ELLIPSIS OVERVIEW: THE PROPOSED POLICY AND POLICY DIRECTIONS ON THE WOAN AND LICENSING OF UNASSIGNED HIGH-DEMAND SPECTRUM

The Invitation to provide written comments on the proposed policy and policy directions on the licensing of unassigned high demand spectrum is open for comment until 8 November 2018.

The purpose of the Draft Policy Direction is to direct the Authority to consider urgently:

- the licensing of unassigned high-demand spectrum to the WOAN; and,
- the licensing of unassigned high-demand spectrum to other licensees.

The wording of the Draft Policy Direction reflects the wording in the relevant sections of the Electronic Communications Amendment Bill 2018 ("**the Bill**").

WHOLESALE ELECTRONIC COMMUNICATIONS NETWORK SERVICE (WOAN)

The Draft Policy Direction sets out the following background:

- The WOAN will be licensed under the existing provisions of the Electronic Communications Act 36 of 2005 ("**the ECA**") under which the Minister can direct ICASA to publish an Invitation to Apply (ITA) for individual electronic communications network services (ECNS).
- The assignment of high-demand spectrum must be done on a "non-exclusive basis".
- A deviation has been approved from the position in the White Paper that all unassigned high-demand spectrum must be assigned to the WOAN. Cabinet has directed that the assignment of spectrum to the WOAN and others may take place simultaneously.

The Minister is to direct ICASA to issue out an ITA in respect of an IECNS licence and spectrum licences for the provision of WOAN services, taking into account the CSIR Report on the spectrum requirements of the WOAN and the provisions of the finalised policy direction.

What spectrum?

The CSIR Report – based on the WOAN having 20% market share, or about 10 million customers – recommends the following assignments of spectrum ("**the WOAN spectrum**"):

- 2x25MHz at 800MHz (band 20);
- 2x20MHz at 2.6GHz (band 7) – paired (FDD) spectrum; and,
- 25MHz at 2.6GHz (band 38) – unpaired (TDD) spectrum.

The balance of currently unassigned high-demand spectrum in the 700MHz, 800MHz and 2.6GHz bands – less potential reservations for the future growth of the WOAN – will become available for licensing to other applicants ("**the non-WOAN spectrum**").

Prequalification requirements

The ITA to be issued by ICASA must stipulate that applicants be a private consortium of persons, with a minimum of 50% local ownership, that is compliant with empowerment regulations passed by ICASA and includes effective participation by targeted groups, including women, youth and persons with disabilities.

Ownership and control must be structured so to ensure meaningful participation of all entities involved including SMMEs and to prevent monopolistic behaviour.

ICASA must ensure that the applicants for a WOAN have a viable business plan as well as the technical ability and finances to build and operate a WOAN.

Terms and conditions

The WOAN:

- can only provide wholesale services: consortium members providing retail services must do so out of an independently-operated vehicle;
- must provide wholesale open access to its network and facilities on terms that are effective, transparent and non-discriminatory; and,
- must charge wholesale rates prescribed by ICASA (it can be exempted from this requirement for a set period).

ICASA is required to determine:

- the **terms and conditions** of the WOAN licences, including universal service and access obligations;
- **incentives** to be applied, such as "a reduced spectrum application fee", reduced/waived annual spectrum fees for a period of 5 years and "immediate facilities leasing of electronic communications networks and electronic communications facilities" of other licensees who are assigned high-demand spectrum;
- **offtake**: "a minimum of 30% national capacity is procured from the WOAN as soon as the WOAN is licenced, for a period of not more than three years, by each radio frequency spectrum licensee that is assigned currently unassigned high demand spectrum as contemplated. The percentage to be procured by each licensee may be proportionate to the amount of high demand spectrum assigned to such licensee. The Authority may determine that, after expiry of the period contemplated herein, a minimum of 30% national capacity must be procured in the WOAN collectively by these radio frequency spectrum licensees, for a further period determined by the Authority[1]"; and,
- **delayed imposition of** wholesale **rates** applicable to WOAN services, for a specific period.

HIGH-DEMAND SPECTRUM TO OTHER LICENSEES

The Minister intends to direct the Authority, in terms of section 3(2) of the ECA, to urgently consider the licensing of radio frequency spectrum licences for unassigned high-demand spectrum not reserved for assignment to the WOAN.

These assignments are conditional on the recipients:

- leasing networks and facilities to the WOAN upon request, as soon as the WOAN is licensed;
- procure capacity in the WOAN (see **offtake** above);

[1] Quoted in full as we are not sure how to interpret this provision.

- complying with imposed universal service and access obligations in rural and under-serviced areas before utilising the assigned spectrum in other areas; and,
- complying with empowerment requirements (currently 30% ownership by historically disadvantaged groups)

The Draft Policy Direction requires that this spectrum is assigned subject to Chapters 8 (facilities leasing) and 10 (competition) of the ECA.

The field of potential applicants for these spectrum licences is to be broadened by allowing entities without ECNS licences to participate in the assignment process.

ICASA must determine the term of the licences to be issued and terms and conditions imposed will remain valid for the entire licence term.

//10 October 2018