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GOVERNMENT NOTICE

DEPARTMENT OF COMMUNICATIONS

No. 876

17 September 2007

**POLICIES AND POLICY DIRECTIONS DRAFTED IN TERMS OF SECTION
3(1) AND (2) OF THE ELECTRONIC COMMUNICATIONS ACT, 2005
(ACT NO. 36 OF 2005)**

I, Dr Ivy Matsepe-Casaburri, Minister of Communications, hereby approve and publish the policy directions in the schedule, drafted in terms of section 3(1) and (2) of the electronic communications act, 2005 (Act No. 36 of 2005).

Dr. Ivy Matsepe-Casaburri
Minister of Communications

SCHEDULE

POLICY DECISIONS AND DIRECTIONS

1. INTERNATIONAL TERRESTRIAL AND SUBMARINE CABLE

I HAVE TAKEN THE POLICY DECISION, in terms of section 3(1) (d) of the ECA, to prioritise access to educational and health institutions, the Post Office, government offices and the Thusong Centres-previously known as Multi-Purpose Community Centres- in the roll-out of Sentech's electronic communications networks and services for the provision of wireless broadband communication.

I HAVE ALSO TAKEN THE POLICY DECISION, in terms of section 3(1)(b) read with section 2(c) of the ECA, that, SAPO post offices will be transformed into Thusong Post Offices, providing access to a variety of government and other services, especially faster, secure and easier access to enabling documents and social grants.

2. ROBUST, RELIABLE AND AFFORDABLE INTERNATIONAL CONNECTIVITY

International connectivity is critical to support our investment objectives, the expansion of the Internet and bandwidth for voice, data and image transmission. It is Government policy that the cost of access to international connectivity is affordable and that all arrangements regarding access or use of international cables and/or facilities do not unfairly exclude others from use of or access to the cables.

In terms of section 43(8)(b) of the ECA, ICASA must prescribe a list of essential facilities including but not limited to electronic communications

facilities connected to international electronic communications facilities such as submarine cables and satellite earth stations.

I THEREFORE DIRECT ICASA, in terms of section 3(2)(c) read with section 2 (c), (f) and (g) of the ECA to consider prioritising and urgently prescribing a list of essential facilities envisaged in section 43(8)(b) of the ECA ensuring that the electronic communications facilities connected to the SAT-3/WASC/SAFE submarine cable can be accessed soon. Taking into account the balance of forces in international submarine connectivity and the objectives of this Act, the Authority should pay particular attention to section 43(5)(b). Prices for access to the cables should be regulated accordingly.

3. INCREASING COMPETITION THROUGH CONVERSION OF VANS LICENSES

Under section 93(4)(a) ICASA must convert existing licences that authorise the holder of such licence to both provide services and operate electronic communications facilities or networks into licences relating to electronic communications services or broadcasting services, radio frequency spectrum licences and electronic communications network service licences.

I THEREFORE DIRECT ICASA, in terms of section 3(2)(c) read with section 2(b), (c) and (d) of the ECA, to urgently consider whether none, or only certain, of the existing VANS licencees can be authorised to provide services as well as to provide and operate electronic communications facilities or networks to ensure that such licensees are issued electronic communications network service licences in addition to other licences specified in the relevant section of the ECA, if applicable.

For the purposes of immediate implementation ICASA should prioritise the following VANS licencees:

- (a) those who already have electronic communications networks of national scope, whose facilities have been duly obtained in terms of the provisions of the Telecommunications Act 103 of 1996 and the applicable regulations promulgated there under pertaining to the licensing of VANS; and
- (b) those who intend to roll out electronic communications networks of national scope;
- (c) those who, in terms of section 5(3)(e) of the ECA, show good cause that if issued with a licence to provide electronic communications network services, would be able to bring about a significant impact on socio-economic development in the Country, providing details for the manner of such impact. This should include the provision of strategies to target the high costs of communication services, the digital divide, achievement of goals in terms of broad based Black economic empowerment, etc.
- (d) those who are able to satisfy the requirements of the fixed licence fee that would be applicable, as determined by the Authority, for VANS licensees that will be converted into this category (Individual ECNS Licence), taking into account any proposed Universal Service obligations that the VANS licensee is able to provide, by virtue of being converted into this category (Individual ECNS) of licensing.
- (e) Those that have been issued with licences on or before 19 July 2006, and intending or already providing International connectivity.

4. ACCESS TO EMERGENCY COMMUNICATIONS

Many of the citizens of South Africa are disconnected from their telephone service for nonpayment. As part of our universal service agenda, the Government aims to minimize disconnections due to non-payment by reducing the cost of communications. The government further aims to ensure continued access to emergency services during the period of disconnection.

Therefore, it is intended that should a subscriber or end-user as contemplated in the Act, that uses the services of a licensee referred to in Chapter 3, default in paying for the service, such licensee may not disconnect the end-user or subscriber and prevent the end-user or subscriber from accessing electronic communications for emergency purposes.

I THEREFORE DIRECT ICASA, for immediate implementation, and, in terms of section 3(2)(b) read with section 2(c) and (o) of the ECA, to prescribe a list of emergency numbers to which the public would have continued access even during a period of disconnection.

5. FREQUENCY SPECTRUM

I DIRECT ICASA, in terms of section 3(2)(c) read with section 2(c) and (o) of the ECA, to take into consideration the decisions that will be taken at the World Radio Conference, 2007 in preparation of the national radio frequency plan or appropriate modification to any existing radio frequency plan.

I ALSO DIRECT ICASA, in terms of section 3(2)(c) read with section 2(g) and 2(m) of the ECA, to consider allocating spectrum for a single network

with possibility for national coverage for the provision of Mobile Broadcasting Services.

It is imperative that holders of radio frequency spectrum licences should co-ordinate their respective frequency usage with other licensees as envisaged in section 33(1) and (3) of the ECA. In terms of section 33(3) of the ECA, ICASA must prescribe regulations governing the co-ordination contemplated in section 33(1), which may include a process for the resolution of disputes among radio frequency spectrum licensees on an expedited basis.

I THEREFORE DIRECT ICASA, in terms of section 3(2) (c) of the ECA, to urgently consider making the regulations contemplated in section 33(3) of the ECA.

6. PROCEDURES AND CRITERIA FOR AWARDED RADIO FREQUENCY SPECTRUM LICENSES

In terms of section 31(3) of the ECA ICASA may, taking into account the objects of the Act, prescribe procedures and criteria for awarding radio frequency spectrum licences for competing applications or instances where there is insufficient spectrum available to accommodate demand. In terms of section 2(e) of the ECA one of the objects of the ECA, is to ensure the efficient use of the radio frequency spectrum.

I THEREFORE DIRECT ICASA, in terms of section 3(2)(c) of the ECA, to urgently consider prescribing the procedures and criteria contemplated in section 31(3) of the ECA.

7. UNDER SERVICED AREA LICENCES (USAL'S)

For USAL's to be functional, effective and attract investment to roll out their networks and provide electronic communications services in the designated areas and not be dependent only on subsidies.

I THEREFORE DIRECT ICASA in terms of section 3(2)(b) of the ECA to—

(a) where there is more than one licence in a province, merge the licences and issue one Provincial Under-Serviced Area Network Operator (PUSANO) licence. Each PUSANO must be licenced for individual electronic communications networks and services.

(b) ensure that the percentage of equity ownership and control to be held by persons from historically disadvantaged groups residing in the designated licence area, must not be less than 51%, or such higher percentage as may be authorised by the Minister;

(c) further ensure that ownership and control by persons or companies interested in investing in the licensed entity, shall be restricted to 49% or less.

8. LOCAL LOOP UNBUNDLING (LLU) PROCESS

I HAVE ALSO TAKEN THE POLICY DECISION that, given the complexity of local loop unbundling process on the one hand and the urgency for South Africa to enable all operators appropriately licensed to have access to the local loop on the other hand, the unbundling process in South Africa should be urgently implemented and completed by 2011. In addition, the Authority should urgently and as appropriate, take advantage of the report of the Local loop unbundling committee and its recommendations on the proposed unbundling models and ensure that we achieve the 2011 deadline.

9. WORLD SPACE

I HAVE TAKEN THE POLICY DECISION that, in recognition of the innovative and unique service provided by this African initiated project that has an important socio-economic impact in many African countries, it is in the interest of our country and continent that the services of WORLDSPACE, provided from South African soil should not be discontinued. Accordingly, ICASA is requested to consider the continuation of this service under the current arrangement until a long-term solution has been found.

I THEREFORE DIRECT ICASA to, in terms of section 3(2)(a) of the ECA, urgently conduct an inquiry on how this services can be continued and licenced in the country.

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