



Wireless Access Providers' Association of South Africa
www.wapa.org.za

31 January 2020

Independent Communications Authority of South Africa
Attention: Mr Davis Kgosimolao Moshweunyane
E-mail: DMoshweunyane@icasa.org.za

Dear Sir,

WAPA SUBMISSION IN RESPECT OF THE NOTICE ON THE LICENSING PROCESS FOR INTERNATIONAL MOBILE TELECOMMUNICATIONS SPECTRUM

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Introduction

1. We refer to the Authority's Notice on the Licensing Process for International Mobile Telecommunications Spectrum¹ ("the Information Memorandum").
2. The Wireless Access Providers' Association of South Africa's ("WAPA") welcomes the Authority's efforts to assign IMT spectrum and wishes to make specific representations as set out below.

About WAPA

3. WAPA was formed in 2006 as a non-profit organisation representing the interests of Wireless Internet Service Providers ("WISPs") in both urban and rural locations in South Africa. WAPA

¹ Notice 597, GG 42820, published 1 November 2019.

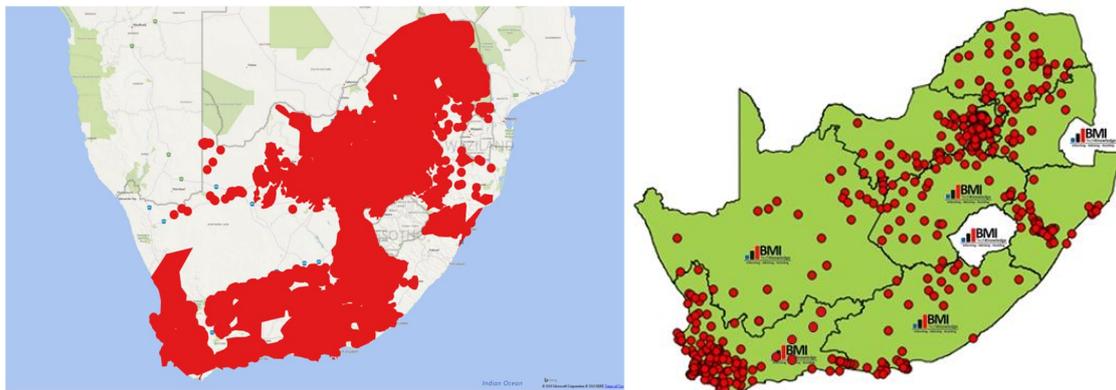
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promotes technical and business best practices for fixed wireless deployment and engages in policy work to promote efficient and equitable spectrum allocation and assignment, wholesale service provision and SMME enablement.

4. WAPA currently represents more than 220 organisations, including large and small players, as well as support industries such as equipment vendors and software providers.
5. WAPA's members predominantly operate in peri-urban and rural areas which often lack affordable and/or reliable access to broadband internet. As a class, WISPs serve to drive down the cost to communicate and increase broadband penetration.



(WAPA 2018 census – coverage map and member location)

6. WAPA members have developed experience in rolling out low cost connectivity fixed wireless broadband access (typically under R500 per month uncapped Internet access at 5 Mbps lines) to over half a million customers across South Africa.
7. WAPA members provide both:
 - 7.1. Access services: WISPs build and operate fixed wireless – and sometimes wired - connections directly to homes and businesses throughout South Africa.
 - 7.2. Backhaul services: WISPs build and operate the long-distance networks which link remote areas to the communications infrastructure of larger operators.
8. WAPA members have a proven track record of price reduction and service innovation in the provision of broadband services to areas which, as a consequence of perceived commercial non-viability, have been largely neglected by the large operators.
9. WAPA works to promote the model of community based SMMEs covering small areas and interconnecting with each other to achieve ubiquitous coverage. This fosters job creation and skills development and transfer, and results in deepening broadband penetration in South Africa through local networks developed to serve local environments.

WAPA's interest in the Information Memorandum

10. Whilst WAPA's members are unlikely to participate directly in the auction process contemplated by the Information Memorandum, their position within broader industry means they are not isolated from the outcomes of the licensing process in general and the establishment of the Wireless Open Access Network ("the WOAN") in particular.
11. There is - correctly - a focus on the value chain for the delivery of mobile services in South Africa which is evidenced in this process as well as the Authority's inquiry into competition in mobile broadband services and the Competition Commission's Data Services Market Inquiry. Sight should not be lost, however, of the broader industry sectors such as fixed networks and the fixed wireless networks which make up the majority of SMME operators in South Africa.

Spectrum packaging and auction design

12. Assignment of IMT700, IMT800, IMT2600 spectrum:

- 12.1. WAPA refers to the contents of the Policy on High Demand Spectrum and Policy Direction on the Licensing of a Wireless Open Access Network² (the Policy Directive") and the report of the Council for Scientific and Industrial Research³ ("CSIR") referenced therein.
- 12.2. Whilst the aforementioned bands have, in at least once instance, been packaged in a manner which materially conforms with the CSIR's first, second and third recommendations⁴, it is worth reiterating that the spectrum combinations proposed by the CSIR's report were stated as the minimum required for viability of the WOAN given initial assumptions and the terms of reference of the study.
- 12.3. It is accordingly unclear to WAPA why the Authority has proposed a diverse range of options where all save for the first amount to an effective reduction in the spectrum to be made available for use by the WOAN.
- 12.4. Given the importance of the WOAN as a pro-competitive intervention and it's potential to move South Africa closer to the goals espoused by SA Connect⁵ and the ICT White Paper⁶, WAPA submits that viability and sustainability of the WOAN should represent the primary objective of the current licensing process. It is further submitted that any deviation from the

² Notice 1013, GG 42597, published 26 July 2019.

³ Notice 1003, GG 41935, published 27 September 2018.

⁴ Page 30, Section 6.

⁵ South Africa Connect: Creating Opportunities, Ensuring Inclusion: South Africa's Broadband Policy. Notice 953, GG 37119, published 6 December 2013.

⁶ Notice 1212, GG 40325, published 3 October 2016.

CSIR's report should necessarily be in favour of the WOAN – such as the addition of an IMT700 assignment to Lot A.

12.5. In view of the above WAPA supports the use of an unaltered or otherwise expanded Option 1 in the upcoming invitation to apply (“ITA”) and auction process.

13. Assignment of IMT2300, IMT3500 spectrum:

13.1. WAPA recognises the financial and administrative appeal of including IMT2300 and IMT3500 allocations in the upcoming licensing process but notes the Minister's directive to the Authority to engage in an investigation of the spectrum requirements of 5G in bands lower than 6GHz⁷ which report is yet to be finalised.

13.2. WAPA is concerned that the inclusion of the aforementioned allocations may therefore be premature and better left for a separate assignment process (whether by auction or a more conventional licensing process).

13.3. Should the Authority elect to proceed with the assignment of these bands in the current licensing process, WAPA would request that the Authority's ITA be structured in a manner that favours licensing on a regional basis by SMME licensees. This approach would serve to both hasten deployment and utilisation of the spectrum whilst fostering investment within the SMME sector, promoting competition and consumer choice and reducing the cost to communicate.

14. Reserve price and spectrum caps

14.1. WAPA welcomes the Authority's willingness to set varying reserve prices by Lot as opposed to the “one size fits all” approach adopted in its 2016 invitation to apply⁸.

14.2. WAPA shares the Authority's assessment that there is currently a deficiency of bandwidth available to operators but would argue that a candid assessment of the circumstances leading to the current licensing process suggests that, rather than there being a factual scarcity of spectrum, there is instead a scarcity of assignment and utilisation arising from a failure of policy and implementation.

14.3. It is therefore not clear that there is a “scarcity” such as to justify the imposition of high reserve prices.

⁷ Paragraph 3.7 of the Policy Directive.

⁸ Notice 438, GG 40145, published 15 July 2016.

- 14.4. WAPA holds the view that the long-term economic benefit associated with the efficient assignment and use of spectrum, namely increased competition, transformation, investment and greater access to affordable communication by consumers, greatly outweighs the short-term economic benefit associated with an otherwise successful auction process employing a high reserve price.
- 14.5. As the notion of a reserve price is generally considered to be an important facet of auction design and unlikely to be discarded in its entirety, it is submitted that the Authority could retain control of the auction and its policy objectives by employing robust qualification criteria and the imposition of appropriate licence conditions (which may vary from licensee to licensee and Lot to Lot) whilst setting a modest reserve price.
- 14.6. A modest reserve price would bolster the prospects of success of any capital-intensive conditions which may be imposed upon successful bidders, further improving the long-term economic benefits of assignment. It would also lower the barrier to entry into the assignment process – an explicit policy objective of this process is for access to high-demand spectrum to be more inclusive.
- 14.7. On the contrary a high reserve price, or one comparable to that found in the 2016 ITA, may:
- 14.7.1. serve as an additional barrier to entry in what is already a highly concentrated market;
 - 14.7.2. discourage service investment by incumbent operators, who are likely to encounter capital constraints as a result of policy-driven licence conditions imposed through the current licensing process; and,
 - 14.7.3. increase the cost to communicate where incumbents pass on the cost to their subscribers.
- 14.8. Despite the tempting financial incentive for the Authority (and the fiscus) to set a high reserve on all lots and the rational desire to ensure that spectrum is licensed at fair value, WAPA would encourage the Authority to be mindful of the broader policy objectives which gave rise to the current licensing process and the benefits which an efficient and rapid licensing process may yield.
- 14.9. The Authority should also note that a high reserve price effectively sets a base for future assignment processes as it is open to a successful bidder to argue that participants in future processes should not be offered equivalent spectrum at a lower price.

- 14.10. Given the competitive inequalities which exist within the South African market and the challenges which are likely to be faced by the WOAN in the coming years, WAPA strongly encourages the Authority's adoption of spectrum caps in addition to extant pro-competitive measures such as the WOAN spectrum set-aside.

Obligations

15. The final report issued by the Competition Commission following its Data Services Market Inquiry underscored the inadequacy of service-based competition within the South African mobile data services market.
16. Despite considerable ambiguity as to the final structure and value proposition of the WOAN, WAPA remains optimistic that the measures contemplated by the Information Memorandum (i.e. spectrum set asides and a willingness to impose pro-competitive conditions on successful bidders) should bolster the WOAN's prospect of commercial success.
17. WAPA wishes to emphasise its view that the current licensing process represents a watershed moment, with repercussions that are likely to resonate within the market for a decade or more. The need to release spectrum to industry must therefore be balanced against the countervailing need to ensure that assignments are made in a manner which serves to rectify distortions and inequalities within the market.
18. Obligations imposed must further take into account the context of the broader industry. Vodacom and MTN already dominate the industry: care must be taken to ensure that obligations imposed through the spectrum licensing process do not result in unintended consequences such as stifling the SMME sector.
19. Uplink and throughput obligations for the Industry
 - 19.1. WAPA welcomes the imposition of service level obligations in general terms but would question whether a 100% coverage obligation is practically attainable.
20. Coverage obligation for the Industry
 - 20.1. WAPA notes the success of the German model and welcomes the Authority's intention to impose a similar condition on licensees assigned spectrum from lots B, C and D.
 - 20.2. The Authority is encouraged to weigh the benefit of the proposed obligations set out in paragraph 6.2 against the value which may be realised through further development of infrastructure which has already been established in less populated areas by SMMEs operating within the fixed wireless market.

- 20.3. Given the emphasis placed on infrastructure sharing and collaboration between licensees by the Policy Directive, WAPA submits that the obligations contemplated above should serve to augment rather than replace existing infrastructure and capacity in less populated areas.
- 20.4. The imposition of geographic coverage and service level obligations is welcomed although WAPA would ask that the Authority clarify the conflict which arises when reading paragraph 6.1.2 with paragraph 6.2.3 of the Information Memorandum. Specifically, a licensee is unable to only provide services to 97% of the population within an identified underserved area whilst simultaneously being expected to provide services to 100% of the population as a whole.
- 20.5. As regards the process of identifying underserved areas, the Authority would presumably need to undertake a renewed process to that contemplated by the Under-Served Areas Definition Regulations⁹. WAPA submits that any efforts in this regard should take broader notions of “meaningful connectivity”¹⁰ into account.

21. Open access obligations for the Industry

- 21.1. WAPA supports the imposition of the obligations outlined in paragraphs 6.3.1 to 6.3.3 of the Information Memorandum but would ask that the Authority clarify the precise role and nature of the contemplated Mobile Virtual Network Operators (“MVNOs”).
- 21.2. Extant MVNOs within the South African mobile data services market mostly amount to little more than branded resellers of electronic communications services sourced from incumbent operators. In order for the proposed obligations to have any meaningful impact on the market, MVNO operation at the active infrastructure level should be empowered through necessary amendments to both the Electronic Communications Act¹¹ (“the ECA”) and Radio Frequency Spectrum Regulations, 2015¹².
- 21.3. WAPA notes that amendments similar to those contemplated by the now withdrawn Electronic Communications Amendment Bill¹³ (“EC Amendment Bill”) would provide a framework for meaningful engagement by MVNOs (and existing SMME licensees) with and increased competition within the mobile data services market. Amendments such as those contemplated by the EC Amendment Bill would furthermore allow for the imposition of

⁹ Notice 734, GG 35675, published on 10 September 2012.

¹⁰ https://www.itu.int/dms_pub/itu-s/opb/pol/S-POL-BROADBAND.20-2019-PDF-E.pdf

¹¹ Act 36 of 2005.

¹² Notice 279, GG 38641, published 20 March 2015, as amended.

¹³ Bill 31 of 2018, published 31 August 2018.

broader wireless open access conditions on licensees assigned spectrum in Lots B, C, D and E by the current licensing process.

22. Wireless open access network obligations

22.1. WAPA is in firm support of the obligations set out in paragraph 6.4 of the Information Memorandum, particularly those pertaining to wholesale access to passive and active infrastructure and the provision of seamless national roaming.

22.2. WAPA encourages the Authority to take all reasonable measures to ensure that the process detailed in paragraph 6.4.9 unfolds smoothly and that the resources needed for the resolution of disputes and/or performance of investigations are in place.

23. Social obligations for the Industry

23.1. WAPA notes the Authority's ongoing engagement with the Competition Commission and would encourage the Authority to seize the opportunity and move to implement the various recommendations made within the Competition Commission's final report.

Conclusion

24. WAPA extends its appreciation to the Authority for its consideration of these comments and trusts that they will be of assistance.

25. WAPA would welcome the opportunity to engage further with the Authority and notes its interest in participating in any public hearings which may be conducted in respect of the current licensing process.

Regards,

TIM GENDERS

CHAIRPERSON: WAPA