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GENERAL NOTICE

NOTICE 889 OF 2011



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

ICASA FRAMEWORK FOR INTRODUCING LOCAL LOOP UNBUNDLING

FINDINGS NOTE

1. The Independent Communications Authority of South Africa (herein after referred to as "the Authority") hereby gives notice of its intention to gazette its findings and determinations subsequent to the outcome of the Section 4B inquiry process on Local Loop Unbundling (LLU) as initiated by the publication of the Discussion Paper on the ICASA Framework for introducing Local Loop Unbundling in Government Gazette No. 34382 on the 22nd June 2011.
2. The purpose of this Findings Note is to outline the Independent Communications Authority of South Africa's (ICASA) determinations on the process to be followed to unbundle the fixed line "local loop".

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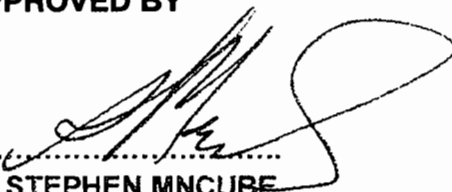
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DATE 29/11/2011
.....



Findings Note on the ICASA Framework for Introducing Local Loop Unbundling

1. Executive Summary

The Authority determines the following:

- The obligation to lease facilities under Chapter 8 of the Electronic Communications Act applies to all licensees providing Electronic Communications Network Services.
- Due to the limited scope of this initial inquiry, the Authority will confine its findings to the application of Local Loop Unbundling to fixed line networks.
- Local Loop Unbundling is to be introduced in a phased approach to minimise disruptions in the ICT sector, particularly regarding employment and network investments, whereby:
 - The Authority will engage industry, as part of a separate regulatory process, to ensure that IPConnect prices are reduced starting from the 31st March 2012.
 - The Authority will engage industry to ensure ways of introducing Bitstream by 1 November 2012.
 - An industry working group will be established to address the ordering system specification mechanisms to support the introduction of Bitstream, with the working group to be convened by the Authority in February 2012.
 - The Authority will engage industry on establishing an Access Line Deficit recovery scheme, through a public consultation process, as a precursor to the introduction of Bitstream.
 - A Regulatory Impact Assessment on the costs and benefits of the fixed line full loop, sub loop and shared line forms of LLU will be conducted, commencing in mid-2012.
 - The Authority will introduce supplementary LLU Regulations and conduct Market Reviews after completion of the Regulatory Impact Assessment.
 - The Authority will undertake an inquiry into the unbundling of wireless access networks.

2. Introduction

This Findings Note represents the Independent Communications Authority of South Africa's (the Authority) determinations as to the outcome of the Section 4B inquiry process on Local Loop Unbundling (LLU) as initiated by the publication of the Discussion Paper on the **ICASA Framework for introducing Local Loop Unbundling** in Government Gazette No. 34382

on the 22nd June 2011. A Reasons Document supporting these findings will be published in due course.

This note reflects the Authority's broad framework for the phased introduction of LLU in South Africa.

3. Background

In the Discussion Paper, the Authority expressed its views that the unbundling of the local loop in the South African electronic communications market represented a step forward in introducing the open-access approach to regulation of the electronic communications sector as espoused in the Electronic Communications Act, no 36 of 2005 (the ECA).

The Authority outlined its views on the legal requirements supporting the unbundling of the local loop; expressing its view that access to the local loop at a non-discriminatory price is mandated within the obligation to lease electronic communications facilities as prescribed in Chapter 8 of the ECA (See Section 3.3 of Government Gazette No. 34382, page 10).

Recognising that the introduction of an obligation to provide access to the local loop may cause disruptions to existing business models, the Authority requested respondents to provide answers to a number of questions.

4. Response by stakeholders to the Authority's Discussion Paper

This section of the Findings Note provides a synopsis of the views expressed by stakeholders based on the questions the Authority asked in the Discussion Paper.

4.1. *Question 1: Is ICASA's proposed approach to unbundling the local loop through the implementation of the facilities leasing regulations reasonable, feasible and acceptable?*

Respondents did not all concur with the Authority's viewpoint that access to the local loop is mandated under Chapter 8 of the ECA.

Vodacom, Cell C, Neotel, the Internet Service Providers' Association, MWEB and Internet Solutions supported the Authority's viewpoint that the obligation to provide access to the local loop is established through the provisions of Chapter 8 of the ECA.

Although Neotel concurred with the Authority's viewpoint, Neotel argued that the Authority should focus on the unbundling of fixed copper access networks at this stage.

MTN indicated its preference for the conducting of a market review under Chapter 10 of the ECA prior to the introduction of LLU.

Telkom argued that the implementation of LLU cannot be given effect under Chapter 8 of the ECA.

Labour, as represented by the Communications Workers Union, Solidarity and the South African Communications Union, opposed the introduction of LLU as a threat to job security and job creation.

Determination: The Authority determines that access to the local loop is mandated by Chapter 8 of the ECA, subject to the provision of such access being financially and technically feasible. However, LLU regulations would need to be made in terms of s44(3)(m) into "the manner in which unbundled electronic communication facilities are to be made available" and a Market Review on pricing such facilities would have to be undertaken before fixed line full line, shared or sub loop unbundling could be implemented in practice.

4.2. Question 2: What form of local loop unbundling do stakeholders realistically favour in the South African market?

ISPA, MWEB and Internet Solutions argued that LLU should apply equally to access to mobile data services; whereas Vodacom, Cell C and MTN argued that a mobile local loop does not exist (therefore to this extent the obligation to lease the 'local loop' under Chapter 8 falls away).

With regards to fixed loop unbundling, MWEB proposed a pragmatic approach to the introduction of LLU, with the various forms of LLU being introduced in a phased manner, commencing with Bitstream. Other respondents, including Neotel and Vodacom, argued that all forms of fixed line LLU should be made available simultaneously.

Some respondents argued that a Bitstream service is not a facility and hence the obligation to provide it cannot be enforced under Chapter 8 of the ECA.

Determination: The Authority determines that for the scope of this inquiry, access to the "local loop" refers to the traditional fixed network, and not access to the mobile or fixed wireless network. The Authority will address access to wireless networks in an inquiry and a determination will then be made as to whether to conduct a Market Review into wireless access networks. The Authority accepts that Bitstream is a service and not an electronic communications facility and will not be regulated in terms of Chapter 8 of the ECA.

4.3. Question 3: What other cost items should be included in each form of local loop unbundling?

Respondents provided detailed lists of possible network components to be included in the determination of a fair cost for each form of LLU.

Determination: The Authority intends utilising the information provided to support on-going cost-modelling exercises to ensure that prices paid by end-users fairly represent the costs of providing services.

4.4. Question 4: Should a standardised ordering and specifications system be developed?

All parties supporting the introduction of LLU expressed the importance of the development of a standardised Ordering and Specifications System (OSS).

Determination: The Authority will convene industry workshops to facilitate the development of an OSS.

4.5. Question 5: In the event that an access line deficit is identified, would you be willing to contribute to an access line deficit recovery scheme?

All respondents supporting the introduction of LLU indicated a willingness to contribute to an Access Line Deficit recovery scheme, provided that the existence and value of an Access Line Deficit can be justified.

Determination: The Authority will initiate a public consultation process to establish an Access Line Deficit recovery scheme, as a precursor to the introduction of any LLU product.

5. The phased introduction of fixed line local loop unbundling in South Africa

The direct impact of the introduction of LLU for access seekers is a reduction in input costs in the provision of retail services to their own customer base. The indirect effects are expected to be both an improvement in quality of service experienced by the end-user and more choice in service providers as well as reduced end-user prices.

The direct impact of the introduction of LLU for the access provider is a disruption in current business models, which require time to be adjusted, particularly when taking into account employment concerns and network investment decisions.

Taking into account the views expressed by all respondents as well as the fact that the obligation to lease an electronic communications facility is dependent on a request to lease such a facility being deemed both financially and technically feasible, the Authority deems it prudent to mandate a phased approach to the introduction of fixed line LLU.

This phased approach will involve the Authority engaging industry on the issue of a reduction in IPConnect prices by the 31st March 2012. The Authority will engage industry to ensure ways of introducing Bitstream by the 1st November 2012

The Authority will engage industry on the ordering system specifications as well as other technical considerations regarding the introduction of Bitstream through industry working groups that will be convened by the Authority in February 2012.

It is expected that Bitstream will be available from the 1st of November 2012.

The Authority will also conduct a public consultation process to establish a mechanism to address the existing Access Line Deficit as a precursor to the introduction of Bitstream. This is a necessary condition to ensure that the provision of Bitstream is financially feasible.

The Authority will initiate a Regulatory Impact Assessment on the costs and benefits of the unbundling of the various forms of fixed line local loop. The introduction of supplementary LLU regulations and a Market Review will be linked to the outcome of the Regulatory Impact Assessment.
