

ICT Weekly Update

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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

Icasa

- Icasa has published its findings and conclusions interpreting the definition of under-serviced area in the former Cell C licence. Icasa has also invited Cell C to submit its "roll out plans", which will presumably lead Icasa to consider whether Cell C complied with its licence obligations.

- Icasa has postponed the date for the workshop on the draft terrestrial broadcasting frequency plan to **11-12 March 2009**.

Minister of Trade and Industry

- The Minister will launch the national space policy on 6 March 2009.

MDDA

- The MDDA has announced that Primedia Broadcasting has renewed its agreement to contribute .2% of its annual turnover to the MDDA

LTI

- LTI will present a paper at the Broadband Summit scheduled for 25-27 March 2009. If you would like to attend the event at a 20% discount as a client of LTI, please send a request to info@thornton.co.za.

NEW PROCEEDINGS

Tenders

- Sita has called for tenders for the provision of ICT compliance services. Tenders are due **31 March 2009**.

- Icasa has called for tenders for a storage and backup system. Tenders are due **6 March 2009**.

PENDING PROCEEDINGS - REPRESENTATIONS DUE

Icasa

- 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**.

Dept of Environmental Affairs and Tourism

- Environmental impact assessment regulations. Comment is due **16 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]

- Code of conduct for broadcasters.
- Broadcasting regulations re elections
- Carrier pre-selection regulations
- Terrestrial broadcasting frequency band plan relating to digital migration
- * Regulations relating to the commissioning of independently produce 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 Spectrum Licensing

How is the use of radio frequency spectrum regulated?

Spectrum is regulated by ICASA in terms of the ECA. However, the Minister has certain regulatory authority, including the obligation to approve (or disapprove) the band plan and to decide whether and how the migration of users that are government entities or organisations, is permitted.

Is a licence required to use radio frequency spectrum?

Unless the use is exempted, a spectrum licence is required. In addition, an ECNS licence (or exemption) is required.

Spectrum licences are awarded consistent with the radio frequency band plan. The band plan indicates which spectrum is designated for use for which type of service. ICASA has recently published a proposed new band plan for public comment.

How is the use of radio frequency spectrum licensed?

Spectrum licences allowing an entity to use certain spectrum are awarded by ICASA. Applications are made on application forms made available by ICASA and are currently considered on an ad hoc basis.

ICASA may make regulations and criteria for awarding spectrum licences for competing applications or in instances where there is insufficient spectrum available to accommodate demand. ICASA has concluded an enquiry into the criteria and process for awarding spectrum licences for use of available 2.5-2.6 GHz and 4-3.6 GHz spectrum. ICASA has indicated that it will draft regulations that will create a two stage process for awarding licences, involving a pre-qualification phase designed to ensure that the spectrum is awarded to entities owned by historically disadvantaged individuals (HDIs), followed by an auction.

Can the use of radio frequency spectrum be made licence-exempt?

ICASA may exempt certain uses of spectrum from the licensing requirement, and prescribe the conditions under which unlicensed use may take place. It has prescribed certain spectrum licence exemptions, for example, for the use of the 2.4 - 2.483 GHz band for wide band wireless systems, WLANs, wideband data transmission applications with a maximum 100 mW eirp, and the 5.470 - 5.725 GHz band for wireless access systems and radio wireless access networks (indoor and outdoor) with a maximum 1 W eirp.

May radio frequency spectrum licences be transferred and if so under what conditions?

Spectrum licences may be transferred in terms regulations made by ICASA, but only twelve months after the date of issue or in the case of commercial operations, twelve months after the facilities are operational. These regulations were made under previous regulatory regimes but remain in effect until amended or repealed by ICASA.

What fees are payable with respect to the grant of a licence for the use of radio frequency spectrum?

The specific amounts of application and licence fees for the various uses of spectrum have been prescribed by ICASA under previous regulatory regimes, which remain in effect until amended or repealed by ICASA.

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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