



A CHAMBER RESPONSE AND SUBMISSION INCORPORATING COMMENTARY

ICASA's Information Memorandum
(Notice 597 of 2019)



FOR ATTENTION

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1. Background

- 1.1. On 1 November 2019, in line with the Electronic Communications Act (36/2005), the Independent Communications Authority of South Africa (ICASA) published a Notice in **Gazette No 42820**.
- 1.2. **Notice 597 of 2019** was for the Licensing Process for International Mobile Telecommunications (“IMT”) Spectrum, inviting comments in respect of the Provisioning of Mobile Broadband Wireless Open Access Services for Urban and Rural Areas using the complimentary Bands which are the IMT700, IMT800, IMT2300, IMT2600 and IMT3500.
- 1.1. Information and Communications Technologies (ICT) is used to denote all types of technologies that provide access to information through telecommunications. This basically includes all technologies that are used to carry and conduct telecommunications, the Internet, broadcast media, audio-visual processing and transmission systems, intelligent building management systems, network-based control and monitoring functions. Broader than IT, ICT has more recently been used to describe the convergence of several technologies and the use of common transmission lines carrying diverse data and communication types and formats (www.techopedia.com).
- 1.2. According to the ICT Policy White Paper: *“The way people communicate and access information and services and interact with each other and government has changed dramatically over the past twenty years. People now need an electronic address as well as a physical address, access to broadband and not only to a telephone line and the skills, means and knowledge to be able to use communications technology to improve the quality of their lives”* p6.
- 1.3. The National Development Plan (NDP) states that: *“By 2030, ICT will underpin the development of a dynamic and connected information society and a vibrant economy that is more inclusive and prosperous.”* The ICT sector has been prioritized by the South African government and is perceived as the backbone of economic growth, with potential to enhance the country’s competitiveness, modernization and being part of the global village. The sector also needs to stimulate the development of futuristic cutting-edge industries and enable the country to effectively take advantage of the Fourth Industrial Revolution (4RI) and occupy its place as a global citizen.

2. Chamber Position and, subsequently, Proposals on HD Spectrum

- 2.1. According to Gilward, Mothobi, Rademan, (2018) p. 25), *“the ICT digital environment can be described as an ecosystem of high capacity, high speed and high quality electronic networks, services, applications and content that enhances the variety, uses, value of information and communication for different types of users through complementary private and public access. All these different elements are integrally related; and a blockage in one part of the ecosystem impacts on the functionality of other parts of the ecosystem. The overall health of the system is determined by the policies, strategies and processes that enable the functionality of the overall system and the organic evolution and innovation of solutions to weaknesses or blockages in the system”*. This definition places users / consumers at the centre of the system. Their ability to access networks, services, applications, content and their affordability, determines the degree of consumers inclusion or exclusion in the ecosystem.
- 2.2. Affordable Broadband is a basic need to participate in the 4th Industrial Revolution and its linked to improved GDP growth based on the Broadband access.
- 2.3. In Australia, the Government established an Open Access Network with a target of 98% of the population and the Business, the network has combination of Fibre, Mobile and Satellite. In Mexico an open access network was established, to roll out to more than 905 of the population, in less than a decade. The viability of the WOAN will require that ICASA prescribe the regulations that will allow easy and rapid deployment of infrastructure. The regulations should incorporate that wherever a road, pipes, waterways and other related infrastructure is built, it must always be provisioned for broadband infrastructure this will cut cost and speedy deployment of infrastructure. Sharing of current infrastructure including the masts, antennas and high sites.
- 2.4. The Spectrum available must all be allocated to the WOAN to enable deployment that will be easily scalable to enable new and future technologies such as 5G and also all operators must use the WOAN network to ensure viability. Additional requirement that in all future spectrum made available for deployment of future platforms and technologies, the WOAN should be prioritised and have a guaranteed allocation set aside.
- 2.5. The spectrum allocated to the WOAN should not be subjected to auction process and exempted from administrative fees.
- 2.6. Will like to urge that there must be consolidation of all of the networks built by municipalities, Provinces and SOE’s that can form a backbone of the WOAN network.
- 2.7. ICASA must prescribe how the WOAN relationship with other operators, to avoid favourable terms for other operators. The WOAN must only provide a wholesale network and when it also provides services directly to consumers, there must be structural separation of the company and the terms and conditions will be the same with other operators as prescribed.

- 2.8. Economic analysis of South African mobile broadband market (refer to recent Competition Authority findings on data pricing).
- 2.9. ICASA must prescribe regulations for the sector empowerment of Black individuals and business, the current system has been often abused and frustrates government's goals. The entity licensed as a WOAN it should be black owned and operated.
- 2.10. Current wholesale offerings contribute to the high prices being charged to consumers it will be an alternative wholesaler for hundreds of ECNS and ECS licensees.
- 2.11. We welcome the proposal that the WOAN should be exempted to licence fees and contribution to the USF. We would further request that the exemption should for 25 years.
- 2.12. Usage of the USF for deployment of the network in rural areas, townships and areas that are difficult to reach like mountainous areas.
- 2.13. The WOAN should be required to connect all the unconnected schools, clinics, police stations, government buildings, public areas like parks and any other building or infrastructure where critical services are acquired by the citizens

3. All the Spectrum be assigned to the WOAN

In the Minister's final Policy on High Demand spectrum and Policy Direction (as gazetted on 24 July 2019) to the Authority for licensing the WOAN, the Minister already implored the Authority to "consider assignment of IMT spectrum to the WOAN and the remaining IMT spectrum to 'other Licensees'". We want the Authority to stick to this order and keep the sequence for the specified IMT spectrum assignments.

- 3.1. Legal Framework for assigning all the available spectrum to the WOAN. Let us endeavour, as much as possible, referencing the applicable sections of the Constitution, the ECA, South Africa's Procurement Laws, the B-BBEE Regulations, ICASA Act (and mandate), as well as the Ministerial Policies and Policy Direction starting with the December 2011 Policy Direction on HD Spectrum. We want to create a strong legal basis supported by credible reference cases in our Law or other relevant foreign statutes.
- 3.2. The cabinet approval of 2016 had included the awarding of 3.5 to the WOAN. We notice the exclusion of this band from the IM and object to this omission by ICASA in the strongest possible terms.

4. Obligations and Regulations

- 4.1. The IM lists six specific obligations. The SMME Chamber enlists -here below- our own proposals over and above the six obligations. These obligations are necessary for the creation of the WOAN's long-term commercial viability and sustainability. We have ample reasons to believe that the WOAN is already rendered a stillborn by the incumbent operators who see it as only a threat to their continued monopoly.
- 4.2. In addition to the six, the Chamber proposes the following mandatory obligations:
- 4.2.1. We oppose the suggestion that each company bidding for the HD spectrum across all the **five Options** be obligated to enable **three MVNOs**. Such a move shall lead to a plethora of new MVNOs that will cannibalize the WOAN, thus leading to its demise;
 - 4.2.2. If the authority's position is sustained there prevails a real risk of the MNOs manipulating "their MVNOs" to undermine the WOAN;
 - 4.2.3. We propose that one MVNO, instead of three, be set up and any one successful spectrum bidder shall partner with this (pre)existing, purpose-built super-consortium MVNO. This move is designed to "focus" the black economic empowerment rather than dilute it;
 - 4.2.4. Any bidder interested in participating in the Spectrum auction must have submitted, 30 days ahead of the actual auction date, a signed, verifiable "Partnership Agreement" to the Authority. The object of this process being to prove a new, genuine black ownership of the contracted MVNO;
 - 4.2.5. Any interested auction bidders must submit their services rollout plan/s to the Authority 30 days ahead of auction day for evaluation or authentication. Based on its assessment, the Authority may or may not reject the submitted plan;
 - 4.2.6. Licensed operators must acquire 100% of "their individual capacity requirements" from the WOAN in underserved areas;
 - 4.2.7. Licensed operators must acquire 60% of "their individual capacity requirements" from the WOAN for specific urban/metropolitan areas OR 40% of their collective capacity;
 - 4.2.8. As per **Par 6.5.2** of the IM, the Chamber would like to make the following proposals:
 - 4.2.8.1. The WOAN Company must involve local communities in the operations of its business, as much as its practically possible, including site construction and network maintenance. Such involvement must begin with requisite skills training and development;

- 4.2.9. As part of social obligations in respect of social obligations, we propose that the WOAN must be demonstrably co-owned by local communities;
- 4.2.10. The Chamber proposes that ICASA must procure professional advice and assistance to help the Authority not depend on the (historically) ineffective B-BBEE Act and its accompanying regulations. The Authority must use other enabling statutes including the Constitution to effect transformation as anticipated in the Policy Direction;
- 4.2.10.1. Par 6.6.2 proposes that a Licensee must within 36 months of being issued with a radio frequency spectrum license reach a level-3 contributor (B-BBEE) status. We oppose this proposition as having failed many times before and futile to assist ICASA achieve the intended objectives of B-BBEE.
- 4.2.10.2. The Chamber proposes therefore that the stated 36-month period serves to condone the known poor regard for transformation and its enabling laws by the operators. This (36-month) stipulation/proposal must be removed totally and be replaced by each operator's own BEE track record as measured over a period of last 10 years. The Authority must not be condoning the overly extended disregard of economic transformation policies and economic inclusion laws/regulations by its Licensees;
- 4.2.10.3. For licensed operators older than 10 years, a Level-1 contributor status must be a prerequisite to HD spectrum auction;
- 4.2.10.3.1. It must be noted that Licensees are long way down subjugating, obfuscating, faking and or frustrating the ideals of economic empowerment;
- 4.2.10.3.2. As an example, MTN, shall by 2020, attain Level 1 B-BBEE contributor status, two Levels better than what the IM prescribes.
- 4.2.10.4. Par 6.3.1 must be deleted. The MVNOs, as proposed by the IM, will only serve to render the WOAN commercially sterile;
- In contradiction to the IM's **Par 6.3.2**, the Chamber submits that the stipulated 51% ownership threshold has failed to transform the ICT's economy in favour of black people. The Chamber, therefore, proposes that any ownership -be it that of the MVNO/s, MNOs, the WOAN or any other entity standing to benefit from the Policy Direction processes- must be owned 90% by the historically disadvantaged individuals (HDIs). Background on why an economically viable WOAN is required

5. The Award Process of the Spectrum to the Industry

- 5.1. The ICT SMME Chamber agrees with the award process of the Spectrum to the Industry, as proposed by the IM;

5.2. In addition to Par 7.5.2.1 and Par 7.5.2.2 we would like to propose the following:

5.2.1. Applicants who are older than 10 years in business must submit their annual BEE Reports for the last 10 Years, as part of their evaluation for qualification;

5.3. In response to Par7.5.2.3 the Chamber proposes that the minimum equity threshold held by HDG be 90% for the operators older than 10 Years. Alternatively, they must have a minimum B-BBEE status level 1 contributor.

6. SMME Development a National Priority

6.1. The IM correctly outline all the reasons for the need for it to establish a WOAN and subsequently assign it the requisite spectrum with a view to empower new players, SMMEs and HDI groups. For similar reasons the ICT SMME Chamber is advocating that the SMMEs ought not be set for a failure by the authority creaming off all the good bands and or availing too small blocks to the SMMEs that are hard to commercialize in any manner.

6.2. Under its Objectives, the **ICT SMME Development Strategy (November 2017)** states that the it will support start-up ICT Small, Medium and Micro enterprises (SMMEs), strengthen existing enterprises and extend support programmes to potentially viable SMMEs. Further, the objectives of the strategy are to:

6.2.1. Facilitate the accelerated growth and entry of SMMEs (particularly youth and women entrepreneurs) in the ICT sector;

6.2.2. Increase uptake and usage of ICTs by the South African nation as a whole, and especially by SMMEs across all sectors of the economy;

6.2.3. Establish a coordinated and integrated planning mechanism for the development of ICT SMMEs within the broader national framework of SMME development across all economic and social sectors, with the principal aim of increasing uptake and usage of ICTs.

6.3. The Chamber submits that, as part of carrying out its Constitutional mandate, and inline with the spirit of the Polity direction, the Authority must consider the Objectives of the ICT SMME Development Strategy, as cited herein above.

7. Questions of Clarity on the IM, as published:

7.1. The ICT SMME Chamber has the following questions on the IM:

7.1.1. We would like to have more clarity from ICASA on the process for licensing the WOAN, from the proposed ITA to the award of the license; up to the allocation of Spectrum to the WOAN. We would appeal that ICASA publishes the draft ITA for public comment before commencement with the licensing process.

7.1.2. We agree with the IM's position that the spectrum being allocated to the WOAN will not -and must not- be subjected to the Auction process. That being the intention, we would like clarity on who exactly does ICASA refer to in 5.3 "by Applicants". Does this include the WOAN too?

7.1.3. The proposed **five Options** disadvantage the WOAN's ability to be a wholesaler that will, at all times, be able to deliver quality services to its customers, since the spectrum will not be enough. Does ICASA accept that, inadvertently, its proposed five Options all bear "a sting in the tail" for the WOAN? If so, what measures does ICASA plan to put in place to avoid rendering the WOAN a stillborn?

7.2. The spectrum blocks should be wide and contiguous to allow efficient (spectrum) usage where systems can be tuned in at higher channel bandwidths. What will ICASA do, henceforth, in correcting this and other of its misdiagnosed measures?

8. General Comments on the IM

8.1. The ICT SMME Chamber submits that the delay in DTT migration has been one of the most crippling effects on the growth and development of the ICT industry, mostly the ICT SMMEs.

8.2. We submit that, amongst others, Cyber security has to be one the key considerations.

8.3. The ICT Chamber recommends that there must be a strategy to ensure that we generate the required skills for the emerging 4IR environment by training and upskilling our workers who are new in the job market and those retrenched as a result of the current bottom line pressures the incumbents are experiencing.

8.4. We submit that, to avoid the re-occurrence of Cell C's problems, ICASA must allocate the whole current set aside spectrum to WOAN.

- 8.5. We propose that a study for transmission backhaul be commissioned through CSIR. Frequencies to be considered but not limited to 7, 11, 13,15 GHz etc.
- 8.6. Section 4.19 under IMT Roadmap states that the Authority envisaged DTT migration by June 2015. Authority and all other government implementing agencies are culpable of this delay.
- 8.7. According to the authority they see a stalemate with regards the clearing of frequency band 703-790 and 790-862 MHz. This to us indicate that there will be more delays.
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9. Conclusion

South Africa has taken the first great towards 4IR by creating the Presidential 4IR Commission. We would caution however that it is the spectrum availability will unleash the full potential of the 4IR platforms and Applications, for which the infrastructure must be 5G ready. Delay of the spectrum ought to be avoided at all costs. We would like to humbly the Authority that South Africa has moved down in the ITU Connectivity Index

Empowerment in the telecoms sector and the broader ICT industry is long overdue, it cannot be delayed anymore. We urge ICASA to use this WOAN opportunity to bring SMMEs into the epicenter of the economy.

The ICT SMME shall welcome the opportunity to make an oral presentation to ICASA when such an opportunity arises.

We wish ICASA well in all its endeavours as we appreciate the enormity of the task at your hands.

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