Our Ref No: BM/19000

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Per Email: DiscussionPaper@dtps.gov.za

Dear Ms Tsholofelo Mooketsi

COMMENTS: NATIONAL INTEGRATED ICT POLICY DISCUSSION PAPER


General Comments

2. The Policy Paper demonstrates a telecommunications bias and does not adequately reflect the interests of, and impact on, role players in the Information and Communications Technology ("ICT") space that use telecommunications for operational purposes. Such role players either do not derive any direct revenue from their telecommunications activities, or only derive limited revenue where, for example, capacity or infrastructure is shared. In this regard special attention should be given in the Policy Paper to State Owned Companies ("SOC's") that uses telecommunications for operational purposes.

3. In view of the current demands of the developmental state, it is evident that the Policy Paper cannot remain stagnant and that it must evolve with time as technology evolves. The status quo in the telecommunications environment calls for more innovative ways to address higher spectrum demand versus the limited supply. It also calls for inclusion of different industries in order to maximize on what the country has to offer in terms of infrastructure and reach. For example, mobile operators should be obliged to share their infrastructure to the same extent that Telkom is expected to share its infrastructure if a potential crisis of hundreds of operators lying dormant is to be averted.

4. If an inclusive approach is not followed the issue of universal service and access will be a challenge for many decades to come. Infrastructure sharing and spectrum sharing are key principles in ensuring that Government achieves its objectives of effective competition and universal service and access.

Specific comments

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Ad item 3.4.2 - Market Reviews: Option 2: Compulsory Review and Publication of Data on a Regular Basis
5. Based on the existing capacity of Independent Communication of South Africa ("ICASA") to do reviews of the market within specified timelines, the compulsory nature of this Option may render the Option ineffective. This Option can only be considered if the capacity of ICASA is substantially increased.

Ad item 3.4.3 - Understanding the Market Gap in support of Universal Service Position:
6. Although ICASA has the mandate and the presence in all the regions to do some investigations to determine the extent to which access to affordable universal services has been achieved, ICASA should be capacitated to properly fulfill this role. However, ICASA cannot do this without the involvement of the Universal Service and Access Agency of South Africa ("USAASA"). USAASA should do the ground work to confirm the availability of ICT infrastructure in those defined unserved areas from a universal access point of view. Both investigation results should then be combined to inform the gap analysis and define a method to address the market gap that may exist.

Ad item 3.4.4.1 - Ex-Ante and ex-Post Regulation:
7. The South African ICT environment is a true reflection of other broader challenges which are being experienced in the country. For example, the status of communications infrastructure in certain parts of the country is fully developed whilst the infrastructure in others parts is almost non-existent. The only way that the country could minimize this gap between the privileged and under-privileged is by continuing to apply ex-ante regulations (i.e. the existing regulatory regime) until minimum broadband requirements are met. Consequently, Option 3 cannot be supported since the country is in our view not yet ready for self-regulation.

Ad item 3.4.4.2 - Consolidation of Market Activities: Mergers and Acquisitions:
8. It has been noted that the ICT industry has recently seen a number of proposed mergers and acquisition applications. Since it is usually the bigger operators that acquire up and coming smaller competitors after forcing them out of the market, stricter regulatory processes must be put in place (firstly to assist and protect the smaller operators, and secondly to make it more difficult for the bigger players to acquire smaller players).

9. The regulatory role in so far as mergers and acquisitions are concerned focuses mainly on ownership and control, whilst the regulatory role in respect of spectrum licensing focuses on high demand spectrum.

10. Since the fulfilling of these roles impacts competition, the respective regulatory roles should be clearly defined ex-ante for transparency and consistency. Option three cannot be supported since the market is already fully liberalised. Consequently, it is not necessary to develop a policy that creates an open market unless the objective is to motivate consolidation and cooperation from the smaller players.
Ad item 3.4.4.3 - Facilities-based and Service-based Competition Regulations:

11. The spectrum of real value, i.e. the high demand spectrum that is available, can never accommodate more than 400 potential operators unless some form of sharing is imposed on existing operators and sharing models of spectrum licensing are adopted. Therefore, the question of facilities-based versus service-based competition should be qualified in view of the fact that South Africa has very well developed urban areas, whilst infrastructure in other areas is mostly non-existent. Although competition on infrastructure is necessary, it will not make business sense in very remote rural areas. On the other hand, the reality is that there is not enough available spectrum to match the number of operators.

12. It is therefore fitting for ICASA to introduce models where infrastructure sharing is mandatory and operators are forced to compete on services. Transnet therefore supports Option 4, which is a hybrid approach combining both facilities based and service based models.

Ad item 3.4.4.4 - Interconnection:

13. The current regulatory requirements regarding interconnection are sufficient. However, it may be questioned whether ICASA is making use of its powers to monitor and guide the industry. Regulating interconnection cannot be done without defining the markets and imposing these definitions on those with significant market power. If the markets are not defined and the definitions not imposed on role players with significant market power, smaller players will be forced out of the market defeating the purpose of ensuring competitiveness.

Ad item 3.4.4.5 - The role of State Owned Companies:

14. Government and ICASA tend to overlook and ignore the magnitude of investment made by SOC's in so far as ICT infrastructure is concerned. This investment is in most instances done through public funding and therefore the general public should be prioritised in as far as connectivity is concerned, especially in areas that are not covered by the private sector.

15. Consequently, Option 3 is not supported, i.e. combining all SOC's into one entity as the current SOC's are focused on different parts of the sector. However, Option 4 is supported. The reason for this is that if the SOC's could combine efforts and share infrastructure in areas where it is feasible, it minimizes the amounts required to be invested in ICT infrastructure thereby making it practical to expand to unserved areas. The SA Connect broadband policy suggests wholesale open access as a licensing model.

16. Depending on the objective, obliging the SOC's to combine efforts might be more practical, especially dealing with broadband in unserved areas where no infrastructure exists. SOC's should not focus on competing with private companies but should rather be encouraged and assisted to invest in areas where the private sector will not. SOC's could also be used to ensure that there are no gaps and that the general public is connected throughout the country.
Ad item 3.4.5 - Broadband and Internet Infrastructure:
17. The Policy Paper addresses broadband from a pure telecommunications viewpoint whilst ignoring other industries outside the ICT industry that have invested heavily in telecommunications infrastructure for their internal use. Telecommunications technologies are evolving and are all migrating to broadband. This extends to technologies in other industries. Consequently, the Policy Paper should take this into account within the context of giving due consideration to the role that could be played by utilities such as municipalities, Eskom and Transnet in rural areas in making parts of their infrastructure available for rural broadband. In this regard it should be noted that Transnet submitted to ICASA on its IMT roadmap that Transnet will be migrating from the analogue system to a broadband digital technology. Transnet might be able to make some of its bandwidth available for broadband in areas where Transnet has a presence and where spare capacity exists.

Ad item 3.5.2 - Open Access System:
18. Option 2 cannot be supported, since it would create uncertainty in the industry making it difficult to attract investment when ICASA moots changes. "Open access" is a broad and complex concept interpreted and implemented differently across the board. It is unclear what is being addressed by proposing "open access". Is it limited bandwidth versus the number of operators seeking access to spectrum, or minimizing network duplication and exorbitant investment? In a policy and regulation making process answers to these questions must be addressed so as it is important to understand how "open access" will be structured. Therefore Option 3 makes more sense because operators understand the risks involved.

Ad item 3.5.3 - Infrastructure Sharing:
19. Transnet supports open access and facility leasing which forms part of Local Loop Unbundling ("LLU") but this should be qualified and articulated in terms of which loop is to be unbundled in order to ensure that the copper LLU debate does not negatively impact the country. A number of operators have made strides in rolling out fibre and extensive wireless networks. These factors should also be considered in LLU discussions.

20. It is particularly important to engage incumbent mobile operators in terms of active network sharing and consider mandating roaming for Mobile Virtual Network Operators ("MVNO's"). The MVNO market is very limited and if policy and regulation could address roaming and make it mandatory, the country might see competition improving from the services' side.

21. Sharing of passive infrastructure like masts is already a common practice amongst operators. This, however, does not necessarily address issues of competition, universal service and access, which means that policy and regulation proposals should consider extending the sharing of infrastructure to include active components as indicated above. Transnet therefore generally supports the concept of infrastructure sharing but that it should be structured properly to address the objectives of Government and minimize infrastructure duplication and encourage infrastructure rollout coordination especially in non-profitable areas.
Ad item 3.6.3 - Meeting the Access Gap:
22. Transnet submitted during the IMT roadmap process that SOC's, including those not involved in telecommunications, have existing infrastructure covering the whole country which could be used to address the objectives of universal service and access for all. However, such utilisation depends on how ICASA structures licensing. Consequently, it is proposed that the Policy Paper should consider making it mandatory for all SOC's that are directly involved in ICT to make their networks available and that SOC's such as Transnet and Eskom (only use telecommunications for operational requirements), make spare capacity available where the network is not used to full capacity.

Ad item 3.6.4 - Universal Service Obligations (USOs):
23. In as far as connectivity is concerned, the kind of obligations considered for SOC's that use telecommunications for operational requirements should be limited to making their infrastructure available in underserved and unserved areas where they have reach and have spare bandwidth to share. It also follows that the obligations placed on commercial operators need to be reviewed and imposed in ways that will eventually make an impact and a difference to the country's connectivity. It does not help issuing a license to an operator and impose an obligation to connect twenty five government schools without specifying which schools in which areas and by when. This will ensure that commercial operators are forced to invest in those areas they chose not to serve.

Ad item 3.7.3 - Principles underlying spectrum management:
24. The radio frequency spectrum policy of 2010 sets out a number of objectives covering a variety of industries and services. However, the policy does not propose any spectrum set-asides for industries other than scientific research, research and development.

25. As already mentioned above, SOC's have historical importance for the country's economic growth and job creation. The infrastructure and equipment currently used is nearing the end of its life cycle and is due for upgrade whilst these SOC's cannot rely on government subsidy and are required to find ways of being profitable. The issue of spectrum is therefore critical for these SOC's in improving their networks. Unfortunately SOC's cannot rely on third party infrastructure for their telecommunications due to the fact that availability cannot be guaranteed. Consequently, legislation must take these factors into consideration to ensure that SOC's do not have to compete for spectrum with commercial operators. One objective that must therefore be added to a spectrum policy is the principle of "spectrum set-asides" for SOC's in industries other than telecommunications. This will support some of the goals of the National Development Plan and the SA Connect broadband policy.

Ad item 3.7.4.2 - Spectrum Assignment and Licensing:
26. The current spectrum licensing regime has made some strides in liberalising the market, and it can be said that the level of investment in telecommunications infrastructure by both the private sector and SOC's is better positioning the country to become digital. It follows, therefore, that the inclusion of state-owned infrastructure in the equation should fast tract Government's objectives in this regard. However, the unplanned full liberalization and unintended consequences of the Altech judgment makes it impossible for the country to retain the status quo.
The differences between urban and rural connectivity also make the market based approach unfavourable for a developmental state. South Africa as a country still needs ex-ante regulation to address issues of inequality and the digital broadband divide. A hybrid model tailor made to accommodate Government objectives of universal service and access will assist Government in achieving its goals.

**Ad item 3.7.5.2 - Spectrum pricing for government services:**

27. Transnet believes that radio frequency spectrum is a scarce national resource and that all users should pay a fee for its use. However, it is clearly inequitable to charge the same rate for spectrum that is used for commercial and revenue generating purposes, than for spectrum that is used to support operations. Consequently, it is proposed that a differentiated approach be adopted to spectrum pricing that would distinguish between commercial and profit making use, and operational use.

**Ad item 3.7.6.2 - Spectrum Sharing:**

28. Sharing of spectrum is practiced in South Africa especially in auxiliary services that use spectrum for communication supporting their core businesses. This has just never been legalised through policy and/or regulation. With demand far exceeding supply, spectrum sharing should be legislated and ICASA must prescribe guidelines on the sharing model and the terms and conditions. This becomes even more relevant for high demand spectrum that will never be enough for the number of available operators.

29. We thank you for the opportunity to comment on the National Integrated ICT Policy Discussion Paper.

Kind regards

[Signature]

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