CWU'S INPUTS ON THE LOCAL LOOP UNBUNDLING DISCUSSION PAPER

The response below addresses various issues related to the LLU and not only to what ICASA requested stakeholders to respond to as captured on page 16 of the document.

1.Issues that CWU considered:

CWU considered carefully the options available to it, which are informed by a number of issues including, but not limited to:

- Job security
- Prospects of job creation
- Socio-economic impact of type of unbundling or to retain the status quo
- Expansion of the network to reach all citizens, urban, rural, rich , poor, black and white, township and suburb residents.

2. Costs

LLU requires operational co-ordination between the incumbent and new entrants regarding processes such as ordering, provisioning, testing, billing, fault handling, SLA, etc. Agreement may be required in areas such as pricing, collocation and spectrum management on broadband local loops. Increase in energy needs.

The pricing of LLU, which will be determined by ICASA will ultimately be used by companies to cut costs in other inputs. Usually labour costs are the first companies consider and may lead to job losses. The role of the regulator in all the above will become essential to facilitate disputes.

3. National Security

LLU also represents an element of risk to national security. Despite the current legal protection in place, calls, e-mails and other types of communication is at a greater risk of being intercepted or manipulated. With one service provider a risk already existed, but with more service providers accessing certain elements of the network or more service providers providing different services at different

layers of the network, an even greater risk exists. South African security and intelligence agencies have been previously misused for party political battles and remain vulnerable to other types of misuse.

4. Insufficient Network Coverage

It is unfortunate that the current network does not extend to the previously disadvantaged areas, because it would have strengthened the need for the local loop to be unbundled. The fixed line tele-density is still racially skewed, despite the monopoly that TELKOM had. Many townships, especially the ones that emerged through government's subsidized housing scheme (RDP houses) do not have access to the fixed line network. The same applies to rural areas where fixed line telephony is non-existent. It can therefore be argued that local loop unbundling will not benefit townships and rural areas where the poor and marginalized are residing. Access to ICT services will therefore always be a challenge for the majority of South Africans. If the local loop will be unbundled with a network that does not extend to the majority, competition will be based only in urban suburbs and central business districts.

5. Technology

It is a known fact that technology is enhanced continuously and the existence of new techniques, new applications, new software and hardware will definitely have a bearing on both the new entrant and the incumbent. The technological cooperation of the incumbent and new entrants will surely be based on technical specifications which still need to be developed. This might prove to be very complex. The inoperable and incompatible aspects of the different electronic equipments might also prove to be complex and can be regarded as an obstacle. There is a great need to ensure that technology neutrality forms part of the core of any regulations to facilitate fair competition of the different technologies based on its comparative advantage. This will allow for more competitors and the convergence of technologies had already ensured some form of fair competition.

6. New Work Methods and Administration

It seems likely that the incumbent will have to either enhance or create new systems, because of the new regulatory "burden" that they will have to comply with. Such issues may be related to:

- o Delivery and maintenance of the copper pair and service guarantees
- o Supplying of all information necessary for implementation of LLU.
- o Arrangements for collocation to allow new entrants to install their equipment on the incumbent's premises.
- o Connection of collocated equipment to the networks of the access seekers.
- o

7. Why unbundle the local loop?

The ICASA discussion document states that: "Unbundling the local loop is similar to number portability. Number portability allows an end-user to switch service providers without having to change the number. Unbundling the local loop allows an end-user to utilize the same physical connection e.g. a traditional telephone line whilst having the choice of a service provider to access the services that are available over this physical connection." The problem with this statement forces the following question to be asked: Who are the "end-users" that are being referred to? The end-users are definitely not:

- Black people in general and Africans in particular
- The poor and marginalized
- The township residents, in particular those living in "new townships" created by the provision of RDP houses
- The rural population of South Africa

Unless the end-user is inclusive of the above it can be argued that LLU will not benefit the majority of South Africans, because they are not end-users within the context of LLU.

8. Capacity of the regulator

Depending on what the outcome would be, one matter is certain: ICASA needs to capacitated to deal with the complexities of unbundling. It was also emphasized that ICASA must be capacitated to physically inspect the incumbent's premises for issues that may be required for the implementation of the unbundling of local loop. The budget of ICASA needs to be interrogated and scrutinized if they made provision for both in terms of monetary and human resources, for this new role that they will have to play.

9. Collocation

The new entrant/access seeker will have to install their own equipments. To facilitate this, a process is required to determine and agree who will :
o   provide technical resources
o   connect technical equipment to access seekers.
Caged collocation and co-mingling are the types of collocation that are utilized in most of the countries that implemented LLU. Caged collocation is when the competitor physically separates its equipment from that of the incumbent sometimes on a site adjacent to that of the incumbent. Co-mingling refers to a situation where the new entrant's equipment is situated with that of the incumbent.

10. Timing of LLU

It would seem as if the timing of LLU is a little too late. It might be viewed that the incumbent has SMP in the fixed line element of ICT. The reality is that LLU should have been implemented when the incumbent was more stable financially and was still the dominant player in the ICT sector. Currently the incumbent is no longer the dominant player in the ICT sector and its value compared to the two

big MNO's is very small. It can therefore be argued that any negative impact on the incumbent forced by regulations may lead to massive job losses of the incumbent's and its suppliers' employees.

CWU have considered the following options related to LLU

Option 1

Status Quo: NO UNBUNDLING

In terms of this option nothing changes except that competitors need to build their own networks. This was what the industry actually fought for and won at the level of the high court, which ruled against the government, ICASA and TELKOM. It can be argued that network based competition can create more jobs in the short term as well as long term.

The fact that the network of the incumbent does not extend to the townships, the rural parts of South Africa and the marginalized blacks motivates for the argument against Local Loop Unbundling simply because it will only benefit the urbanized living in the suburbs, the business community and those privileged enough to have access to the current network.

Local loop unbundling can only be supported if and when the network is accessible to the majority of South Africans.

Option 2

Bitstream access

It seems from the definition of bitstream access that it will not involve the new entrants to physically access the copper network. It would seem as if this model will have the least impact on job security, but it also might be too early to come to that conclusion without more information.

11. Conclusion

ICASA is promoting service-based competition through LLU, but this type of competition is not sustainable in the long term opposed to infrastructure-based competition. The facility seeker or new entrant is dependent on the incumbent's network and in South Africa the copper network is very old. LLU may well lead to decrease in prices, but it will definitely not lead to universal access due to limitations in network coverage. LLU may therefore lead to the opening of further avenues for abuse of security and intelligence agencies for the benefit of certain unscrupulous individuals and groups.

LLU may lead to a reduction of prices for those who have access to the network, but it will not promote universal access for the majority. The November 2011 implementation date for LLU is unrealistic if all the technical, cost and other matters are considered.

- Therefore it is the view of CWU that the status quo should be maintained as a decision on LLU was taken prematurely and it is therefore unreasonable, unrealistic and unacceptable.
- As reflected above, Bitstream is another option which is better than the others but only at an appropriate time because it is too early to consider it now.
- Cost items are not an issue for now.
- With regards to the development of standardized ordering and specifications system, it is also too early to comment on it.
- It is fair to respond positively on the area of access line deficit, CWU will be available.