



## **Suggested Amendments to the South African Electronic Communications Act: Universal Service and Access**

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The Electronic Communications Act (EC Act) came into force in 2006. It replaced post apartheid legislation relating to telecommunications, which entrenched the state-owned monopoly and for basic telecommunications services. One of the aims of the EC Act was to pave the way to a competitive industry, not as an end in itself, but as a means to achieving universal service.

The EC Act left in tact, the Universal Service and Access Agency of South Africa (USAASA) and many of the provisions relating to universal service that were found in the Telecommunications Act. Most of the provisions in the Telecommunications Act were not implemented and the provisions have not been implemented in terms of the EC Act either. Some of the problem is that the universal service and access scheme is not clear, providing a bottleneck in the establishment of universal service and access policy.

This is the fourth in a series of articles suggesting amendments to the EC Act. In this article, we discuss amendments to the provisions of chapter 14 the EC Act relating to universal service and access.

### **UNIVERSAL SERVICE AND ACCESS IN THE EC ACT**

The EC Act defines 'universal service' as:

“the universal provision of electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14.”

'Universal access' is defined as:

“universal access to electronic communications network services, electronic communications services and broadcasting services, as determined from time to time in terms of Chapter 14.”

The determinations are to be made by the Minister on the recommendation of USAASA.

## **Universal Service and Access Fund**

The Universal Service and Access Fund (USAF) was established in terms of the Telecommunications Act so that subsidies could be paid out in order to further the goals of universal service and access. Section 87 of the EC Act provides for the continued existence of the USAF.

Although USAASA is required to administer the USAF, it must do so in accordance with the instructions of the Minister. Money paid into the fund is transferred to the national revenue fund in terms of section 87(2), and subsidies are paid out only if Parliament appropriates money for that purpose in terms of section 87(3).

Section 89 of the EC Act requires every holder of a licence to make a prescribed annual contribution to the USAF. Icasa published regulations in this respect by Notice 1270 of 2008 in Government Gazette 31499 dated 10 October 2008. The regulations provide that all licensees pay an annual contribution of 0.2 percent of annual turnover.

Section 88 of the EC Act provides that the money in the USAF be exclusively utilized for the payment of subsidies to:

- Assist 'needy persons';
- Broadcasting and ECNS licensees for the construction of infrastructure in under-served areas;
- Schools and universities for the procurement of services; and
- Establish and operate broadcasting services and community access centres.

In terms of section 88(2) of the EC Act, under-served areas are to be determined by Icasa.

In terms of section 88(4), the Minister must determine types of needy persons to whom assistance may be given, the types of persons who may apply for assistance and the application manner, and the manner in which subsidies will be paid.

USAASA has embarked on a consultative process that should lead to recommendations to be made by USAASA to Icasa and the Minister in respect of the required determinations.

## **Competitive Tender for Universal Service Projects**

In terms of section 90 of the EC Act, USAASA may also award project grants to ECNS licensees in under-served areas by competitive tender.

## **E-rate**

In 2001, the Telecommunications Act was amended, by the addition of section 45(3), to provide for a 50 percent discount to public schools and universities for Internet access services. The Minister was required to set a date on which the provisions came into force. The Minister set the date 18 January 2005. To date, however, no licensees have implemented the provisions.

The provisions nonetheless were re-enacted in section 73 of the EC Act, with some amendments. The two amendments that are noteworthy are:

- A requirement that Icasa regulate the implementation of the provisions in section 73(4).
- A discretion for the Minister to extend the discount to private schools in section 73(5).

Icasa published E-Rate Regulations in Government Notice No R 246 in Government Gazette 31979 dated 3 March 2009. It is not clear that the regulations are being enforced, however.

## **SUGGESTED AMENDMENTS TO THE EC ACT**

'Universal access' is defined in the ECA as "universal access to electronic communications network services, electronic communications services and broadcasting services, as determined from time to time in terms of Chapter 14". Section 82(3)(a)(i) provides that the Minister must determine what constitutes universal access by all areas and communities to ECS and ECNS. There is no mention of broadcasting services, like there is in the definition of universal access. Therefore, it is suggested that the section is amended to indicate that the Minister must determine what constitutes universal access by all areas and communities to ECNS, ECS and "broadcasting services".

The ECA defines 'universal service' as "the universal provision of electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14". Section 82(3)(a)(ii) provides that the Minister must determine what constitutes the universal provision for all persons to ECS. Again, broadcasting services are not mentioned although they are mentioned in the definition. It is therefore suggested that the section is amended to indicate that the Minister must determine what constitutes the universal provision to all persons of ECNS, ECS and "broadcasting services".

Section 82(3)(a)(ii) provides that the Minister must determine what constitutes access to ECN including elements or attributes thereof. In the definitions, the concept of access to ECN is found in the definition of universal access, where in section 82(3)(a) it is found in

the provision relating to universal service. It is suggested that a new section be included to indicate that in determining universal access and universal service, the Minister must determine what constitutes access to an ECN, thereby ensuring that access to an ECN is relevant to both the determination of what is universal access as well as universal service.

Section 88(1) provides that subsidies may be paid out of the USAF for certain things. There are inconsistent references to ECNS, ECS and broadcasting services and therefore it is suggested that section 88(1)(a) is amended to include reference also to ECNS; that section 88(1)(b) is amended to include reference only to ECNS; and that section 88(1)(e) is amended to state “for the establishment and operation of community access centres, including for training and allowances for personnel, in order that communities may gain access to ECNS, ECS and broadcasting services”.

Section 88(3) requires Icasa to bi-annually review the definition and designation of under-serviced areas. What is meant by the word bi-annual is often, every six months. Therefore, it is recommended that “bi-annually” be replaced with “every two years”.

Section 88(4) provides the Minister with the authority to make determinations for the payment of subsidies out of the USAF in respect of needy persons. As the USAASA is established to administer the USAF, inter alia, it is suggested that section 88(4) be amended to state that USAASA must determine the meaning of “needy persons” for the purposes of the ECA. Section 88(4) also should be amended to indicate that USAASA must create application procedures for such persons to apply for subsidies from the USAF as well as for all of the other purposes for which funds may be distributed, including procedures for competitive tender projects.

## **CONCLUSION**

In the Medium Term Strategic Framework - a framework to guide government's programme in the electoral mandate period 2009-14, published by the Minister in the Presidency: Planning, at least six of the Strategic Priorities have a component of achieving universal access to ICT services.

As electronic communications becomes increasingly important to the fulfillment of other aspirations, such as education, health care, government services and the like, universal access in the context of electronic communications will become increasingly important.

In order to achieve universal service and access, the provisions of the EC Act must be implementable, including the provisions related directly to encouraging universal service

and access. At a minimum, therefore, chapter 14 should be amended as suggested herein to ensure that the provisions can be implemented.

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