

Electronic Communications Amendment Bill

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About BUSA

- BUSA is a confederation of business organisations, including chambers of commerce and industry, professional associations, corporate associations, and unisectoral organisations. It represents a cross-section of business, large and small.
- BUSA's function is to ensure business plays a constructive role in economic growth, development and transformation.
- As the principal representative of business in South Africa, BUSA conveys the views of its members in various structures, including in the National Economic Development and Labour Council (NEDLAC).



President Ramaphosa's message from the Investment Conference

- “As part of this plan, we are taking immediate steps to finalise reforms in key sectors like mining, oil and gas, tourism and telecommunications – all of which are sectors that have great potential for growth, but which have been constrained by **policy uncertainty**.”
- “We see **infrastructure investment** as a critical enabler of growth and job creation, and are therefore consolidating government infrastructure spending into a single Infrastructure Fund.”
- “We are here to declare that we are determined to build a country that is driven by enterprise and innovation, to develop an economy that is diverse and resilient and prosperous, and to **create companies that achieve sustained returns** not only for their shareholders, but also for the workers that drive them and the communities that support them.”
- “We have finalised consultations with the telecommunications industry and other stakeholders to ensure. **allocation of spectrum reduces barriers to entry, promotes competition and reduces costs to consumers**”

- ✓ **The President's message promises: to ensure that there is policy certainty, a conducive environment for investment, and spectrum policy that promotes competition and reduces costs to consumer**
- ✓ **We caution that the ECA Bill its current form threatens these noble objectives that have been set out by the President**



The objectives of the Bill amongst others are

Objectives

Amendments to the EC Act

1 Provide access to scarce resources i.e. spectrum

- Ending the exclusive assignment of Spectrum – move to non-exclusive basis
- Trading, Sharing and Refarming of spectrum to be approved by the Authority
- The assignment of high demand spectrum to the WOAN

2 Clarify the Roles of Minister and the Authority (ICASA)

- The roles of the Minister and that of ICASA materially altered
- Policy Directives published by the Minister must be implemented by ICASA
- The Minister to approve universal access and service obligations

3 Reduce duplication and enhance service based competition

- Open access extended to network service (in the past only facilities access)
- ICASA to approve the deployment in adequately served premises
- Deemed entities have to provide access at cost-orientated rates

4 Achieve coverage of rural and underserved areas

- Licensees obliged to cover rural areas before adding capacity in urban areas
- Additional universal access and universal service obligations must be imposed on existing and new radio frequency spectrum licensees as approved by the Minister

5 Address market concentration and allow more entrants

- The Licencing of the WOAN
- The assignment of high demand spectrum to the WOAN
- Offer various incentives to the WOAN



Provide access to scarce resources i.e. spectrum

The Bill requires

- Ending the exclusive assignment of Spectrum – move to non-exclusive basis
- Trading, Sharing and Refarming of spectrum to be approved by the Authority
- The assignment of high demand spectrum to the WOAN

The outcome of the Bill

- Non-exclusive use risks harmful interference, limits effective optimisation of spectrum and creates uncertainty over the spectrum rights the licensee has.
- The WOAN will enjoy a disproportionate advantage over other licensees (if based on CSIR study).
- The amount of spectrum available to existing operators will be limited and will likely exclude some operators. Licensees unable to obtain additional spectrum will be constrained to compete.

The effect on investment

- Investment to control quality of service would be difficult to justify, and the cost substantially more, which will increase the cost of delivering services
- Licensees will have difficulty competing with a WOAN to be assigned a disproportionate amount of the spectrum and receive further incentives

Proposal

- The retention of the exclusive assignment of spectrum principle, which is applied in almost all markets. HDS should not be subject to open access, and non-exclusive rights to HDS should not be mandated through legislation.
- The amount of spectrum to be assigned to the WOAN should enable it to compete (both on technical and economic basis) without distorting the market. The spectrum assigned to the WOAN should be equal to other licensees.



Clarify the Roles of Minister and the Authority

The Bill requires

- The roles of the Minister and that of the Authority materially altered
- Policy Directives published by the Minister must be implemented by ICASA
- The Minister to approve universal access and service obligations

The outcome of the Bill

- The Minister's decisions will govern such matters as the spectrum that may be assigned, spectrum fees, spectrum trading, spectrum use rights and spectrum renewal.
- ICASA must adhere and implement Policy and Policy directives as published by the Minister, as opposed to only taking policy and policy directions into consideration and applying its own independent judgement on such policies and policy directions in undertaking its responsibilities.

The effect on investment

- These changes undermine ICASA's independence and role on critical operational telecommunications spectrum matters that require proper market analysis and independence from political interference. Investment risk would as a result increase which will slow down investment.

Proposal

- The existing EC Act provides an appropriate balance between the Minister setting policy objectives and ICASA complying with its operational responsibilities; it is consistent with international best practice and should not be changed.



Reduce duplication and enhance service based competition

The Bill requires

- Open access extended to network service (in the past only facilities access)
- ICASA to approve the deployment in adequately served premises
- Deemed entities have to provide access at cost-orientated rates

The outcome of the Bill

- This is a radical shift from the existing evidence-based, and proportionate regime and it is inconsistent with established international best practice.
- Licensees will no longer be able to refuse access on reasonable grounds, which include economic and efficiency grounds.

The effect on investment

- Investment constrained following an increase in the risk of earning a return
- Licensees will no longer have an incentive to invest and innovate in order to differentiate their networks as they will be subject to open access.

Proposal

- The existing EC Act, and supplementary Regulations set out clear provisions on the terms and negotiation of access agreements, and enable the regulation of access to facilities and network services, including if required the resolution of disputes



Achieve coverage of rural & underserviced areas

The Bill requires

- Licensees are obliged to cover rural areas before deploying in urban areas
- Additional universal access and universal service obligations imposed on existing and future licensees as approved by the Minister

The outcome of the Bill

- Service quality in urban and sub urban areas, where congestion is more prevalent, will decrease because operators will not be able to address capacity constraints.
- There will be inefficient use of spectrum and a time delay in the deployment of spectrum in urban and sub-urban areas

The effect on investment

- The roll out of investment in urban and sub-urban areas will be delayed.
- Licensees will be constrained to earn return on investment
- Service delivery to consumers and businesses will deteriorate which will negatively impact on the economy and consumers in these areas

Proposal

- Licensees should be allowed to utilise spectrum in a technology and geographically agnostic way.
- Rural and underserviced area deployment should not compromise the deployment in other areas
- Support the deployment of broadband services in rural and underserviced areas and licensees being obliged to deploy networks in these areas in return for getting access to high demand spectrum.



Address market concentration and allow more entrants

The Bill requires

- The licencing of the WOAN
- The assignment of high demand spectrum to the WOAN
- Offer various incentives to the WOAN

The outcome of the Bill

- The incentives to be awarded to the WOAN as determined by ICASA is uncertain and include:
 - a reduced spectrum application fee,
 - and reduced or waived radio frequency spectrum licence fees for a period of five years,
 - immediate facilities leasing of operators networks and facilities that obtain unassigned high demand spectrum.

The effect on investment

- If the WOAN is awarded undue, unfair or unreasonable incentives it will likely distort the market

Proposal

- The WOAN should be enabled to compete (both on technical and economic basis) on an equivalent and fair basis with other licensees in providing competitive wholesale services.



In summary

- We support the Government's objectives which aims to increase broadband coverage, promote affordable broadband and innovate and transform the sector. To achieve this new investment and innovation by existing and new entrants is required.
- However, in BUSA's view the Bill substantially increases uncertainty and regulatory risk for telecoms operators. This will reduce investment and innovation at exactly the time when significant new investment is needed in the telecoms sector to deliver the services and reach that South Africans require at affordable prices.
- The Bill should be suspended because of its far-reaching implications for the sector and consumer. The implications of the Bill, together with the increasing importance of electronic communications to the wider economy, require caution. The Bill should be subjected to a socio-economic impact assessment, and consideration be given to tabling the Bill at Nedlac to allow for maximum input and consultation.
- The Bill should be reviewed, and the telecoms sector governed through existing legislation, which includes the licensing of high demand spectrum.



THANK YOU



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