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**SUBMISSION BY MWEB CONNECT (PTY) LTD (“MWEB”) ON PROPOSED ICT POLICY  
REVIEW FRAMING PAPER 2013**

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**1. INTRODUCTION**

- 1.1 MWEB thanks the Department of Communications ("the Department") for providing us the opportunity to furnish the Department with our comments on the Proposed ICT Policy Review Framing Paper 2013 ("the Paper").
- 1.2 We welcome the opportunity to participate in this process and are confident that our submission will contribute to defining the objectives and principles that should guide policy determination.
- 1.3 MWEB's comments are general, however these comments are raised in response to the questions relating to the following principles outlined in the Paper:
- (a) South Africans have a right to quality communication infrastructure and services which enable economic growth, employment and wealth creation.
  - (b) South Africans have a right to benefit from the ability of the communications sector to facilitate social development and improve the quality of life for individuals and communities.
  - (c) South Africans have the right to equal universal access to communication services and infrastructure.
  - (d) Government has a responsibility to maximise the overall public benefit derived from the use of public resources.
  - (e) All South Africans are entitled to a quality communication system that facilitates innovation, fair competition and equitable treatment of all role players.
  - (f) South African citizens and consumers are entitled to maximum transparency in how services are delivered and conditions under which they are delivered.

## 2. MWEB SUBMITS THAT THE FOLLOWING MUST BE ADDRESSED IN ORDER THAT THE PRINCIPLES PROPOSED ARE REALISED

2.1 We have summarised some of the provisions of the Electronic Communications Act, 2005 (“the Act”) and the action we think is required to ensure proper realisation of the principles outlined in the Paper:

Section in the Act	Action required
43(1) provides that an electronic communications network service licensee must, on request, lease electronic communications facilities to any other licensee, unless such request is unreasonable	ICASA (“the Authority”) needs to ensure that disputes around the reasonableness of a request are determined on an urgent basis. Failure to do this will result in access seekers’ requests being unreasonably delayed.
43(7) provides that electronic communications facilities leased must not be of a lower technical standard and quality than the technical standard and quality provided by such ECNS licensee to itself	The Authority needs to ensure that this can be effectively measured and enforced, as lessees do not have insight into the networks they lease. In this regard, minimum Service Levels must be imposed. Dominant players must be held accountable for the Quality of Service (“QOS”) by way of a measurable Service Level Agreement (“SLA”).
43(8) provides that the Authority must prescribe a list of Essential Facilities, including but not limited to: (a) electronic communications facilities, including local loops, sub-loops and associated electronic communications facilities for accessing subscribers and provisioning services; (b) electronic communications facilities connected to international electronic communications facilities such as submarine cables and satellite earth stations; and (c) any other such facilities	It is critical that the Authority prescribes a list of Essential Facilities and that the Authority review such list frequently. Due to the rapid change in technology, we do not believe that every 36 months, as contemplated in the Act, will be sufficient. Key networks and infrastructure should be regarded as an “Essential Facility”, which will allow other licensees access to the network on an open, non-discriminatory basis.
47 provides that the Authority may prescribe regulations establishing a framework for the establishment and implementation of wholesale rates applicable to specific types	It is crucial for the Authority to establish such pricing regulations (taking into account LRIC pricing). The establishment of pricing regulations is critical for there to be fairness

<p>of electronic communication facilities and associated services taking into account the provisions of Chapter 10 (Competition matters)</p>	<p>and level the playing fields where licensees are at the mercy of dominant players and require the use of Essential Facilities that are controlled by these dominant players, for example the cost of IPC and mobile APN.</p> <p>It is equally important for the Authority to establish which licensees have significant market power and have control of Essential Facilities as contemplated in Chapter 10.</p>
<p>67 requires the Authority to prescribe regulations relating to competition matters, and in particular requires the regulations must among other things declare licensees in the relevant market or market segments, as applicable, that have significant market power, as determined in accordance with subsection (6), and the pro-competitive conditions applicable to each such licensee.</p>	<p>Regulations must be prescribed to give effect to Chapter 10. At present there isn't even prescription of licensees that have significant market power. This inevitably leads to abuse by certain dominant players, thereby stifling competitors.</p>
<p>Chapter 7 Interconnection</p>	<p>The Transit relationship should also be regulated as Transit agreements are depended on by smaller players. Therefore Transit regulations should be effected or the regulations prescribed in terms of s38 of the Act should clearly apply to the Transit relationship as well. There are currently instances where dominant players are imposing unwarranted and unfair conditions on licensees due to the lack of Transit regulations. MWEB will provide detail in this regard upon request.</p>

2.2 Both the state and the private sector have a major role to play in the achievement of the principles outlined in the Paper. The role of the state in the deployment of broadband networks has been discussed at length in The European Commission's "EU Guidelines for the Application of State Aid Rules in Relation to the Rapid Deployment of Broadband Networks" ("the Guidelines") dated January 2013.

2.3 The Guidelines promote state aid in the roll out of broadband and wholesale access models where state aid is granted, stating “Besides the direct beneficiary of the aid, third-party operators receiving wholesale access to the subsidised infrastructure may be indirect beneficiaries”. The glossary of the Guidelines highlights where wholesale access products may be offered: “The wholesale access products that can be provided over the subsidised network are the following.

- FTTH/FTTB network: ducts access, access to dark fibre, unbundled access to the local loop (WDM-PON or optical distribution frame (ODF) unbundling), and bitstream access.
- Cable networks: duct access and bitstream access.
- FTTC networks: duct access, sub-loop unbundling and bitstream access.
- Passive network infrastructure: duct access, access to dark fibre and/or unbundled access to the local loop. In case of an integrated operator: the access obligations (differing from the passive infrastructure access) shall be imposed in accordance with the provisions of the NGA Recommendation.
- ADSL-based broadband networks: unbundled access to the local loop, bitstream access.
- Mobile or wireless networks: bitstream, sharing of physical masts and access to the backhaul networks.
- Satellite platform: bitstream access.”

2.4 In order to ensure fair competition and broadband growth, the following principles should apply to any wholesale model that is subsidised or funded by the state:

- 2.4.1 The wholesaler should never be allowed to retail (not even through affiliate companies);
- 2.4.2 If the wholesaler is later allowed to retail, the retail price must not be less than the wholesale price or the Authority should formulate a mechanism to allow for a sufficient margin to promote proper competition;
- 2.4.3 All access seekers should be granted access without discrimination;
- 2.4.4 The network owners (wholesalers) should only be allowed to grant access to their subsidiaries or affiliates on the same terms as access is provided to

other licensees in order to ensure that the network operator does not offer less favourable terms to third party access seekers;

- 2.4.5 The QOS (SLA) and technical requirements should be specified and managed and should be applied non-discriminatory to all access seekers;
  - 2.4.6 Pricing should be regulated;
  - 2.4.7 Wholesalers are prohibited from implementing a “floor rate” whereby they bind the access seekers to a minimum monthly or annual purchase amount; and
  - 2.4.8 The networks should be regarded as an “Essential Facility” as defined in the Act, which will allow other licensees access to the network on an open, non-discriminatory basis.
- 2.5 It is MWEB’s submission that a high valued spectrum policy must require the wholesale open access model as outlined above.

### **3. CONCLUSION**

- 3.1 Whilst MWEB is grateful for the opportunity to comment on the Paper, we are concerned that on 7 June 2013 Government Gazette 36550 published the Minister of Communications’ intention to introduce the Electronic Communications Amendment Bill, 2013, in the National Assembly. Surely valid comments and submissions made in respect of this Paper should inform any amendment to the Act. It would be more prudent to effect amendments only once the ICT Policy Review Process is complete and all submissions are properly considered.
- 3.2 We believe that this brief submission will add value to the ICT Policy Review Process and will open the doors to further discussion around key areas.

Should the Department require any further information from MWEB please contact Wilmari Hannie at [whannie@mweb.com](mailto:whannie@mweb.com) or 021 596 8533.