



**Submission in Response
To
ECA Amendment Bill B31 [2018]**

INTRODUCTION

ABT Africa Group is an established SMME brand in South Africa's ICTs having participated in the Broadcast Digital Migration's DTT programme and in the Telecommunications sector as a video broadcast company.

ABT welcomes the Parliamentary Portfolio Committee to invite comments on the amendment of the ECA and its Parliamentary round of commentary following the Department of Telecommunications and Postal Services (DTPS) own public participation process which elicited some interesting if not robust engagement.

We welcome this step as we believe that the draft Bill proposals bring about the real hope of transforming how the ICTs are conducted, regulated and traded. The Bill inspires hope for new players telecoms generally and ICT SMMEs specifically, of which ABT is both. ABT supports the objectives of the Bill including the promotion of transformation, lowering the cost of communications and increasing competition.

- a) We note that in 1.2 of the Background and context of the Bill, "The Act is amended to improve implementation and remove and ambiguity and vagueness which hamper efficient and effective regulation." The Bill, in our view reduces the ambiguities which have in some instances impacted transformation, service and the BBBEE ideals.
- b) We observe a possible confusion on clause 1.9 of the Bill causes confusion if read against the previous public statements including the Minister's Budget Vote of 2017. This confusion specifically relates to spectrum and the licensing thereof.
- c) We support the Department's drive to remove bottlenecks and monopolies in the telecoms market environment as it ensures that universal coverage and access to services in recognition of the critical role of ICTs in socio-economic development is upheld.
- d) Achieving the universality at lower rates as envisaged in the Bill is contingent upon an inclusive market environment.

ANALYSIS AND FEASIBILITY

- a) The WOAN is a key element of the Bill and we welcome the extent to which it had been canvassed and debated by the industry and the public at large.
- b) We encourage the Department to proceed with speed to ensure the release of Spectrum, the licensing of the WOAN with strong BBBEE credentials and an even stronger model for the WOAN to sustain.
- c) We caution of the dire consequence for the failure of the WOAN as undesirable in the industry and posing a threat of loss for the SMMEs, funders and other investors in contradiction to the Bill intended objectives.

THE REGULATORY ENVIRONMENT

Under our country's specific circumstances, we would urge and support that the Department and Minister bring the Regulator under the Department and Ministry's ambit. This will avoid the unnecessary contradictions on policy and regulation that led to the recent court action. This will help focus the Regulator on transformation issues and inclusive growth which they have clearly failed to deliver since the 1993/94. We are of the view that these new provisions will strengthen the Regulator's arm in the right direction.

Correctly the Bill strengthens the powers of the Minister by ensuring that he/she approves universal service obligations that are attached to operators' licences. We further urge that the Minister be mandated to drive national priorities by issuing policy directions to the Authority as it is currently the case with the DTSP Policy Directives to the Authority.

The South African telecoms market continues to be oligopolistic and closed. The optic fibre networks business has only served to widen the gap between the small players and established operators. There barriers to entry have grown as regulatory obligations have been flouted, ignored or "paid off" by established operators at the cost of market growth and or transformation.

The absence of recognition for the regulatory framework resulted in the broadband rollout being impeded where we saw big business unfairly competing against new players for Phase 1 (as managed by Broadband Infraco). The question arises, why did big business ignore the rural network in all their 20-odd license periods?

SMMEs -from the BBI experience- have done very well compared to big business in the Phase 1 rollout. For this reason, more SMMEs must be accorded the opportunity to do the rollout at the forthcoming Phases. We welcome the department's attempt in creating a regulatory framework that will enable rollout but urge for strictly SMMEs to do broadband rollout.

Rapid deployment will be equally critical issue as we rollout 5G networks which is fast becoming a reality. We urge the Minister and the Department to expedite this 5G network build by SMMEs through a policy direction to the Authority. The Authority must develop Rapid Deployment regulations using the draft provisions of the Bill.

CONSUMER PROTECTION

ABT welcomes the provisions that seek to enhance protection of the consumer in the ECA.

TRANSFORMATION

ABT welcomes that the Bill places transformation as one of its key objectives. We support the objectives of transformation and, to deliver the impactful results of transformation, ABT recommends that there be one WOAN.

We detest the exploitation of the existence of "value-chain" where it is expected that SMMEs shall and can only participate in the lower rungs of the "value-chain". We say, for true transformation to take place, SMMEs must be allowed and supported to partake of any business they want and not be restricted to being resellers of services for big business.

ABT supports the idea of the Authority's 2016 published ITA. However, we were not happy with the loose terms attached to the spectrum allocation. The Authority ought to have taken the SMMEs and new entrants into confidence with regards the set of obligations for that ITA.

Whilst we concur that attaching the creation of Mobile Virtual Network Operators (MVNOs) to the spectrum licensing for the incumbent operators, we say that this is not sufficient. The Authority should consult SMMEs rather than think for them.

MVNOs are but one market mechanism for the Authority to enable new licensees and promote service-based competition by Black operators generally and African SMMEs particularly.

ABT would like to alert this process that more SMMEs fail in South Africa at a higher rate than in Kenya, Rwanda and Nigeria; the USALs are a case in point. These failures are a direct result of poor implementation by licensees and absence of policing of policy by the Authority.

COMPETITION

In South Africa, the ICT SMMEs have been let down. Otherwise, with good support, they would have long built and operated their own networks. The people that get retrenched from big business do not lose their skills and expertise as a result. They become entrepreneurs who, if supported through legislation, would access the market and thus transform the market.

We call on the Authority to license spectrum to SMMEs and new entrants equitably as it assigns same to the operators. Failure to do this sustains the awful status quo and dampens the SMMEs' spirit of participating in the ICTs.

The incumbents must be encouraged to work with the SMMEs instead of stifling them and disincentivising them through non-payment or late payment for services rendered.

ABT supports the Bill as it promotes competition at the service level but reserve the bulk of the spectrum to the WOAN. Service-based competition will enhance service level competition; but the same is not true for infrastructure ownership in South Africa.

THE WIRELESS OPEN ACCESS NETWORK (WOAN)

ABT supports the Bill for introducing the WOAN. ABT proposes that 60% of the WOAN be owned by Black shareholders/investors including Women and the Youth at all time of its existence.

We refute the argument that the WOAN will be a failure merely because it failed elsewhere in the world. South Africa has a specific history that is hard to pick from other countries histories. South Africa needs special and interventions that may, sometimes, defeat the logic of other countries.

For the sustainability of and commercial feasibility of the WOAN, we would propose that operators must acquire their aggregated minimum 60% spectrum from the WOAN; rather than the CSIR's proposed minimum of 20%.

We also suggest that this spectrum offtake arrangement must be a fixed arrangement for the first 5 years of the WOAN overseen by the Authority.

ABT notes and welcomes the Bill's introduction of a cost-based pricing model for the WOAN from its inception.

ABT proposes that regulatory holidays and tax incentives be offered to the WOAN for it to sustain at least during its first 5 years.

SPECTRUM

As indicated above, ABT agrees with the licensing of the spectrum to the incumbents for as long as strict terms of BBBEE are attached thereto.

RADIO FREQUENCY SPECTRUM TRADING

HIGH DEMAND SPECTRUM

We welcome and support the Bill in its empowering the Minister to determine what high demand spectrum is six months after the promulgation of the Act or as and when required.

ABT does not support any delay, perceived or real, in the licensing of high demand spectrum. However, we want the Authority and the Minister never to omit any form of opportunity of spectrum assignment, allocation or auction as an opportunity to include generally Black and specifically African SMMEs.

Further delays in spectrum licensing may be used by the incumbents as an excuse to continue holding the transformation agenda to ransom. To remove this excuse ABT therefore supports that the spectrum be licensed -on stringent condition- as speedily as possible. We believe this will also expedite the big business/small business reconciliation and positive engagements.

RETURN OF SPECTRUM

ABT does not support the inferred notion returning spectrum. Whilst this Clause may have been used very effectively as a stick by the ICT White Paper (before the Bill), it equally has an adverse flipside of really unsettling the investors.

CONCLUSION

ABT is willing to come and make a presentation in Parliament in support of this our written submission.

Regards

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