

Vol. 666

**4 December
Desember 2020**

No. 43968

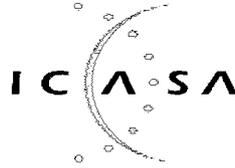
Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
GENERAL NOTICES • ALGEMENE KENNISGEWINGS			
Independent Communications Authority of South Africa/ Onafhanklike Kommunikasie-owerheid van Suid-Afrika			
696	Electronic Communications Act (36/2005): Licensing process for Individual Electronic Communications Network Service Licence and Radio Frequency Spectrum Licence for the Wireless Open Access Network (WOAN).....	43968	3

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 696 OF 2020



LICENSING PROCESS FOR INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK
SERVICE LICENCE AND RADIO FREQUENCY SPECTRUM LICENCE FOR THE WIRELESS
OPEN ACCESS NETWORK (WOAN)

REASONS DOCUMENT ON THE INFORMATION MEMORANDUM PUBLIC
REPRESENTATIONS (WOAN)

DECEMBER 2020

CONTENTS

1. BACKGROUND 4

2. OBJECTIVES 5

3. LEGAL FRAMEWORK 6

4. PROPOSED SPECTRUM FOR THE AWARD 7

5. SPECTRUM OBLIGATIONS 7

6. TIMING 16

GLOSSARY

B-BBEE:	Broad-Based Black Economic Empowerment
Capacity:	average data traffic speed (measured in megabits per second (Mbps)) per cell/base station at any given time offered by the WOAN using the high demand spectrum assigned to the WOAN.
ECA:	Electronics Communications Act 36 of 2005
I-ECNS:	Individual Electronic Communications Network Service
ICT:	Information and Communications Technology
IM:	Information Memorandum
IMT:	International Mobile Telecommunications
ITA:	Invitation to Apply
MVNO:	Mobile virtual network operator
National Capacity:	Total capacity offered nationally irrespective of technology used
RFS:	Radio Frequency Spectrum
SMME:	Small, Medium and Micro Enterprises
The Authority:	Independent Communications Authority of South Africa
WOAN:	Wireless Open Access Network

1. BACKGROUND

- 1.1. On 1 November 2019 the Independent Communications Authority of South Africa ("the Authority") published an Information Memorandum ("**IM**"). The purpose of the IM was to outline the Authority's intention with regards to the licensing process for International Mobile Telecommunications ("**IMT**") spectrum pursuant to considerations of the Policy on High Demand Spectrum and Policy Direction on the Licensing of a Wireless Open Access Network dated 26 July 2019 ("**Minister's Directive**").
- 1.2. The IM was aimed at providing guidance to prospective applicants on, *amongst other things*, the process and criteria to be applied on the licensing process in terms of regulations 6 and 7 of the Radio Frequency Spectrum Regulations 2015, read with section 31 (3), and 33 of the Electronic Communications Act, 2005 (Act No, 36 of 2005).
- 1.3. The IM also provided the Authority's licence considerations and obligations related to the WOAN and solicited written representations from interested parties. The Authority received more than 52 public representations within the deadline of 31 January 2020. An additional 4 public representations received after the deadline were not considered.
- 1.4. Below is a summary of the Authority's position on the representations received from the public which provides for how the Authority incorporated the public representations in drafting the Invitation-to-Apply ("ITA") for the I-ECNS and Radio Frequency Spectrum Licensing of a Wireless Open Access Network.
- 1.5. The summary herein focuses on the common submissions received from the public which relate exclusively to the WOAN as well as the drafting of the WOAN ITA. This document does not summarize all submissions received from interested parties but focuses on submissions that had an impact in the drafting of the WOAN ITA.

2. OBJECTIVES

- 2.1. The objectives section of the IM discussed the aim of licensing the IMT700, IMT800, IMT2300, IMT 2600 and IMT3500 and what it sought to achieve, namely:
 - 2.1.1. promotion of empowerment;
 - 2.1.2. increasing universal service;
 - 2.1.3. attracting investment in the WOAN sector; and
 - 2.1.4. encouraging infrastructure sharing, promoting competition, reducing costs.
- 2.2. The objectives of the IM were noted and supported in most submissions, but some submissions indicated that they do not agree that the IM in its current form addresses its key objectives.
- 2.3. Some views advocated for promotion of competition and others cautioned that the objectives as set in the IM may work against each other. There was a view that indicated that promoting competition must be prioritised and that the IM has failed to indicate how competition is to be promoted.
- 2.4. The Authority has considered the aspects raised in the public representations when drafting the composite ITA for the licensing of Individual Electronic Communications Network Service (I-ECNS) and Radio Frequency Spectrum (RFS) Licences for the Wireless Open Access Network (WOAN) ITA and was of the view that the introduction and licencing of the WOAN will be instrumental in addressing and promoting competition. In the Authority's view, the WOAN was an important policy instrument to lower barriers to entry for smaller players, improve the ownership of the ICT sector by historically disadvantaged individuals and to promote service-based competition. The Authority has as a result considered licencing spectrum to the WOAN in a manner that enables it to fulfil its policy mandate and to thrive.

3. LEGAL FRAMEWORK

- 3.1. This section listed and detailed some of the legislation / policy guiding the publication of the IM.
- 3.2. A number of submissions indicated that the IM consists of insufficient information on the auction process and how the WOAN would work.
- 3.3. The Authority was of the view that the minimum requirements for the WOAN stipulated in the IM were sufficient for the purposes of soliciting public representations.
- 3.4. The WOAN is a new concept in South Africa which has not been regulated or legislated on in the past, for this reason the Authority has decided to follow the beauty contest licensing process for the WOAN where applicants would be required to submit applications that included the following functionality aspects:
 - 3.4.1. Demand, Need and Support of the proposed service and impact of the proposed service on competition in the relevant markets;
 - 3.4.2. Economic efficiency, viability of the business plan and financial means of the Applicant;
 - 3.4.3. Capability, expertise and experience of the Applicant and its employees in business in general and in I-ECNS in particular;
 - 3.4.4. Technical efficiency;
 - 3.4.5. Functional efficiency in terms of the extent to which the use of spectrum meets the user's needs; and
 - 3.4.6. Diversity of ownership.
- 3.5. The applicant with an application that scores the highest on functionality would be awarded the I-ECNS and RF spectrum licences for the provision of WOAN services.

- 3.6. There were also submissions that warned that the Authority should be vigilant and avoid imposing proposed conditions of award (whether to the WOAN or to the licensees) that would undermine the objects of the Act¹.
- 3.7. The Authority has applied its mind considerably to the licence conditions that it has imposed on the WOAN as well as the conditions of award in order to ensure that it does not undermine the objectives of the Act.

4. PROPOSED SPECTRUM FOR THE AWARD

- 4.1. This section in the IM listed the spectrum that was available for assignment as well as options of the packages that would be available i.e. option 1 – option 5.
- 4.2. There were a number of suggestions presented by the industry on the amount of spectrum needed by the WOAN in order to be viable.
- 4.3. The Authority has set aside 2x 10 MHz on the IMT700 band, 1x 30 MHz on the 2600 MHz band and 1x 30 MHz on the IMT3500).²

5. SPECTRUM OBLIGATIONS

- 5.1. This section in the IM listed the obligations that would form part of the licence conditions of the Radio Frequency Spectrum (RFS) Licence.
- 5.2. The WOAN will be licenced for both I-ECNS and Radio frequency Spectrum licences.

WOAN OBLIGATIONS

5.3. EMPOWERMENT PROVISIONS

¹ Vodacom submission – page 59

² The reasons for the Authority allocating these bands are explained further in the IMT committee's reasons document.

- 5.3.1. Most comments received on the WOAN obligations related to empowerment provisions.
- 5.3.2. There was a large number of submissions that encourage stricter empowerment obligations for the WOAN such as 100% black ownership³ and 50% black female ownership⁴ as opposed to the level 3 BBBEE, that is proposed by the Authority. It was also suggested that allocations to incumbents whether through the WOAN or from the Authority must be subjected to a 40% Black SMME participation which is not limited to all services provided by incumbents⁵.
- 5.3.3. The submissions also suggest that the WOAN must encourage involvement of local communities in the operations of the WOAN as much as it is practically possible, including site construction and networking maintenance. Such involvement must begin with requisite skills training and development⁶.
- 5.3.4. Some submissions are of the view that 100% black ownership of the WOAN should remain for 20 years⁷.
- 5.3.5. The Authority has considered the empowerment recommendations from interested parties and has in addition to the empowerment provisions stipulated in the ECA imposed the following empowerment provisions for the WOAN:
- 5.3.5.1. The application must include the percentage of equity ownership to be held by persons from historically disadvantaged groups, which must not be less than 30%

³ ABBA submission – page 1; Bowline Security submission – page 1 & 2; Day Dreamer & ICT Project (PTY) LTD submission – page 1; FCC Projects and Services submission – page 1 & 2; GoBe (PTY) LTD submission – page 2; JuiceTel (PTY) LTD submission – page 2; Sun 'n Shield Technologies submission – page 2; Tuse Applications (PTY) LTD submission – page 2; UniqueNet Resource submission – page 2; Zavuna Technologies submission – page 1.

⁴ Smile Communications submission – page 13.

⁵ ABBA submission – page 2; GoBe (PTY) LTD submission – page 2; JuiceTel (PTY) LTD submission – page 2.

⁶ The ICT SMME Chamber submission – page 6.

⁷ Bowline Security submission – page 2; Day Dreamer and ICT Project (PTY) LTD submission – page 1; FCC Projects and Services submission – page 2; UniqueNet Resource submission – page 2.

equity shareholding with an equivalent voting power in the Applicant;

- 5.3.5.2. The application must include the percentage of equity ownership to be held by black people as defined by section 1 of the B-BBEE Act, which must not be less than 50% equity shareholding with an equivalent voting power in the Applicant;
- 5.3.5.3. The applicant must be at least 20% black women owned in order to encourage meaningful participation of black women in the industry;
- 5.3.5.4. The application must include diversity of ownership to ensure meaningful participation of all entities involved including SMMEs;
- 5.3.5.5. The application must include effective participation by targeted groups, including women, youth and persons with disabilities.
- 5.3.5.6. The Authority has imposed empowerment obligations on the WOAN in order to ensure that it is a credible empowerment tool that will assist the Authority to achieve the objectives of the ECA as set out in section 2, namely: to encourage transformation in the industry, promote an environment of open, fair and non-discriminatory access to broadcasting service, electronic communication networks and to electronic communication services, as well as to promote the empowerment of historically disadvantaged persons including black people, with particular attention to the needs of women, opportunities for youth and challenges for people with disabilities.

- 5.4. There were calls by the interested parties for all other spectrum that is available to be made available to the WOAN first⁸.
- 5.5. The Authority has considered and set aside spectrum for the WOAN first in order to ensure its viability. The WOAN will not participate in the auction for spectrum but will be allocated the spectrum already set aside for it in terms of the beauty contest spectrum assignment model.
- 5.6. The Authority intends to auction all the identified spectrum excluding the set-aside for the WOAN.
- 5.7. Some submissions argued that the public sector (government) has to play a more active role in the WOAN⁹.
- 5.8. The Authority has considered the submissions indicated in paragraph 5.7 above and permits the WOAN applicants to partner with the public sector in accordance with Section 3.3(e) of the Minister's Directive.
- 5.9. Other submissions suggested that only the WOAN should be allowed to secure sufficient spectrum to roll out a national network and produce capacity to support market needs at the wholesale level in order to enable the WOAN to compete in a skewed market¹⁰.
- 5.10. Having considered the representations, the Authority is of the view that the WOAN must have sufficient spectrum set aside to roll out a national network and produce capacity to support market needs at the wholesale level in order to enable the WOAN to compete in a skewed spectrum market. However, the Authority has an obligation to ensure that in assigning spectrum to the WOAN it does not go against its mandate in terms of the ECA to promote effective competition. To this end, the Authority has taken a decision to undertake a simultaneous auction process that will allow operators to obtain sufficient spectrum to roll out a national network and has considered applying incentives

⁸ Bowline Security submission – page 2; GoBe (PTY) LTD submission – page 2.

⁹ Altron Nexus Solutions submission – page 4 – 5.

¹⁰ Cell C submission – page 6.

to the WOAN that will help it to compete in this perceived skewed spectrum market.

- 5.11. Some submissions suggest that the reserve price for auction should not apply to the WOAN considering the importance of the WOAN's financial sustainability¹¹.
- 5.12. The WOAN will not be participating in the auction process and will therefore not be required to pay a reserve price.
- 5.13. In the Authority's view, since the WOAN is deemed an empowerment and transformation tool, it is necessary to ensure its financial sustainability. Although the Directive enjoins the Authority to consider a payment holiday period of 10 years, the Authority is satisfied that a seven (7) year payment holiday for both general licence fees and spectrum fees is sufficient from the date of licence issuance. Two (2) years will be for deployment of operations and five (5) years will be to have cash flow to assist it with financial sustainability.
- 5.14. Some submissions were of the view that the WOAN will be a late entrant into the market and will be expected to compete against dominant, vertically integrated and well entrenched incumbents.
- 5.15. Mindful of this market structure, the Authority has applied incentives that would help the WOAN to compete against the well-entrenched incumbents as indicated under paragraphs 5.25 to 5.27 of this Reasons Document.
- 5.16. There are also submissions that are of the view that the asymmetric framework for WOAN should include:
 - 5.16.1. The assignment of adequate spectrum at a reasonable or even zero-cost; (The Authority has considered this and has afforded the WOAN a seven (7) year payment holiday for the general licence fees and spectrum licence fees)

¹¹ Cell C submission – page 21 – 22.

- 5.16.2. Access to backhaul, metro and long-distance links, limiting the amount of initial investment by enforcing a requirement for sharing of existing passive infrastructure; (The Authority has considered this and explains its considerations further in paragraphs 5.31 – 5.33 of this reasons document)
- 5.16.3. A special dispensation in respect of rapid deployment roll-out obligations, recognition of need to target urban areas first; (The Authority has considered this and explains its considerations further in paragraph 5.20 of this reasons document)
- 5.16.4. Access to USAF / Digital Dividend Funds; (The Authority does not administer the USAF but complies with Section 89,90 and 91 of the ECA on this aspect)
- 5.16.5. The appointment of a credible, black- owned and woman- led consortium must operate WOAN¹². (The Authority has considered the WOAN empowerment obligations in paragraph 5.3 of this reasons document)

COVERAGE

- 5.17. There was a proposal from the public of a 70/30 split in favour of rural areas to ensure that the WOAN is sustainable¹³. Some representations indicated that a 97% coverage obligation in Underserviced areas is uneconomic¹⁴.
- 5.18. Most representations received indicated that open access obligations will be beneficial to encourage partnerships with the WOAN¹⁵.
- 5.19. Some submissions indicated that coverage obligations will diminish the viability of the WOAN, there will be low returns on investment in the rural areas.

¹² Smile Communications submission – page 9.

¹³ ABBA submission – page 2; GoBe submission – page 3; JuiceTel submission – page 3

¹⁴ MTN submission – page 13; South Africa Communications Forum submission – page 9

¹⁵ ABBA submission page 2; GoBe submission – page 3; JuiceTel submission – page 3;

- 5.20. The Authority has not implemented coverage obligations for the WOAN to ensure that it is sustainable.

MVNO

- 5.21. There are representations that were submitted that advocated for the removal of MVNO access obligations.¹⁶
- 5.22. Some submissions advise that the requirement for a licensee to provide open access to a minimum of three MVNOs as a condition of its licence is likely to be detrimental to an environment where the WOAN can grow and become a healthy and viable wholesale business. It is instead believed that the licensee and the WOAN should compete in the open market for MVNO business, supporting a more competitive market for wholesale services¹⁷.
- 5.23. The Authority has considered the submissions and has proposed open access obligations where a licensee who is assigned spectrum through this process is required to provide access to wholesale services on open access principles of fairness, transparency and non-discrimination to any other person licensed in terms of the ECA and persons providing services pursuant to a licence exemption. In the Authority's view, it is important to promote the viability and sustainability of the WOAN by giving more Licensees access and to furthermore support the open access principles of fairness, transparency, and non-discrimination in line with the provisions of Chapter 4 of the ECA.
- 5.24. The requirement for a licensee to provide open access to a minimum of three MVNOs as a condition of its licence was not considered for the purposes of finalising the WOAN ITA as it is not applicable to the WOAN.

¹⁶ MTN submission – page 13 & 39

¹⁷ Vodacom submission – page 9 & 37

30% OFFTAKE

- 5.25. One of the common questions that were asked in the submissions relates to uncertainty as to the 30% of the national capacity that needs to be procured from the WOAN. The Authority was further requested to clarify how the 30% capacity offtake requirement on licensees will work in practice¹⁸.
- 5.26. The Authority has considered the 30% capacity offtake and has proposed obligations and incentives, respectively for the WOAN as follows:

Obligations

- 5.26.1. A licensee that will be assigned spectrum through this process (WOAN) is required to make available a minimum of 30% national capacity to be procured by successful Applicants that will be assigned Radio Frequency spectrum through the IMT auction licensing process, as soon as the WOAN is operational, for a period of 7 years.
- 5.26.2. The obligation to procure a minimum of 30% national capacity from the WOAN by successful Applicants that are assigned Radio Frequency spectrum through the IMT auction licensing process, collectively shall be imposed on the IMT auction licensees as licence terms and conditions in accordance with regulations 7 (e) of the RFSR.
- 5.26.3. The WOAN will be provided details on which successful applicants assigned Radio Frequency Spectrum through the IMT auction licensing process will be obliged to procure 30% national capacity from the WOAN collectively after the IMT auction licence applicants have been assigned spectrum with a licence condition for the 30% uptake in accordance with regulation 7 (e) of the RFSR.

¹⁸ Cell C submission – page 38; FNB Connect submission – page 1; Smile Communications submission – page 10; Telkom submission – page 10;

Incentives

5.27. An obligation to procure a minimum of 30% national capacity from the WOAN by successful Applicants that are assigned Radio Frequency spectrum through the IMT auction licensing process, collectively shall be imposed on the IMT auction licensees as licence terms and conditions in accordance with regulations 7 (e) of the RFSR as an incentive to the WOAN.

FACILITY LEASING AND INFRASTRUCTURE SHARING

5.28. Some submissions state that preferential access to facilities leasing should be limited to the WOAN¹⁹.

5.29. Other submissions state that obligations should be imposed on other licensees to prioritise WOAN access to active and passive infrastructure sharing and roaming.²⁰

5.30. It must however be noted that some submissions oppose preferential access to operator assets by the WOAN. These advocate that access should be based on fair, reasonable and commercially negotiated terms which must apply to infrastructure sharing.²¹

5.31. The WOAN and other licensees are subjected to the Facilities Leasing Regulations in force to deal with access to electronic communication facilities. The Authority is to impose licensing conditions for Tier 1 operators to provide reference offers for their pricing.²²

5.32. Chapter 8 of the ECA makes provision for facilities leasing. In addition to this the Authority has developed Facilities Leasing Regulations in terms of section 44 of the ECA. This gives the Authority the power to perform regulatory oversight to ensure compliance with the facilities leasing requirement.

¹⁹ Telkom submission – page 10

²⁰ Community Investment Ventures Holdings submission

²¹ MTN submission – page 13 & 39

²² This aspect is an IMT process and will be dealt with further in the IMT committee's reasons document.

5.33. The WOAN just like the other licence holders will be subjected to the Facilities Leasing Regulations.

6. TIMING

6.1. The Authority is of the view that the licensing processes for the Industry and the WOAN is to commence simultaneously by publishing both the ITA's at the same time. The Authority appreciates the fact that the two processes may not be concluded at the same time.



DR KEABETWE MODIMOENG
CHAIRPERSON

DATE: 03/12/2020