



telecommunications
& postal services

Department:
Telecommunications and Postal Services
REPUBLIC OF SOUTH AFRICA

ELECTRONIC COMMUNICATIONS AMENDMENT BILL



STAKEHOLDER CONSULTATION WORKSHOP PRESENTATION

Lombardy Boutique Hotel
07 March 2018

Background

The Draft Electronic Communications Amendment Bill 2017 was published for public comment on 17 November 2017;

The SMMEs as organised through the ICT SMME Chamber supported the provisions of the ICT Policy White Paper;

We welcomed and supported provisions on spectrum, rapid deployment of infrastructure and open access;

In our written submission we have continued to embrace and support these provisions as drafted into the draft Bill as they represent the last legal hope for the SMMEs to ever see industry transformation in our lifetime;

Our presentation today proceeds on the same track of embracing the White Paper / ECA Amendment Bill whilst providing detail and meaning to our written submission.

Historical Context

Vodacom and MTN received their license in October 1993

- They were given the spectrum after long negotiations between ANC and Nationalist Party;
- They were given the license by The Apartheid Minister Welgemoed and his Post Master General, Ters Oosthuizen;
- The National Telecommunications Forum and CDITP were opposed to Nationalist Party;
- Giving spectrum license just few months before April General Elections in 1994

The ICT SMME Chamber believes that, in this context the incumbents have done very well for themselves and the country. We further believe and hereby motivate- that now is the time for them to return the favour and make room for SMME emerging operators.

Historical Context

Vodacom and MTN received their license in October 1993

- These companies were given 2G, later 3G and parts of 4G spectrum;
- That set the precedence that we are still living with today.
- Cell C and iBurst/WBS were given their licenses by the ANC government;
- Their license conditions state clearly that there cannot be trading of spectrum.

What is happening between Vodacom and Rain is no different to Regulator being captured. You cannot Trade Spectrum.

Investment Context

The WOAN model is attractive to investors.

- It is a model they are familiar with in other sectors such as Toll Roads Airports and the railways, etc. Why would they feel otherwise with the spectrum WOAN?
- South Africa must remember that it is the 21st century. The African century. The Millennials (under 25 years) expect us to build a future for them;
- If we exclude black people in the control of spectrum we will be advancing economic digital apartheid;

Spectrum will be software driven tomorrow. Let us start today to assist in the democratisation of the digital economy.

Gone are the days that technology is a preserve of white people; and that black people do not understand investments; not after 23 years.

Clause 3.37 Provides for the Amendment of the ICASA Act in the Schedule

The purpose of this amendment is to oblige the Authority to making regulations that enforce the BBBEE ICT Sector Code on existing and new licensees;

The Chamber supports exemptions or other authorizations including the spectrum assignment to promote transformation of ICTs and broad-based black economic empowerment within 12 months of the promulgation of the ECA Act;

The encouragement of black economic empowerment includes the avoidance of retrenchment processes as this may lead to the suffering of the families of the retrenched if not avoided. Additionally, it leaves a burden to the country's social services as that means the government must increase its budget to cover for the unemployed. Absorption of Learners that are by merit ready to join the sector must be encouraged.

The Chamber moves that the Bill impose financial penalties annually for the failure of licensees to comply with the ICT sector codes. The Bill should make it an obligation for the ICT operators to implement the BEE legislation. Licenses are a national asset and should be seen to be benefiting the citizens of the country.

Compare Apples with Apples (Retrenchments)

MTN	12	2016/04/18
Telkom	255	2016/03/16
CELL C	47	2015/05/08
Telkom	7800	2015/05/04

Employees affected: 8 114

This excludes the stats from other ICT partners that may not appear on the public platform. The number is therefore more than 10 000 jobs lost in the last 3 years

Protection of SMMEs from the MNO's, there is a lot of abuse by the MNO in terms of how they deal with the SMMEs. They fail to pay for services rendered and they destroy and relegate the SMMEs to the side-lines.

Creation of an Ombudsman that will assist in fast tracking and resolution of disputes should be established as ICASA cannot regulate and partake on the disputes arising from the players.

The Chamber submits that transformation be an inclusive effort and should not be left at the hands of either the government or big business; neither of which has proven sufficiently radical.



Spectrum Management

The ICT SMME Chamber welcomes and supports the following drafting:

- Compelling spectrum licensees to submit their annual report on spectrum consumption to the Authority and Minister;
- The development of a monitoring and enforcement system that allows for adjudication of spectrum disputes;
- The Development of an automated licensing system for non-high-demand spectrum.

Spectrum Management ..Continued

In line with the policy set out in the National ICT Policy White Paper, the ICT SMME Chamber welcomes the proposed draft amendment in so far as its provisions on the management of radio frequency spectrum.

- The draft Bill transfers some current ICASA functions to the DTPS and Minister;
- We **endorse** the proposal of the new Section 29A where the Minister becomes responsible for the international dimensions of spectrum management.
- Developing and approving the National Radio Frequency Spectrum Plan (NRFP) including the allocation of spectrum for the exclusive use by national security services (currently ICASA develops the NRFP and submits it to the Minister for approval)
- Establishing a National Radio Frequency Spectrum Planning Committee and National Radio Frequency Spectrum Division as contemplated in section 34A

The above-stated functions include the creation of the Spectrum management bodies to be located at DTPS to which SMME's we want to be represented.

The WOAN

Licensed 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;

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.

Be cautious of setting up the WOAN for failure

Long timelines can render the WOAN a stillborn

Nefarious moves underway to sabotage the WOAN

Terms & Conditions for the WOAN

- ICASA must recommend **universal service and access obligations** to the WOAN;
- ICASA's recommendations be concluded within 12 months of the commencement of the new Amendment Act
- Waive or reduce spectrum licence fees for the WOAN;
- Prioritized access to rights of way for the WOAN
- WOAN Funding from the Digital Development Fund (DDF) for rolling out network in rural areas;
- The Bill must pronounce on the specifics of incentives that are applicable to the WOAN;

Why the Chamber Supports WOAN

- The WOAN represents the last real opportunity for black SMMEs to flourish in the ICT Sector.
- It has adopted a cost-based pricing model.
- It will be a wholesale open access provider to networks and facilities.
- It will become a provider for active infrastructure sharing that includes but is not limited to national roaming.
- It will provide radio access network sharing and be an enabler for mobile virtual network operators on voice and data based 4G+ technologies.
- It will allow access to its networks and facilities as or when determined by the Authority.
- It complies with network and population coverage targets which are dictated by the Authority.

SMMEs Pin Their Hopes on the ECA Bill

The ICT SMME Chamber generally supports the ECA for the following reasons:

1. The ECA Amendment Bill comes very close to reviving the hope of transforming the ICT industry.
2. The telecommunications market has increasingly been dominated by a few; the rest, particularly the SMMEs, are relegated to scavenging in the lower rungs of the value-chain. The Bill gives us hope that this will change.
3. Operators are very good at writing Transformation policies. They are as equally atrocious at implementing their good-sounding policies; as they accuse government to be.
4. Make South Africa's an inclusive economy through transforming the sector immediately.
5. Foster SMME participation and market access.

The Chamber shall leverage the Amended Act to force the hand of government, the operators and the ICT industry at large at keeping their “transformation word” to the Youth, the small businessman and businesswoman of this country.

Conclusion

- ICT SMMEs have the only the Laws of the land to depend on in translating our political freedom to economic freedom;
- We want to be meaningful players rather than subjects of “Corporate Tick Box” exercises;
- We want to re-store black dignity, pride and self-belief by doing it for ourselves
- We shall engage everyone from the private sector to the public sector;
- What ICT SMMEs want of the Bill:
 - Access to markets; removal of all barriers to entry;
 - Access to opportunities;
 - Ownership and controls;
 - Funding for projects and their innovation;
 - Skills Development that are linked to actual business opportunities