and collaboration between licensees is that it will result in the more effective use of scarce resources such as spectrum and a reduction of the duplication of infrastructure while facilitating service-based competition.

1.5 The White Paper provides that all currently unassigned high demand spectrum will be set aside for assignment to the WOAN. The Minister performed significant consultation with stakeholders on the best approach to implement this policy provision.

1.6 The Minister commissioned the Council for Scientific and Industrial Research (CSIR) to conduct a study, which is attached hereto, to determine the spectrum requirements for the WOAN to ensure its viability. The study focused on the Capacity and Quality of Services (QoS) determination with respect to the unassigned high demand spectrum bands namely; the network coverage spectrum (i.e. 700 MHz and 800 MHz) and the network capacity spectrum (i.e. 2600 MHz). The study provides recommendations on the unassigned high demand spectrum required by the WOAN to ensure its viability and sustainability on the basis of 20% market share; and excess unassigned high demand spectrum for other electronic communications network service licensees.

1.7 In view of the recommendations of the CSIR study, Cabinet approved that unassigned high demand spectrum may be licensed to a WOAN and to other electronic communications network service licensees simultaneously.

1.8 The Authority is directed to consider the recommendations of the CSIR study urgently.

1.9 The WOAN must provide wholesale open access to its electronic communications networks and facilities, upon request, to any other person licensed in terms of the ECA and persons providing services pursuant to a licence exemption, in accordance with the following wholesale open access principles:

- a) Wholesale open access on terms that are effective, transparent and non-discriminatory;
- b) Leasing of its electronic communications networks and electronic communications facilities; and
- c) Charge wholesale rates as prescribed by the Authority.

1.10 Based on the provisions of the White Paper, the following conditions must apply to the WOAN. The WOAN -

- a) must be a consortium of persons, at least 50% owned by South Africans, that participate voluntarily;
- b) must comply with the empowerment requirements contemplated in section 9(2)(b) of the ECA;
- c) must include diversity of ownership to ensure meaningful participation of all entities involved including SMMEs, and to prevent monopolistic behaviour;
- d) must include effective participation by targeted groups, including women, youth and persons with disabilities;
- e) may not be a public entity under the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- f) may only provide wholesale services.

1.11 If any member of the consortium applying for the WOAN provides electronic communications services, the Authority must require functional separation between such electronic communications services and the member's participation in the WOAN, which must be provided by an independently operating business entity.

1.12 The Authority must determine the following for the WOAN—

- (a) the terms and conditions, including universal service and access obligations; and
- (b) incentives such as—
 - (i) a reduced spectrum application fee, only covering administrative costs;
 - (ii) reduced or waived radio frequency spectrum licence fees for a period of five years;
 - (iii) immediate facilities leasing of electronic communications networks and electronic communications facilities of the radio frequency spectrum licensees, if any, that are assigned currently unassigned high demand spectrum as contemplated in paragraph 2;
 - (iv) offtake i.e. a minimum of 30% national capacity is procured from the WOAN as soon as the WOAN is licenced, for a period of not more than three years, by each radio frequency spectrum licensee that is assigned currently unassigned high demand spectrum as contemplated in paragraph 2. The percentage to be procured by each licensee may be proportionate to the amount of high demand spectrum assigned to such licensee. The Authority may determine that, after expiry of the period contemplated herein, a minimum of 30% national capacity must be procured in the WOAN collectively by the radio frequency spectrum licensees contemplated in paragraph 2, for a further period determined by the Authority;
 - (v) delayed imposition of wholesale rates that must be charged by the WOAN, for a specific period.

1.13 The Authority must—

- (a) consider imposing regulatory remedies on the WOAN, to ensure effective service-based competition, and to avoid any anti-competitive effects;
- (b) perform strict regulatory oversight; and
- (c) ensure that the applicants for a WOAN have a viable business plan, the technical capabilities and financial strength to build and operate a WOAN.

1.14 The Minister intends to direct the Authority, in terms of section 3(2) read with section 5(6) of the ECA, to issue an Invitation to Apply (ITA) and accept and consider applications for an individual electronic communications network service license and intends to direct the Authority in terms of section 3(2) to urgently consider the licensing of a radio frequency spectrum license, for a WOAN.

2. UNASSIGNED HIGH DEMAND SPECTRUM NOT ASSIGNED TO THE WOAN

2.1 The Minister intends to direct the Authority, in terms of section 3(2) of the ECA, to urgently consider the licensing of radio frequency spectrum licences for unassigned high demand spectrum not reserved for assignment to the WOAN.

2.2 The radio frequency spectrum licences contemplated in paragraph 2.1 must be issued on condition that—

- (a) the licensee, must lease its electronic communications networks and electronic communications facilities, if any, to the WOAN upon request, as soon as the WOAN is licenced. The Authority must perform strict regulatory oversight to ensure compliance with this network and facilities leasing requirement;
- (b) the licensee procure capacity in the WOAN as provided in paragraph 1.12(b)(iv);
- (c) the spectrum is assigned subject to Chapters 8 and 10 of the ECA;
- (d) universal access and universal service obligations are imposed on the licensee to ensure high quality network availability in rural and under-served areas; the obligations must be complied with in rural and under-served areas before the assigned spectrum may be used in other areas by the licensee;
- (e) spectrum lots or capacity should be divided in a way that ensures that the relevant spectrum is not licenced to a single entity; and
- (f) compliance with empowerment requirements in terms of section 9(2)(b) of the ECA and any regulations issued by the Authority.

2.3 Section 31(2)(b) of the ECA provides that an individual electronic communications network service licence is required in addition to any radio frequency spectrum licence where the provision of such service entails the use of radio frequency spectrum. Although some of the applicants for the radio frequency spectrum licences will have an existing individual electronic communications network service licence in compliance with section 31(2)(b), provision should also be made for applicants that do not have an existing individual electronic communications network service licence.

2.4 The Minister intends to direct the Authority, in terms of section 3(2) read with section 5(6) of the ECA, to issue an Invitation to Apply (ITA) and accept and consider applications for individual electronic communications network service licenses from applicants that intend to apply for the radio frequency spectrum licences, but do not have individual electronic communications network service licenses.

2.5 Any terms and conditions imposed by the Authority shall remain in force for the duration of the radio frequency spectrum licence issued.

2.6 The licences contemplated in this policy and policy direction shall be for such periods as determined by the Authority.