



Submission to the Department of Communications

Proposed ICT Policy Review Framing Paper

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1. INTRODUCTION

1. Neotel thanks the Department of Communications of the Republic of South Africa (“the DoC”) for the opportunity to comment on the Proposed ICT Policy Review Framing Paper, (“the Paper”), which was published in Government Gazette No 36408, Notice 429 of 2013.
2. The Paper is the first step in the progression towards creating a stable and flexible electronic communications policy environment.
3. The Paper is a useful foundation for the public consultation process and Neotel commends the DoC for affording industry stakeholders an opportunity to fully participate in the policy formulation process.
4. The Paper outlines the underlying principles taken from the Constitution of South Africa, which Neotel believes are appropriate policy beacons.
5. Neotel’s submission will comment on the purpose of the Paper and then offer comment on some of the proposed principles, with specific focus on the telecommunications sector. .

2. PURPOSE OF THE POLICY FRAMING PAPER

6. The purpose of the Paper is to lay the foundation for creating a stable and flexible policy environment and to set objectives and principles for the legislative policy framework.
7. The Paper will underpin the current review process. The DoC is reviewing the present framework to establish which current provisions have become redundant due to advancement and changes in the sector. Furthermore, to establish which provisions are still relevant and which new provisions should be incorporated to the policy.
8. Neotel supports the approach proposed by the DoC. We believe policies that govern the rapidly advancing electronic communications sector need to be assessed to ensure that the policy framework is still applicable and relevant. Neotel welcomes the opportunity to fully participate in the policy framework process.

3. THE RIGHT TO FREEDOM OF EXPRESSION

9. Neotel supports the approach of adopting the right to freedom of expression (section 16) as the primary principal underlying the review of all communication related policies and laws. Neotel also believes that the right to Privacy (section 14) and the right to of access to information (section 32) are supporting constitutional rights that should be considered in the principles underlying the review of all communication related policies and laws.
10. In regard to the importance of constitutional principles in the review of communication related policies and laws, Neotel also respectfully submits that the DoC should have reference to, *inter alia*:

- (i) Project 25 of the South African Law Reform Commission, Discussion Paper 122, Statutory Law Revision (Legislation administered by the Department of Communications), August 2011; and
- (ii) Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions, to the National Assembly of the Parliament of South Africa, 31 July 2007.

4. THE RIGHT TO ACCESS A DIVERSE RANGE OF CONTENT

1. Neotel supports any endeavors taken by the DoC to promote accessibility of electronic communications services, particularly in the underserved areas.
2. Neotel supports the position articulated by the DoC of a separate and specific consideration in the new policy environment and also submits that the allowance for a diversity of ownership of the means to communicate would stimulate healthy competition and lead to efficiency in the market.
3. Neotel is continuously developing a wider range of products and services to cater for the needs of the different consumer groups.

5. A RIGHT TO QUALITY COMMUNICATION INFRASTRUCTURE AND SERVICES WHICH ENABLE ECONOMIC GROWTH, EMPLOYMENT AND WEALTH CREATION

4. Neotel supports the right to quality communication infrastructure and services which enable economic growth, employment and wealth creation. Neotel continues to create employment and to positively contribute to economic growth in South Africa.
5. Neotel submits however, that this principle has not been adequately covered in the existing policies and legislation. Neotel believes that government's role remains salient for development and that government coordination at an inter-Ministerial and inter-Departmental level is fundamental to ensure that the sector fulfils its role to act as a catalyst for economic growth and development. Neotel further acknowledges the need and role of government to ensure the implementation of strategic infrastructure – where applicable, in partnership with the private sector - to ensure that government achieves its development goals through infrastructure development as set out in the National Development Plan and Infrastructure Development Plan.
6. As such, Neotel respectfully submits that government must ensure that the envisaged policy process does not discourage private or foreign investment. While government seeks to ensure that state owned companies (“SOC’s”) operating in the ICT sector play a crucial role in the country’s infrastructure development, Neotel respectfully submits that this should not be achieved to the detriment of the private sector and investment already made. The combined role of the public and private sector should be leveraged so as not to duplicate infrastructure, but also to maximise infrastructure to service under-served areas and address price and quality considerations. In regard to the latter, there should be a level playing field in which SOCs and the private sector are able to compete to ensure that South Africans have access to quality communication infrastructure and services which will enable economic growth, employment and wealth creation.

7. Neotel further acknowledges the establishment and the work done by the Presidential Infrastructure Coordinating Commission (“PIIC”) with regards to the roll out of critical infrastructure. The work of the PIIC will have a significant impact on shortening the timeframe for infrastructure roll out, particularly with regard to approvals, authorisation, licences, permissions, environmental impact assessments and exemptions. However, Neotel submits that the ambit of the Commission should not exclude private entities as this could have the consequences of establishing an asymmetrical competitive environment, favouring state owned companies over private entities.

6. A RIGHT TO EQUAL UNIVERSAL ACCESS TO COMMUNICATION SERVICES AND INFRASTRUCTURE

8. Neotel welcomes the DoC’s recognition of the values enshrined in the Constitution insofar as it concerns universal access to communication services and infrastructure irrespective of economic standing, geographic location or social status. In order to achieve this, government has to jointly work together with the private sector.
9. As such, Neotel respectfully submits that government must ensure that it gives serious consideration to the relaxation of the regulatory bottlenecks that hinder the private sector from rolling out infrastructure effectively and efficiently, by for example, fast-tracking the publication and implementation of the rapid deployment guidelines as required by section 21 of the ECA.
10. As mentioned above, attention should also be given to coordination and/or collaboration amongst various Ministries such as communications and other departments whose work will have an impact on the communications sector. For example, the Department of Co-operative Governance - way-leave processes at local government levels must be streamlined to ensure effective and seamless deployment of electronic communications infrastructure in the areas under the control of municipalities and traditional councils.
11. Further, traditional councils and its communities must be informed about the importance of the deployment of electronic communications infrastructure as it benefits the community at large from a socio-economic perspective.
12. While the issue of cost and affordability to communication services remains a critical issue, more demand-side research should be undertaken to better understand service uptake and willingness to pay for certain services by consumers.
13. While government is committed to ensuring universal access to communication services and infrastructure, it is critical that policy consider alternative means to ensure service delivery apart from the old method, appropriate for monopoly and duopoly environments, of apportioning universal service obligations. More evolved options, such as reverse auctions should be considered. Access to the funds accrued in the Universal Service and Access Fund remains central to ensuring the successful roll-out of universal service projects in South Africa, along with the effective functioning of the institutions responsible for their objectives, such as USAASA.

7. A RIGHT TO PRIVACY AND TO PROTECTION OF PERSONAL INFORMATION

14. While Neotel appreciates the DoC's efforts to ensure that personal information generated through electronic communications is protected and secured, Neotel believes that South Africa currently has the necessary laws and regulations to safeguard this. For example, the soon to be enacted Protection of Personal Information Bill 'PoPI'.
15. PoPI applies to all persons that are involved in the processing of personal information and operators are not exempted from compliance with PoPI. PoPI makes it clear that any operator that fails to safeguard personal information of its clients would be subjected to penalty provisions.
16. Therefore, there is no need to address this through the new communications sector policy framework as this would further create additional reporting requirements that are sufficiently catered for at this stage.

Furthermore, the creation of such rules through the communications framework is likely to result in forum-shopping amongst consumers who suffer a loss as a result of misuse or leaking of personal information. However, Neotel still believes that government should ensure that it addresses the key challenges that the country faces in terms of cyber security.

8. GOVERNMENT'S RESPONSIBILITY TO MAXIMISE THE OVERALL PUBLIC BENEFIT DERIVED FROM THE USE OF PUBLIC RESOURCES

17. Neotel supports the principle that government has a responsibility to maximize the overall public benefit derived from the use of public resources.
18. However, this principle is not adequately reflected in existing policy and legal frameworks. For example, there is no detailed policy or legal framework on the quantum of radio frequency spectrum to be released and the mechanisms by which this will be achieved and the timeframes involved. Approximately 468MHz of spectrum has been identified for Broadband Wireless Access that has not been assigned yet in South Africa.¹ Details on the targets and timeframes in which all of this spectrum can be made available should be clearly set out in policy and legal frameworks.
19. Government should prioritise the assignment of low frequency spectrum suited to provide services in rural areas. This will help to ensure that broadband is made available quickly in rural areas. Policy and legal frameworks should be created to set out what spectrum should be prioritised and to provide timeframes for the assignment of spectrum. For example, spectrum in the 450MHz band is used by

¹ See ICASA presentation to CRASA workshop, 24 March 2011, "A Broadside Analysis of Spectrum Requirements – A Case of South Africa".

many operators worldwide to provide data services in rural areas and could greatly facilitate the roll-out of networks in under-served areas.²

20. Furthermore, there is no clear policy or legal frameworks that set out how broadband networks should be rolled out in areas that are not economically feasible for the private sector to serve, which are usually rural areas. The optimal solution for the rollout of broadband networks in rural areas (whether they be wireless or fixed) in the interests of maximising the supply of services to customers in order to meet demand is by means of reverse auctions. Reverse auctions award the job of rolling out infrastructure to the bidder with the lowest cost that meets the relevant quality standard to provide services.

9. PROMOTION OF A QUALITY COMMUNICATION SYSTEM THAT FACILITATES INNOVATION, FAIR COMPETITION AND EQUITABLE TREATMENT OF ALL ROLE PLAYERS

21. Neotel supports the promotion of a quality communication system that facilitates innovation, fair competition and the equitable treatment of all role players.
22. There are several goals that the Paper could set out explicitly in order to achieve this policy principle. In particular, the market for fixed line services is not currently characterised by fair competition and requires intervention. The market for fixed line services is dominated by Telkom SA Limited (“Telkom”), which has a market share of more than 45%.³ The Framework should set out a number of open access goals to address this dominance and its effects. Such goals include Local Loop Unbundling (“LLU”) and the structural separation of Telkom.
23. The DoC unfortunately does not mention LLU or the structural separation of Telkom as discussed in the National Development Plan 2030 in the Policy Framing paper.⁴ This is despite the fact that the unbundling of the copper local loop has been the government’s policy since 2007, as a consequence of the Local Loop Unbundling Committee’s report⁵, and the then Minister of Communications’ policy decision that “...the unbundling process in South Africa should be urgently implemented and completed by 2011”.⁶ This position was re-iterated in the Independent

² The list of countries includes at least, in respect of CDMA services: Belarus, Czech Republic, Georgia, Germany, Latvia, Madagascar, Moldova, Sweden, Ukraine. See:

http://en.wikipedia.org/wiki/List_of_CDMA2000_networks, last accessed on 9 May 2013. LTE has been tested in the 450MHz band in Brazil. Source: <http://www.cpqd.com.br/en/news-a-events/news/4285-brazil-tests-first-4g-system-in-450-mhz-for-rural-areas.html>, last accessed on 9 May 2013.

³ See Competition Tribunal decision in Competition Commission vs. Telkom SA Ltd., case no. 11/CR/Feb04.

⁴ National Development Plan 2030, available at: <http://www.npconline.co.za/>, see p. 191.

⁵ The Local Loop Unbundling Committee, 23 May 2007, “Local loop unbundling: A way forward for South Africa”, Available at: <http://www.info.gov.za/view/DownloadFileAction?id=72535>, last accessed on 13 September 2011.

⁶ See Section 8 of Government Gazette no. 30308, notice no. 876, published on 17 September 2007.

Communications Authority of South Africa's ("ICASA's") determination in 2011 that LLU will be implemented in a phased approach.⁷

24. There are other goals that the Policy Framing paper could support in order to deliver innovation, fair competition and the equitable treatment of all role players. Neotel strongly supports, after a market review by ICASA, promulgating regulations to provide access to Telkom's poles and ducts in a similar way to Office of Communication (Independent regulator and competition authority for the UK communications industries) 'Ofcom's' promulgating regulations to open up British Telecom's poles and ducts.⁸ In conjunction with LLU, this will facilitate competition in markets for fixed line broadband.
25. LLU, the structural separation of Telkom and providing access to Telkom's poles and ducts should be goals that are firmly set out in the ICT Policy Review Framing Paper.

10. A RIGHT TO AN ENVIRONMENT THAT IS NOT HARMFUL TO THEIR HEALTH OR WELL-BEING

26. Neotel upholds the consumer's right to an environment that is not harmful to their health or well-being. Neotel ensures that the manufacturers who supply the electronic communication equipments adhere to the different standards passed by the South African Bureau of Standards. Moreover, local and imported electronic communication equipments and devices comply with the provisions of the Draft Type approval regulations (Government Gazette no. 36381) published 18 April 2013. The Draft Type approval regulations aim to streamline the equipment type approval framework in line with the Electronic Communications Act of 36 of 2005.

⁷ See ICASA Findings Note on Local Loop Unbundling, published on 11 November 2011, available at: <https://www.icasa.org.za/LegislationRegulations/RegulationsUnderway/LocalLoopUnbundlingLLU/tabid/540/Default.aspx> , last accessed on 16 April 2013.

⁸ See OFCOM, 2010, "Review of the Wholesale Local Access markets: Statement on market definition, market power determinations, and remedies", available at: http://stakeholders.ofcom.org.uk/binaries/consultations/wla/statement/WLA_statement.pdf , last accessed on 9 May 2013.

11. CONCLUSION

27. Neotel supports the aims and objectives of the Policy and welcomes the intention by government to set out its objectives for broadband in South Africa. Critical to this success is the harmonization of the multiple policy processes underway and various legislative initiatives being considered. While this submission is not the platform for a policy harmonisation discussion, any successful approach must inevitably consider the need to ensure that policy and legislative reform going forward is clearly coordinated and choreographed to ensure optimal outcomes.

Neotel is at the Department's disposal to clarify any issues relating to this submission and we wish you well with further deliberations in drafting the Policy.