

4 May 2020

## **INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)**

Block B, 350 Witch Hazel Avenue

Eco Point Office Park, Centurion.

Attention: Mr. Peter Mailula - [pmailula@icasa.org.za](mailto:pmailula@icasa.org.za)  
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### **RE: ICASA NOTICE 91 OF 2020: DRAFT REGULATIONS IN RESPECT OF THE LIMITATIONS OF CONTROL AND EQUITY OWNERSHIP BY HISTORICALLY DISADVANTAGED GROUPS (HDGS) AND THE APPLICATION OF ICT SECTOR CODE**

South African Black Internet Service Providers' Association (SABISPA) is a registered non-profit organisation representing the interests of black ISP's within the telecommunications sector. Our mandate is to advocate, educate and support our members but to also maintain fair internet related policies in South Africa. We aim to enforce economic inclusion in the ICT sector on behalf of our constituency.

We indeed support and commend the ICASA in developing these draft regulations considering the findings document and Position Paper on the inquiry into Equity Ownership by HDGS and application of the ICT Sector Code in the ICT Sector published on 15 February 2019 ("Position Paper").

#### **1. BACKGROUND**

The Constitution provides a vision of a united, prosperous, non-racial and non-sexist society; a country that belongs to all who live in it, united in its diversity. The Constitution also obliges the country to heal the divisions of the past, recognising that South Africa emerged from a system where the majority of its citizens were robbed of opportunity. We lost the land, how it began we will never know. The battle for the air or spectrum as we know it is no different to the blood that has been spilt for the land since the arrival of the first ship on African soil.

Under the previous apartheid system, a plethora of policies and legislation was promulgated with the sole objective of denying black people, including black women,

access to and control of South Africa's economic productive resources and skill based purely on race and gender considerations.<sup>1</sup> More than two decades after the demise of this apartheid system, and in spite of the promulgation of a broad range of policy and legislative instruments introduced by the democratic Government aimed at redressing the imbalances of the past, the majority of South Africans are still excluded from ownership and control of economically productive assets and possession of strategic skills to the detriment of economic development, employment creation and poverty-eradication.

Since the dawn of our democracy we served the air "*Spectrum*" on a silver platter and again on a gold platter 14 (fourteen) years ago giving birth to current data monopoly controlled by the 4 (four) Telco's today. We have made it impossible for smaller black owned companies to enter the space, hence the high data cost today. There is no guarantee that they will drop the data prices should spectrum be given to them.

In support of the National Development Plan, 2030 the objective is that the country can create 11 million jobs by 2030 by:

- Improving economic policy coordination and implementation;
- Building partnerships between the public sector, business and labour to facilitate, direct and promote investment in labour-intensive areas;
- **Raising competitiveness and export earnings through better infrastructure and public services, lowering the costs of doing business, improving skills and innovation, and targeting state support to specific sectors;**
- Strengthening the functioning of the labour market to improve skills acquisition, match job seekers and job openings, and reduce conflict.

Meeting the objectives of the plan requires leadership to drive implementation, and to convince South Africans of the need to make mutual sacrifices for longer-term benefits. It will also require a change in the structure of the economy and the pace at which it grows.<sup>2</sup>

Over the next several years the world economy is expected to grow at a modest pace. In these circumstances, South African businesses need to think carefully about what they produce, for which markets, using what capabilities. As a small open economy, South Africa can develop niche products. Capturing a small share of

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<sup>1</sup> BBBEE Sector Code 2016

<sup>2</sup> National Development Plan 2030:29.

global demand in areas where local firms can compete can have a big impact.<sup>3</sup>  
Regional economic

integration can boost economic growth in all countries in southern Africa. The region has grown rapidly over the past decade, with strong performances in minerals, agriculture, telecommunications and tourism. Achieving economic integration requires identifying practical opportunities where cooperation can offer mutual benefits; investment in infrastructure; strengthening regional trade-blocs; lowering tariffs; and addressing nontariff barriers, such as inefficient border posts.<sup>4</sup>

South Africa needs to implement its economic policy priorities effectively. Coordination failures, split accountability and overlapping mandates hinder the implementation of existing policies.

Compared with the best international standards, South Africa's ICT infrastructure is abysmal. Efficient information infrastructure that promotes economic growth and greater inclusion requires a stronger broadband and telecommunications network, and lower prices. The economic and employment benefits outweigh the costs.<sup>5</sup>

## 2. INPUTS/SUBMISSION

- 2.1.1 The 30% HDG Equity Requirement must be increased to 49% to demonstrate true transformation of the sector. A Class licensee must ensure that its ownership equity held by HDG is not less than 49% at any given time during the license period.
- 2.1.2 The 30% HDG Equity Requirement must also apply to Class ECNS and ECS licenses. We have acridly noted the strategic monopoly of the big telecom giants such as Vumatel who are dominating the market with multiple class licenses. If the authority ignores the importance of "the ownership" of these multiple class licenses will be failing to execute the full recommendations of the ICT Sector Code.
- 2.1.3 We wish the Authority to investigate other entities operating in the telecoms sector without licenses. The Electronic Communications Act ("the ECA") and BEE ICT Sector Code ("the Code") must apply to any entity operating and/or owning entities operating in the sector. We have noted a trend in the market where non-licensed entities are buying a group of WISPs to create a telecom

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<sup>3</sup> National Development Plan, 2030. 34.

<sup>4</sup> National Development Plan, 2030. 34.

<sup>5</sup> National Development Plan, 2030: 36.

conglomerate. We firmly request the authority to exercise due care and fairness to ensure no entities are allowed to by-pass this intended process.

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Yours in economic transformation of the South African telecommunications sector

**Regards**



**Zuko Leonard Rabotapi**  
National Chairperson of SABISPA