

CELLC



Cell C (Pty) Ltd  
150 Rivonia Road, Sandown 2198  
Private Bag X36, Benmore 2010  
Johannesburg, South Africa  
General Tel: +27 (0)11 324 4000  
Fax: +27 (0)11 324 4001  
Website: [www.cellc.co.za](http://www.cellc.co.za)  
Reg. no: 1990/007722/07

14 June 2013

**Attention: Ms Adelaide Masemola**  
Director: Economic Analysis and Scenario Construction  
ICT Policy and Strategy Branch  
Department of Communications  
Private Bag X860  
Pretoria  
0001

By email: [ictreviewpanel@doc.gov.za](mailto:ictreviewpanel@doc.gov.za)

Dear Madam

**CELL C'S RESPONSE TO THE DRAFT ICT POLICY REVIEW FRAMING PAPER, 2013**

Cell C (Pty) Ltd (Cell C) is pleased to respond to the public consultation on the draft ICT Policy Review Framing Paper, 2013. We have set out our comments, queries and observations on each of the sections under Chapter 3 of the Framing Paper.

In summary, our comments are concerned with the following key points:

- (a) Cell C is concerned that the Framing Paper for a Policy review does not contain, emulate or acknowledge the basic characteristics of a policy document. We understand that the Framing Paper is intended to form the basis of the Policy Review process and ultimately, a Green and White Paper. These documents are typically based on and emanate from an agreement on what policy should be followed. That policy sets the stage for legislation and regulation. If the policy context is not appropriate or adequate, legislation may be subject to varying interpretation, drafting will be made more difficult, and application will be subject to challenge on the basis that policy is too vague to apply. Policy statements or other forms of policy must first and foremost endeavour to capture the status quo, and then engage with objectives and goals for the future, but these cannot be created in a vacuum.

Directors: Mohammed Hariri (Non-Executive Chairman)\*\*\*\*, Homoud M Allusseyer\*, Rami Aslan \*\*\*\*, Mohammed Muslim Khan\*\*, Mazen Abou Chakra \*\*\*\*, Ian Pierce, Hassan Kabbani \*\*\*, Nhlanhla Kunene, Yusuf Mahomed, Alan DC Knott-Craig (CEO), Saudi\*, British\*\*, Lebanese \*\*\*, Canadian\*\*\*\*





Our specific comments follow.

**1. Background (Section 3.2)**

- a. In section 3.2. the document refers to a *"silo approach"* to the sector, and suggests that this approach should be reviewed so that *"we do not inadvertently create a digital divide where access to quality communications services, technologies, infrastructure and content is a privilege of the elite, rather than a right for all"*.
- b. Cell C cautions against retrospectively framing the approach to regulation of this important sector as a *"silo approach"*. The history of regulation in this sector is broadly in line with regulation in other countries and in our view, could not have been addressed in a different manner or we would have missed out on important steps in the regulation of each industry. The term *"silo approach"* is a negative one, suggesting that no regard can be or was had to other related industries. This statement directly contradicts the introductory paragraphs that refer to the introduction of the ECA in 2005, and creation of a converged regulatory authority in 2000.
- c. Furthermore, the attempt to link the *"silo approach"* to the creation of a digital divide in the future is nonsensical. Such a divide already exists and it did not follow from any *"silo approach"* to regulation, by which we assume the drafters of the Paper mean that broadcasting was regulated separately from telecommunications and post. South Africa is a capitalist economy, driven by the need to return value to shareholders. Without proper regulatory intervention regardless of the sector (or *"silo"*), commercial operators and indeed even state-owned companies have had no incentive to cover underserved areas, or to fulfil universal service obligations. This is so the world over.
- d. Regulation and the digital divide may well be linked, but they are linked because regulatory authorities have failed to put in place proper regulatory interventions such as universal service obligations and the Universal





can one set an objective in this regard? One might end up setting an objective for the regulatory authority that is not capable of achievement because current issues have not been addressed.

- c. One of the current issues identified in the consultation on the ICASA Amendment Bill, for example, was the way that ICASA and the Minister liaise with one another, and what is expected from this relationship in future. The closer working of these two entities would seem to us to be a critical objective of any future policy for the sector.
- d. Similarly, the purpose section does not make it sufficiently clear in Cell C's view as to whether or not the Review will consider only policies and laws that are promulgated by the Minister or enforced by ICASA. For example, the Regulation of Interception of Communications and Provision of Communications-Related Information Act (RICA) is enforced by the Department of Justice but has a significant impact on the ICT sector. In addition, the ICT sector Codes of Practice published by the Department of Trade and Industry (dti) have to be applied by ICASA, but are not administered by the Department of Communications. There may therefore be an overlap and/or conflict between the Policy and provisions that already exist in other legislation.
- e. Cell C recommends that this Framing Paper contain a complete list of all the current policies, procedures, Acts and Regulations that will form part of the Review.
- f. Also of critical importance is the role of the "public interest" in any future policy. Although it may be implied in the Framing Paper, Cell C recommends that the promotion of the public interest be specified as one of the most fundamental underlying objectives, with examples of what this might mean. Section 2 of the current ECA begins with a statement that the regulation of the sector requires that ICASA take the various subsections into account "in the public interest". Cell C believes it would be helpful and indeed necessary to include a section on how the Policy Review will take







as Cell C to compete on price when the prices charged by dominant operators such as MTN, Telkom and Vodacom are opaque – there is for example, a difference in the price charged to consumers for on-net and off-net calls.

- c. Cell C encourages the education of consumers about their rights to demand more transparency on prices. To the extent that ICASA considers that this element is not adequately dealt with in other legislation, ICASA is empowered to protect consumers by regulation under the existing sector laws. If the Panel's review considers that those laws are not adequate to achieve this purpose, then the Paper should identify this as a lacuna which the Review can address in future policy initiatives.
- d. We reiterate the importance of assessing the status quo prior to embarking on the exercise to produce a Framing Paper.

**17. South Africans have a right to an environment that is not harmful to their health or wellbeing (3.5.14)**

- a. Cell C acknowledges this fundamental right as espoused in the Constitution. It is unclear what role it should play in the ICT sector.
- b. The Department of Health has conducted a study in line with international studies of a similar nature to determine whether or not there are adverse effects on health from the use of cellphones, for example. The Minister has recognised this study.
- c. We support the principle that the King reports have long enunciated, namely that corporate entities (which includes state-owned companies) should take account of the needs and wellbeing of their "stakeholders". This is part of good corporate governance. Companies are already accountable under these principles.
- d. Cell C is also aware of and compliant with the requirements of the Department of Environmental Affairs and Tourism as regards the erection of



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100



negotiation and arrangements have to be transparent and publicly available. Suppliers will have recourse to an independent body for dispute settlement.

- iii. Universal service –Member states are allowed to define universal service obligations as long as they are transparent, non-discriminatory and competitively neutral.
  - iv. Public availability of licensing criteria – Where licenses are required, the terms and conditions of individual licenses and the licensing criteria have to be publicly available.
  - v. Independent regulators – The establishment of a regulatory body that is “separate from, and not accountable to, any supplier of basic telecommunication services”.<sup>3</sup>
  - vi. Allocation and use of scarce resources – Procedures for the allocation and use of scarce resources will be carried out in an objective, timely, transparent and non-discriminatory manner. Information regarding spectrum allocation will be made publicly available.
- c. These do not reflect the basic principles of broadcasting, but here we believe that the White Paper on Broadcasting published all those years ago following CODESA and the Triple Inquiry on Broadcasting, still contain some truths that should form the basis of any forward-looking review. Read together with the basic principles applicable to traditional telecommunications, the point of departure for this review should be to ask questions such as did we achieve these important goals, how did we fail, why did we fail, are these truths still valid?
- d. The nature of a policy also deserves consideration in the Framing Paper. Regulation exists for particular purposes and not of and for its own sake. In

<sup>3</sup> WTO 1996 Reference Paper, Para.5.

