

**MOBILE TELEPHONE NETWORKS (PTY) LTD**  
Head Office: 216 14th Ave Fairland 2195  
Private Bag 9955 Cresta 2118 South Africa  
Tel +2711 912 3000 Fax +2711 912 3001 <http://www.mtn.co.za>



**21 January 2014**

**Dr Stephen Mncube**

Chairperson  
ICASA  
Block B, Pinmill Farm  
164 Katherine Street  
Sandton

Via Email : [Chairperson@icasa.org.za](mailto:Chairperson@icasa.org.za)

Attention : Godfree Maulana - Manager: ECS/ECNS Compliance  
Via Email : [gmaulana@icasa.org.za](mailto:gmaulana@icasa.org.za)

Dear Sirs,

**RE: UNIVERSAL SERVICE AND ACCESS LICENCE OBLIGATIONS – GG37071**

MTN would like to thank the Authority for the opportunity to make comments on the above notice and herewith submit our comments for your consideration.

Furthermore, MTN records that it wishes to make oral presentations to the Authority should oral hearings be scheduled.

Thanking you in anticipation.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'R. Gell', written over a light blue horizontal line.

**ROSSANA GELL**  
**ACTING GENERAL MANAGER: REGULATORY AFFAIRS**  
**MTN (PTY) LTD**

*Directors: RS Dabengwa (Chairman), Z Bulbulia (CEO)\*, R Gasant, NWC Molope, PD Norman, S Fokie, KW Pienaar, PG Sibiya\*, BD Goschen*

*Company Secretary: MML Mokoka \*Executive*

*Reg No. 1993/001436/07*

*Vat Reg. No. 4630140434*

**Registered Financial Service Provider. FSP Reg. No. 44774**



**MTN'S RESPONSE TO THE NOTICE OF ICASA'S INTENTION TO AMEND THE  
UNIVERSAL SERVICE AND ACCESS LICENSE OBLIGATIONS AS PUBLISHED IN  
GOVERNMENT GAZETTE No 37071 DATED 27 NOVEMBER 2013**

**21 January 2014**

## Table of Contents

1. EXECUTIVE SUMMARY .....	4
2. INTRODUCTION .....	5
3. GENERAL COMMENTS.....	6
4. SPECIFIC COMMENTS .....	12

MTN's submission in respect of the USO amendments is structured as follows:

- Section 1: An executive summary;
- Section 2: Introduction;
- Section 3: General; and
- Section 4: Specific commentary.

## 1. EXECUTIVE SUMMARY

MTN (Pty) Limited ('MTN') would like to thank the Independent Communications Authority of South Africa ("ICASA") for the opportunity to respond to its proposed amendments to the Universal Service and Access License Obligations ("USO"). MTN wishes to record that it welcomes the publication of the proposed amendments and generally appreciates and supports the objectives thereto.

MTN believes the proposed amendments could be clarified and strengthened in a number of respects, in particular:

- The inconsistencies between the explanatory memorandum and the proposed amendment should be addressed in order to ensure that all objectives encapsulated in the memorandum are carried through into the proposed amendment;
- The allocation of schools must comply with certain criteria in order to ensure that schools connectivity can be rolled out;
- The revised schools connectivity targets should be clarified in respect of which licensees the revised obligations apply to;
- The amendment must make provision for the inclusion of the ICT solution for schools connectivity, as this is currently not addressed; and
- The roll out targets should be revised with respect to the number of schools which are capable of receiving schools connectivity.

## 2. INTRODUCTION

MTN would like to thank ICASA for the opportunity to respond to its proposed licence amendments with respect to the USO as published in Government Gazette No. 37071 dated 27 November 2013.

The proposed amendments set out the following rationale:

- The current SIM card and handset USO obligations are no longer relevant due to changes in the market;
- The current schools connectivity obligations can only be implemented once ICASA undertakes the following:
  - Provides a list of schools to be connected;
  - Develops a monitoring plan after implementation; and
  - Lists the specific requirements for schools connectivity.
- Amendments are required so as to impose an obligation upon the licensees to not only provide Internet connectivity as per the existing obligations, but provide the relevant equipment required to connect to the Internet;
- The proposed amendment seeks to replace the obligation to provide SIM cards and handsets with the obligation to provide the necessary equipment required to connect to the internet.
- In addition, the number of schools to which schools connectivity is required is to be amended.

MTN supports and agrees with the rationale as expressed by ICASA and would like to express its general support of such objectives and congratulate ICASA for taking the first step towards improving the schools connectivity model.

The explanatory memorandum was sent to MTN under cover of a separate email on 28 November 2013.

### 3. GENERAL COMMENTS

#### 3.1 Explanatory Memorandum

MTN supports the rationale for the amendment as set out in the explanatory memorandum. MTN notes that, even though the intention behind the proposed amendment to the USO is clearly set out in the explanatory memorandum, the proposed amendment of MTN's license as contained in the Government Gazette does not deal with all the reasons which are set out in the explanatory memorandum. Unfortunately, there are a number of differences between the memorandum and the proposed amendment, namely:

1. The explanatory memorandum states in paragraph 7 that internet access, specifically schools connectivity in the current USO obligations could only be implemented if changes are made thereon. ICASA proceeds to identify in the explanatory memorandum the following changes which need to be effected to the license in paragraph 7 (i) through to (iii):

“(i) providing list of schools to be connected;  
(ii) monitoring plan after implementation; and  
(iii) specific requirements for schools connectivity.”

2. The memorandum also reflects in paragraph 8 thereof that Operators were only required to “*connect schools but excluding the requisite hardware peripherals associated with connectivity*”. It is further stated that the licensees should provide this equipment in order to have an impact, and therefore requires a change in the obligations.

MTN submits that the proposed amendment contained in the Government Gazette does not include these proposed changes that are set out in the explanatory memorandum. It is submitted that because the explanatory memorandum has no legal force and effect, it is proper that ICASA should include the changes stated in the memorandum under Part B of the proposed amendment for the sake of legal clarity.

The license amendment in its current form does not cater for the following requirements set out in the explanatory memorandum:

- (i) List of schools to be connected by the licensee

Although ICASA have provided a list of schools to licensees prior to publishing the license amendment makes no reference to ICASA's obligation to provide the list of schools to the licensees, neither does it set out any requirements for the eligibility criteria of schools. Licensees are not able to deliver on the USO obligations without a list of schools that match some basic criteria, and are in line with the targets given to licensees with regard to the number of schools to be connected. It is of critical importance that the eligibility criteria of the appropriate schools are reflected in the license obligations. If not, MTN respectfully submits that the laudable objectives will not be attained in the time

period specified as a result of logistical issues. We explain below in more detail and only as an example why it is so important that the objective eligibility criteria is agreed to ensure that the obligation is capable of implementation. With respect to the list of schools which was provided to MTN, MTN analysed the list of schools given to it in the following manner:

- In August 2013, the Authority presented MTN with a list of 553 schools.
- The list of 553 schools was subsequently withdrawn by ICASA.
- In September 2013, ICASA provided MTN with a list of 2000 schools which consisted of a list of all schools allocated to all licensees. The list of 2000 schools had been vetted by the Department of Education and only schools which were ready to receive the benefits of schools connectivity were included in the list of 2000.
- ICASA has since confirmed that the original list of 553 schools are still the schools which have been allocated to MTN, and therefore MTN must match the 553 list to the list of 2000 schools in order to identify the schools allocated to MTN, which are ready for schools connectivity implementation.
- MTN conducted an exercise and identified a total of 216 schools on the list of 2000 schools that matched the schools on the list of 553 allocated to MTN. Therefore MTN has determined (from the information provided by ICASA) that these 216 schools are the schools which are confirmed by the Department of Education to be ready to receive schools connectivity and are allocated to MTN.
- It is not clear what criterion was applied to the schools by the Department of Education in order to deem the schools ready for implementation.
- MTN conducted a coverage analysis on the 216 schools in order to establish whether these schools fall within MTN's 3G coverage. It was established that a total of 55 schools fall within MTN's 3G coverage area. It is not clear if these 55 schools have electricity, road access or secure physical structures.

Subject to further confirmation by way of site inspection, MTN is then only able to roll out schools connectivity to a total number of 55 schools at this time.

As a result, MTN proposes that the following be included under Part B of the proposed amendment:

Ad new paragraph 5:

*“5 ICASA shall provide a list of schools to each Licensee, to be determined by ICASA in consultation with the Department of Education, no later than three (3) months prior to the planned implementation of schools connectivity. The following criteria must be met prior to any licensee being required to roll out schools connectivity:*

1. *The list of schools provided by ICASA to the licensees must meet the following conditions before the licensees are able to commence roll out of the USO:*
  - a. *All public schools listed must fall within the relevant licensees 3G coverage area:*

- b. All public schools listed must consist of a physical structure of bricks and mortar in order that the equipment may be installed and kept under lock and key;
- c. Commercial power must be available on the school premises;
- d. There are sufficient access roads to enable vehicles to access.
- e. The public schools provided to a licensee should not have any internet access capability at the time of the rollout. Or alternatively, if the public school does have an internet access capability, the licensee will not be required to rollout internet access at the school.”

(ii) Implementation of a monitoring plan by ICASA

The proposed amendment does not refer to a monitoring plan; MTN requires clarity as to what such monitoring plan will entail. In addition there is an existing compliance reporting process in place in terms of the Compliance Procedure Manual as published on 15 December 2011, Government Gazette No.34863.

In terms of the existing USO obligations for access 3G radio frequency spectrum (“Schedule 5”), paragraph 3.9 sets out the following:

*“For the purpose of determining whether the Licensee has complied with its obligations as set out in clause 1.2 and 2.2<sup>1</sup>, the Authority and the Licensee shall use their best endeavours to reach agreement, within 3 month of the Effective Date, on the applicable performance indicators. Should the Authority and the Licensee fail to agree with this 3 month period, the Authority may impose a set of performance indicators. The Authority may specify the implementing body and such a body shall outsource the monitoring of these obligations, and report to the Authority on a quarterly basis.”*

It is not clear if it is the intention of the Authority to amend this paragraph in the original USO. However, and in an effort to simplify the amendment process, MTN submits that MTN and ICASA have an existing compliance reporting process in place in terms of the Compliance Procedure Manual as published on 15 December 2011, Government Gazette No.34863. Currently, MTN’s performance is verified by means of an “issues” report and “compliance” report to be completed by MTN and signed off by the school principal/head master/ delegated person of the receiving school. In fact MTN submitted copies of these reports to ICASA to confirm compliance with the obligations as required in terms MTN’s existing license obligations. This compliance reporting is in accordance with “Form 3” in the Compliance Procedure Manual Regulations published in Government Gazette no 34863 on 15 December 2011.

---

<sup>1</sup> The obligation set out in 2.2 of Schedule 5 refers to the obligation to provide Internet access to 5000 public schools within 8 years



MTN submits that the abovementioned paragraph 3.9, subject to the necessary changes as it relates to cross referencing should be reflected in the license amendment including a reference to the Compliance Procedure manual.

(iii) Specific requirements for schools connectivity

The Explanatory Memorandum makes reference to specific requirements for schools connectivity as one of the changes to be effected by ICASA before the schools connectivity obligations can be implemented.

MTN submits that the proposed amendments unfortunately make no reference to specific requirements for schools connectivity. As an example the current schedule 5 (paragraph 2) of MTN's license obligations for access to 3G radio frequency spectrum, sets out the obligation to provide Internet access to 5000 Public Schools within 8 years and sets out the number of schools to be completed per year. In addition a licensee must provide an implementation plan to ICASA before the licensee can implement schools connectivity.

Furthermore, MTN was provided with a document drafted by the Department of Basic Education ("DBE") which purports to set out the DBE's requirements for schools connectivity consisting on a full turnkey solution of Internet connectivity complete with a fully equipped computer laboratory. Whilst MTN has no objections to provide the DBE requirements (provided that same can be provided within MTN's existing USO budget) it is not clear if this is intended to form part of the proposed amendment. As the proposed amendment currently stands, the requirement for only Internet Access has not been amended and will still form part of MTN's schools connectivity obligations. In order to make provision for the delivery of the equipment required to access the Internet connectivity, the definition of "Internet Access" at per schedule 5 of the USO for access to 3G radio frequency spectrum should be amended. MTN submits that the definition be amended as follows:

*"Internet Access shall mean the provisioning of Internet connectivity as a telecommunication service, which shall include the necessary telecommunications access link and bandwidth to connect the public school of Institution for People with Disabilities to the global network of networks known as the Internet, and shall include any other necessary information technology support infrastructure, end-user equipment and facilities, such as ~~power supply~~, personal computers and user terminal, on-premises servers network equipment and other related local area network infrastructure ~~unless the licensee is obliged in terms of this schedule or deems it necessary to provide such equipment.~~ The equipment required and the number of and specifications for such equipment must be agreed between ICASA and the licensee with regard to the licensee's existing USO budget."*

### 3.2 Other general comments

In addition, MTN would like to submit the following additional general comments with regard to the USO obligations:

#### 1. Institutions for People with Disabilities

MTN's existing license obligations include the provision of Internet Access for 140 Institutions for People with Disabilities. It is not clear if this obligation and the implementation timetable remains unchanged. To date, MTN has not provided Internet Access to any such Institutions for People with Disabilities due to the fact that the Authority has not yet provided MTN with a list of such institutions. MTN requests that ICASA provide clarity as to whether this obligation remains part of the license obligations. In the event that such obligation remains part of the license obligations, MTN request that ICASA provide MTN with a list of such institutions which fall within MTN's 3G coverage area.

#### 2. Abuse of schools connectivity benefit


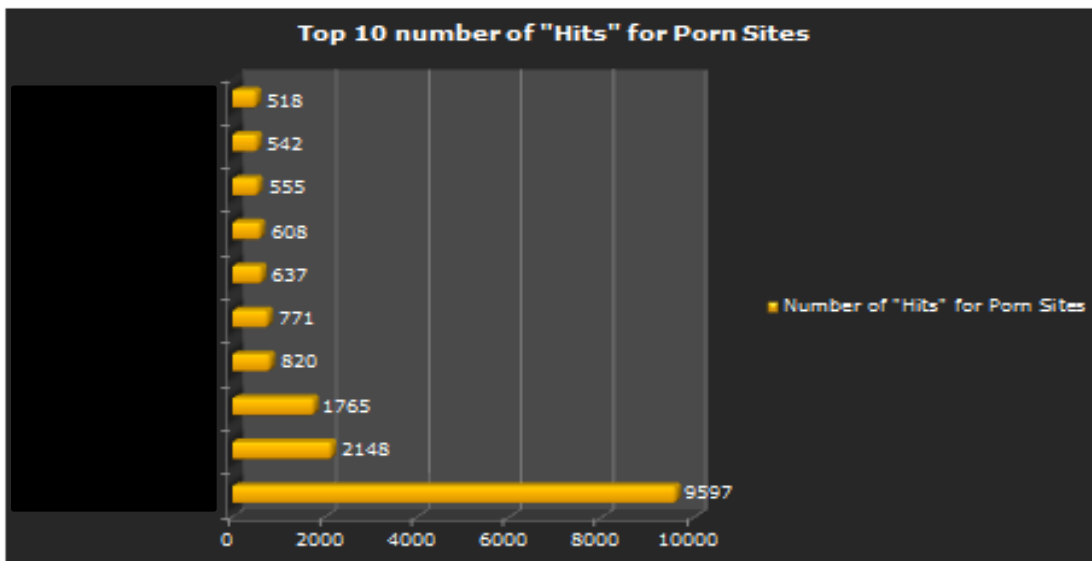
MTN has addressed this concern with ICASA previously, and has also raised concern to the Parliamentary Portfolio Committee on Communications ("PPCC") during public hearings with regard to the ICASA amendment Bill and the ECA Amendment Bill of June 2013. MTN submits that in order to ensure proper use of the schools connectivity benefit, it is imperative that ICASA put measures in place to prevent abuse or indeed allow the licensees to put measures in place to prevent access to inappropriate content such as adult websites.

Earlier consultations with ICASA in September have revealed the possibility of an education portal, which will control and limit all Internet access by schools. In addition, MTN proposes that any schools that have been identified as abusers of the system, insofar as they access inappropriate content, or content which is not for educational purposes, or remove SIM cards from devices by placing them into personal phones or remove any equipment or SIM cards from the schools premises, be sanctioned by removing the benefit of receiving internet access at e-rate (i.e. the 50% discount).

For example, MTN conducted an audit of schools who received E-rate in 2010 and the following interesting findings were made.

The following is a graphical representation of the top 10 schools which received the E-rate, depicting the number of "hits" to adult content sites during the month of October 2010:


### 3G USO Schools Content Analysis (Content data extracted for the month of October 2010)

Copyright 2010 © Mobile Telephone Networks. All rights reserved.

The following device analysis of schools that benefitted from E-rate shows that the SIM Cards provided with the dongles are now all placed in cell phones and not the dongles with which they were provided, indicating private and non-educational use:

### 3G USO Schools Device Analysis



Device Make and Model	Total Number of 3G USO SIM cards	Device Make and Model	Total Number of 3G USO SIM cards
NOKIA - 1200	26	NOKIA - 2330C	1
NOKIA - 1600	12	SAMSUNG - E1360	1
SAMSUNG - SGH-J700	4	NOKIA - 2626	1
MOTOROLA - MQ4-4411D11	4	MOTOROLA - CC3-41C21	1
SAMSUNG - SGH-E230I	4	NOKIA - 2630	1
NOKIA - 1110I	4	SAMSUNG - SGH-F480	1
NOKIA - 1202-2	4	NOKIA - 2680S	1
SAMSUNG - SGH-E230	3	NOKIA - 1662-2	1
SAMSUNG - SGH-E370	3	NOKIA - 2700C	1
VODAFONE - 123	3	NOKIA - 7230I	1
NOKIA - 2300	3	LC - C3	1
SAMSUNG - E1105T	2	LG - KS360	1
NOKIA - 7100S	2	CEC - T689	1
SAMSUNG - SGH-M620	2	SAMSUNG - GT-E1080I	1
NOKIA - 1100	2	NOKIA - 3310	1
ZTE - A33	2	MOTOROLA - AC2-41D11	1
NOKIA - 1630	1	NOKIA - 3410	1
SAMSUNG - SGH-D900I	1	NOKIA - 1208	1
NOKIA - N95 8GB	1	NOKIA - 3310I	1
MOTOROLA - MC3-41J11	1	SAMSUNG - SGH-E900	1
SAMSUNG - SGH-E700	1	NOKIA - 5310 XPRESSMUSIC	1
NOKIA - 2310	1	MOTOROLA - CC3-41C32	1
NOKIA - 6233	1	NOKIA - 6111	1
NOKIA - 2760	1	SAMSUNG - SGH-X310	1
NOKIA - 3120C	1	NOKIA - 6210 NAVIGATOR	1
LG - KG120/MS120B	1		

Copyright 2010 © Mobile Telephone Networks. All rights reserved.

## 4. SPECIFIC COMMENTS

### 4.1 Ad table A of the proposed amendment

ICASA sets out the current USO's for the following operators in Table A:

- Cell C;
- Vodacom;
- MTN;
- Neotel;
- Sentech; and
- Wireless Business Solutions ("WBS").

It is not clear why certain licensees have different USO and why the USO are not consistent or standard across licensees USO. MTN submits that a full list of all licensees and their current obligations should be included in the amendment for transparency purposes.

### 4.2 Ad Part B of the proposed amendment

MTN submits that the proposed amendment does not set out the reasons for the amendment to the license obligations. Section 10(1)(g)(i) of the Electronic Communications Act 36 f 2005 ("ECA") makes provision for ICASA to amend an individual license in the event that the amendment relates to Universal Access or Universal Service and is necessary, in the opinion of the Authority as a result if changed circumstances in the market.

MTN submits that ICASA should include the following opening paragraph under part B so as to provide clarity as to the purpose of the amendment:

*"Reasons for the amendment*

*The Authority has conducted a review of the Universal Service and Access Obligations and has determined that it is necessary to make certain amendments to Individual Licenses on the basis that there have been changed circumstances in the market, namely:*

1. *The obligation to provide 125 000 handsets and 2 500 000 SIM cards are no longer relevant due to changes in the market;*
2. *The current schools connectivity obligations cannot be implemented by licensees in its current form and require the following changes to be implemented in order to facilitate the roll out of obligations."*

#### 4.3 Ad paragraph 1 a, b and c of Part B

The amendment proposes the reduction in the number of public schools as follows:

- a. 5000 to 1500 within 5 years
- b. 2500 to 750 within 5 years
- c. 1000 to 300 within 3 years

MTN submits that the proposed licence amendment is not clear as to which licensees are obliged to comply with the revised schools connectivity obligation. MTN submits that in order to avoid any confusion, each licensee's schools connectivity obligation should be clearly stated.

MTN assumes that the reduced numbers of schools are allocated as follows:

- a. 5000 to 1500 within 5 years – MTN, Vodacom, Cell C, Sentech
- b. 2500 to 750 within 5 years – Neotel
- c. 1000 to 300 within 3 years - WBS

Based on the assumptions above, MTN supports the reduction of schools proposed by ICASA. In light of the fact that the scope of the obligation has now increased to possibly include monitors, overhead projectors and the like, MTN also supports the proportional reduction of schools across all licensees listed in Table A and notes that the proportional reduction is consistent across all licensees.

There is a lack of clarity as to whether the schools that have already benefitted from schools connectivity are included in the revised numbers or not. MTN has rolled out schools connectivity to a total number of 593 schools as per the USO obligations and seeks clarity from ICASA as to whether these schools are included in the 1500 schools indicated in this USO amendment.

Based on the information in a, b and c above ICASA needs to provide the licensees with a list encompassing the total number of schools (7050 schools as per the draft Regulation) and the allocation (not just the number but the name of school) per licensee. To date ICASA has only provided a list of 2000 schools of which some of those schools do not fall within MTN's coverage area. MTN assumes this may be the case for the other licensees too.

As referred to under general comments above, MTN has identified only 55 schools that potentially meet the criteria necessary for MTN to deliver the schools connectivity obligations. MTN respectfully submits that, in light of these findings, it will be very difficult for the licensees to meet the targets provided, bearing in mind that only 2000 out of 7050 schools are deemed ready to receive the schools connectivity and it is not clear if all these schools will fall within the licensees 3G coverage or meet the other criteria necessary for schools connectivity rollout. MTN respectfully submits that ICASA consider revising the timeframes under which these obligations are to be met to be in line with the number of schools available

to receive schools connectivity and which meet the criteria set out under general comments above.

In addition, MTN submits that there are currently 494 individual ECNS and ECS licensees, and only 6 licensees have been allocated schools connectivity obligations. MTN request that ICASA provide clarity as to why none of these licensees have been allocated with Universal Service and Universal Access obligations.

#### 4.4 Ad paragraph 2 of part B

MTN submits that a target of 300 schools before the end of the 2013/14 financial year is an aggressive target, which licensees will not be able to meet for the following reasons:

- The end of the financial year is March 2014. Public comment for this amendment is due on 21 January 2014.
- Hence, rollout can only commence once the amendment has been finalised after the period for public comment has lapsed.
- Once the amendment has been finalised, the licensees will require time to agree the ICT solution as well as implementation plans with ICASA.
- As set out in 3.2 above, only 216 of the schools allocated to MTN are ready to receive schools connectivity as per the DBE.
- Only 55 of those 216 schools are within MTN's 3G coverage area therefore, even if the time constraints above can be overcome, MTN do not have sufficient schools allocated within its 3G coverage area.

MTN respectfully submits that these targets are dependent on a variety of factors including the cooperation of ICASA and the DBE. MTN submits that ICASA should liaise with the licensees individually in order to determine:

- 1) The number of schools that the licensees are able to roll out to;
- 2) The timeframes for such roll-out based on the schools readiness to receive schools connectivity (as confirmed by the Department of Education);
- 3) The schools which fall within the licensees 3G coverage obligations, and
- 4) Other criteria as set out in 3.1 above.

MTN submits that this is the only way to determine a realistic roll out schedule. MTN would like to reiterate that MTN is committed to schools connectivity, and would like to work together with ICASA to ensure the rollout of a sustainable schools connectivity programme.

4.5 Ad paragraph 3 and 4 of part B

MTN is in agreement with the proposed removal of the obligation to provide 2 500 000 SIM Cards and 125 000 handsets which are set out under the USO obligation for access to the 1800 MHz radio frequency spectrum ("Schedule 4"). MTN submits that as its USO budget for 2014 is based on the existing license obligations, the amendment of the license obligations should not amount to an increase in the licensee's financial obligations.

**-end-**