



planning, monitoring & evaluation

Department:
Planning, Monitoring and Evaluation
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)
FINAL IMPACT ASSESSMENT TEMPLATE (PHASE 2)
ELECTRONIC COMMUNICATIONS AMENDMENT BILL

The Final Impact Assessment: Electronic Communications Amendment Bill

The Final Impact Assessment provides a more detailed assessment of the ultimately policy/legislative/ regulations/ other proposal. In addition, it identifies **(a)** mechanisms for monitoring, evaluation and modification as required; and **(b)** a system for managing appeals that could emerge around the implementation process.

1. The problem Statement/ Theory of Change

1.1. Give summary of the proposal, identifying the problem to be addressed and the root (causes) of the problem that will be addressed by the new rule.

a) Summary of the proposal (Summary Background of the proposed policy/bill/ regulations/ other)

Since the advent of democracy in 1994, South Africa developed separate frameworks for the telecommunications, broadcasting, postal sector and a green paper on e-commerce. These policy frameworks adopted assisted the country to begin transforming the communications sector, and also provided for universal service and access to information and communications technologies.

The 1996 White paper on telecommunications intended to address amongst other key policy issues the following: (i) not all citizens had access to affordable reliable and quality communication services ; (ii) ineffective competition due to market structure inefficiencies (Price and market); transformation of the sector (previously disadvantaged individuals (PDIs) not participating meaningfully in the sector); (iii) need for effective regulation of these sectors and radio-frequency spectrum; (iv) affordability and tariff setting;

The issue of universal access is still at the core of the ICT sector reform. Moreover, inefficiencies in competition, allocation of spectrum on a first come first serve basis, have sustained a highly concentrated market structure over time, making it impossible for government to extend communication services to the majority of citizens. Over nearly the past two decades, this policy challenges, coupled with convergence in technologies, compelled government to initiate a process to review the ICT sector.

The review process started in 2012, with the appointment of a 22-member Advisory Panel by the Minister of Communications. A framing paper outlining the objectives of the review was gazetted for comments in April 2013. This was followed by the gazetting of the Green paper in January 2014, reflecting on achievements against the original vision, and asked what have been the major impediments.

It was followed by the publication of the Discussion paper in November 2014, which presented a range of options and possible policy approaches to realise the objectives set in the framing paper. In March 2015, the ICT Policy Review Panel handed over its final

recommendations report to the Minister of Telecommunications and Postal Services. This report formed the basis for the development of the National Integrated ICT Policy White paper. The overarching policy challenges being addressed by the National Integrated ICT Policy White paper are as follows:

- Universal access gap;
- Lack of coherent Universal Service and Access Obligations (USAO) framework;
- Separate Policy frameworks governing the sector (lack of convergence of policies); and
- Outdated legislative framework.

This National Integrated ICT Policy White paper takes cognisance of the historic development (original intentions of the separate policies), new developments (including the current landscape) as well as likely future dynamics in the sector. The White Paper was approved on 28 September 2016.

One of the laws that must be amended to give effect and enable implementation of the White Paper is the Electronic Communication Act (ECA), 36 of 2005. The current ECA is limited in the following respects:

- There is no whole of government approach to ensure effective rapid deployment of electronic communications networks;
- Spectrum is allocated to only a few licensees that exclusively use the spectrum;
- Duplication of infrastructure occurs;
- The current facilities leasing provisions are ineffective and does not enable the sharing of infrastructure on open access basis;
- Lack of clarity on empowerment framework;
- No enabling provisions for a wireless open access network;
- Improvement of the competition provisions are required to ensure effective competition;
- Consumer protection provisions need strengthening;
- The Act does not make provision for international roaming regulation

b) Problem/s and root causes that the proposal is trying to address

Overarching problem: Lack of universal service and access to ICTs (Availability, Accessibility, Affordability, Awareness and Ability)	
Identified Problem	Root causes
<ul style="list-style-type: none"> 1. Lack of universal service and access to ICTs 	<ul style="list-style-type: none"> The existing ICT law (ECA) is based on the era prior to the development of the National Integrated ICT Policy White Paper of 2016 – hence this legislative framework cannot adequately address some of the new challenges brought about by technological developments which evolved since the ECA was promulgated in 2005.
<ul style="list-style-type: none"> 1.1 Limited availability of networks and coverage (supply-side) as well as lack of affordability for people to use and access services 	<ul style="list-style-type: none"> Ineffective market structure and lack of competition due to small number of large firms, mostly vertically integrated, that control scarce resources like spectrum. Copper local loop for example never opened up. High costs of network deployment/infrastructure results in slow increase in network deployment and network build by large operators only. High costs to communicate due to ineffective competition and ineffective regulation of the full value chain affecting costs. Lack of rapid deployment of infrastructure due to lack of policy and policy direction as well as regulations under section 21 of the ECA. Rapid deployment is hindered due to a range of factors such as number of authorities involved in 3 spheres of government that must provide approvals, inconsistent rules, lack of uniform and clear requirements and by-laws, processes and procedures, legal disputes between especially municipalities and ECNS licensees, etc. Limited access to radio frequency spectrum due to radio frequency spectrum being a finite resource. In addition, assigned spectrum has been assigned exclusively/ individually with no sharing or open access obligations.

Overarching problem: Lack of universal service and access to ICTs (Availability, Accessibility, Affordability, Awareness and Ability)	
Identified Problem	Root causes
	<ul style="list-style-type: none"> • Unequal treatment of licensees with regard to access to spectrum. 400 licensees have ECNS licences with equal rights, but only a handful of licensees have access to spectrum necessary to build electronic communications networks. • Lack of effective policy framework (management and allocation of spectrum) on the use of frequency spectrum as a scarce resource, inhibit potential entrants. • Limited or lack of infrastructure sharing amongst the incumbents result in duplication of infrastructure at a high cost. Infrastructure shared where it suits access provider only. Facilities leasing framework not assisting access seekers. Copper local loop never unbundled caused lack of competition in access market. Refusal by fixed incumbent to share landing station is another example. Duplication of infrastructure occurs. Open access is not regulated.
<ul style="list-style-type: none"> • 1.2 Accessibility of services (limited) – ability to use and access to services regardless of education, race, gender, disability, location, etc. (demand-side). 	<ul style="list-style-type: none"> • Lack of availability of infrastructure, services and equipment such as computers, smartphones etc. prevent rural and poor communities from accessing ICTs. • Technology barriers such as lack of audio description, lack of universal design of equipment, limiting participation of people with disability. • Limited or slow transformation of the sector, inhibiting participation of black people in the sector (transformation, empowerment and ownership). Lack of enforcement of the B-BBEE sector code and its various elements to ensure broad-based black economic empowerment that increases ability to use and access services. • Lack of facilities for people with disabilities prevent people with disabilities from accessing ICT services.

Overarching problem: Lack of universal service and access to ICTs (Availability, Accessibility, Affordability, Awareness and Ability)	
Identified Problem	Root causes
	<ul style="list-style-type: none"> • Consumer protection mechanisms is inadequate to protect all types of consumers including persons with disabilities. The Act does not make provision for international roaming regulation. This is a problem that has prevented the Regulator from regulating international roaming leading to amongst other things high roaming costs in SADC and other destinations.
<ul style="list-style-type: none"> • Lack of universal service and access especially to broadband 	<ul style="list-style-type: none"> • Lack of uniform imposition of Universal Service and Access Obligations (USAO). Despite the fact that 400 licensees have ECNS licences, with equal rights, only about 5 were recently given school connectivity obligations. No universal obligations were imposed since licence conversion around 2009, leading to uncertainty and unequal treatment. The lack of such obligations seriously contribute to lack of universal service and access. • Out-dated definition of universal services and access that does not include broadband. Therefore, even if universal service and access as defined is achieved today, it does not include access to broadband. • Lack of monitoring and enforcement by ICASA of obligations imposed, is a problem since that results in non-compliance by licensees. • Insufficient linkage between spectrum assignment and obligations, especially for refarmed spectrum where spectrum assigned long ago is used for new services and applications without corresponding obligations associated with such services and applications. This is a problem since a new entrant assigned spectrum today for such service or application will attract significant obligations, resulting in an unfair competitive advantage for the incumbent that refarm spectrum.

1.2. Describe the intended outcomes of the proposal-

This Bill seeks to give effect to the National Integrated ICT Policy White Paper in order to mainly promote Universal Service and Access through a Wireless Open Access Network, fair competition, infrastructure sharing through open access and the non-exclusive use of spectrum. These broad outcomes hinge on the following:

- Ensure open access framework that avoids duplication of infrastructure and enables service based competition;
- Ensure whole-of-government approach in order to enable effective rapid deployment of electronic communications networks;
- Given the changing environment, introduce new approaches to spectrum assignment. That is, ensure assignment of high demand spectrum on open access basis;
- Transformation of the sector through enforcement of ICT Broad-Based Black Economic Empowerment(BBBEEE) Sector Code;
- Reduce infrastructure duplications and encourage service-based competition through a wireless open access network to reduce cost of communications;
- Regular market definition and market review to be performed by the Regulator. The outcome of effective market review is effective competition;
- Improved quality of services including for persons with disabilities, consumer protection of different types of end-users and subscribers, including persons and institutions.
- Enhanced cooperation between National Consumer Commission and the ICT Regulatory Authority; and
- Enablement of international roaming regulation including SADC roaming regulation to ensure regulated roaming costs, quality of service and transparency.

1.3. Describe the groups that will benefit from the proposal, and the groups that will face the cost. These groups could be described by their role in the economy or in society. As a minimum, consider if there will be specific benefits or costs for the poorest households (earning R 7000 a month or less); for black people, youth or women; for small and emerging enterprise; and /or for rural development. Add more rows if required

Groups that will benefit	How will they benefit?
Households/ Communities	The proposed amendments in the Bill such as infrastructure sharing, WOAN and rapid deployment will expectedly/potentially result in the benefits below:

Groups that will benefit	How will they benefit?
	<ul style="list-style-type: none"> • Ease of access to affordable communication services since the WOAN created by the Act will build networks in all underserved areas and its prices will be cost-oriented. Service-based competition on top of the WOAN will lead to low prices due to low reasonable wholesale costs from WOAN. Infrastructure sharing similarly enables serviced-based competition. Rapid deployment of networks ensures the quick roll-out and availability of networks everywhere that enables the access part. • Opportunity for access to economic and social opportunities (through access to information and communication technologies) – betterment of their lives. • Opportunity for reduction in the cost of living (reduced transaction costs, through direct reduction in the cost to communicate/regulation of wholesale prices/poverty reduction). • Opportunity for cost reduction, improved quality and choice. • Opportunity for all communities regardless of their geographic location, social or economic standing to benefit from opportunities offered by ICTs. • Opportunity to enhance social cohesion through affordable ICT applications and reduced costs to communicate.
Historically Disadvantage Group (objectives of the Broad-Based Black Economic Empowerment policy of government)	Black people will benefit due to enforcement by the Regulator of the ICT BBBEE sector code through licensing.
ICT Sector Players (Licensees) <ul style="list-style-type: none"> • licensees in the sector (fixed and mobile operators as well as those offerings communication services and Internet service providers) 	<ul style="list-style-type: none"> • Both the fixed and mobile network operators will be able to save costs of network deployment as the Open Access provisions in the Bill will enable all licensees to access and share infrastructure and the use of spectrum with each other, in an effective, transparent and non-discriminatory manner.

Groups that will benefit	How will they benefit?
<ul style="list-style-type: none"> Mobile virtual network operators and other resellers of services 	<ul style="list-style-type: none"> Opportunity for infrastructure-sharing arising from the deployment of Wireless Open Access Network – thus doing away with duplication of infrastructure. This also ensures the removal of one of the barriers to market entry, enabling SMMEs and Electronic Communications Service Licensees to provide services on the WOAN. Opportunity for operators to improve productivity (efficiency gains) through reduced costs of doing business (i) including investment expansion and (ii) improved access to broader customer base/including global reach – marketing and/or transportation costs reduced. Improved policy certainty to potentially promote investment in the sector – potentially ensure efficient/rapid deployment of ICT infrastructure (through a single trench policy). Entry barriers potentially reduced through shared assignment of spectrum and open access networks.
Consumers (competition)	Effective regulation of competition will ensure that consumers have a greater and wider choice of service providers and services and are expected to benefit from reduced costs of communications services, transparency in pricing of services and quality of services from competing service providers.
SMMEs, new entrants (competition)	Effective regulation of competition will contribute to levelling of the playing field for SMMEs and emerging licensees for growth.
Consumers (consumer protection)	<ul style="list-style-type: none"> Access to quality services and transparency of information will be enhanced through the amendments to section 69 on the codes of conduct on consumer protection and end-user and subscriber service charters. Code of conduct on consumer protection will ensure protection of different types of end-users and subscribers including persons and institutions as well as users of wholesale services. The scope of the end-user and subscriber service charter will be increased to include the provision of accurate, understandable and

Groups that will benefit	How will they benefit?
	<p>comparable information regarding services, rates etc. It will also include standards of services that can be expected.</p> <ul style="list-style-type: none"> • Quality of service standards in the new section 69A will be required for among other things broadband download and upload speeds and minimum requirements to meet the needs of persons with disabilities.
<p>Vulnerable Groups such as people with disability, children, youth and women</p>	<ul style="list-style-type: none"> • The Bill puts more emphasis on ensuring that people with disabilities also fully participate in the Digital Society. • Section 82 provides that "The Agency must from time to time, with due regard to circumstances and attitudes prevailing in the Republic <u>including the needs of persons with disability and broadband, make recommendations on universal service and access</u>" • Section 88 provides that "(4A) In exercising the powers contemplated in subsection (4), the Agency must consider the needs of persons with disabilities in assessing the access gap and setting universal service and access definitions and targets." • Section 36 requires <u>universal design requirements to make provision for persons with disabilities.</u> • Section 69A provides that quality of service standards <u>must include minimum requirements to meet the needs of persons with disabilities, etc.</u> • Various interventions ensure alignment with the UN Convention on the Rights of Persons with disabilities for effective use of ICT devices, services and technologies on an equal basis with others. The Regulator must for example prescribe quality of service standards with minimum requirements to meet the needs of persons with disabilities. • The Regulator must also enforce the B-BBEE sector code that benefits persons with disabilities. This is done through an amendment of section 4(3)(k) of the ICASA Act, in the Schedule.

Groups that will benefit	How will they benefit?
	<ul style="list-style-type: none"> • Opportunity for people to benefit as the sector regulator will be required in terms of section 8(2)(o) to include persons with disabilities when setting obligations on licensees.
Licensees (international roaming)	<ul style="list-style-type: none"> • Regulation of international roaming will reduce roaming costs resulting in an increase of roaming traffic and revenue. A new section 42A is inserted to enable ICASA to regulate international roaming. • Potential reduction in taxes and interconnection rates required by other jurisdictions. In terms of the new section 42A(6) ICASA can engage other regulatory authorities in other countries that will ensure reciprocity and reduce interconnection rates.
Consumers (International roaming)	<p>Consumers making use of roaming will benefit from reduced roaming costs; avoiding bill shock; clarity and provision of information on roaming. This will happen as a result of the Regulator being enabled by the Bill to prescribe international roaming regulations. It is also enabled by the obligation imposed to prescribe SADC roaming regulations in line with the SADC model policy and regulations.</p>
Government and SADC (International roaming)	<ul style="list-style-type: none"> • Effective regulation of international roaming in SADC, i.t.o. section 42A, will lead to reduced roaming costs that potentially results in cross-border flow of people, goods and services due to the benefit from reduced roaming costs. This will also benefit economies of the SADC region. • Improved international relations and cooperation. South Africa's compliance with the SADC decisions made by ICT Minister on SADC roaming for example reflects positively and shows South Africa's commitment to SADC objectives.
Government	<ul style="list-style-type: none"> • Chapter 4 of the Bill provides for rapid deployment and therefore policy and regulatory certainty – potentially ensuring efficient/rapid deployment of ICT infrastructure.

Groups that will benefit	How will they benefit?
	<ul style="list-style-type: none"> • Whole of government approach enhances coordinated efforts, thus reducing administrative burden and duplication of resources. • The role that the Rapid Deployment National Coordination Centre will play such as developing automated wayleave application systems will benefit municipalities. • Opportunity to enhance government transformation agenda by extending participation of black people in main-stream ICT sector activities (e.g., ownership, skills development, supplier development, local content/manufacturing) through the amendment of section 4(3)(k) of the ICASA Act, in the Schedule.

Groups that will bear the cost or lose	How will they incur the costs or lose?
<p>Current spectrum holders (licensees who have exclusive rights to high demand spectrum)</p>	<ul style="list-style-type: none"> • They will lose their exclusive rights to the use of radio frequency spectrum as the policy and the Bill make high demand spectrum subject to open access principles and non-exclusivity, noting that spectrum is owned by government. It must be noted that the current spectrum holders will still be able to offer mobile communications services and assigned high demand spectrum does not have to be returned but will be subject to a future enquiry by the Regulator at the end of the license terms, between 2026 and 2028. Current spectrum holders may lose competitive advantage since high demand spectrum will not be assigned exclusively anymore going forward. Spectrum will generally be assigned on open access basis. Spectrum will for example be used in the WOAN where operators have equal access to it. <ul style="list-style-type: none"> • In public consultation some operators argued that the return of high demand spectrum will create more costs than benefits

Groups that will bear the cost or lose	How will they incur the costs or lose?
	<p>The comment was in respect of the Bill as published for comment. Amendments were made to the Bill to not use the words 'return of spectrum' but that assigned spectrum will only be renewed on new terms and conditions.</p>
ICASA	<p>ICASA will not be responsible for developing the National Radio Frequency Plan since the clarification of roles in respect of spectrum requires that this function be performed by the Minister. ICASA will also have to act in accordance with spectrum related policy and policy directions when making spectrum regulations. This is provided for in the amendment of sections 29, 30 and 34.</p>
DTPS (Rapid Deployment)	<p>Costs associated with establishment and operation of Rapid Deployment Steering Committee and Rapid Deployment Coordination Centre, GIS Database and automated wayleave system.</p>
Certain government departments and Local Government responsible for approval, authorisations to construct networks (Rapid Deployment)	<p>Some municipalities use approval processes when licensees apply for wayleaves, as an income generating mechanism. The Bill provides that municipalities may only charge a cost-based administration fee. This may result in loss of revenue due to requirement for cost-based charges and not using approvals etc., for revenue generation. Following public consultation and comment from SALGA and City of Cape Town, the requirement that admin fees must be cost based was removed from the Bill.</p>
DEA (Rapid Deployment)	<p>Costs for the amendment of related environmental legislation to improve timelines of environmental impact assessment and relevant approvals. There may however be no costs if DEA does not amend their legislation. The role of the RDNCC is merely to encourage improvement of timelines and that processes run in parallel.</p>
Current licensees that provide electronic communications networks (ECNS)	<ul style="list-style-type: none"> • Current licensees that provide electronic communications networks will be obliged to open their existing networks on the open access principles. Sharing of the network the ECNS licensee initially invested in, including the spectrum license costs • ECNS licensee may lose competitive advantage because the licensee with best network that is determined by spectrum held is in better competitive position. A licensee's competitiveness is affected if it must open its network to other competitors or if it has to share spectrum use.

Groups that will bear the cost or lose	How will they incur the costs or lose?
	<ul style="list-style-type: none"> • Network unbundling/opening up costs such as co-location space, RAN sharing costs etc. This will come about as a result of the open access regulation under the Bill that will lead to the imposition of open access obligations. • To enable single trenching, the ECNS may incur extra costs to create capacity. DFA said: “On Section 20C(1)(g) - It can never be expected of a licensee, when constructing a network, to provide for future participation by other licensees in the network so constructed. Construction is expensive and if there is no future participation in a constructed network it means that the licensee constructing the network has to carry the cost of construction without deriving any benefit from that.” • The redrafted Bill now excludes the particulars like extra capacity and leaves it to ICASA to make the rules on it in due course.
Government entities with rights of way e.g. Transnet (Rapid Deployment)	<p>Government entities will be required to make rights of way available to ECNS Licensees. The administrative processes involved will have a cost. The relevant infrastructure maps and databases will need to be updated. The relevant title deeds may need to be amended to reflect the opening of such rights of way.</p> <p>Obligation deleted in latest Bill following public consultation. To be considered under MoU with affected parties.</p>
Licensees	Licensees are expected to incur implementation and adaptation costs to ensure BBBEE compliance
Existing spectrum licensees that require more high demand spectrum	<ul style="list-style-type: none"> • The White Paper provides that unassigned high demand spectrum will be assigned to a WOAN. The Bill has a similar provision but subject to the spectrum needs of the WOAN. High demand spectrum assignment is therefore not exclusive anymore but subject to open access principles and sharing. Existing spectrum licensees will not be able to access high demand spectrum exclusively.

Groups that will bear the cost or lose	How will they incur the costs or lose?
	<ul style="list-style-type: none"> • Existing ECNS licensees holding spectrum may argue that they cannot continue rolling out networks, improving broadband capacity and speed without additional spectrum as a result of the provision in the Bill that high demand spectrum must be assigned to the WOAN (depending on how much spectrum is required by the WOAN) and that any remaining high demand spectrum, if assigned to operators, must be done on open access principles. • In the public consultation an MNO said that spectrum availability will drive down the cost of network rollout due to reduction in the number of site builds. The operator believes that the positive impact of early release of all allocated spectrum (700, 800 and 2600MHz) on data pricing cannot be disputed. <p>The comment was in respect of the Bill as published for comment. Amendments were made to the Bill to clarify the hybrid model that will be enabled in spectrum assignment. The requirement that WOAN must be functional first was also removed.</p>
Competitors to WOAN and participants in WOAN	<p>WOAN as a new competitor may affect existing network providers especially where existing network providers are dominant or exclusively provide networks that will lose customers that rather use the WOAN. The WOAN ensures the availability of networks that can be used by various operators that do not have networks. The cost will also be regulated and therefore affordable to such operators.</p> <p>One operator argues that Infrastructure requirements for a single network with all the spectrum will be significant. The net negative impact of a dominant WOAN on consumer surplus is in the region of ZAR107 to 153bn.”</p> <p>Another operators say that the WOAN provides an opportunity to level playing field in the assignment of HDS and lower infrastructure costs (WOAN does not have to replicate all infrastructure).</p>

Groups that will bear the cost or lose	How will they incur the costs or lose?
	<p>If incumbent MNOs will not be able to qualify for more spectrum, it will lead to further congestion on the networks resulting in declining speeds and call quality, and increased costs as MNOs have to invest further in building additional cell sites.</p> <p>The revised Bill, following public consultation, makes provision for a hybrid model on spectrum assignment. It also allows spectrum assignment rights to other licensees at the same time that the WOAN is licenced. As stated by some operators, the WOAN is an opportunity. The loss anticipated initially, has been largely mitigated through the amendments to the Bill.</p>
Private Sector	Construction costs of WOAN to the extent that infrastructure of current incumbents is not part of the WOAN consortium but this is a normal commercial imperative
Regulator (Competition)	Human resources and especially financial resources in order to regularly do market definition and review and work in collaboration with the Competition Commission
Operators with significant market power (SMP) in ineffective markets(if any) and Operators that qualify as Deemed entities	<p>Costs of compliance with pro-competitive measures imposed by the Regulator.</p> <p>During public consultation an operator said: “Requiring such [deemed entities] to provide access at “cost-based” pricing would impact on their ability to recover the costs associated with major new investments, particularly those based on next generation technologies that carry considerable risks. This is because standard cost-based regulation would reduce the potential returns that operators can make from these investments if they are successful, but may not compensate them for the risk of failure (i.e. if demand turns out to be lower than expected or costs higher than expected).”</p> <p>“Regulating wholesale fixed services through cost-based pricing will stifle infrastructure deployment, investment and jobs.”</p>

Groups that will bear the cost or lose	How will they incur the costs or lose?
	Following the above public submissions the Bill was amended to replace cost-based with cost-oriented pricing that clarifies the intention that reasonable rate of return permitted.
Licensees (Quality of service and consumer protection)	<ul style="list-style-type: none"> • As per the new Bill, licensees are expected to incur the costs of publishing information for end users and subscribers on quality of service – as required by section 69A of the Bill • The Bill introduces costs of compliance with Code of Conduct on consumer protection and compliance with end user and subscriber service charter for the Licensees • Telkom: “ICASA is to prescribe minimum QoS for consumers in line with SA Connect. This is likely to increase the cost to communicate.”
Regulator (Quality of service and consumer protection)	<ul style="list-style-type: none"> • As per the Bill the Regulator is expected to incur the costs of making regulations to ensure that consumers are protected from poor quality of service as well as regulations on quality of service standards • The regulator will incur the costs of creating awareness about the quality of service standards • The regulator will also incur M&E costs of compliance with the quality of service standards • The regulator will incur the costs of producing market performance reports that also include quality of service
Regulator (international roaming)	<ul style="list-style-type: none"> • The regulator will incur the cost of developing the international roaming regulation that includes the costs of international engagements
Licensees (international roaming)	<ul style="list-style-type: none"> • Regulatory compliance costs such as provision of information to roaming subscribers, noting that licensees are already providing information in this regard • Licensees will face potential reduction in revenue generated by licensees from roaming

1.4. Describe the behaviour that must be changed, main mechanisms to achieve the necessary changes. These mechanisms may include modifications in decision making process systems; changes in procedures; educational work; sanctions; and or incentives. Also identify groups inside or outside government whose behaviour will have to change to implement the proposal. Add more rows if required.

Groups inside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
Government	<ul style="list-style-type: none"> • Fragmented and silo approach in respect of ICT interventions to promote universal service and access, which leads to duplications of efforts and resources. Previously the synergy necessary between the Department, ICASA and USAASA was not optimal. • There is no whole of government approach to ensure effective rapid deployment of electronic communications networks due to the different approaches on wayleaves applications by municipalities for example. • Regulatory failure to create a one-stop shop as contemplated in section 21 of the ECA which would facilitate obtaining permissions and approvals, shortening the time and expense involved in the deployment of electronic communications network roll out. Operators should be able 	<ul style="list-style-type: none"> • The Bill creates a whole of government approach to ensure effective rapid deployment of electronic communications networks by amongst other things creation a Rapid Deployment Steering Committee consisting of various stakeholders across government that must be established by the Minister, and will be convened by the DG; • Similarly the Bill includes a National Radio Frequency Spectrum Planning Committee appointed by the Minister and convened by the DG, that consists of government stakeholders

Groups inside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
	<p>to approach one centre to get clarity, potentially apply for approvals, get access to uniform information and get access to dispute resolution.</p> <ul style="list-style-type: none"> Government not fully exploiting the use of ICTs to improve service delivery such as limited e-government applications and services and improve efficiencies in the public service. 	<p>The Bill includes various infrastructure interventions that will create the platform for service delivery such as the WOAN, rapid deployment of networks and open access to infrastructure</p>
	<ul style="list-style-type: none"> Due to current legislation, spectrum is allocated to only a few licensees by the Regulator that exclusively use the spectrum 	<p>The Bill addresses this behaviour by introducing a new spectrum regime based on open access, non-exclusivity and sharing, that will be administered and enforced by the Regulator</p>
Regulator	<ul style="list-style-type: none"> Lack of clarity on empowerment framework and the inconsistent application thereof by the Regulator since only some licensees have empowerment requirements. 	<p>The Bill amends and strengthens provisions on enforcement mechanism for BBBEE that will now link licensing with compliance with the sector codes</p>
Regulator	<ul style="list-style-type: none"> The Regulator has not regulated international roaming 	<ul style="list-style-type: none"> The Bill provides clarity by making specific provision for international roaming regulation in section 42A

Groups inside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
Regulator	<ul style="list-style-type: none"> Limited market reviews done by Regulator to competition chapter. Improvement of the competition provisions are required to ensure that behaviour of licensees are changed to ensure effective competition. It is generally known that lack of competition exists in some markets since operators often mirror each other's costs and do not compete on price. 	Bill provides new framework requiring regular market definition and review.

Groups outside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
ICT Sector players (Electronic Communications Network and Service licensees)	<p>ECNS licensees who currently use spectrum on an exclusive basis will now be required to share the use of spectrum.</p> <p>Ineffective competition at an infrastructure level amongst the Network Operators and limited access to essential facilities. Access seekers are</p>	<p>Assignment of high demand spectrum by the Regulator will be made subject to open access principals and assigned on non-exclusive basis, in accordance with the new provisions of the Bill.</p> <p>The Bill introduces a Wireless Open Access Network that will enable licensees that do not own networks and that wish to access networks to access</p>

Groups outside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
	<p>frustrated by access providers and thereby cannot access facilities of access providers and therefore cannot compete. Ineffective facilities leasing regime where incumbents have generally refused access to facilities such as opening the local loop, access to submarine cable landing stations etc</p> <p>Duplication of infrastructure occurs since each operators constructs its own separate network even though other operators already have networks in the same area;</p>	<p>the WOAN network and provide a service over the WOAN network. Incumbents will also participate as shareholders in the WOAN, due to ability to access high demand spectrum, and their behaviour will change since they will share their infrastructure through the WOAN. Effective competition will be enabled at service level.</p> <p>The Bill also creates an open access framework in Chapter 8 that places open access obligations on electronic communications network service licensees. Depending on the type of operator, that the Regulator will have to determine following due process, different operators will attract different open access obligations.</p>
<p>ICT Sector players (Electronic Communications Network and Service licensees)</p>	<ul style="list-style-type: none"> Behaviour of licensees to ensure protection of consumers can be improved ranging from providing accurate, understandable and comparable information on rates etc. to standards 	<ul style="list-style-type: none"> The Bill strengthens consumer protection provisions by amongst other things, ensuring better cooperation between the Regulator and the NCC and also requires that the Regulator must prescribe a code of conduct on consumer protection that must be reviewed at least every

Groups outside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
	<p>of service that can be expected.</p>	<p>three years. The minimum requirements for the end-user and subscriber service charters are also reviewed.</p> <ul style="list-style-type: none"> • The Bill provides that the code of conduct on consumer protection must include without limitation, provision for the protection of different types of end-users and subscribers including persons and institutions as well as users of wholesale services.
SMMEs	<p>There is low uptake and usage of ICTs by SMMEs.</p> <p>Not enough dynamic and innovative SMMEs are entering the ICT sector</p>	<p>The interventions in the Bill such as the WOAN and open access create an enabling regulatory environment to promote the development of SMMEs by reducing costs and geographic barriers, promote competition and diversity and, access to the use of scarce resources such as spectrum.</p>
Households/Communities/Consumers	<p>Low uptake and usage of ICTs by individuals and households.</p>	<p>The uptake and usage of ICTs will be achieved through the implementation of universal service and access framework, introduction of supply-side interventions such as Open Access, rapid deployment of electronic</p>

Groups outside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
		communications networks and Spectrum in the Bill.
Vulnerable Groups such as people with disabilities, children, youth and women	Research indicates that women use ICTs less and differently than men. ¹ Persons with disabilities have difficulties in accessing communication services and using devices.	<p>The Bill strengthens the application and enforcement of the BBBEE sector code by linking it to licensing and the renewal of licenses in the amendment of the ICASA Act in the Schedule of the Bill.</p> <p>Use of ICT's by a particular groups can be improved by e.g. access – infrastructure deployment where they live. The cost reduction (affordability) mechanisms will ensure an increase in gadgets and will lead to increased usage. The Bill ensures further alignment with the UN Convention on the Rights of Persons with disabilities for effective use of ICT devices, services and technologies on an equal basis with others. The Regulator must for an example prescribe quality of service standards with minimum requirements to meet the needs of persons with disabilities. This improves access.</p>

¹ Research ICT Africa, Allison Gillwald, understanding what is happening in the ICT sector, 2012.

Groups outside Government	Behaviour that must be changed (Current Behaviour)	Main mechanism to achieve the necessary changes
International roaming providers	High roaming costs must be reduced and compliance ensured with SADC decisions on roaming	<ul style="list-style-type: none"> The Bill makes provision for international roaming regulation in section 42A. The Regulator will be enabled to regulate international roaming costs charged by local operators and will also be able to discuss with other regulators in other jurisdictions to ensure reciprocity. This will lead to cost-based charges that are affordable and closer to local rates.

1.5. Report on consultations on the proposal with the affected government agencies, business and other groupings. What do they see as the main benefits, costs and risks? Do they support or oppose the proposal? What amendments do they propose? And have these amendments been incorporated in your proposal?

Affected Stakeholders	What do they see as main benefits, costs and risks?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal?
EMPOWERMENT				
1. Government Departments and Agencies (Name them) ICASA	Risk: ICASA is of the view that the new section 8A, as is currently worded, is in contravention of section	Oppose	The Authority therefore recommends that the word "must" be substituted with the	No, since section 4(3)(k) of the ICASA is also amended to "must", in the Schedule. Clause 8A was however deleted.

	4(3) (k) of the ICASA Act. The Authority therefore recommends that the word "must" be substituted with the word "may" to be on par with section 4(3) (k) of the ICASA Act.		word "may" to be on par with section 4(3) (k) of the ICASA	
2. Business (Name them)				
3. Organised Labour				
4. Civil Society				
5. The Public				
6. Other groupings (Name them)				
RAPID DEPLOYMENT				
Government Departments and Agencies (Name them) SALGA	1.Benefit: Speedy resolution of disputes and minimal protracted court actions.	1. Support proposal	1. None	1. NA
SALGA	2.Risk: Proposed regulatory framework has the potential to encroach on Constitutional imperative i.e. on the exclusive executive powers regarding the rights of ways conferred to Municipalities.	2.Oppose	2. Proposed amendments to be in line with section 151 (4) and 156 (1) of the Constitution. In other words Bill cannot deal with matters that are municipal powers. It	2All obligations on municipalities were removed from the Bill

			can be inferred that SALGA wants amendments to the provisions that give rights to ECNS licensees to enter land.	
SALGA	3.Costs: Concerns raised on municipality incurring costs for ICT Infrastructure provision at municipal level.	3. Oppose	3. They propose amendment to the provision that financially binds municipalities in their planning, though SALGA does not say exactly how it can be resolved. Only say that such provision should not be inserted that binds municipalities.	3. Provision deleted
SALGA	4.Risk: SALGA raised concern that the process for automated wayleaves ² should not undermine the authority of the Municipalities.	4. Oppose and support	4. Not specifically	4. The Bill provides that RDCC will promote establishment of such system but this does not mean that it will handle wayleave applications, since that must be done by municipalities. No changes to Bill required. There is therefore no risk to municipalities but

² A wayleave is a right of way granted by a landowner, generally in exchange for payment and typically for purposes such as the erection of telegraph wires or laying of pipes. (<https://en.oxforddictionaries.com>)

				in fact a benefit since they can duplicate the proposed automated wayleave system. Implementation will be gradual depending on availability of resources, skills etc.
SALGA	5.Risk: Concern raised regarding the responsibilities assigned to SALGA to ensure price uniformity on wayleave application process. SALGA argues that they do not have the power to set prices as they are a voluntary Association. SALGA however misunderstood the amendment since it only says SALGA must promote uniform prices that is within their powers.	5.Oppose	5.SALGA suggest the Regulator should come up with pricing regime scheme to be used to lobby members.	5. Provision deleted
SALGA	6.Risk: SALGA is also concerned about reliance on statutory provisions for rapid deployment issues. They say statutory provisions are not able to balance the rights of licensees with landowners. They say due consideration must be given not to include	6.Oppose	6.Amendment proposed to establish a coordination framework for rapid deployment of ICT Infrastructure that will balance the rights of landowners against those of licensees.	6. The State Law Adviser provided opinion dated 7 September 2017 that the Bills creates a fair balancing of rights between licensee and landowners. No changes required.

	a statutory provision that binds municipalities. SALGA prefers coordination.			
SALGA	7.Risk: Concern that right to enter land is more favourable to licensees than land owners / Municipalities. This is a concern to SALGA as SALGA is of the view that municipalities have powers over things like municipal roads ito s. 156 of the Constitution.	7.Oppose	7.SALGA proposes a balanced approach that creates mutual agreement amongst parties. It is inferred that SALGA does not want provisions that give rights to ECNS licensees but that it should be left to municipalities and licensees to agree on access to municipal land.	7. The State Law Adviser provided opinion dated 7 September 2017 that the Bills creates a fair balancing of rights between licensee and landowners. No changes required to the Bill
SALGA	8. Benefits: SALGA supports the following: 1. the establishment of the Rapid Deployment Coordination Centre and the Steering Committee since due to the increasing number of legal disputes between SALGA members and ECNS licensees, will provide a quick conflict resolution mechanism and since more	8.Support	8.None	8.NA

	<p>collaboration is required. 2. the proposed regulatory framework for rapid deployment since the current provisions in the ECA may be weak.</p> <p>3.the development of GIS database containing all fibre deployment in the country will assist all parties including municipalities.</p> <p>4. a single trench provision that promote the sharing of infrastructure to avoid duplicated trenching and ensure sharing of infrastructure.</p>			
ICASA	<p>Risk: The Authority does not have any statutory powers to regulate non-licensees or landowners. Therefore it becomes difficult to develop and enforce dispute resolution regulations for persons that are not licensees. It is our sub mission that the function of resolving disputes should be carried</p>	Oppose	<p>Amendments to clause 20C, 20P and 25(8). Propose that dispute resolution be done by RDCC.</p>	<p>No. The Department is of the view that ICASA already has, alternatively will have after the Bill becomes law, powers to resolve disputes involving landowners. Also confirmed in legal opinion from SLA. No amendment required in Bill.</p>

	out by the National Co-coordinating Centre			
ICASA	Cost: ICASA highlights that the consequence of removing the 30 days prior written notice in section 24(1) is that a licensee may give an unreasonable short notice to the local authority. For this reason they recommend that the current wording in the ECA be retained.	Oppose	Omit amendment of section 24(1) to retain 30 day notice period.	This matter is linked to Tshwane CC judgement. Provision is made for a general procedure and rights in clause 20G(5)(a) and (b). The necessary safeguards are created there. The 30-day provision has however been reinserted.
Business (Name them) FTTX	FTTX: Level of detail provided in several proposed new sections appears inappropriate and potentially defeating the objects of the ECA: For example, section 20C(1), places an obligation on ICASA to “ <i>prescribe rapid deployment regulations</i> ”, instead of just enabling the regulator to make regulations necessary to give effect to chapter 4 of the ECA.	Oppose	Amend Bill to omit detail	FTTX: The proposal on blanket regulations are not permissible and is correctly done in Bill.

MTN	<p>MTN: The inclusion of Rapid Deployment: Will boost infrastructure development in cities and rural areas</p>	Support	N/A	N/A
Liquid Telecom	<p>Liquid: The interventions are welcome, however there are concerns:</p> <ul style="list-style-type: none"> • Excessive detail and over-regulation • Single trench policy may lead to unintended adverse consequences • Inappropriate instruction to other sectors • The concept of "adequately served" 	Oppose	<p>Less detail in Bill.</p> <p>Omit single trenching from Bill.</p> <p>Delete instructions to other sectors</p> <p>Clarify adequately served further.</p>	<p>Liquid: The 'inappropriate' instruction to other sectors have been omitted and simplification done where possible. Regarding proceeding now with rapid deployment, PD is required and planned for 2018/19 and pilot commenced.</p> <p>Single trench concern: The Department considered how to amend the various sub-clauses to address the concerns raised such as the deletion of 20I(e) -since it is inappropriate for the Regulator to make regulations that determine the role of the Department (RDNCC). The role of the RDNCC to coordinate rapid deployment already covered in any event. In the spirit of simplification, it is proposed that clause 20I(2) be deleted to give more flexibility</p>

	<p>requires further detail</p> <ul style="list-style-type: none"> • 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 <p>Need not wait for the amendment; we can proceed with regulations on many of the issues covered in the Bill right now</p>			<p>to ICASA, and since ICASA will be guided by the WP in developing the regulations.</p> <p>Recommendation: Delete clause 20I(2)</p> <p>Adequately served concern: The definition of adequately served can be clarified to avoid loopholes. ‘Meet me’ facility is replaced with co-location that is more commonly used. A new subsection can be added to ensure a process and criteria for approvals contemplated in subsection (3).</p> <p>Recommendation: <u>20M. (1) For the purposes of this section "adequately served" means—</u> <u>(a) an electronic communications network or facilities that enables the provision of electronic communications services including voice services and broadband services at the quality and speeds provided in SA Connect</u></p>
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				<p> <u>or any subsequent amendment of such quality and speeds, has already been deployed to and within a set of premises such as a gated complex, an office park, a shopping mall, a government building or a block of flats, by an electronic communications network service licensee ("in this section referred to as the access provider"); and</u> (b) the access provider has the ability to connect each and every occupant or user within such premises. (2) The Authority must ensure that the access provider complies with the following rules when premises are 'adequately served': (a) The electronic communications network or facilities or </p>
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				<p><u>elements thereof should be available from the access provider to access seeking licensees on an open-access basis as contemplated in section 43. Such electronic communications network or facilities or elements thereof are deemed essential facilities;</u></p> <p><u>(b) an occupant within the premises is not obliged to receive an electronic communications service from the access provider and may select and receive a service from any electronic communication service provider of choice; and</u></p> <p><u>(c) the access provider must establish a "meet-me" co-location facility at a suitable point within the premises at which all access seeking licensees may install their own electronic</u></p>
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				<p><u>communications facilities or equipment so as to interconnect with the electronic communications network of the access provider, or that the access seeking licensee may use those facilities of the access provider as would enable it to provide services as requested.</u></p> <p><u>(3) No</u></p> <p><u>electronic communications networks or facilities may be deployed in adequately served premises except with the approval of the Authority, if such deployment will not discourage service-based competition.</u></p> <p><u>(4) The Authority must prescribe the procedure and criteria that will be used by the Authority to consider applications contemplated in subsection (3) with due regard to the policy objective to promote service-based competition.</u></p>
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				<p>Application process concerns: The question on how it will be ensured that all applications run in parallel, despite laws in this regard, should be addressed. Amendments are proposed below.</p> <p>Recommendation: 200. <u>(1) The Rapid Deployment National Co-ordinating Centre must engage with departments and other organs of state across all three spheres of government responsible for granting of approvals, authorisations, licences, permissions or exemptions to deploy electronic communications networks and facilities to promote and encourage that all applications and related processes for approval, authorisation, licence, permission or exemption and processes relating to any consultation and participation required by the relevant laws, required for the deployment of electronic communications networks and facilities including, without limitation, environmental authorisations, civil aviation authority permission for</u></p>
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			<p><u>erection of masts, town planning approval and building plan approval must, in order to expedite the matter, run concurrently.</u></p> <p><u>(2) The Rapid Deployment National Co-ordinating Centre must keep updated information on the application processes and minimum information requirements for an approval, authorisation, licence, permission or exemption and processes relating to any consultation and participation required by the relevant laws, required for the deployment of electronic communications networks and facilities.</u></p> <p><u>(3) Any authority responsible for the approval, authorisation, licence, permission or exemption contemplated herein must ensure that its employees are familiar with the requirements of the rapid deployment provisions in this Act and the rapid deployment regulations; must acknowledge receipt of an application within a week, and immediately indicate any outstanding information; may impose reasonable conditions and standards on the deployment of</u></p>
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				<p>electronic communications networks and facilities; may not prohibit an electronic communications network service licensee from deploying electronic communications networks or facilities; and must align their processes with the processes contemplated in section 20F(1).</p> <p>Dispute resolution concern: An industry body may be able to resolve disputes between its members, but not all licensees and landowners including municipalities. The Authority will have to resolve it on an expedited basis. Liquid says the provisions are inadequate but do not say which ones. If read with the section where the Authority must make regulations on expedited dispute resolution i.e. 20C(2), it seems adequate.</p>
FibreCo	FibreCo: Support the drive to implement the rapid deployment framework with some urgency	Support	Insert self-regulatory provisions	Fibreco: Self-regulatory models not WP policy.

	Consideration be given to industry driven self-regulatory models			
SARAO	<p>SA Radio Astronomy Observatory: A number of amendments are proposed to include astronomy related matters, including consultation with their Minister and Authority, inclusion of info on database etc. Example: Section 20A (1) on Page 21 of 116: Role of the Minister</p> <p>✓ The Minister must provide oversight over the implementation of this Chapter and liaise with other Ministers responsible for aspects of rapid deployment of electronic communications networks and facilities, <i>as well as other Ministers responsible for protecting strategic national facilities such as radio</i></p>	Support	<p>Section 20A (1) on Page 21 of 116: Role of the Minister</p> <p>✓ The Minister must provide oversight over the implementation of this Chapter and liaise with other Ministers responsible for aspects of rapid deployment of electronic communications networks and facilities, <i>as well as other Ministers responsible for protecting strategic national facilities such as radio astronomy and related</i></p>	SARAO: Amendment made where appropriate.

	<i>astronomy and related scientific endeavours;</i>		<i>scientific endeavours;</i>	
RIA	<p>Research ICT Africa: Management of supporting databases should sit with the Regulator.</p> <p>RIA believes that the Rapid Deployment National Coordinating Centre should at the very least have formal and substantial involvement from the regulator, and report thereto.</p>	Support	Change Bill to make ICASA responsible for GIS database	<p>RIA: The RIA comment obliges us to consider whether it is correct that RDNCC administers database but ICASA makes access control and database structure regulations. This may be unworkable.</p> <p>RIA makes a valid point that we need to ensure that ICASA is formally part of RDNCC. We do not deal with the composition of the RDNCC or Steering Com in Bill. The RDNCC is intended to be Unit in DTSP, that may include secondees under PS Act, including from ICASA. A new clause 20A(3) is recommended as follows:</p> <p><u>20A(3) The Rapid Deployment Steering Committee consists of -</u></p> <p>(a) <u>one or more representatives of the Authority, nominated by the Authority, that will serve as <i>ex officio</i> members;</u></p>

				<p>(b) <u>representatives of departments and other organs of state across all three spheres of government responsible for granting of approvals, authorisations, licences, permissions or exemptions to deploy electronic communications networks and facilities; and</u></p> <p>(c) <u>such other members as the Minister may determine.</u></p>
ISPA	<p>ISPA: Another long list of difficult tasks for the regulator.....changing “may prescribe” to “must prescribe” and imposing unrealistic deadlines without consequences changes nothing</p>	Oppose	Amend Bill to include consequences for the Relator for non-compliance	<p>ISPA: The Department should revisit all the periods prescribed in Act and relax same except very critical ones.</p> <p>Recommendation: A number of periods were either extended or the deadline removed. Critical ones like Open access, spectrum, competition and BBEE were retained.</p>
ICASA	<p>ICASA:</p> <ul style="list-style-type: none"> • The Authority does not have any powers to 	Oppose	Amend bill to make RDNCC responsible for dispute resolution.	<p>ICASA: OCSLA was asked for their views on the jurisdiction issue and opined that ICASA</p>

	<p>regulate non-licensees or landowners. It would be ineffectual to require the Authority to develop and enforce dispute resolution regulations for landowners as regard rapid deployment as the Authority has no jurisdiction over non-licensees.</p> <ul style="list-style-type: none"> • It is our submission that the function of resolving disputes should be carried out by the National Co-ordinating Centre. 			<p>has jurisdiction to make regulations on resolution of disputes between ECNS and landowners. To create certainty following is suggested by Department.</p> <p>Recommendation:</p> <p><u>20C(2) The regulations must provide for procedures and processes for the Authority to resolve resolving disputes that may arise between an electronic communications network service licensee and any landowner on an expedited basis, in order to satisfy the public interest in the rapid rollout of electronic communications networks and electronic communications facilities.</u></p> <p>Municipal Systems Act a concern. We cannot determine what a municipality must do. We can't regulate local govt.</p> <p>Amendment of Rapid Deployment Chapter to delete obligations on municipalities and other government departments since such matters will be dealt with in an MoU. For example cut</p>
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				<p>section 20D obligations on municipalities.</p> <p>Recommendations: Amendments to Chapter proposed in Bill to omit obligation on municipalities.</p>
Organised Labour				
Civil Society				
The Public				
Other groupings (Name them)				
WOAN				
Business (Name them) Telkom	<p>Telkom: A WOAN as a pragmatic instrument to level the playing field in a way that enables smaller and emerging operators to access currently unassigned HDS.</p> <p>A hybrid model is supported although there are differing views on the model</p> <ul style="list-style-type: none"> The main discord is the amount of spectrum to be 	Support	<p>Telkom: All unassigned high demand spectrum assigned to the WOAN at no cost to the WOAN.</p> <p>No return of assigned high demand spectrum.</p>	<p>Telkom: Return of existing spectrum considered in 31E below. All high demand spectrum cannot be assigned to WOAN as suggested since hybrid followed. The hybrid and reduced or waived spectrum fees have been catered for in the Bill. Access to MNO infrastructure in urban areas will be included with reference to Open Access chapter.</p>

	<p>assigned to the WOAN</p> <ul style="list-style-type: none"> • Return of existing spectrum assignments is not supported <p>Critical success factors of the WOAN</p> <ul style="list-style-type: none"> • Immediate establishment and licensing of the WOAN • Funding capacity and stability of investors in the WOAN • A clear and stable regulatory framework & unwavering political and regulatory support • All unassigned high demand spectrum assigned to the WOAN at no cost to the WOAN • Open access to existing MNO 			
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<p>FibreCo</p>	<p>infrastructure at reasonable pricing</p> <ul style="list-style-type: none"> • Access to state-owned assets (eg. public buildings, ducts, etc.) <p>Telkom propose the construction of a WOAN to leverage existing 3G 900 MHz sites to match the current 3G coverage footprint</p> <p>Access to MNOs infrastructure to encourage operators to share passive and active mobile infrastructure.</p> <p>FibreCo: We support the concept of the WOAN with certain conditions: Credible party to operate: cannot be state-owned, must be in hands of proven open-access wholesale providers that have shown they can do this. Wholesale</p>	<p>Support</p>	<p>WOAN cannot be state-owned.</p> <p>WOAN can be effective in delivering on its mandate it needs one or both of a guaranteed offtake from existing operators.</p>	<p>Fibreco: WOAN not state owned. Functional separation included in Bill. Off takes are enabled.</p>
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	<p>separation must be enforced; and</p> <p>Workable economics: to ensure WOAN can be effective in delivering on its mandate it needs one or both of a guaranteed offtake from existing operators in urban areas and/or offtake from Government services</p> <p>No historic spectrum required, however needs exclusive spectrum allocations in bands that will ensure the above conditions are met</p>			
Hekima	<p>Hekima: Use of the term 'cost based pricing' without defining it.</p>	Support	<p>Hekima: Define cost based pricing.</p>	<p>Hekima: Cost-based changed to cost-oriented.</p>
Vodacom	<p>Vodacom: Dominant WOAN will only utilize 42% of 700, 800 and 2600 MHz for CA, if assigned all of HD spectrum</p> <p>Spectrum blocks -equal allocation of HDS to five</p>	Support	<p>Vodacom: Spectrum blocks - equal allocation of HDS to five blocks i.e. the WOAN and the 4 existing MNOs</p>	<p>Vodacom: Suggestions already enabled in framework of Act and Bill.</p>

<p>FTTX</p>	<p>blocks i.e. the WOAN and the 4 existing MNOs</p> <p>MNOs' committed to buy capacity from the WOAN</p> <p>Transformation -At least 51% black owned</p> <p>MNO block's either awarded via auction and/or assigned with obligations (coverage investment)</p> <p>Envisaged a competitive WOAN and will be committed to support the WOAN (buy capacity)</p> <p>FTTX: WOAN will help facilities based competition as well.</p>	<p>Support</p>	<p>FTTX: N/A</p>	<p>FTTX: Noted.</p>
<p>Liquid Telecom</p>	<p>Liquid Telecom: Concerns</p> <ul style="list-style-type: none"> • Ignores the Section 3(3) prohibition of policy directions in respect of licenses: may blur policy 	<p>Support</p>	<p>Liquid Telecom: Policy direction should not be issued on a licensing matter.</p>	<p>Liquid: Disagree, 3(3) says except "except as permitted".</p>

SACF	<p>formulation and implementation</p> <ul style="list-style-type: none"> CSIR research has not been shared <p>SACF: Promotes - Transformation Service based Competition – universal service @affordable rates</p> <p>Legislative amendment – not necessary and will delay licensing</p>	Support	SACF: Section on WOAN not required.	SACF: Proposal being considered and may still be implemented in parallel, but legal concerns exist.
NAMEC	<p>NAMEC: There should be multiple WOANs</p> <p>None must have government as a shareholder; government must remain in its policy making domain and leave business to run business.</p>	Support	NAMEC: Amend section to enables multiple WOANs.	NAMEC: Multiple WOAN will not enable scale that is required.
PBICT	PBICT: The WOAN must be established whereby BBI,	Support	PBICT: The WOAN must be established whereby	PBICT:

<p>Zenzeleni</p>	<p>Sentech, SITA have 30% controlling interest, the black ICT smmes have 30% controlling interest and 40% goes to existing operators.</p> <p>Government, private sector and state owned entities must allow the WOAN to use its infrastructure.</p> <p>WOAN must be established and must include black SMMEs.</p> <p>DTPS must focus on restructuring and transformation of the industry through policy.</p> <p>Zenzeleni: We support the principles laid out for the WOAN especially with regards to the proposed Chapter 3A 4 (c) – regarding funding for underserved areas.</p>	<p>Support</p>	<p>BBI, Sentech, SITA have 30% controlling interest, the black ICT smmes have 30% controlling interest and 40% goes to existing operators.</p> <p>Zenzeleni: WOAN must be obliged to focus on access gap.</p>	<p>WOAN cannot be state-owned. BEE is enabled in Bill.</p> <p>Incentives are being considered.</p> <p>Zenzeleni: Comment noted though it must be balanced with viability need of WOAN.</p>
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Rain	<ul style="list-style-type: none"> • We advocate that WOAN implementation must focus on the true access gap at first. <p>Rain: Key Elements: MNOs to retain existing Spectrum assignments,</p> <p>MNOs to purchase an aggregate 30% of WOAN Capacity. Capacity is finite, Spectrum allocation to address capacity. e.g. if three licensees each acquired 30% of the available capacity on the WOAN's network (i.e. 90% in total) this leaves 10% Capacity for the WOAN.</p> <p>The Bill proposes Cost Based Pricing model. Pricing of Services is better placed within the ICASA.</p>	Support	Rain: Delete clause that provides for return of assigned high demand spectrum.	Rain: Aggregated capacity buying not what was agreed. The matter of capacity percentages is linked to spectrum assignment and will be considered at appropriate time. The requirement for wholesale pricing regulation remains with ICASA.
FibreCo	FibreCo:	Support	FibreCo: N/A	FibreCo:

A4AI	<p>The focus of the wholesale open access model is supported</p> <p>A4AI: In principle, a good proposal to reduce costs</p> <p>The WOAN presents opportunity —community networks, for example, could be given priority or subsidised access to the wholesale network.</p>	Support	A4AI: N/A	Noted.
MTN	<p>MTN: Proposed Model for the Implementation of WOAN to include: Support for the sustainability of WOAN - by purchasing up to 30% of capacity by the industry Sufficient (but not all) Spectrum allocated to WOAN</p> <p>Co-existence between the existing operators and</p>	Support	MTN: The Bill must be amended to make provision for hybrid model on spectrum assignment.	A4AI: Noted.

	<p>WOAN (Hybrid Model) is a solution -</p> <ul style="list-style-type: none"> • Hybrid Model is aimed at promoting both service-based and infrastructure based competition <p>This will enable the Bill to deliver on:</p> <ul style="list-style-type: none"> • Economic transformation; • Meaningful participation in economy; and • Expanding access to rural and underserved areas <p>Time is a key factor in resolving the impasse on the Bill as per Mining Charter:</p> <ul style="list-style-type: none"> • Lack of frequency in a current competitive market with continuous customer demand is detrimental to development objectives 			
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<p>ICT SMME Chamber</p>	<p>ICT SMME Chamber: Operators to procure a minimum of 51% of their collective capacity; or such capacity as may be determined by the Authority, from the WOAN within its first twenty four (24) months of its operation;</p> <p>Once the universal service and or access obligations have been complied with in the rural and under-serviced areas the assigned spectrum may only then be used in other areas by the licensee. (rural rollout first)</p> <p>Long timelines can render the WOAN a stillborn</p> <p>ICASA's recommendations be concluded within 12 months of the commencement of the new Amendment Act</p>	<p>Support</p>	<p>CT SMME Chamber: Bill must be amended to provide 51% capacity procurement in WOAN.</p> <p>Bill must refer to the incentives of WOAN.</p>	<p>ICT SMME Chamber: Agree with rural first obligation that is enabled. ICASA enquiry removed to fasten process. Incentives cannot be included yet.</p>
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<p>Cell C</p>	<p>The Bill must pronounce on the specifics of incentives that are applicable to the WOAN;</p> <p>Cell C: Cell C is a strong and active advocate of Open-Access infrastructure and services-based competition</p> <p>Correctly implemented, WOAN can positively shift the market structure to provide more choice and value for consumers</p> <p>Critical success factors for implementation</p> <ul style="list-style-type: none"> • Operators should receive new high demand spectrum alongside WOAN • WOAN is a catalyst, not a monopoly • Offtake from MNOs acquiring new spectrum 	<p>Support</p>	<p>Cell C: Hybrid model to be provided in Bill.</p> <p>Bill to provide for immediate access to MNO infrastructure.</p>	<p>Cell C: Most of the suggestions are enabled in Bill.</p>
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<p>Media Monitoring Africa</p>	<ul style="list-style-type: none"> • Infrastructure sharing as licence condition • Access to existing infrastructure • Creating an attractive financing structure for equity and debt investors is key. Debt secured by substantial offtake • “Cost +” revenue model, including reasonable return on capital • WOAN must have national coverage including both urban and rural areas • Spectrum pricing – no upfront fees <p>Cell C provides motivation for WOAN and counterarguments for those against the WOAN.</p> <p>Media Monitoring Africa:</p>	<p>Oppose</p>	<p>MMA:</p>	
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<p>FMF</p>	<p>No clarity on Who is to get the licence. Existing licencees? An Untried Experiment: Rwanda & Mexico not tested viable models No Feasibility/ Market Study:</p> <p>FMF: Does NOT support WOAN capitulation ('hybrid', joint etc). WOAN is 'RUF': rare, unproven, failed</p>	<p>Oppose</p>	<p>No WOAN should be provided in the Bill.</p> <p>Bill must provide more clarity on WOAN.</p> <p>FMF: Remove WOAN from Bill.</p>	<p>MMA: The Bill cannot give clarity on who must get the license, only create framework for licensing. Definitional improvements were made. Success stories are emerging.</p> <p>FMF: Success stories are emerging.</p>
<p>RIA</p>	<p>Research ICT Africa: Analysis Mason indicated that there was not a case to be made for the introduction of an open access wireless network</p> <p>Experimenting with the WOAN in a more limited capacity without inhibiting market developments would reduce the high risk associated with the current model.</p>	<p>Oppose</p>	<p>RIA: Remove WOAN from Bill or provide for more limited WOAN.</p>	<p>RIA: WOAN supported by significant number of key stakeholders, industry.</p>

<p>ICASA</p>	<p>ICASA:</p> <ul style="list-style-type: none"> • The proposed creation of a monopolistic WOAN is contrary to the principles of fair competition, the stimulation of investment and technological advancement. • The Authority recommends that other alternatives to the WOAN model such as infrastructure sharing to enhance competition and increase broadband coverage in South Africa, should be considered. 	<p>Oppose</p>	<p>ICASA: Remove WOAN from Bill, rather provide for infrastructure sharing.</p>	<p>ICASA: The WOAN is integral to the White Paper and government policy. The alternative suggested by ICASA i.e. infrastructure sharing, is also part of the amendments through the open access framework.</p> <p>General: “On the licensing process of the WOAN there is a big debate is who determines the High Demand Spectrum between the Minister and the Authority. The Minister must from time to time set policy on High Demand Spectrum to promote open access and achieve other national objectives.”</p> <p>“Licensing of the WOAN The Minister shall determine sufficient spectrum to be licensed to the WOAN. The Authority shall issue an Invitation to Apply for interested parties to apply for an Electronic Communications Network Service licence to operate as the WOAN. Any duly incorporated entity or a consortium of licensed</p>
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			<p>entities can apply to operate as the WOAN.</p> <p>The Authority shall impose obligations and incentives on the WOAN subject to the Ministerial Policy on the High Demand Spectrum. Obligations shall include coverage targets and quality standards. Incentives shall include spectrum licence fees and price regulation holiday for a specific period.”</p> <p>Amendments made to Bill: (read with 31E)</p> <p>19A. (1) The Authority <u>must ensure that an individual electronic communications network service licence and a radio frequency spectrum licence is issued to a Wireless Open Access Network.</u></p> <p>(2) The <u>Wireless Open Access Network must -</u> <u>(a) provide wholesale open access to its electronic communications networks and facilities, upon request, to any other person licensed in terms of this Act and persons providing services pursuant to a licence exemption in accordance with the terms and conditions of a wholesale open access agreement entered into</u></p>
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				<p><u>between the parties, in accordance with the general open access principles;</u></p> <p><u>(b) _____ in addition to the requirement in subparagraph (a), comply with the following open access principles on its electronic communications network:</u></p> <p><u>(i) _____ Active infrastructure sharing that includes but not limited to national roaming, radio access network sharing and enabling mobile virtual network operators, for voice and data based on the latest generation of technologies;</u></p> <p><u>(ii) _____ cost-based pricing charge wholesale rates as prescribed by the Authority in terms of section 47;</u></p> <p><u>(iii) _____ provide access to its electronic communications network or electronic communications facilities as prescribed by the Authority; and</u></p> <p><u>(iv) _____ specific network and population coverage targets.</u></p> <p><u>(3) _____ The Minister may must issue a policy direction to the Authority in terms of section 5(6) directing the Authority to</u></p>
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			<p>issue an invitation to apply for the <u>Wireless Open Access Network licences after—</u></p> <p><u>(a) — the Authority has made recommendations on the terms and conditions including universal service and access obligations which will apply to the Wireless Open Access Network as contemplated in section 31A and 31E; and</u></p> <p><u>(b) — the Minister has considered incentives that will apply as contemplated in subsection (4);</u></p> <p><u>(4) — The Minister must, for purpose of licensing the Wireless Open Access Network, consider incentives that may be granted to the Wireless Open Access Network including—</u></p> <p><u>(a) — reduced or waived spectrum fees as contemplated in section 3(2)(d) of the Act;</u></p> <p><u>(b) — access to rights of way, public infrastructure as well as public electronic communications facilities through government facilitation; and</u></p> <p><u>(c) — allocation of funds as contemplated in section 88 of the Act to construct or extend an electronic</u></p>
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				<p><u>communications network in under-served areas."</u></p> <p><u>(4) The Authority must, in terms of section 9, issue an invitation to apply for the Wireless Open Access Network licences.</u></p> <p><u>(5) The Authority must determine-</u> <u>(a) the terms and conditions including universal service and access obligations; and</u> <u>(b) incentives such as –</u> <u>(i) reduced or waived spectrum fees;</u> <u>(ii) regulatory forbearance on the imposition of wholesale rates that can be charged by the Wireless Open Access Network for a specific period, notwithstanding the provisions of subparagraph (2)(b)(ii), which will apply to the Wireless Open Access Network, in accordance with policy or policy directions issued by the Minister, if any.</u></p>
SPECTRUM AND WOAN				
Government Departments and Agencies (Name them) SALGA	Benefit: SALGA supports proposal on the development of National Radio Frequency Plan by the Minister to manage Radio	Support	SALGA is proposing that they become part of the Frequency Spectrum Planning Committee.	No. The Bill provides that relevant Government Departments can be appointed to the Committee. No amendment necessary.

	Frequency Spectrum since they believe this will ensure equitable access to spectrum and effective allocation of resources.		They further propose that municipalities be accommodated in the allocation/assignment of the higher frequency bands and application for spectrum by municipalities be more rationalised and less cumbersome. Allocation of frequency bands for emergency services is critical for local government to modernise services.	The matter of spectrum assignment cannot be provided in legislation.
SALGA	SALGA supports the publishing of periodic frequency spectrum audits and evaluation as this will ensure transparency in the management of radio frequency spectrum.	Support	None	NA
ICASA	Risk: ICASA states that the WOAN is not the appropriate vehicle to address market concentration. ICASA	Oppose	Deletion of section 19A	The WOAN is integral to the White Paper and government policy. The alternative suggested by ICASA i.e. infrastructure sharing, is also part of the amendments through the open access framework.

	<p>argues that the establishment of the WOAN and the re-assignment of all high demand spectrum to the WOAN is aimed at addressing the Minister's concern over an oligopoly - a highly concentrated market where only a few firms dominate. It is ICASA's submission that the WOAN would not be the appropriate vehicle to address these concerns. The Authority recommends that other alternatives to the WOAN model such as infrastructure sharing to enhance competition and increase broadband coverage in South Africa, should be considered.</p>			No amendment required.
ICASA	<p>Risk: The subsection as it currently reads presupposes that the Authority already knows who the Wireless Open</p>	Oppose	The Authority proposes that subsection 19A(1) be deleted in its entirety.	The Department agrees that an ITA is required. That is the purpose of the policy direction under section 5(6) that is covered in 19A(2).

	<p>Access Network (WOAN) Licensee is. In licensing a WOAN, the Authority is obliged to adhere to the legislative process as outlined in section 9 of the ECA, which includes the publication of an Invitation to Apply (ITA).</p> <p>The problem according to ICASA is that they will have to follow the process under section 9 of the ECA. This is not a problem, however, since the Department agrees that such process must be followed.</p>			<p>No amendment required though Bill was amended to provide that the Minister must issue the policy direction.</p>
ICASA	<p>Risk:</p> <p>Section 3(1)(e) of the Bill and ECA already deals with issues relating to incentives that would apply with regard to licences applicable individual licensees. Since the Authority is the licensing authority, it stands to reason that the Authority would be the</p>	Oppose	<p>ICASA recommends that section 19A (2) and (3) be deleted in their entirety.</p>	<p>The Bill was amended to provide that ICASA must determine the incentives.</p>

	<p>one to consider incentives that may be granted in licensing the WOAN, taking into account the Minister's policy directives in this regard.</p>			
ICASA	<p>Risk: ICASA is of the view that the amendments can rather be included in sections 30 and 34 where they emanate from. The Authority further noted that the new insertion does not indicate the role of the Authority in developing the National Radio Frequency Plan.</p> <p>Section 29A(d) of the Bill indicates that the Minister is responsible for the development and approval of the Plan. It is ICASA's view that since the Minister is the one</p>	Oppose	<p>ICASA recommends that section 29A(d) be amended to the extent that Cabinet will approve the Plan; or Section 29A (d) of the Bill be deleted in its entirety since section 34(2) of the ECA affords the Minister oversight and control in the development of the Plan.</p>	<p>Clarification of roles was necessary and clearly specifying the role of the Minister.</p> <p>No amendment required.</p> <p>Provision is made for consultation with ICASA in section 34(8A) The Bill was amended to clearly require that the Minister must consult the Authority.</p> <p>Even through in practice a Minister may submit the NRFP to Cabinet for noting or approval, this is not a requirement and need not be legislated.</p> <p>No amendment required.</p>

	<p>responsible for developing the Plan, it therefore stands to reason that the approver thereof would be Cabinet or Parliament. The aforementioned principle is further entrenched in the current legislative framework, Section 34(2) of the ECA.</p> <p>The Minister (and consequently the Department) is a shareholder representative in some industry players. The proposed framework herein, if implemented will create a basis for conflict or perceived conflict of interest.</p> <p>ICASA recommends that section 29A(d) be amended to the extent that Cabinet will approve the Plan; or Section 29A (d) of the Bill be deleted in its entirety</p>			<p>The Minister will be advised by a representative Steering Committee, and do be required to do consultation, that will ensure objective processes.</p> <p>It is not necessary to refer to Cabinet.</p> <p>ICASA proposes that section 29A(d) of the Bill be deleted in its entirety since section 34(2) of the ECA affords the Minister oversight and control in the development of the Plan.</p> <p>The Department proposes to keep the clause <i>so there is a central section where all the responsibilities of the Minister is provided for.</i></p> <p>The SLA can advise on best approach.</p>
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	since section 34(2) of the ECA affords the Minister oversight and control in the development of the Plan.			
ICASA	<p>Risk:</p> <p>The Authority strongly submits that it is best situated to continue to manage spectrum, as an independent regulator.</p> <p>The independence of ICASA is provided for in the Constitution (section 192) and in its founding legislation (the ICASA Act). However, not only these, but also a range of international agreements and protocols are of significance, including the agreements reached in the World Trade Organization. Section 4(3) (c) of ICASA Act stipulates that "the Authority must control, plan, administer and manage the</p>	Oppose	ICASA recommends that the current provisions in the Act remain the same i.e. that they control, plan, administer and manage the use and licensing of spectrum	<p>The WP provides clarification of roles between Minister and ICASA for example - WP Par 9.2.5.1 provides that - "The regulator is responsible for: The administration, management¹ and assignment¹ of spectrum, and the issuing of licenses, as may be applicable."</p> <p>The independence argument is linked to current ICASA Act that will change through the ICT Sector Commission Bill.</p> <p>An amendment has been made to section 4(3)(c) of ICASA Act in Schedule to align it with the wording in section 30(1) of ECA.</p>

	<p>use and licensing of the radio frequency spectrum in accordance with bilateral agreements or international treaties entered into by the Republic ." (own emphasis) Section 24 of the ICASA Act stipulates "in the event of any conflict between the provisions of this Act and any other law, except for the Constitution, relating to the regulation of broadcasting provisions of this Act prevail."</p> <p>ICASA makes the point that section 4(3)(c) of ICASA Act says they must control and plan spectrum, Also that ICASA Act prevails.</p>			
ICASA	<p>Risk: The Authority said they do not have the resources to develop a real-time spectrum database as contemplated in section 31 of the Act. They said that in the 2016/17 financial year, the Authority procured an automated spectrum</p>	Oppose	Consequent to the above, the Authority recommends that the subsection be deleted in its entirety. (30(2)(g))	This matter is in accordance with the policy requirement in the White Paper. The existing system being developed by ICASA will serve as a strong basis to develop the database further. ICASA also clarified on 28 May 2018 that they can procure such system. No amendments required.

	<p>management system. The system will be fully deployed by end of quarter three of the 2017-18 FY and will perform the following functions:</p> <p>Spectrum licensing; Spectrum assignments; Technical analysis; Interference analysis; Radio frequency propagation models; and Type approval licensing, amongst others.</p>			
Business (Name them) Vodacom	<p>Vodacom: There will no investment incentive and certainty for licencees. The Bill violates Vodacom's property rights – arbitrary deprivation of Vodacom's existing rights to spectrum; expropriation of Vodacom's rights to spectrum; arbitrary deprivation of Vodacom's existing rights to property in its facilities</p>	Oppose	Bill must be amended to provide that the Spectrum assigned should not be returned.	<p>Response to Vodacom: Concerns on return of spectrum addressed to give investment certainty while balancing policy objectives. Hybrid model of spectrum assigned enabled in Bill.</p>

	<p>Vodacom propose that the Spectrum assigned should not be returned.</p> <p>Vodacom further propose that new spectrum should be assigned as per ITA (4 blocks to be auctioned or assigned, and a fifth assigned to the WOAN)</p>			
RIA	<p>Research ICT Africa: The various and manifold provisions of the Bill that undercut ICASA's independence in all matters of spectrum are, in our view, unconstitutional and should be withdrawn.</p> <p>RIA is concerned that there is no formal representation from ICASA on National Radio Frequency Spectrum Planning Committee, even though in terms of the Bill they remain responsible for frequency assignment, monitoring and enforcement.</p>	Oppose	<p>The spectrum related changes in the Bill should be amended to ensure that ICASA's independence is not affected in other words the Minister should not play the role specified in the bill re spectrum.</p>	<p>RIA: ICASA is a creature of statute and as such Parliament has to right through legislation to continuously clarify and define the nature of its independence.</p> <p>Spectrum is a policy prerogative. The WP provides clarification of roles between Minister and ICASA for example - WP Par 9.2.5.1 provides that - "The regulator is responsible for: The administration, management¹ and assignment¹of spectrum, and the issuing of licenses, as may be applicable."</p> <p>The independence argument is linked to current ICASA Act that will change</p>

	<p>RIA notes that the Bill provides for the establishment of a National Radio Frequency Spectrum Division within DTSP. It is unclear why this was considered worthy of specification within legislation</p> <p>RIA is concerned by the proposed involvement of the Minister in respect of 'high demand' spectrum.</p> <ul style="list-style-type: none"> • Firstly, the Bill proposes under new Section 31E(1) that it be a Ministerial prerogative to determine what constitutes 'high demand' spectrum. As ICASA is, and should be, the body receiving spectrum assignment requests, it is best placed to determine when there is high demand. • The Bill specifies further that it is the Minister who 			<p>through the ICT Sector Commission Bill.</p> <p>Spectrum Committee is necessary due to significant changes in framework and to ensure that the minister acts in accordance with good planning and strategic advise.</p> <p>Bill amended to provide that ICASA determines what is high demand spectrum.</p> <p>Hybrid model for spectrum enabled.</p>
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	<p>must determine which unassigned high-demand spectrum must be assigned to the Wireless Open Access Network (WOAN). RIA believes that this provision will undermine the existing rights of current spectrum licensees and the high levels of investment in the sector.</p> <ul style="list-style-type: none">• Not only that, its asymmetrical application will serve to disadvantage other applicants for spectrum, making it anti-competitive.• Concerns over structural conflicts of interest that pertain to continued state intervention in the sector are reinforced by the Bill, as in its current form it will legitimise greater interests and powers of the Minister in radio spectrum affairs			
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	Welcomes use it or loose it and provisions on trading, sharing and refarming	Support		
	Cell C: Most contentious: return of spectrum by existing licensees to be reframed.	Oppose	Remove provision in Bill on return of spectrum	Cell C: Return of spectrum provisions clarified in Bill to remove concerns.
NAB	<p>NAB: A far greater role is needed for the Minister of Communications on issues related to broadcasting spectrum.</p> <p>Spectrum sharing – s31C</p> <ul style="list-style-type: none"> • The Bill proposes provisions for spectrum sharing subject to the approval of ICASA. However, this type of capacity sharing is not practical for broadcasters • The most practical kind of ‘capacity sharing’ for the broadcasting industry is infrastructure 	Oppose	<p>The NAB recommends an additional subsection in section 31C(2) which reads as follows: <i>The Authority may not approve spectrum sharing if it will - (d) cause harmful interference.</i></p> <p>Propose amendment of Bill to provide more powers for MoC.</p>	<p>NAB: The Bill cannot give greater powers to the MoC than the President did in 2014 through proclamation. MoC consulted and can still do spectrum PDs under section 3.</p> <p>Spectrum sharing conditions will be prescribed by ICASA in contemplated regulations.</p>

	<p>sharing wherein antennas and combiners are shared following engineering consideration and careful tuning thereof</p> <ul style="list-style-type: none"> • The NAB recommends an additional subsection in section 31C(2) which reads as follows: <i>The Authority may not approve spectrum sharing if it will - (d) cause harmful interference.</i> 			
ICASA	<p>ICASA: The Bill proposes that the Authority may issue radio frequency spectrum licences for unassigned high demand spectrum not assigned to the WOAN on condition that the WOAN is functional. The term “functional” has not been defined; it is not clear if it refers to the WOAN being</p>	Oppose	Suggest that status quo be retained and reduction of ICASA powers be omitted from Bill.	<p>ICASA: Functional was removed.</p> <p>Inconsistency with ICASA Act corrected through an amendment of ICASA Act in Schedule.</p> <p>Clarification of role on spectrum in accordance with govt policy in WP.</p> <p>Spectrum policy and its framework is a policy prerogative.</p>

	<p>licensed, profitable and/or operational.</p> <ul style="list-style-type: none"> • In our understanding of the ECA, spectrum management consists of spectrum planning, spectrum assignment, licensing and monitoring. Section 4(3)(c) of ICASA Act stipulates that “the Authority must control, plan, administer and manage the use and licensing of the radio frequency spectrum in accordance with bilateral agreements or international treaties entered into by the Republic. • Section 24 of the ICASA Act stipulates <i>“in the event of any conflict between the provisions of this Act and any other law, except for the Constitution, relating to</i> 			
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	<p><i>the regulation of broadcasting, electronic communications and postal service, the provisions of this Act prevail.”</i></p> <ul style="list-style-type: none"> • The Authority submits that it is best situated to continue to manage spectrum, as an independent regulator. • The independence of ICASA is provided for in the Constitution (sec 192) and in its founding legislation (ICASA Act: sec 3). • Furthermore, a range of international agreements and protocols to which South Africa is a signatory, including the agreements reached in the World Trade Organisation (“WTO”) confirm the need for 			
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	<p>regulatory independence.</p> <ul style="list-style-type: none"> The proposed dilution of ICASA's role in respect of spectrum planning, management and control is inconsistent with international best practice and potentially falls foul of the country's international commitments. 			
SARAO	<p>SARAO: A number of new amendments are proposed regarding spectrum use and its impact on astronomy advantage areas.</p> <p>Support: 31(3A)(a) on annual renewal of licences, (3A)(b) that renewal subject to reporting and 31(8A) on use it or loose it.</p> <p>Does not support: 31(11): Automated licensing system in declared Astronomy</p>	Support	They propose for example that regulator should ensure harmful interference to radio astronomy eliminated to extent reasonably possible. Further proposals are made requiring cooperation and consultation between regulator and Astronomy Management Authority.	<p>SARAO: It is not necessary to deal with matters that can be better dealt with or are already dealt with in AMA Act. Though annual renewal was supported, the provision had to be deleted due to legality concerns. In view of requirements in AMA Act, the Authority will be obliged to consider AMA legislation in developing the automated database.</p>

	Advantage Areas unless measures are implemented to protect radio astronomy facilities from RFI and EMI		Propose amendment of 31(11) to exclude automated licensing in Astronomy Advantage Areas.	
Telkom	<p>Telkom:</p> <p>31(8A)(b): link the exemption to a timeframe</p> <p>Telkom oppose the return of the currently assigned HDS.</p> <p>Telkom supports hybrid model of facilities based competition wherein WOAN will use all unassigned spectrum and MNOs continue using existing assigned spectrum.</p>	Support and oppose	Amend Bill to omit return of spectrum provisions.	<p>Telkom:</p> <p>The recommendation to link the exemption to a timeframe to be determined accepted.</p> <p>Recommend as follows:</p> <p><u>31(8A)(b) The Minister may, upon recommendation by the Authority, exempt SMMEs and new entrants from the ‘use it or lose it’ principle contemplated in subsection (8) for a defined period, upon good cause shown.</u></p> <p>The Bill supports hybrid though not as proposed by Telkom. The proposal are very subjective and not aligned with the WP.</p>
ICT SMME Chamber	ICT SMME Chamber: The ICT SMME Chamber welcomes and supports spectrum provisions.	Support	N/A	N/A

SABC	<p>SABC: Sections 30(1) and (2) read with sections 34A(3) and 34 B (b) of the Bill propose to take the control of the radio frequency spectrum from the regulator to DTSP. Regulatory function which is afforded to it by section 192 of the Constitution. Thus, the SABC proposes that this function should remain with ICASA.</p> <p>Section 31C(Sharing): spectrum sharing will not be practical for broadcasters. Thus, the SABC proposes that all forms of spectrum sharing should be coordinated by ICASA to avoid uncontrolled harmful interferences</p> <p>Section 31 (3A) of the Bill proposes that radio frequency spectrum licences will be renewable annually, despite the duration of the</p>	Oppose	Propose amendment of Bill to retain spectrum functions that ICASA has	<p>SABC: The spectrum amendments are aligned with govt policy.</p> <p>The spectrum sharing provisions are made subject to ICASA control. No high demand spectrum sharing. Non-high demand sharing only with ICASA approval. ICASA also remain responsible for spectrum including interference management.</p> <p>The annual renewal provision was deleted</p>

	<p>licence. Thus, the SABC submits that the two broadcasting licences should be conterminous in line with section 8(2)(c) of the ECA read with sections 4(3) (d) and (e) of the ICASA Act which state that ICASA will prescribe licence duration/conditions</p>			
Multichoice	<p>Multichoice: Bill does not ensure specific bands to be preserved for broadcasting and doesn't provide enough role for Minister of Communications. Requirement for "co-ordination" not enough</p> <p>Not appropriate for Minister of TPS to exercise wide powers on broadcasting spectrum This is ICASA's domain – independent regulation extends to regulation of broadcasting spectrum</p>	Oppose	<p>Proposal – Bill's approach to spectrum needs to be completely reformulated, taking into account the broadcasting context</p> <p>Proposal – Bill's provisions on high demand spectrum and the WOAN should exclude spectrum used for broadcasting and broadcasting signal distribution</p>	<p>Multichoice: The Chapter 5 on spectrum has been transferred to the MTPS exclusively by proclamation of the President, on 15 July 2014.</p> <p>The TPS and MoC however cooperate under an MoU on matters of mutual concern.</p> <p>The section in the Bill goes further than what is required on the proclamation by ensuring a legislated requirement for coordination in 29A(g).</p> <p>Section 34(7)(v) also obliges the MTPs to take into consideration broadcasting and audio visual services.</p>

	<p>Unworkable that spectrum licences be renewable annually, does not take into account significant investment by Individual service licences</p> <p>Unintended impact of Bill on broadcasting matters since many provision not applicable to broadcasting.</p> <p>Bill appears to undermine ICASA's independence and powers by:</p> <ul style="list-style-type: none"> • Obliging ICASA to comply with Minister's policies and policy directions • Shifting some of ICASA's powers, functions and duties (e.g. virtually all ICASA's spectrum powers are proposed to be transferred) 			<p>No amendment required.</p> <p>Annual renewal now removed.</p> <p>Broadcasting concerns considered and broadcasting excluded from WOAN obligations.</p>
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	<ul style="list-style-type: none"> Constitutional Court has made it clear that an institution will be considered independent only if it enjoys a degree of protection from government control 			
SACF	<p>SACF: Networks - financed through debt finance and investor funding - regulatory certainty needed. The threat to spectrum rights – creates regulatory uncertainty</p> <p>Policy and policy directions may not be on the granting, amendment, transfer and renewal of licences.</p>	Support	Amend section that enables Minister to issue PD on licensing re WOAN.	<p>SACF: More clarity created in Bill on spectrum rights.</p> <p>The policy directions may be on licensing it permitted by the Act.</p>
PBICT	<p>PBICT: Amend conditions of telcos to support the SMMEs on enterprise development especially in areas of skills and use of infrastructure.</p>	Support	Amend conditions of telcos to support the SMMEs on enterprise development especially in areas of skills and use of infrastructure.	<p>PBICT: Enterprise development part on ICT Sector Code that will now be enforced.</p>

	The spectrum must not be auctioned as the haves will continue to have.			
Crystal Web	<p>Crystal Web and LEASP: Temporary assignment of available High Demand Spectrum to incumbents</p> <p>Avoid an “ultra vires” misappropriation of spectrum and a commitment to treating renewal dates in line with the ECA (and not as an opportunity to be a horrible landlord)</p> <p>Not consider organization of WOAN in the ECA.</p> <p>Repeal of silliness arising in 2014 ECA Amendment</p>	Support	Omit WOAN provisions on its formation in Bill.	<p>Crystal Web: Spectrum rights confirmed by linking it clearly to service license periods.</p> <p>Most other submission in fact wanted more clarity on WOAN in Bill.</p> <p>2014 amendments not considered in this Bill.</p>
Zenzeleni	<p>Zenzeleni: Expand license exempted spectrum Consider spectrum as a commons</p>	Support	Amend Bill to introduce a spectrum commons.	Zenzeleni: Noted proposals.

	and managed for the “public interest” Allow spectrum re-use per area.			
Rain	<p>Rain: “No high demand spectrum may be traded”. This has to be clarified as it may inhibit restructuring or investment by new shareholders for the following reasons;</p> <ul style="list-style-type: none"> Existing operators could not restructure/change shareholding without surrendering their spectrum Licences. Surrendering of Licences will deter investment in the Sector, and this will result in static Control Structures. <p>Monitoring of Spectrum, Development of National</p>	Oppose	Amend Bill to provide that high demand spectrum may be traded.	<p>Rain: The provisions are in accordance with the WP provisions. Practical experience has shown that clarification of spectrum roles are necessary. The policy related roles on spectrum currently controlled by ICASA belongs with the Minister.</p> <p>The Bill was however amended to enable high demand spectrum trading.</p>

	Frequency Plan, Licensing and Enforcement of Spectrum use, and Spectrum Fees. These activities are administrative in nature and better placed with ICASA. Technical expertise and ICASA has this capacity.			
MTN	MTN: Support for the sustainability of WOAN - by purchasing up to 30% of capacity by the industry Sufficient (but not all) Spectrum allocated to WOAN	Support	Amend Bill to ensure that not all spectrum allocated to WOAN.	MTN: Noted.
Liquid	Liquid: Concerns: <ul style="list-style-type: none"> Ministerial power regarding the determination of spectrum fees and incentives and the mixing of operational regulatory work and policy 	Oppose	Enable transfer of licences in Bill. Define use it or loose it in Bill. Amend the 30% capacity requirement.	Liquid: “for a defined period” added to limit arbitrariness. Good cause also reduces arbitrariness. Lastly because ICASA must make recommendations, due process is ensured, subjecting it to review proceedings. Access to high demand spectrum will be through the WOAN and other radio

	<ul style="list-style-type: none"> • Effective prohibition of transfers of licences with high demand spectrum • “Use it or lose it” lacks clear definitions and exemptions seem arbitrary • 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 			<p>frequency licensees. Everybody agrees with urgent need to license WOAN.</p>
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	<p>supporting access in rural areas via community networks</p> <p>Namec:</p> <p>The repatriation and aggregation of costly spectrum is ridiculous considering that debt has been raised on the back of such an asset having been allocated in the first place.</p> <p>Doing so is most irresponsible as government and will effectively collapse the sector.</p>		<p><u>impose obligations related to BBEE throughout the value chain of the industry. Obligations should not be limited to the USOs.'</u></p> <p><u>The Department holds view that - "Regarding the licensing of the Wireless Open Access Network, we need to do away with a section that suggest that everyone should wait for the WOAN before they can commence using the newly allocated spectrum. Rather fav incentivizing the WOAN to commence the rollout without delay. Already we must expect a delay in the availability of parts of the HDS due to uncertainties around DTT."</u></p> <p><u>Recommendation:</u> <u>31E(5) The Authority may issue radio frequency spectrum licences for unassigned high demand spectrum not assigned to the Wireless Open Access Network as contemplated in subsection (4), on condition that—</u></p> <p><u>(a) the licensee procures a minimum of 30% capacity or such higher capacity as determined by the</u></p>
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				<p><u>Authority, in the Wireless Open Access Network for a period determined by the Authority; and</u></p> <p><u>(b) universal access and universal service obligations contemplated in section 31A are imposed on the licensee, and such obligations are complied with in rural and under-serviced areas before the assigned spectrum may be used in other areas by the licensee.</u></p> <p><u>“On the return of the already allocated spectrum: The suggestion is that we should say that within 24 months prior to the expiry of the current licences, the Authority shall undertake an inquiry on the licensing framework for the currently allocated spectrum to promote open access and competition. The Authority shall submit recommendations to the Minister on the outcome of the inquiry. “</u></p> <p><u>Recommendation:</u> <u>31E(6) Radio frequency spectrum licences that include exclusively/individually assigned high demand spectrum on the date contemplated in subsection (1), may</u></p>
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			<p><u>not be renewed on the same terms and conditions at the end of the licence term, to ensure inter alia compliance with section 31E(2).</u></p> <p><u>(7) The Authority must, within 24 months of the commencement</u></p> <p><u>Of the Electronic Communications Amendment Act, ... within 24 months before the expiry of radio frequency spectrum licences contemplated in subsection (6) Conduct an inquiry as contemplated in section 4B of the ICASA Act and make recommendations to the Minister at least six months before the expiry of the radio frequency spectrum licences contemplated in subsection (6) on the terms and conditions, as well as the time frame, under which the that may apply to such radio frequency spectrum licences, as a condition for the renewal thereof exclusively/individually assigned high demand spectrum, excluding the high demand spectrum assigned to the Wireless Open Access Network, must be returned to the Authority, taking into account policy, market developments, the promotion of</u></p>
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			<p><u>competition and extent of availability of open access networks."</u></p> <p><u>(8) Notwithstanding the provisions of section 3(3), the Minister must issue a policy direction to the Authority in terms of section 3(2) on the terms and conditions that must apply to such radio frequency spectrum licences, as a condition for the renewal thereof, at least three months before the expiry of such radio frequency spectrum licences.</u></p> <p><u>"On the licensing process of the WOAN there is a big debate is who determines the High Demand Spectrum between the Minister and the Authority. The Department's view is that from time to time the Minister will set policy on High Demand Spectrum to promote open access and achieve other national objectives. The issues raised by the industry were really about semantics than substance."</u></p> <p><u>"Licensing of the WOAN The Minister shall determine sufficient spectrum to be licensed to the WOAN. The Authority shall issue an Invitation to Apply for interested parties to apply for an Electronic Communications</u></p>
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				<p><u>Network Service licence to operate as the WOAN. Any duly incorporated entity or a consortium of licensed entities can apply to operate as the WOAN.</u></p> <p><u>The Authority shall impose obligations and incentives on the WOAN subject to the Ministerial Policy on the High Demand Spectrum. Obligations shall include coverage targets and quality standards. Incentives shall include spectrum licence fees and price regulation holiday for a specific period.”</u></p> <p><u>Recommendation:(read with 19A)</u></p> <p><u>31E. (1) The Minister responsible for telecommunications and postal services Authority must, within 6 months of the commencement of the Electronic Communications Amendment Act, ..., and thereafter as required, determine –</u></p> <p><u>(a) what constitutes high demand spectrum; and</u></p> <p><u>(b) which unassigned high demand spectrum must be reserved for assignment to the Wireless Open Access Network,</u></p> <p><u>by notice in the Gazette, after consultation with the Authority in</u></p>
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			<p><u>accordance with relevant policy or policy directions issued by the Minister, if any.</u></p> <p><u>(2) The assignment of high demand spectrum is—</u></p> <p style="padding-left: 40px;"><u>(a) subject to the principles of open access as contemplated in Chapter 8; and</u></p> <p style="padding-left: 40px;"><u>(b) in line with the principle of non-exclusivity, subject to the provisions of the national radio frequency plan.</u></p> <p style="padding-left: 80px;"><u>(3) The Authority must, within 12 months of the commencement of the Electronic Communications Amendment Act, ... finalise an inquiry as contemplated in section 4B of the ICASA Act and make recommendations to the Minister on the terms and conditions which will apply to the Wireless Open Access Network.</u></p> <p><u>(4) The Authority must assign the unassigned high demand spectrum as determined by the Minister of Telecommunications and Postal Services in terms of in</u></p>
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				<p><u>subsection (1)(b) to the Wireless Open Access Network following a policy direction issued by the Minister in terms of section 5(6) as contemplated in in accordance with section 19A.</u></p> <p><u>(5) The Authority must issue radio frequency spectrum licences for unassigned high demand spectrum not reserved for assignment to the Wireless Open Access Network as contemplated in subsection (4), on condition that—</u></p> <p style="padding-left: 40px;"><u>(a) the licensee procures a minimum of 30% capacity or such higher capacity as determined by the Authority, in the Wireless Open Access Network for a period determined by the Authority; and</u></p> <p style="padding-left: 40px;"><u>(b) universal access and universal service obligations contemplated in section 31A are imposed on the licensee, and such obligations are complied with in rural and under-serviced areas before the assigned spectrum may be used in other areas by the licensee.</u></p> <p><u>(6) Radio frequency spectrum licences that include exclusively/individually assigned high demand spectrum on the date contemplated in subsection (1),</u></p>
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				<p><u>may not be renewed on the same terms and conditions at the end of the licence term, to ensure inter alia compliance with section 31E(2).</u></p> <p><u>(7) The Authority must, within 24 months of the commencement of the Electronic Communications Amendment Act, ... within 24 months before the expiry of radio frequency spectrum licences contemplated in subsection (6) conduct an inquiry as contemplated in section 4B of the ICASA Act and make recommendations to the Minister at least six months before the expiry of the radio frequency spectrum licences contemplated in subsection (6) on the terms and conditions, as well as the time frame, under which the that may apply to such radio frequency spectrum licences, as a condition for the renewal thereof exclusively/individually assigned high demand spectrum, excluding the high demand spectrum assigned to the Wireless Open Access Network, must be returned to the Authority, taking into account policy, market developments, the promotion of competition and extent of availability of open access networks."</u></p>
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				<u>(8) Notwithstanding the provisions of section 3(3), the Minister must issue a policy direction to the Authority in terms of section 3(2) on the terms and conditions that must apply to such radio frequency spectrum licences, as a condition for the renewal thereof, at least three months before the expiry of such radio frequency spectrum licences.</u>
Organised Labour				
Civil Society				
The Public				
USOs AND SPECTRUM				
Zenzeleni Rain BBC SARAO RIA	Zenzeleni: Definitions of what constitutes Universal Service and Access outdated. Therefore we urge that the ECA Amendment include a provision to transfer the function away from the Agency. Rain: Section 31A be amended to distinguish appropriately between different types of spectrum users. In addition,	Support Support	Zenzeleni: ECA Amendment include a provision to transfer the function away from the Agency. Rain Amend Bill to ensure that section 31A distinguishes appropriately between	Zenzeleni: Agreed that definitions may need updating. The existing Act already enables it. The bigger function on USAOs will be part of framework change in DDF Bill. Rain: Agreed. ICASA now enabled to determine which licenses will carry USOs.

	<p>RIA: ICASA has currently chosen only to impose USOs on the holders of individual licences. USOs may not be appropriate in all cases of spectrum assignment, and some spectrum is not suitable for deployment in rural areas.</p>	<p>Support</p>	<p>related scientific endeavours from harmful interference.</p> <p>RIA: Amend Bill to provide that different USOs may be imposed depending on the type of spectrum.</p>	<p>RIA: Agreed. The new provision does not make USOs applicable to all spectrum licensees but rather ones determined by ICASA.</p> <p>Competition Commission and OCSLA: Following discussion with OCSLA the meeting was of view that section 31(3A) (a) that provides that Radio frequency spectrum licences are renewable annually, despite the duration of the licence, must be deleted since not legally correct. The same compliance objective can be achieved by making the following amendments:</p> <p>Clause 21(c):</p> <p>(c) by the insertion after subsection (3) of the following subsection: "(3A) (a) Radio frequency spectrum licences are renewable annually, despite the duration of the licence. (b) The Authority must include compliance with section 30(2)(i) as a</p>
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				<p>condition for renewal of a radio frequency spectrum licence."</p> <p>Clause 21(f) (f) by the substitution for subsection (8) of the following subsection:</p> <p>"(8) Subject to subsection (9), the Authority may withdraw any radio frequency spectrum licence or assigned radio frequency spectrum when the licensee fails to comply with section 31A(6), to utilise the assigned radio frequency spectrum in accordance with the licence conditions applicable to such licence or fails to use the assigned radio frequency spectrum for a period of one year, referred to as the 'use it or lose it' principle."</p> <p>New: Amendment of section 31(9): "31(9) Before the Authority withdraws a radio frequency spectrum licence or assigned radio frequency spectrum in terms of subsection (8), it must give the licensee prior written notice of at least 30 days and the licensee must have 7 (seven) business days in which to respond in writing to the notice (unless</p>
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				<p>otherwise extended by the Authority) demonstrating compliance with section 31A(6) or that it is utilising the radio frequency spectrum in compliance with this Act and the licence conditions.”</p> <p>Amend 31A(5) “(5) Universal access and universal service obligations should be specific, attainable and measurable and compliance should be evaluated by the Authority on an annual basis, as a condition of renewal of the radio frequency spectrum licence.</p> <p>(6) The Authority may withdraw any radio frequency spectrum licence or assigned radio frequency spectrum when the licensee fails to comply with its universal access and universal service obligations.”</p>
OPEN ACCESS				
Government Departments and Agencies (Name them) ICASA	Risk: ICASA proposes that the terms "open access" and "wholesale open access" be defined, and that their use throughout Chapter 8 of the Bill be reviewed to	Support open access chapter but proposing improvements	ICASA proposes that the terms "open access" and "wholesale open access" be defined, and that their use throughout Chapter	Change open access to wholesale open access in the following section: Definition of WOAN; 2(cC), 19A(2)(b), 20G(5)(h), 20L(2)(c), 31E(2)(a), 31E(6), heading Chapter 8, heading section 43, 43(1B), 43(7), 44(3)(a)(i), 44(3)(b), (l), (p), heading section 47, 47(1), 67(7)(a)

	<p>ensure consistency and provide clarity.</p> <p>Further ICASA argues that it is not clear whether the general access principles referred to in section 43(1) of the Bill are the same as the open access principles referred to in section 43(1B) of the Bill.</p> <p>ICASA therefore proposes that the wording in subsections (1) or (1B) be expanded in order to provide the necessary clarity.</p>		<p>8 of the Bill be reviewed to ensure consistency and provide clarity.</p> <p>ICASA therefore proposes that the wording in subsections (1) or (1B) be expanded in order to provide the necessary clarity.</p>	<p>Insert following definition - “Wholesale open access means the sale, lease or otherwise making available an electronic communications network service by an electronic communications network service licensee on a wholesale basis on general open access principles, and to the extent applicable the additional wholesale open access principles provided in sections 43(1A) and (1B);”</p>
<p>Business (Name them) Telkom Vodacom FTTX Liquid WAPA FibreCo Cell C RIA</p>	<p>Telkom: Open access principles in the mobile context is supported and should be on a non-discriminatory basis.</p> <p>Access to radio high sites is currently a challenge and the need for high sites will increase with the introduction of FWA and 5G.</p>		<p>Telkom: Amend Bill to remove regulation of wholesale fixed services through cost-based pricing.</p>	<p>Telkom: This submission by the stakeholder is very subjective, being primarily a fixed-line operator. Traditionally the licensee failed to provide LLU etc. It is recognized that the licensee started providing more access to its network but as determined by itself, in an unregulated way.</p> <p>The stakeholder ironically say that it will stifle infrastructure deployment by</p>

	<p>Need robust mechanisms to ensure operators obtain speedy and meaningful access at the wholesale level.</p> <p>Regulating wholesale fixed services through cost-based pricing will stifle infrastructure deployment, investment and jobs in a growing dynamic market which will hamper economic development.</p> <p>Vodacom: Support open access and sharing based on commercial agreements</p> <p>Do not support removal of reasonability test: Must be economically and technically feasible, and achieve efficiencies</p>		<p>Vodacom: Amend Bill to omit open access provisions.</p> <p>Reinsert reasonability test.</p>	<p>disincentivising investment, but in the case of mobile infrastructure, then do not raise the same argument.</p> <p>The stakeholder has the most fibre in the country an access to it is critical, similarly the stakeholder has street cabinet, ducts in the local loop, etc etc that other operators do not have and do not have access to.</p> <p>The proposal constitute a deviation from the policy that cannot be implemented by the drafters.</p> <p>Vodacom: At the public hearings ICASA conceded that the terms technical and economic feasibility are abused by operators to refuse access. ICASA said they are working on clear definition thereof to prevent abuse.</p> <p>The WP does not state this as a requirement.</p> <p>For practical reasons, the technical inability was retained but not economic feasibility, since the latter is abused by</p>
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	<p>FTTX: Open access principles are critical but must also take account of technical constraints and realities.</p> <p>Liquid: Will reduce incentives to build network redundancy</p> <p>Deeming provision is not based on any rationale and may be an overreach</p> <p>Reliance on the OSI model in a IP world seems misplaced</p> <p>Expectation of the authority completing regulations in 18</p>		<p>FTTX: Reinsert technical inability.</p> <p>Liquid: Delete OSI model provisions.</p>	<p>access providers to such an extent that parties do not even file or conclude facilities leasing agreements anymore.</p> <p>Subsection 43(5) applies when an operators refuses to give access and enter into agreement, and ICASA then resolves dispute. If a matter was technically impossible, ICASA will resolve it at that time.</p> <p>FTTX: Technical inability reinserted.</p> <p>Liquid: Infrastructure competition will still exist and network redundancy will be there.</p> <p>OSI will be omitted from definitions and open access chapter.</p> <p>Further deeming criteria and definition will be done by ICASA in regulations.</p> <p>The regulations are critical and should be done as per time frame. If preparatory work done early, and</p>
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	<p>months seems optimistic: given historical performance and proposed structural changes in the regulator</p> <p>WAPA: Open Access price must promote market</p> <p>FibreCo: Supporting arguments provided.</p> <p>Cell C: Detailed motivation supporting with cases studies.</p> <p>Open-Access competition should drive efficiency across all networks</p> <ul style="list-style-type: none"> - Share existing infrastructure, aggregate demand for new build areas - Enhance service-based competition through true wholesale/retail separation 		<p>WAPA: Omit cost based pricing.</p>	<p>current process used, can easily be done in 12 months.</p> <p>WAPA: Pricing will allow RoR on investment and still promote infrastructure deployment. Market shift required to services.</p> <p>FibreCo: Support noted.</p> <p>Cell C: Support noted.</p>
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	<p>These Open-Access dynamics have been demonstrated in SA already (in fixed)</p> <p>RIA: Open access has failed in Rwanda, Nigeria and Kenya. Mexico illustrates opportunity costs caused by delays</p>		<p>RIA: Delete open access.</p>	<p>RIA: Mexico already have 25% roll out and have first commercial client. SA also pioneering in this field. Wide support for proposal. No scale beyond current two incumbents. Must open incumbents and also create WOAN with scale as third operator in infrastructure space, to ensure competition.</p> <p>“ On the cost methodology where we refer to “at cost”, instead of even cost plus, my suggestion is that we should refer to “forward looking efficient cost pricing methodologies to be prescribed by the Authority”. There are many methodologies currently in use such as cost plus, fully allocated costing, long run incremental cost. We should not prescribe a particular methodology in the legislation. Even, there are many pricing standards which cannot be prescribed in law. These include price cap, rate of return, or the combination of the two.”</p>
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			<p>General: The obligation is in accordance with the WP. The cost-based terminology concerns operators and at the public hearings it was clarified that operators should propose preferred words like 'cost plus'.</p> <p>The ICT Regulation toolkit refers to 'cost-oriented pricing' as well as EU Access Directive.</p> <p>'Cost-oriented pricing' a method of setting prices that takes into account the company's profit objectives and that covers its costs of production. For example, a common form of cost-oriented pricing used by retailers involves simply adding a constant percentage markup to the amount that the retailer paid for each product.</p> <p>Recommendation:</p> <p>Using wording from Article 13 of EU directive the following is proposed:</p> <p>47. (1) The Authority [may] <u>must</u> prescribe regulations</p>
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			<p>establishing a framework for the establishment and implementation of wholesale rates applicable to specified types of [electronic communication facilities and associated services taking into account the provisions of Chapter 10] <u>open access including obligations for cost orientation of prices and obligations concerning cost accounting systems for deemed entities.</u> <u>(2) The Authority shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise consumer benefits. In this regard the Authority may also take account of prices available in comparable competitive markets."</u>.</p> <p>The following other sections should then also change:</p> <p>19A(2)(b)(ii) cost-oriented pricing; 20C(1)(f), 20D(2), 24(3), 25(1), 27(1)(b), <u>42A(d) prices for roaming services should be cost-oriented and not be too excessive in comparison comparable with prices charged for the same services at national level;</u></p>
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				and 43(1B)(b) <u>19A(2)(b)(ii) cost-based pricing</u> <u>wholesale rates as prescribed by the</u> <u>Authority in terms of section 47;</u>
Organised Labour				
Civil Society				
The Public				
Other groupings (Name them)				
INTERNATIONAL ROAMING				
Government Departments and Agencies (Name them) ICASA	Risk: ICASA highlights that Section 42A(7) of the Bill stipulates that " this section <i>applies mutatis mutandis to international roaming to any other jurisdiction</i> ". This section is unclear and difficult to implement as section 42A is specific to its application, which is international roaming	Oppose	ICASA recommends that subsection 42A(7) be amended to eliminate ambiguity and reflect the true intention of the Department.	It is necessary to enable ICASA to make international roaming regulations in general, or for a specific country or region or grouping like Europe or BRICS etc. SADC is the most important immediate concern. We are placing emphasis on SADC since that is an existing commitment between SADC countries that must be domesticated.

	obligations of licensees with regard to SADC countries.			The Bill has been amended to clearly make provision for international roaming regulation.
Business (Name them)				
Organised Labour				
Civil Society				
The Public				
Other groupings (Name them)				
COMPETITION				
Government Departments and Agencies (Name them) ICASA	ICASA is of the view that the 12-month period within which the Authority is required to define markets in the broadcasting and electronic communications sectors is not adequate given the lengthy consultation process required in conducting a market inquiry (in terms of section 4B of the ICASA Act read with section 67 of the ECA) to define markets.	Support but require longer time period	The Authority proposes that section 67 (3A) be reworded as follows: <i><u>"67(3A) The Authority must, within 24 months of the coming into operation of the Electronic Communications Amendment Act ...: define all the relevant markets and market segments relevant to the broadcasting and</u></i>	The Open access framework is dependent on this and therefore urgent. Current work done by ICASA could be used by ICASA as basis for this work. The requirement for a formal enquiry has been deleted in the revised wording, to also assist quicker turn-around time. Preparation can start before this Bill becomes law since current ECA also enable it.

			<p><u>electronic communications sectors by Notice in the Gazette. The Notice must set out a schedule in terms of which the Authority conduct market reviews of the defined markets and market segments taking into consideration the policy directions issued by the Minister."</u></p> <p>The Authority proposes that section 67(4C) be reworded to read as follows: “(4C) A market review under this chapter shall not take longer than 24 months.” Instead of 12 months currently stipulated in 67</p>	No amendment required
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			(4C)	
ICASA	<p>Risk: The Authority believes that it should make its ex ante market decisions and determinations independently.</p> <p>Although cooperation between the Authority and the Commission is supported, it cannot be legislatively prescribed that the decisions between the two bodies should not be aligned, (to the extent that aligned means 'agreed and be consistent'), as they each have different legislative mandates.</p>	Oppose	ICASA therefore proposes the deletion of section 67B (2) of the Bill in its entirety.	<p>The clause on alignment of decisions between the Authority and CompCom has been deleted.</p> <p>Comment from CompCom also incorporated in Bill.</p>
Business (Name them) Liquid Hekima Multichoice ICASA RIA	<p>Liquid: Market definition process requires public participation</p> <p>Concurrent jurisdiction a concern.</p>	Some support and some oppose	Liquid: Amend Bill to include public participation in market definition process.	Liquid: ICASA actions constitute administrative actions and are therefore subject to public consultation, and to the extent not provided in ECA, the PAJA applies.

	<p>Consider the changes proposed in the Competition Amendment Bill</p> <p>Hekima: To define all relevant markets and market segments relevant to the broadcasting and electronic communications sectors, within a period of 12 months is untenable.</p> <p>The new clause 67A seeks to govern the relationship between the Authority and the Commission. Section 67 (9)-(12) of the current Act deals with such a relationship. In addition, section 4(3A) of the ICASA Act and sections 3 (1A), 21 (h)-(j), 82 (1)-(3) of the Competition Act, including 2008 amendments of the Competition Act also deal with it.</p> <p>The Bill imposes an obligation to amend the</p>		<p>Hekima: Amend the 12 month requirements for market definition.</p> <p>Omit provisions that deal with relationship between ICASA and CC.</p> <p><i>Section 67(4) of existing Act must be deleted.</i></p>	<p>Hekima: Proposal not supported since WP clear on it and due to historical experiences in this regard. It is possible since the markets will already have been defined.</p> <p>If planned and budgeted for, the execution can take place in said time.</p> <p>No amendment required.</p> <p>The MoU timeline has been removed.</p> <p>The CompCom and ICASA have not expressed any reservations regarding 67(4), which is not the subject of this Bill in any event.</p> <p>On 67A, the Bill will be reworded as suggested by the Competition Commission.</p>
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	<p>existing MOA within 3 months. Department cannot impose legislative timelines on an entity not falling under its portfolio</p> <p>Whilst monitoring is part and parcel of the Authority's functions, the Competition Commission was created for purposes of investigating anti-competitive conduct in all sectors of the economy, including the electronic communications and broadcasting sector. This is the essence of <i>ex ante</i> v <i>ex post</i> regulation [<i>The point appears to be that 67(4) of existing Act must be deleted</i>]</p> <p>According to the new section 67 (13) the Authority must perform the market definition and market review proceedings after consultation with the Competition Commission. The Authority's decisions should not be subjected to</p>			
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	<p>another regulator. This can be dealt with in terms of the MOA</p> <p>Multichoice: The amendments proposed to section 67 amount to a requirement for ICASA to undertake blanket ex ante regulation</p> <p>This approach is unwarranted and highly inappropriate, no motivation for this approach in the Memo does not give ICASA discretion to decide will require massive resources</p> <p>ICASA:</p> <ul style="list-style-type: none"> • The requirement that ICASA and the Competition Commission align their decisions and approvals will undermine the respective entities statutory mandates. 		<p>Multichoice: Amend section 67 to remove obligation to do blanket ex ante regulation</p> <p>ICASA: Amend provisions in Bill that undermine the respective mandates of the CC and ICASA. Amend Bill to make it mandatory <i>for the Commission to avail information to a regulatory body when that body is also</i></p>	<p>Multichoice: No, after market definition, ICASA must decide which market to review. This is no different from the current process that ICASA is undertaking in any event or priority markets.</p> <p>ICASA and RIA: Competition Commission suggested deletion of some provision in 67A and B since existing laws are sufficient, read with MoU between regulators. Currently negotiating revision of MoU with ICASA that will be gazetted mid-year 2018. The cooperation between two regulators will be improved this way, and since it is a soft issue it does not require hard law. The MoU will also</p>
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	<ul style="list-style-type: none"> • In its interaction and/or collaboration with the Competition Commission (“the Commission”), the Authority has experienced some challenges when assessing mergers and acquisitions over which the Authority has concurrent jurisdiction with the Commission. • The first issue is that of duplication of resources when the Authority conducts a competition assessment and the Commission has assessed same relying on documents and information that is not available to the Authority. • We are of the view that <i>either regulatory</i> 		<p><i>considering the same transaction and would therefore rely on the same information that may be in the possession of the Commission.</i></p>	<p>deal with sharing of info between two authorities.</p> <p>The matter was addressed as suggested by the Competition Commission i.e. that only an MOU will be mentioned in 67A and 67B will be deleted.</p>
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	<p><i>institution should be able to use the findings of the other only to the extent of assisting it in its inquiry.</i></p> <ul style="list-style-type: none">• A second but related issue is that of forum shopping by applicants seeking approvals relating to mergers and acquisitions falling within the jurisdiction of the Authority and the Commission.• This can be addressed by <i>making it mandatory for the Commission to avail information to a regulatory body when that body is also considering the same transaction and would therefore rely on the same</i>			
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	<p><i>information that may be in the possession of the Commission.</i></p> <p>RIA: Our recommendation on this matter is for ICASA to consult the Competition Commission on issues related to anti-competitive practices, but to retain its role of setting ex-ante pro-competitive conditions.</p>		<p>RIA: Amend Bill to ensure that ICASA consults the Competition Commission on issues related to anti-competitive practices, but to retain its role of setting ex-ante pro-competitive conditions.</p>	
Organised Labour				
Civil Society				
The Public				
Other groupings (Name them)				

1.6. Describe possible disputes arising out of the implementation of the proposal, and system for settling and appealing them. How onerous will it likely be for members of the public to lodge a complaint and how burdensome and expeditious is the proposed dispute-settlement procedure?

See Annexure A

The table below provides a concise mechanism for dealing with potential disputes arising from the implementation of the Bill:

Group/s	Possible Dispute	Dispute Resolution Mechanism
ICT Service Providers/ Electronic Communications Network Service Licensees	<i>Spectrum Licensing framework, Open Access Policy and WOAN</i>	<p>Continuation of dispute with the Regulator about assignment of high demand spectrum. Efforts are being made to settle the matter out of Court. Specific consultation has commenced with ICASA on the Bill that will also assist the parties in settlement.</p> <p>New litigation may arise if ECNS licensees disagree with how high demand spectrum is assigned. The Minister has already commenced discussions with ECNS licensees to find amicable solutions on the implementation.</p> <p>New litigation may arise if ECNS licensees disagree with the imposition of open access obligations. The Bill however provides for due process through the Open Access Chapter in the Bill. Only after the regulations have been prescribed can obligations be imposed. Regulations go through the fair administrative processes. Operators can only be classified as vertically integrated or deemed after meeting certain criteria, again following due process. Therefore procedural and substantively fair processes will resolve differences. The existing Complaints and Compliance Committee at ICASA can also play a role in dispute resolution.</p>
Local Government and ICT Service providers (Electronic Communications Network Service Licensees)	<i>Rapid Deployment policy</i>	A Rapid Deployment Steering Committee to be established that also interacts with SIP 15, that will be a coordinating mechanism- It will be used to streamline, coordinate and accelerate infrastructure deployment process to enable the sustainable and environmentally sound deployment of critical broadband infrastructure. This structure will coordinate all matters pertaining to rapid deployment of ICT infrastructure and will bring together government,

Group/s	Possible Dispute	Dispute Resolution Mechanism
		<p>also through SIP 15, Municipalities and Electronic Communications Network Service Licensees when necessary. Any arising disputes would be resolved by the Steering Committee.</p> <p>Inter-Ministerial Committee, a political structure will further complement the work of the Rapid Deployment Steering Committee and ensure alignment at a Ministerial level.</p> <p>Provisions are also inserted to ensure that the Regulator must resolve disputes between licensees and landowners on an expedited basis.</p> <p>In case of disputes between government entities, differences will be discussed until mutual agreement is reached. Other mechanisms such as legal opinion mutually obtained will be used as well as IGR framework.</p>

2. Impact Assessment

2.1. Describe the costs and benefits of implementing the proposal to the groups identified in point 1.5 above, using the following chart. Add more rows if required

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
EMPOWERMENT				
Government Departments and Agencies (Name them)				
Regulator				

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
	<p>Prescribe BBBEE regulations Amend existing licences to give effect to HDG and BBBEE M&E Costs</p>	<p>Regulatory costs associated with enquiries, public consultation, drafting and administration</p>	<p>30% equity ownership by HDG Compliance with scorecards in ICT BBBEE Sector Code and therefore BBBEE ensured</p>	
<p>Business (Name them) ECS, ECNS, Spectrum and Broadcasting licensees</p>	<p>Compliance with HDG and BBBEE requirements</p>	<p>According to a 2017 Discussion Document on HDG and BBBEE by ICASA, with the exception of broadcasting licensees, there is very low levels of compliance with the empowerment requirements</p> <p>Following license conversion around 2009, HDG requirements were only carried over to a handful of licensees. Since all existing individual licensees will have to comply going forward, to avoid refusal</p>	<p>30% equity ownership by HDG Compliance with scorecards in ICT BBBEE Sector Code and therefore BBBEE ensured</p>	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
		to renew licences, a compliance and adherence cost will be incurred by non-compliant licensees.		
Organised Labour	NA			
Civil Society/ The Public	NA			
Other groupings (Name them)	NA			
RAPID DEPLOYMENT				
Government Departments and Agencies (Name them)	Rapid Deployment Steering Committee	Rapid Deployment Steering Committee will be appointed by the Minister and liaise with SIP 15 and existing government operational budgets will be utilised. It is estimated that the Committee will be formed by a maximum of 20 individuals, the majority of whom will serve on ex officio basis. The Committee will meet 6 times per annum. The estimated costs per individual per meeting is	Simplify, streamline, coordinate and accelerate the infrastructure deployment process to enable the sustainable and environmentally friendly deployment of critical broadband infrastructure.	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
		<p>R50 (R50 X 20X 6), equating to R6, 000. Again, government facilities will be utilised for these meetings, thus minimising costs.</p>		
	National Coordination Centre	<p>The Department will make provision for this Unit as part of current revision of Service Delivery Model. The Minister has already established the interim Centre.</p> <p>The GIS database and system automation costs will be budgeted as part or normal MTEF processes.</p>	<p>The benefit of central coordination and alignment through this Centre is enormous. The benefit to network deployment and economic growth is clear. The costs associated with current disputes in court will be reduced significantly for the State.</p>	
	Amendment/ Alignment of various Acts, Regulations, By-	Various Departments will need to consider how to align their policies and legislation etc. with the	Despite to initial costs to ensure synergy between various Acts,	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
	Laws and other procedures and processes	new policy. The DTI for example may need to amend the Building Regulations to include requirements from this Bill.	regulations etc., the benefits in the medium to long term include better intergovernmental relations, consistent, simple and coordinated approaches among government departments and agencies to process and determine applications for planning, approvals, permits etc. Reduction of inconvenience to the public and operators. Achievement of SA Connect targets etc.	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
<p>Business (Name them)</p> <p>ICT Sector players (Electronic Communications Network and Service licensees)</p>	<p>Costs of compliance with the new policy, legislation and regulations</p>	<p>Costs of change management, including business models.</p> <p>Licensees will for example have to comply with the single trench policy. This will require negotiation with existing infrastructure providers or in case of new deployment, making provision for capacity for other licensees that may follow. The detail must however still be determined by the Regulator in regulations.</p>	<p>Effective competition</p> <p>Shared infrastructure, access to essential facilities, scarce resources and avoidance of duplication.</p> <p>Protection of the environment.</p> <p>Reduction of inconvenience to the public.</p>	
<p>Organised Labour</p>	<p>NA</p>			
<p>Civil Society/ The Public</p>	<p>Compliance by landowners with network build rights of operators and permissible compensation</p>	<p>Landowners will also have to change behaviour to allow operators to construct networks. Landowners will have to be informed of rights and obligations including</p>	<p>The benefit of the change is certainty and clarity, consistency, reasonability of cost and dispute</p>	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
		dispute resolution option. The National Coordination Centre should continuously create awareness for all role-players including landowners that will have normal budgetary implications	resolution outside court processes.	
Other groupings (Name them)	NA			
SPECTRUM AND WOAN				
Government Departments and Agencies (Name them)	Spectrum steering committee	Spectrum Steering Committee will be appointed by Minister and existing government operational budgets will be utilised. It is estimated that the Committee will be formed by a maximum of 20 individuals The members will be from government and will serve on ex officio basis. The Committee will meet 6 times per annum. The estimated meeting cost	Integrated and coordinated spectrum planning and management in the public interest	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
		per individual is R50 (R50 X 20X 6), equating to R6, 000. Again, government facilities will be utilised for these meetings, thus minimising costs.		
	Spectrum Unit in DTPS	<p>The Department will make provision for this Unit as part of current revision of Service Delivery Model.</p> <p>Spectrum Planning and overall management currently performed by the regulator will be performed by the DTPS. The additional cost implications for the DTPS will be balanced by the cost reduction at the regulator.</p>	Clarity of roles and responsibilities between the Minister and the regulator.	
	Real-time databases	The regulator as well as sector-specific agencies that deal with spectrum will have to ensure that	Availability of real time information about spectrum assignments that	The Department is of the view that the

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
		<p>they establish real-time spectrum databases to interlink with the regulator.</p> <p>The Authority initially said they do not have the resources to develop a real-time spectrum database as contemplated in section 31 of the Act. On 28 May 2018 ICASA clarified that they can procure such automated spectrum licensing system</p> <p>They said that in the 2016/17 financial year, the Authority procured an automated spectrum management system. The system will be fully deployed by end of quarter three of the 2017-18 FY and will perform the following functions:</p> <p>Spectrum licensing; Spectrum assignments;</p>	<p>assists overall spectrum management.</p>	<p>existing system being developed can be used as a starting point and that the database is an important policy requirement.</p>

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
		Technical analysis; Interference analysis; Radio frequency propagation models; Type approval and licensing, amongst others.		
Business (Name them) ICT Sector players (Electronic Communications Network and Service licensees)	Costs of compliance with the new policy, legislation and regulations.	Costs of change management, including business models. Generally the cost associated with sharing spectrum as opposed to exclusive use	Effective competition Shared infrastructure, access to essential facilities, scarce resources and avoidance of duplication. Whereas about 6 operators currently exclusively use spectrum and monopolize such scarce resource, the new spectrum	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
			framework enables spectrum sharing that will enable about 400 access seekers currently without spectrum to provide services. Therefore new entrants and SMMEs will benefit and competition will be created.	
Organised Labour	NA			
Civil Society/ The Public	NA			
Other groupings (Name them)	NA			
OPEN ACCESS				
Government Departments and Agencies (Name them)	WOAN: Costs of incentives that may apply as determined by the Authority such as reduced spectrum fees for the WOAN.	WOAN: Regulatory/administrative costs towards licensing WOAN that are part of ordinary regulatory costs	The benefit of WOAN is sharing of infrastructure including spectrum, less duplication of infrastructure, promotion of	If the spectrum fees for WOAN are reduced as an incentive, less income will accrue

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
		<p>OPEN ACCESS FRAMEWORK:</p> <p>Regulator must prescribe open access regulations, classify operators per new framework and amend licences. Therefore facilities leasing regulations must be amended to convert it to open access regulations. Ordinary regulatory/ administrative costs associated with this.</p>	<p>universal service and access, serviced based competition and less impact on the environment</p> <p>OPEN ACCESS FRAMEWORK: Benefits accrue to operators without networks, new entrants, SMMEs etc. Incumbents must open their networks for use by service providers that will enable active and passive infrastructure sharing such as roaming, MVNOs etc. Competition stimulated, service-based competition,</p>	<p>to the National Revenue Fund from the licensing of high demand spectrum to the WOAN.</p> <p>The potential however exist to maximize income from the remaining high demand spectrum when licenced to other operators.</p>

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
			reduction of costs, etc.	
<p>Business (Name them)</p> <p>ICT Sector players (Electronic Communications Network and Service licensees)</p>	<p>WOAN: Costs of compliance with the new policy, legislation and regulations.</p> <p>Applicants that wish to be part of WOAN consortium will have costs associated with preparing and participating in the application process, but these processes are voluntary.</p> <p>Successful members of WOAN consortium will have costs associated with contributing their own networks to and or building the new WOAN, being an LTE</p>	<p>WOAN: Costs of change management, including business models</p> <p>The behavior that needs to change is sharing of infrastructure and charging reasonable fees. Cooperation required and compliance with the various open access principles like openness, transparency and fairness.</p> <p>Regulatory oversight and intervention may be required to ensure change of behavior. Currently incumbents are reluctant to open their networks like local loops, to share facilities like landing stations etc.</p>	<p>WOAN: Effective competition</p> <p>Shared infrastructure, access to essential facilities, scarce resources and avoidance of duplication.</p> <p>Access seekers will be able to provide services on top of the WOAN without requiring own networks.</p> <p>WOAN consortium members benefit from market entrance, access</p>	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
	<p>network. Additional costs due to rural network build requirements. Costs of training regulatory staff and inspectors to ensure compliance.</p> <p>Costs of improving effectiveness of CCC that assist with adjudication on disputed decisions.</p> <p>GENERAL OPEN ACCESS FRAMEWORK AND OBLIGATIONS:</p> <p>Costs for operators to open networks and share networks like RAN sharing. Unbundling costs. Commercial costs like open access</p>	<p>GENERAL OPEN ACCESS FRAMEWORK AND OBLIGATIONS:</p> <p>Costs of change management, including business models</p> <p>The behavior that needs to change is sharing of infrastructure and charging reasonable fees. Cooperation required and compliance with the various open access principles like openness, transparency and fairness.</p> <p>Regulatory oversight and intervention may be required to ensure change of behavior. Currently incumbents are reluctant to open their networks like local loops,</p>	<p>to spectrum, less capital investment required due to sharing of network roll-out costs by consortium (efficiency gains), economies of scale, demand aggregation and demand stimulation.</p> <p>The WOAN will have rural and underserved area roll-out obligations that benefit universal services and access objectives, the rural and the poor.</p> <p>GENERAL OPEN ACCESS</p>	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
	<p>agreements that must be entered into.</p>	<p>to share facilities like landing stations etc.</p> <p>Consideration by licensees of best commercial model i.e. participating in WOAN or own network construction.</p> <p>One on one negotiation and cooperation will be required between access providers and seekers. If disputed, the regulator will have to resolve the dispute. Due to number of access requests and possible disputes, the regulator will incur additional costs to resolve disputes.</p>	<p>FRAMEWORK AND OBLIGATIONS:</p> <p>Shared infrastructure, access to essential facilities, scarce resources and avoidance of duplication. Reduction of costs.</p>	
Organised Labour	NA			
Civil Society	NA			

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
The Public Households/Communities/Consumers	Costs of accessing information and end user devices.	Costs of embracing technology	Increased access to ICT services and products Low costs to communicate Secure and reliable access and use of ICT services.	
Other groupings (Name them)	NA			
INTERNATIONAL ROAMING				
Government Departments and Agencies (Name them)			Advancing regional economic integration within SADC and ease the cost of doing business, whilst realising favourable economic interaction by SADC Member States.	
Business (Name them)	Cost modelling tools/ Appointment of consultants/Revision	Operators will have to do cost modelling of own roaming costs, participate in regulatory process of	The regulation of international roaming will include a cost	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
	of international roaming agreements	<p>Regulator, comply with cost based rate obligations imposed; renegotiate with roaming partners, provide information to Regulator and CRASA etc.</p> <p>Reciprocity should apply to ensure that unequal interconnection rates, surcharges etc do not negatively affect operators</p> <p>Regulated costs may reduce revenue generated by operators. Reduced costs however likely to increase demand and therefore an increase in number of roaming minutes, that will reduce any negative financial implication</p>	<p>saving for operators since it is likely to include reduction in taxes charged by other jurisdictions. Reduced roaming rates will also increase roaming traffic minutes thereby benefiting roaming providers.</p>	
Organised Labour	NA			

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
Civil Society/ The Public		Behaviour changes since roamers do not have to buy sim cards in each country due to reasonable roaming costs resulting from roaming regulation	<p>Reduced cost to communicate and the cost of doing business in the SADC Region.</p> <p>Intra-SADC mobility of people</p> <p>Reduced roaming costs to other international destinations.</p>	
Other groupings (Name them) CRASA and SADC	<p>Cost modelling tools</p> <p>Cost of service provider to perform cost modelling</p>	CRASA will work with SA in doing cost modelling towards cost based SADC roaming charges.	Advancing regional economic integration within SADC and ease the cost of doing business, whilst realising favourable economic interaction by SADC Member States.	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
			SADC roaming regulation enables CRASA to ensure success of Home and Away roaming project in view of key role played by SA.	
COMPETITION				
Government Departments and Agencies (Name them) Regulator	<p>Cost of appointment of consultants to assist with specialized market definition and market review processes, estimated at R5m per annum. This requirement exists in current legislation in any event.</p> <p>Increase in regulatory/ administrative costs</p>	<p>Regular market definition and review requires financial resources.</p> <p>Regulatory staff should also be trained and additional specialists appointed at Regulator to reduce the reliance on consultants.</p>	<p>Market definition that is prerequisite for other processes like Open Access Framework.</p> <p>Effective competition</p> <p>Clarity of markets. Regular updating of markets.</p> <p>Clarity on which markets will be</p>	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
	to do research, draft ToRs, develop documents, request information from operators, analyse information, conduct public hearings, develop regulations.		<p>reviewed by when.</p> <p>Regulation of ineffective markets and operators with SMP is such markets.</p> <p>Rate regulation to ensure reduction of costs, especially data costs.</p> <p>Effective regulation will ensure meeting of government policy objectives.</p>	
<p>Business (Name them)</p> <p>ICT Sector players (Electronic Communications Network and Service licensees)</p>	Costs of compliance with the policy, legislation and regulations including the employment of specialists in this area.	Costs of participation in regular market definition and reviews by Regulator including own cost modelling, provision of information, written submissions on	The benefit is that markets are regulated to ensure effective competition. Effective competition	

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
	The amendments are however not new but specific obligations are imposed on the regulator to ensure that market definition is done and that market reviews take place regularly.	Regulatory proposals, participation in hearings etc. Cost of implementation of pro-competitive remedies that may involve change management, changes to business models, etc.	results in many benefits from quality and availability of service to reasonable prices. Licensees that do not have SMP benefit from a level playing field.	
Organised Labour	NA			
Civil Society/ The Public	NA			
Other groupings (Name them)	NA			

2.2. Describe the changes required in budgets and staffing in government in order to implement the proposal. Identify where additional resources would be required for implementation. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

Rapid Deployment Steering Committee established

- Costs of institutionalising the Committee, however, it envisaged that the Secretariat for the National Coordinating Centre will also be responsible for efficient working of the Rapid Deployment Steering Committee

Rapid Deployment National Coordination Centre established

- Costs of institutionalising the Centre that will form part of the new organisational design of the Department (new Organogram) and will be resourced accordingly. Provision will also have to be made for development of GIS database and systems like an automated wayleave application system.

Radio Frequency Spectrum Committee established

- Costs of institutionalising the Committee, however, it envisaged that the Secretariat for the Spectrum Unit will also be responsible for efficient working of the Committee.

Spectrum Unit

- Costs of institutionalising the Spectrum Unit that will form part of the new organisational design of the Department (new Organogram) and will be resourced accordingly. Provision will also have to be made for procurement of spectrum management tools.

Regulatory costs

- Costs of BBBEE regulations and ensuring BBBEE compliance
- Costs of licensing a WOAN
- Costs for rapid deployment, open access, international roaming and consumer protection regulation
- Costs of effectively regulating competition as proposed in the Bill. Capacitation of regulator and sufficient budget to do regular market definition and review
- Costs of real-time spectrum database
- M&E costs

2.3. Describe how the proposal minimises implementation and compliance costs.

- In terms of Institutional Mechanisms such as the Committees and Coordination Centre established to coordinate and facilitate government efforts, existing resources within the DTSPS will be re-prioritised and realigned to provide Secretariat and professional support. Government as a whole will have a cost saving due to the role of the Rapid Deployment Coordination centre that will ensure

certainty, availability of information, clarity on processes, collection of administrative costs by municipalities etc. Industry will similarly have cost savings due to cost-based approvals, simplicity, clarity and improved turn-around times.

- Implementation Costs (Travelling costs and accommodation – using government offices for meetings to reduce costs)
- The establishment of the WOAN will create a cost-saving for hundreds of licensees that do not have to build electronic communications networks but can render their electronic communications services on top of the WOAN. The same applies to the open access regulation that will enable infrastructure sharing by deemed entities.
- The sharing of high demand spectrum, which will be assigned at reduced rates to the WOAN, is a cost saving for operators, which saving will ultimately benefit the consumer.
- The regulation of international roaming will include a cost saving for operators since it is likely to include reduction in taxes charged by other jurisdictions. Reduced roaming rates will also increase roaming traffic minutes thereby benefiting roaming providers.
- The costs for government roll-out of ICT infrastructure can be reduced due to the open access regime created, where infrastructure will be subject to open access;
- Costs of litigation about high demand spectrum and rapid deployment of infrastructure, can be reduced through this Bill due to clarity created, and institutional mechanisms to ensure coordination as well as dispute resolution.

3. Managing Risk

3.1. Describe the main risks to the achievement of the desired ends of the policy/bill/regulations/other and/ or to the national priorities (aims) that could arise from adoption of the proposal. Also describe the measures taken to manage the identified risks. Add more rows if necessary.

Identified Risk	Mitigation Measures
Lack of implementation by the Regulator/ Disagreement on implementation of White Paper	Meetings with Regulator to ensure alignment/ agreement Meetings with Minister of Communications to ensure that Regulator aligns APP with priorities in legislation Amendment of legislation to ensure misalignment between White paper and existing legislation is not cause of non-implementation
Lack of institutionalisation of the proposed Steering Committees for Spectrum and Rapid Deployment as well as the Spectrum Unit and Rapid	Ensure competent and capable Secretariat support is in place to provide professional support to Committees.

Deployment National Coordination Centre	<p>Properly delegated Senior officials will be empowered by the DG's to represent their departments in the respective coordination committees working seamlessly with DG offices of the departments involved.</p> <p>Inclusion of appropriate capacity/ realignment of capacity in Service Delivery Model and organisational structure design for DTPS.</p> <p>Interim Rapid Deployment Coordination Centre already established to commence with the function.</p>
Resistance and lack of compliance by industry players	<ul style="list-style-type: none"> • Continual engagement with industry players to ensure that the policy is implemented in such a way that it, as far as possible, minimises the costs (for compliance) and mitigate the risks associated with the new ICT policy and provisions in the Bill • Agree to the extent possible on most effective implementation plan with industry, of key aspects such as high demand spectrum assignment and establishment of WOAN • Ensure effective enforcement of regulation to deter non-compliance • Negotiate hybrid model and support for WOAN
Lack of or delays in the finalisation of legislation to enable implementation of the Policy	<ul style="list-style-type: none"> • Accelerate processes of developing necessary ICT legislation and regulations • Use the SEIAS Report to empower and enable policy decision makers to make decisions expeditious understanding the potential costs, benefits/opportunities and risks/threats of the proposed ICT Policy/ Bill and how the costs would be reduced, benefits maximised and risks mitigated
Net cash outflow due to international roaming regulation	International roaming regulation must include reciprocity as provided in the Bill to avoid negative impact on our economy.

3.2. Describe the mechanisms **included in your proposal** for monitoring implementation, evaluating the outcomes, and modifying the implementation process if required. Estimate the minimum amount of time it would take from the start of the implementation process to identify a major problem and remedy it.

Some of the mechanism included in the legislation are as follows:

- The Minister of Telecommunications and Postal Services must provide oversight over the implementation of rapid deployment and liaise with other Ministries responsible for aspects of rapid deployment of electronic communications networks and facilities.
- The Minister of Telecommunications and Postal Services must establishment a Rapid Deployment National Coordinating Centre and a Rapid Deployment Steering Committee to oversee the activities of the Centre.
- The Minister of Telecommunications and Postal Services is responsible for establishment of a National Radio Frequency Spectrum Planning Committee. The Minister of Telecommunications and Postal Services must coordinate radio frequency spectrum across government and sector-specific agencies contemplated in section 34B.
- The Regulator must, within 12 months of the commencement of the Electronic Communications Amendment Act define all relevant markets, since that is necessary for the wholesale open access regulations to function. The latter regulations must be done with 18months of the commencement date.
- The Regulator is to publish Sector Review and Performance Report on the ICT sector on an annual basis. The Authority must submit the market performance report to the Minister and Parliament within 30 days of publication.

In addition -

- The need for monitoring and evaluation of policy implementation is considered a priority for government, as stipulated in DPME guidelines.
- The DTSP has a Monitoring and Evaluation framework and a Strategic Planning and Monitoring Unit to monitor implementation of strategic targets that include the new ICT policy and implementation thereof through legislation.
- The White Paper also states that the Regulator, working together with DTSP will continuously undertake periodic evaluation of the impact of the new ICT policy (3-5 years intervals).

Any legislation may have implementation challenges and delays. The DTSP and ICASA will closely monitor the regulatory work required under the revised ECA and address any implementation challenges as they arise.

4. Summary

4.1. Summarise the impact of the proposal on the main national priorities

National Priority	Impact
1. Social Cohesion	<ul style="list-style-type: none"> • Convergence of digital networks, services, applications, content in all South African languages and affordable devices will promote nation building and strengthen social cohesion;

	<ul style="list-style-type: none"> • The reduction of communication costs including roaming costs in the SADC region contribute to a sense of belonging, bring people together. • Social cohesion is also strengthened by clear and consistent implementation of BBBEE.
2. Security (Safety, Financial, Food, Energy and etc.)	<ul style="list-style-type: none"> • The Bill makes specific provision for spectrum used for security services, disaster relief and public interest use. • The Bill contribute to network expansion for a digital economy that will benefit the use of networks for security purposes.
3. Economic Growth	<ul style="list-style-type: none"> • Spectrum policy enables efficient use of scarce resources to maximise economic and social benefits; • Open Access policy facilitates sharing of infrastructure and essential facilities to promote economic growth, development and competitiveness in the sector; • Rapid deployment of networks are directly linked to economic growth • The strengthening of HDG and BBBEE in the Bill drives empowerment and economic growth and development
4. Economic Inclusion (Job Creation and Equality)	<ul style="list-style-type: none"> • HDG and BBBEE in the Bill ensures that citizens can meaningfully participate in the economy and also ensures job creation and equality
5. Environmental Sustainability	<ul style="list-style-type: none"> • Rapid deployment policy enables coordinated and efficient approach to infrastructure deployment, thereby reducing unnecessary

	<p>infrastructure duplication which has a negative effect on the environment;</p> <ul style="list-style-type: none"> • Single trench policy which eliminates multiple digging and trenching, which may lead to environmental degradation
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4.2. Identify the social and economic groups that would **benefit most** and that would **bear the most cost**. Add more rows if required.

Main Beneficiaries	Main Cost bearers
New entrants, SMMEs and 400 other licensees that do not have access to spectrum such as MVNOs	Major incumbents (Network operators) with significant market power, controlling essential facilities, 25% of infrastructure market or vertically integrated
Historically Disadvantaged Groups and Black people	Six major spectrum licensees like mobile network operators
SADC region citizens	Regulator
Households/Communities/Consumers	Government including DTPS, DEA, DTI, Municipalities

4.3. In conclusion, summarise what should be done to reduce the costs, maximise the benefits, and mitigate the risks associated with the policy/bill/regulations/other. Note supplementary measures (such as educational campaigns or provision of financing) as well as amendments to the draft itself, if appropriate. Add more lines if required.

a) What should be done to reduce the costs associated with the Bill:

- ICASA should use its existing resources to ensure compliance with the empowerment requirements in the Bill that do not require any external resources. ICASA should also budget as may be required in the ordinary course of MTEF for the priorities mentioned in the Bill as the Bill moves closer to enactment. The same applies to the other obligations placed on the regulator ranging from licensing a WOAN and open access regulations to market definition and review. ICASA will be requested to commence with preparatory work as soon as possible to reduce any pressure on its resources.
- The cost of empowerment compliance by operators can be reduced by allowing a transitional period.
- When the institutional mechanisms such as the Committees and Coordination Centre for Rapid Deployment and Spectrum is established, existing resources within the DTPS should be re-prioritised and realigned to provide Secretariat and professional support. Interim Rapid Deployment Coordination Centre has already been established to assist with the implementation. Government as a

whole will have a cost saving due to the role of the Rapid Deployment Coordination centre that will ensure certainty, availability of information, clarity on processes, collection of administrative costs by municipalities etc.

- ICASA/ The new Regulator can be requested to share their Spectrum Resources with the DTSPS;
- Implementation Costs (Travelling costs and accommodation – using government offices for meetings etc to reduce costs)

b) What should be done to maximise the benefits associated with the Bill:

The policy given effect to in the Bill, such as the creation of WOAN, open access, assignment of high demand spectrum, enablement of rapid deployment of networks, effective regulation of competition and consumer protection, will contribute significantly to growing the economy, reducing cost to communicate, improving competition, ensuring consumer protection, empowerment, rural connectivity and access, less impact on the environment etc. The benefits associated with the Bill must be implemented as soon possible. The DTSPS and the Regulator should prioritize the implementation of the frameworks and interventions created in the Bill. The DTSPS should reorganise to maximize the use of its existing resources.

c) What should be done to mitigate the risks associated with the Bill:

Continued engagement and consultation is necessary. Rapid deployment provisions create tension between the rights of landowners and operators as well as government entities and operators. Clarity should be created, a balancing of rights should be ensured, and constitutional rights protected. An interim working group will be established with government stakeholders to ensure discussion and cooperation.

The risks associated with the new spectrum framework and the WOAN should also be mitigated through consultation with ICASA and industry. This discussion on implementation has started as far back as November 2016 and is continuing. The best implementation model is being negotiated at Ministerial level and the Bill already makes provision for a hybrid spectrum model, as supported by Industry. Mechanisms are introduced to ensure compliance with equity ownership by historically disadvantaged groups and BBBEE. A transitional period or gradual implementation may be considered to reduce to impact of the compliance costs though the requirements have been long-standing.

4.4. Please identify areas where additional research would improve understanding of the costs, benefits and/ or risks of the policy/bill/regulations/other

NA

For the purpose of building SEIAS body of knowledge please complete the following:

Name of Official/s	Ms C Lesufi
Designation	D: Telecommunications Policy
Unit	ICT Policy and Strategy Development
Contact Details	012-4278512
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Annexure A:

The National Integrated ICT Policy White paper was developed as part of a highly consultative process, providing a platform for stakeholders from all walks of life to make their voices heard.

Significant stakeholder engagements were performed following the approval by Cabinet of the National Integrated ICT Policy White paper on 28 September 2016. These include a consultation at Midrand Conference Centre: 31 October 2016, ICT sector consultation on the implementation of the National Integrated ICT Policy White Paper: 14 December 2016; Ministerial engagement regarding implementation of the White Paper: Engagement with National ICT Forum: 17 February 2017; Meeting held between Minister and National ICT Forum on White Paper Implementation, focusing on WOAN: 19 May 2017 and Public Hearings: 06 – 07 March 2018.

The purpose of the engagements was to reduce to risk of litigation. The Department has amendment the Bill and for example introduced an enabling framework for a hybrid model on spectrum and also clarified the intentions on the 'return' of high demand spectrum.

Mechanism proposed in this Bill to address potential disputes include the following:

- Rapid Deployment Steering Committee linked to SIPs, will streamline, coordinate and accelerate the infrastructure deployment process to enable the sustainable and environmentally sound deployment of critical broadband infrastructure. This structure will coordinate all matters pertaining to rapid deployment of ICT infrastructure and will bring together government, with the assistance of SIP 15, Municipalities and Electronic Communications Network Service Licensees when necessary.
- National Radio Frequency Spectrum Committee – This Committee will bring together various government stakeholders that play a role or are affected by spectrum. It will advise government and provide guidance to the Minister on the overall management of the radio frequency spectrum in the best interest of the economy.

The ICASA CCC can be used to settle any disputes arising.

The likelihood of legal disputes have been reduced significantly.