

ICT Weekly Upda

INDEX

NEW FINDINGS, JUDGMENTS AND ANNOUNCEMENTS

Page 1

NEW PROCEEDINGS

Page 1

PENDING PROCEEDINGS - REPRESENTATIONS DUE

Pages 1

PENDING PROCEEDINGS - OUTCOME AWAITED

Page 2

Q&A

Page 3

LISA THORNTON INC PUBLICATIONS

Page 4

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Legal, regulatory and policy developments in the ICT industry

Prepared by Lisa Thornton Inc for clients and colleagues

NEW FINDINGS, JUDGMENTS AND ANNOUNCEMENTS

LTI

- A new Section has been included in the ICT Weekly Update, Q&A, in which we answer your questions. Please send your questions to info@thornton.co.za.

Icasa

- Icasa has withdrawn its invitation to apply for licences to provide mobile broadcasting services.

Competition Tribunal

- The Tribunal has approved the mergers between MTN and Italk Cellular, MTN and Verizon, and Vodacom and Storage Technology Services.

NEW PROCEEDINGS

Tenders

- Icasa has called for tenders for the provision of an ERP solution. Tenders are due **12 March 2009**.

- Icasa has called for tenders for the appointment of a supplier of mobile direction finding systems for monitoring and investigating spectrum interference. Tenders are due **11 March 2009**.

- The DoC has requested tenders for assistance in managing Digital Dzonga. Tenders are due **20 March 2009**.

Dept of Environmental Affairs and Tourism

- The Dept has published proposed environmental impact assessment regulations, and proposed activities that require an environmental authorisation, including facilities for marine infrastructure and for radio masts in certain areas of the Eastern Cape. Comment is due **16 March 2009**.

PENDING PROCEEDINGS - REPRESENTATIONS DUE

Icasa

- Code of conduct for broadcasters. Comments are due **20 Feb 2009**.

- Regulations setting out minimum standards for end-user and subscriber service charters. Comment is due **20 March 2009**.

- Broadcasting advertising regulations and a supplementary code of practice. Comment is due **27 March 2009**.

- Licence conversions. Service licences converted but not yet issued must submit licensee information to Icasa by **26 May 2009**.

Minister of Science and Technology

- Regulations in terms of the Astronomy Advantage Areas Act. Comments are due **6 March 2009**.

.za Domain Name Authority

- Deletion of certain dormant or unsustainable domains. Comment is due **13 March 2009**.

PENDING PROCEEDINGS - OUTCOME AWAITED

Parliament

- * Broadcasting Amendment Bill
- * Films and Publications Amendment Bill

Minister of Communications

- * Study on the trends of digital local content and uptake rates
- * International peer benchmarking study on the costs to communicate
- * Guidelines for the rapid deployment of electronic communications facilities (re undersea cables)
- * ICT Charter regarding BEE

Department of Communications / Icasa

- * Under-serviced area licences (second and third rounds)
- * GMPCS licences

ICASA

[Pending decisions about individual licenses and complaints have not been included in this list]

- Broadcasting regulations re elections
- Carrier pre-selection regulations
- Terrestrial broadcasting frequency band plan relating to digital migration
 - * Regulations relating to the commissioning of independently produced South African programming.
 - * Licence fee regulations
 - * Digital broadcasting Migration Regulations
 - * Radio frequency band plan
 - * E-rate regulations
 - * Findings in enquiry on interpretation of under serviced areas in the Cell C licence
 - * Must Carry Obligations
 - * Schedule for periodic review of relevant markets

- * Regulations for monitoring and investigating anti-competitive behavior
 - * Significant market power determinations
 - * Pro-competitive licence terms and conditions
 - * Methodology to determine effectiveness of competition
 - * Methodology to define and identify relevant markets
 - * Technical standards for power line communications
 - * Technical standards for electronic communications equipment
 - * Interconnection Regulations
 - * Facilities Leasing Regulations
 - * Essential Facilities Regulations
 - * Regulations with regard to functional specification for geographic number portability
 - * Findings in section 27 enquiry into a satellite licensing framework
 - * Findings in respect of the Discussion Paper on the Review of Community Sound Broadcasting Policy
 - * Radio regulations regarding new standards for telecommunications equipment
 - * Regulations with regard to telecommunications equipment approval
 - * Regulations in respect of standards for analogue terminal equipment
 - * Regulations regarding amateur radio
 - * Regulations regarding local television

USAASA

- * Recommendations on definitions of universal service, universal access, under serviced areas, and needy persons.

South African Law Reform Commission

- * Report on Privacy and Data Protection Bill

Department of Science and Technology

- * National Space Science and Technology Strategy

Minister of Justice and Constitutional Development

- * Ratification of Council of Europe's Convention on Cyber crime (dealing with computer-related fraud and forgery and infringement of copyright). An additional protocol regarding racist and xenophobic acts committed through computer systems has yet to be signed by South Africa.

Minister of Trade and Industry

- * Proposed new merger thresholds. The due date for comments is **31 October 2008**.

*Proposal to increase the fees for filing merger notices. The due date for comments is **31 October 2008**.

.za Domain Name Authority

- * Memorandum and Articles of Association
- * .za Domain Policy and Procedure

Website Use Policy

This policy, developed in line with South African law, is for sale. If you would like to purchase it, please send a request to info@thornton.co.za.

Communications Systems Use Policy

This policy for employee and consultants' use of employers' communications systems, has been developed in line with South African law. If you would like to purchase the policy, please email a request to info@thornton.co.za.

Q&A

Electronic Communications Licensing

How is the provision of electronic communications networks or services regulated?

Electronic communications networks and services are primarily regulated by ICASA in terms of the ECA. However, the Minister is responsible for making policy and issuing policy directions to ICASA and for making key regulatory decisions, such as when new individual ECNS may be licensed.

Is a licence required to install or operate electronic communications networks or provide services over them?

The provision of ECNS, ECS and broadcasting services (BS) requires either an individual or class licence or must be exempt from licensing. ECNS, ECS and BS licences are either be individual or class.

Those licensees that are individual include ECNS of national or provincial scale, and voice telephony ECS that use numbers allocated by ICASA. Licence applications for individual licences may only be made in response to an invitation and in respect of individual ECNS licences, only after a policy direction issued by the Minister.

Class licences include ECNS of municipal scale, data ECS and voice ECS where numbers are sub-allocated by licensees. ICASA must act on applications within 60 days and if it fails to do so, there will be a deemed class licence registration.

ICASA has prescribed that certain services may be exempt from licensing, including non-profit ECS, resellers of ECS and private ECNS; however, service providers must nonetheless apply for the right to provide exempt services in terms of ICASA regulations.

Is the provision of electronic communications networks or services open to competition in South Africa?

There currently exists some competition in the provision of services. However, SA is still in the process of transitioning from a statutorily protected monopoly for the provision of public switched telecommunication services (PSTS) and duopoly for the provision of mobile cellular telecommunications services (MCTS). A second PSTS provider and third MCTS provider were licensed (in addition to Sentech) under the now repealed Telecommunications Act. Those licensees as well as hundreds of former value added network service licensee have been issued individual ECNS and ECS licences in the licence conversion process. However, the establishment and implementation of a regulatory framework effectively facilitating competition largely is absent.

What other requirements, permits or approvals must be met or obtained before networks may be installed or operated and services provided?

In addition to service licensing, if a service provider intends to use spectrum, that provider must obtain the required radio frequency spectrum licence. All equipment used by licensees must be type approved by ICASA and all technical standards prescribed must be followed.

May licences be transferred and if so under what conditions?

No individual or class licence may be assigned, ceded or transferred without the prior permission of ICASA.

What fees and levies are payable and to whom with respect to the grant of a licence for the installation or use of network infrastructure or the provision of services?

ICASA may prescribe regulations establishing application and registration fees, licence fees (taking into account any policy direction issued by the Minister), numbering allocation fees, and contributions to the Universal Service and Access Fund.

No licence or application fees have been prescribed by ICASA in terms of the EC Act. ICASA has promulgated regulations requiring all licensees to pay 0.2 percent of annual turnover related to the licensed activity to the USAF.

LISA THORNTON INC PUBLICATIONS

International Comparative Legal Guide (IPLG)

The Global Legal Group has published the International Comparative Legal Guide to Telecommunications Law and Regulations 2009 (2nd edition). If you would like a copy, please email lat@thornton.co.za

Telecommunications Law in South Africa

If you would like to purchase Telecommunications Law in South Africa, edited by L Thornton, et al, please contact STE publishers at angela@ste.co.za. It is available online at www.idrc.ca/en/ev-87910-201-1-DO_TOPIC.html, and link.wits.ac.za/papers/tele-download.

Email Compliance

If you would like a copy of A Guide to Achieving Email Compliance - a South African perspective, please contact info@thornton.co.za.

Protecting Minors from Harmful Content via Mobile Phones

This report is available online at lhr.org.za/news/2007/protecting-minors-harmful-content-mobile-phones.

The State of Competition in the Telecommunications Sector in South Africa

This report is available online at internationalcompetitionnetwork.org/media/library/conference_5th_capetown_2006/AppendixIII.pdf.

World Communications Regulation Report

BNA International has published a series of articles by Lisa Thornton Inc on South African ICT issues

- Numbering Plans and Number Portability, March 2009.
- Court Rulings, Licence Conversion, and the Future of Electronic Communications in South Africa, Dec 2008
- Radio Frequency Spectrum, October 2008
- High Court Ruling Paves the Way for Competition, Sept 2008
- Recent Legal Challenges, May 2008
- Update on the Licence Conversion Process, April 2008
- A New Broadband Infrastructure Company, Feb 2008.
- Regulation of Submarine Communications Networks, November 2007.
- Interception of Electronic Communications, October 2007.
- The Minister's Policy and Policy Directions, September 2007.
- How the Communications Regulator exercises its Powers and Functions, July 2007.
- The Making of subordinate Legislation, May 2007.
- Rights of Way, April 2007.
- Competition Matters, March 2007.
- Universal Service, Feb 2007.
- The Regulation of Broadcasting Services, Dec 2006.
- Interconnection and Facilities Leasing , November 2006.
- The Powers of the Minister and of the Independent Regulator, October 2006.
- The Electronic Communications Act, Sept 2006.

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Lisa Thornton Inc
PO Box 1377, Saxonwold, 2132,
South Africa

