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Dear Ms Nkosi

BROADBAND INFRACO – SUBMISSION TO NOTICE OF INQUIRY INTO THE STATE OF COMPETITION IN THE ICT SECTOR

Broadband Infraco would like to thank the Authority for this opportunity to make this written submission in terms of the Authority's Public Inquiry into the State of Competition in the Information Communications and Technology ("ICT") Sector.

Since its inception in 2007 and its commencement of services in 2010, Broadband Infraco has actively participated in both the ICT sector generally and the Authority's processes to bring about greater and more effective competition in the country's ICT Sector.

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Broadband Infraco's brief history can objectively demonstrate that it has been a catalyst for reduced prices in South Africa's long-distance backhaul market segment. Tariffs and fees for comparative services from our competitors have come down significantly since we commenced operation. In addition, we have made numerous submissions and inputs into the Authority's Cost to Communicate programme, specifically in the broadband segment.

1. Structure of Submission

- 1.1 Broadband Infraco notes the comparative nature of the Inquiry vis-à-vis developments in the South Africa ICT sector versus similar milestones and challenges in the United States ICT Sector.
- 1.2 Rather than offer a pure theoretical exercise as to the causes of, comparisons with and the consequences of the parallels between the South African ICT Sector and its United State counterpart, our submission directly focuses on the *Key Issues Raised by the Authority's Inquiry*, namely:
 - 1.2.1 The cost to communicate, competition and consolidation;
 - 1.2.2 Spectrum;
 - 1.2.3 Convergence and the Internet;
 - 1.2.4 Innovation
 - 1.2.4.1 Net Neutrality; and
 - 1.2.4.2 Disruptive Technologies; and
 - 1.2.5 The Current State of Competition in the ICT Sector;
- 1.3 Since consolidation is the current hallmark of the country's ICT Sector, the first part of our submission provides examples of that consolidation and gives some reasons as to why market consolidation is occurring. Our analysis in this respect focuses on the current state of competition in the ICT Sector.
- 1.4 The second part of our submission points out spectrum-related issues that have implications on competition.

- 1.5 The third section of our submission explains our view on Convergence and the Internet and how both have shaped the current state of competition in the ICT sector.
- 1.6 Our discussion on Net neutrality and Disruptive technologies focus on whether net neutrality is a topical issue for South Africa at this time and looks at how the introduction of both the Internet and mobile cellular technology represent the pivotal disruptive technologies of the modern ICT era.

2. Summary - Notice of Public Inquiry into the State of Competition in ICT Sector

- 2.1 On 20 March 2014, ICASA published a Notice of Public Inquiry into the State of Competition in ICT Sector.
- 2.2 The Inquiry asks if there are any parallels between the South African market and the United States market in the context of:
 - 2.2.1 [Each market being] very slow to modernize local loop infrastructure;
 - 2.2.2 [Each market] treated the monopoly local services market as cash cows, using cash flow for dividends, share repurchases, acquisitions, and lobbying activities rather than for R&D or capital investment in new technology;
 - 2.2.3 [In each market], they (telcos) have merged with and acquired each other, reducing the total number of large local services providers;
 - 2.2.4 [Telcos] deliberately and systematically avoided competing with each other despite making repeated public statements implying that it would be economically rational for them to do so; and
 - 2.2.5 [Telcos] engaged in massive, highly coordinated political lobbying, regulatory and litigation activities intended to preserve the status quo.

3. Key Issues Raised by ICASA Inquiry

- 3.1 The cost to communicate, competition and consolidation**
- 3.2 Spectrum**
- 3.3 Convergence and the Internet**
- 3.4 Innovation, net neutrality and disruptive technologies**
- 3.5 Competition and the inquiry**

4. The current state of competition in the ICT sector as a whole

- 4.1 The National Broadband Policy provides that in terms of “market structure and regulatory regime: Despite the horizontal licensing regime introduced by the Electronic Communications Act of 2005, the market remains structured around vertically integrated incumbents, which have multiple licences, but continue to compete downstream with multiple service providers. This creates anti-competitive incentives in the market and requires a resource-intensive regulatory regime, where the regulator is constantly required to adjust the behaviour of the incumbents”.
- 4.2 As a result of the *regulator needing to constantly adjust the behaviour of the incumbents*, the South African ICT sector is marked with consolidation. This consolidation is a manifestation of the need for telcos to expand their scope of operations in an effort to starve off mounting competitive pressures brought about by declining voice revenues, lower mobile termination rates and the need to offer enterprise clients’ converged voice, data and Internet solutions. The consolidation is evidenced by Vodacom acquiring Neotel, Telkom making a bid to purchase BCX, MTN and Telkom Mobile engaging in infrastructure sharing, and Dimension Data being acquired by NTT Docomo.

- 4.3 Declining voice revenues and the need to offer enterprise clients' converged voice, data and Internet solutions are behind Telkom's decision to launch a second attempt in seven years to acquire BCX. Industry analysts say that this sort of consolidation is overdue and needed because it will lead to bigger and stronger competitors. They add that several of Telkom's competitors are succeeding in becoming broad-based solutions companies, in effect giving them a tremendous advantage over Telkom as voice becomes a less profitable environment. They also add that it's become much clearer that a telecoms operator can no longer survive as a telco alone. Vodacom and MTN have both made huge investments in business services. They add that if the Telkom-BCX tie-up is allowed to proceed, it will mean a more formidable competitor in the ICT sector, one that has the ability to play in many more spheres, forcing everyone else to become more competitive. It could also spark acquisitions or mergers by other companies.
- 4.4 Declining mobile termination rates have also spurred mobile operators to explore measures to reduce their cost of sales as competition intensifies and shrinks profit margins. In this regard, market consolidation is evidenced by Altech Autopage, the independent cellular service provider in the Altron stable, planning to acquire 65 000 Cell C subscribers from rival Nashua Mobile for R91,5 m.
- 4.5 The deal comes just weeks after Nashua Mobile's parent, Reunert, announced it was selling the company's Vodacom and MTN subscribers to the two mobile network operators. Reunert intends shutting down Nashua Mobile, arguing the margins it's making are no longer satisfactory.

The Vodacom and MTN deals are worth a combined R2,3 bn excluding VAT.

- 4.6 Service providers have come under intense pressure following renegotiation of agreements with the mobile networks, which themselves are under pressure to cut costs as competitive pricing pressures grow across the industry.

- 4.7 Additionally, Telkom Mobile's infrastructure sharing deal with MTN is consistent with the National Broadband Policy's view that *compelling global trends show increasing pressure on operators to better share infrastructure*.
- 4.8 This wave of market consolidation is, in our view, primarily driven by the need for cost efficiencies and revenue preservation. It would not, in Broadband Infraco's view, necessarily lead to an automatic reduction in the cost to communicate. Regulatory interventions may be the only viable tool to drive down the cost to communicate in South Africa.

5. Spectrum

- 5.1 Frequencies that offer mobile operators the opportunity to provide high-speed wireless broadband services are at the heart of current spectrum debates. The Department of Telecommunications and Posts is expected to issue a draft Spectrum Policy for public comment at the end of July. Vodacom's CEO explained that Vodacom's push to acquire Neotel is partly due to Government's inaction around licensing the 800 MHz, 2.6 GHz and 3.5 GHz frequency spectrum bands.
- 5.2 In an effort to be ahead of the curve in offering LTE services, mobile operators have been re-farming their 900 MHz and 1800 MHz frequencies. They have launched LTE services on a limited scale.
- 5.3 Broadband Infraco endorses the views expressed in the National Broadband Policy on spectrum. The National Broadband Policy provides that:

"Spectrum is a scarce but non-depleting resource that has to be managed efficiently in order to optimise its potential to provide broadband access. This is especially pertinent given the dominance of mobile access in South Africa. Fixed wireless access also requires spectrum and represents an alternative to fixed line networks to provide high capacity broadband especially in rural areas.

- 5.4 Therefore, whilst there is clearly a need for mobile operators to have access to the "LTE" frequencies in order to offer high speed broadband services in lucrative urban areas, the licensing of the 800 MHz frequency band for fixed wireless access in order to provide broadband services in under-served areas is equally (if not more) important.

The National Broadband Policy further provides that:

- 5.5 *The immediate priorities with respect to spectrum are:*

- 5.5.1 *the identification of unused spectrum and its reassignment;*
- 5.5.2 *the removal of all bottlenecks preventing migration of terrestrial broadcasters from analogue to digital in order to realise the digital dividend;*
- 5.5.3 *the re-allocation and assignment of broadband spectrum taking into consideration job creation, small business development, national empowerment and the promotion of NDP goals;*
- 5.5.4 *approval of spectrum sharing between spectrum licensees and across services by ICASA in support of efficient use of spectrum and where it does not impact negatively on competition;*
- 5.5.5 *the enabling of dynamic spectrum allocation; and*

5.5.6 *ensuring sufficient spectrum for extensive Wi-Fi and other public access technologies and services.*

5.6 *It is Government's objective to ensure that access to broadband for all is attained. Therefore, licensing of broadband spectrum should contribute to the realisation of the following public interest policy objectives:*

5.6.1 *the achievement of universal access to broadband;*

5.6.2 *effective and efficient use of high demand spectrum;*

5.6.3 *adoption of open access principles;*

5.6.4 *safeguard the spectrum commons and spectrum required for public access technologies and services; and*

5.6.5 *The promotion of broader national development goals of job creation, the development of small and medium sized businesses and South African-owned and controlled companies, and the broad based economic empowerment of historically disadvantaged persons.*

5.7 Broadband Infraco supports the establishment of a wholesale open access regime that will address the structural constraints in the market arising from the dominance of a number of vertically integrated operators, as proposed in the National Broadband Policy. The National Broadband Policy adds that "Re-structuring the market to enable greater wholesale access to networks by service providers will go a long way to creating a more competitive services sector, which is likely to enhance quality and drive down prices".

6. Convergence and the Internet

- 6.1 Technological convergence has enabled the Internet to be delivered on a multitude of platforms and devices. People, governments, organisations and corporations can receive the Internet via their mobile phone, television, tablet, laptop, and desktop. The Internet can be delivered on a plethora of platforms ranging from satellite, fibre optic cable, co-axial cable and radio frequency spectrum.
- 6.2 Governments and policy-makers should do everything in their power to enable the continued proliferation of the technology and devices used to deliver the Internet. This includes introducing technology neutral policies, laws and regulations to encourage people, entrepreneurs, organisations and companies to devise the most cost-effective and user friendly means to access the Internet.

7. Innovation, net neutrality and disruptive technologies

Net Neutrality versus Innovation

- 7.1 Broadband Infraco understands *net neutrality* as meaning:

The setting of the terms, conditions and prices set by broadband Internet service providers, restricting their ability to use innovative network management technology, provide appropriate levels of quality of service, and deliver new features and services to meet evolving consumer needs,¹ effectively treating all Internet traffic equally.

¹ Cisco Systems Incorporated website – *Net Neutrality*. 14 May 2014

- 7.2 Net neutrality opponents recommend legal and regulatory restrictions on broadband Internet access services to effectively mandate the terms, conditions, and prices set by broadband service providers. They argue that net neutrality would restrict their ability to use innovative technology to manage their networks, provide appropriate levels of quality of service, and deliver new features and services to meet evolving consumer needs.²
- 7.3 Supporters of net neutrality believe, on the other hand, that greater regulation is needed to prevent service providers from limiting bandwidth or services and creating two classes of Internet experience. Net neutrality advocates are of the opinion that net neutrality would prevent phone and cable firms from discriminating “both technically and financially” against companies providing online services. “Instead of permitting individualized bargaining and discrimination, they say³, the commission’s (Federal Communications Commission) rules should protect users and Internet companies on both fixed and mobile platforms against blocking, discrimination, and paid prioritization”.
- 7.4 The effect of net neutrality would allow the content of paying customers to be delivered at much higher quality of service levels than content from non-paying customers.
- 7.5 In South Africa, traffic prioritisation is not new. Since the launch of ADSL, traffic shaping has been implemented, with unshaped data accounts available at a higher price. In the past South African consumers had to pay more for unshaped data and therefore better service levels on some traffic.
- 7.6 The new FCC (American) model places pressure on companies to pay for prioritised traffic to ensure better service levels to consumers who use their products.

² *Ibid.*

³ Citizen newspaper website, *150 tech companies press government for net neutrality*, 14 May 2014

- 7.7 The principle of net neutrality would, in our view, restrict the operators' ability to effectively manage their networks in the best interests of their customers. A tiered system of broadband service provisioning is commercially and technically preferable because it incentivises network operators to optimise their investment and infrastructure deployment, management and maintenance.

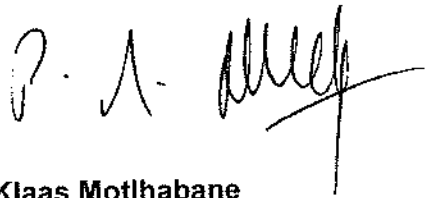
Disruptive Technologies

- 7.8 Disruptive technologies, such as mobile cellular technology or the Internet should, in our opinion, not be overly regulated at the outset. Their innovation should be encouraged through self-regulation or light-touch regulation.
- 7.9 Mobile cellular technology is one of the biggest technology disruptors given how it turned the voice and data communications business model on its head away from fixed line. It is also doing the same in the banking space by permitting mobile cellular customers to freely exchange money for the exchange of goods and services.
- 7.10 A potential threat to the conventional mobile voice offering is the tie-up between Facebook and the chat service WhatsApp. Facebook users will be able to make voice calls over the Internet using WhatsApp.
- 7.11 The Internet itself represents one of the most profound game changers in human history. Its magnitude and effect it has on human interaction and history is virtually unmeasurable. The Internet's ability to connect people, data, processes and things, as Cisco calls the "Internet of Everything" is seeing Google testing a driverless passenger car that is connected to the Internet using wireless sensors.
- 7.12 These technologies should not be overly regulated in their nascent stages as over-regulation could stifle their development and innovation.

8. Conclusion

- 8.1 The National Broadband Policy provides sufficient guidance on the current market concentration, both from an infrastructure and services perspective, and offers possible policy measures that are necessary to break such market concentration.
- 8.2 The National Broadband Policy also highlights the challenges relating to spectrum management and allocation in the high-demand frequency bands.
- 8.3 ICASA is therefore encouraged, during the development of this Inquiry, to pay due regard to the principles enunciated in the Broadband Policy. This coordinated approach would lead to the adoption of consistent policies geared towards the stimulation of competition in the ICT sector.

Yours sincerely,

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