



**Submission to ICASA: “ICASA Regulatory Framework for Broadcasting  
Transmission Services”  
Government Gazette No. 34371, Notice 346, 15 June 2011  
Submission Date: 13 September 2011**

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## A. INTRODUCTION

1. Neotel thanks the Independent Communications Authority of South Africa (“the Authority”) for the opportunity to comment on Government Gazette No. 34371, Notice 346, “ICASA Regulatory Framework for Broadcasting Transmission Services”, published on 15 June 2011 (“the Framework Document”).
2. We would appreciate the opportunity to present our views at any oral hearings that the Authority holds on this matter.
3. Neotel’s submission is limited largely to clarifying questions regarding the scope of the markets, and the scope of the proposed interventions. Neotel is not in a position to answer many of the Authority’s questions due to the fact that Neotel does not currently supply or use terrestrial or satellite broadcasting signal distribution services. Our responses to the Authority’s specific questions are set out according to the sections in the Authority’s document.

## B. BROADCASTING TRANSMISSION SERVICES MARKETS IN SOUTH AFRICA

### Question 1

4. There are a range of electronic communications service providers across the broadcasting value chain. These can broadly be delineated into contribution networks, and distribution networks. Contribution networks connect broadcasters (such as the SABC, E-TV, Top-TV and Multichoice) to one another, and to sources of content, such as stadia, live productions studios (for example, Red Pepper, Sasani Studios and Urban Brew) and other sites, such as Parliament. Distribution networks take content from broadcasters, and distribute the content to end users, via satellite, terrestrially, or via Internet Protocol (“IP”). The Authority is focussed in this case on the ‘access’ layer of the distribution network, which is the air interface between high sites and end users in the case of terrestrial broadcasting, and between the satellite uplink facility and the end user in the case of satellite broadcasting. The Authority’s analysis correctly characterises the market.
5. The Authority explains that it is *“of the view that broadcasting transmission services are facilities as contemplated in the ECA”* (see page 17 of the Framework Document). This seems to be overly broad, since on p. 9, the Authority explains that there are four main types of broadcasting transmission services, three of which involve the use of leased lines, which are not Electronic Communications Facilities (“Facilities”) as contemplated in the ECA, as leased lines are services provided over Facilities. Neotel agrees that the constituent parts of the ‘access’ network, which the Authority defines as *“the last portion of the network and is used to distribute broadcast signals to the end user”*, which include masts and transmission equipment, are indeed Facilities.
6. In section 3.6, the Authority describes Sentech as being the *“main provider of wholesale broadcasting transmission on terrestrial networks”*. Again, the Authority needs to make it clear that it is referring here to the ‘access’ network, and not to any of the contribution, trunk and feeder networks where leased lines could provide significant parts of the wholesale broadcasting transmission service. In respect of leased lines, there are a number of providers, as discussed below.
7. In section 3.6.1, page 31, the Authority concludes that *“All television broadcasters and most radio broadcasters in South Africa purchase a MTS from Sentech”*. It would be useful here to explain that MTS refers to the ‘access’ layer and not necessarily the

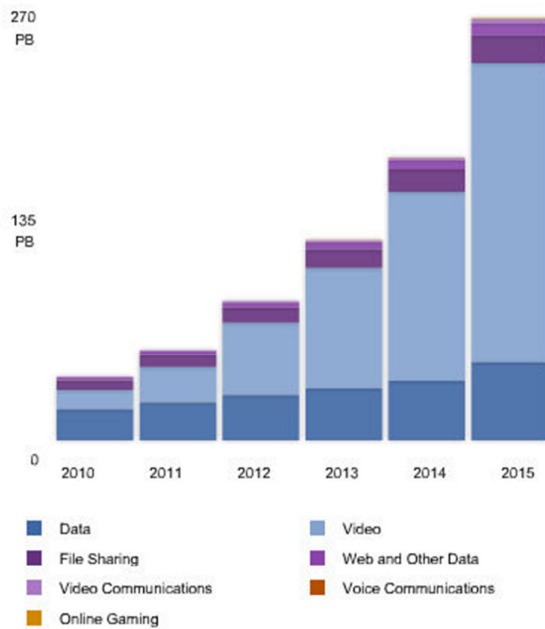
contribution, feeder and trunk services that form part of broadcasting transmission services.

8. In respect of Web TV and IPTV (section 3.8.1), Neotel agrees that the technology has not been adopted widely enough for such services to constitute an alternative to satellite or terrestrial signal distribution networks. Nonetheless, Neotel wishes to draw the Authority's attention to recent research by Cisco Systems, which predicts substantial growth in Internet Video, which excludes video communication using services such as Skype and Google Talk (see Figure 1 below). Specifically, 60 billion minutes of Internet Video will cross the internet in South Africa each month in 2015, up from 3 billion minutes in 2010.<sup>1</sup> Cisco predicts that Internet-Video-to-TV traffic will increase 41-fold between 2010 and 2015.
9. Nonetheless, a large proportion of Internet Video will be delivered over fixed line Internet (designated as "Internet" in Figure 2 below), which suggests that, in the context of South Africa's relatively low fixed penetration rate, that much of this growth will not be experienced by a significant proportion of the population, who are largely dependent on mobile services.
10. Internet Video is therefore unlikely to be a significant alternative to terrestrial and satellite signal distribution platforms for a substantial proportion of South Africa's population.

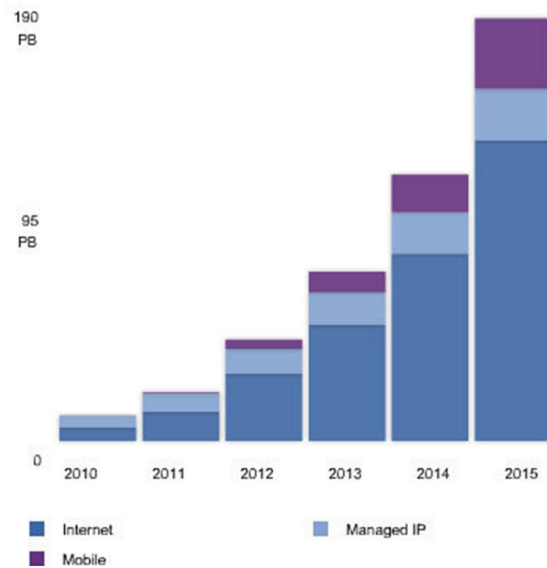
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<sup>1</sup> Source: Cisco Visual Networking Index, available at: [http://www.cisco.com/web/solutions/sp/vni/vni\\_forecast\\_highlights/index.html#~Country](http://www.cisco.com/web/solutions/sp/vni/vni_forecast_highlights/index.html#~Country), last accessed on 24 August 2011.

**Figure 1: Internet Video growth in the context of total IP traffic growth in South Africa, 2010 – 2015 (Petabytes/month)**



**Figure 2: Internet Video by type of access technology, 2010 – 2015 (Petabytes/month)**



Source: Cisco Visual Networking Index, available at: [http://www.ciscovni.com/vni\\_forecast/advanced.html](http://www.ciscovni.com/vni_forecast/advanced.html), last accessed on 24 August 2011

11. In Section 3.8.3, the Authority describes ‘cable’ as being a potential alternative to terrestrial and satellite signal distribution platforms. The Authority describes ‘cable’ as being copper and fibre in the context of Super5Media’s licence. It is not clear, however, how this alternative is different to that described in 3.8.1, which refers to Fixed-network technology / Xdsl. If the Authority intended to evaluate co-axial cable as an alternative signal distribution platform, analysing this in section 3.8.3 would be worthwhile.
12. In respect of possible sources of data for the Authority’s market review, the Authority could consider using a BMI-T report on sizing various markets in the ICT sector. BMI-T estimates that the media & communications sector will spend approximately R345m on ‘Other data’ services (i.e. excluding Internet, Voice and mobile) in 2011.<sup>2</sup> Spend on ‘Other data’ is likely to grow at approximately 11% per annum. Some of this spend is likely to be on contribution and distribution networks.

<sup>2</sup> BMI TechKnowledge, “SA ICT Vertical market sizing and forecasting report”, report code 3037, prepared by Cal Falconer, Tertia Smit and Clinton Jacobs, August 2010.

### Question 2

13. Wholesale and retail leased lines should be examined in a separate market review. The Authority's analysis is focussed, correctly, on the 'access' layer of the Distribution network. The Authority is correct in explaining that leased lines are used in respect of contribution networks and distribution networks (feeder and trunk links), and that leased lines are widely used by a variety of other customers in addition to broadcasters and signal distributors. Any analysis of the market for leased lines would need to be done taking into account all of the customers that use those services. Furthermore, there is no particular urgency in a leased line market review since, as the Authority points out in Section 3.1 of the Framework Document:

*"There are a range of providers in the market currently providing broadcasting transmission conveyance (i.e. point to point transmission services on feeder, trunk and contribution networks)".*

### Questions 3, 4, 5 and 6

14. The value chain looks broadly correct.
15. The alternative competitive dynamics of alternative distribution platforms have been correctly characterised.
16. Neotel is not a broadcaster, and is therefore not in a position to comment on how signal distribution requirements differ depending on the geographic footprint of the licence.
17. Since Neotel is not a broadcaster, we are not in a position to comment on whether the type of sites required by broadcasters will differ according to the geographic footprints of licences, and specifically whether a large footprint will require purpose built transmission sites.

## C. MARKET DEFINITION ISSUES

### Questions 8 - 17

18. Neotel has not conducted its own market analysis for broadcasting transmission services, and is therefore not in a position to comment on relevant markets. Neotel notes that the Managed Transmission Services market identified by the Authority comprises services in the 'access' layer of the distribution network (i.e. between *"the last portion of the network and is used to distribute broadcast signals to the end user"*, to use the Authority's phraseology on page 20), and excludes conveyance or linking services, which usually rely on leased lines.
19. In respect of Question 17: Neotel does not own many high sites. Neotel's Code Division Multiple Access (CDMA), Wi-Max, and Microwave base stations are largely co-located with other licensees' infrastructure. Neotel is therefore not in a position to comment on this question.
20. Neotel wishes to draw the Authority's attention to the fact that, on page 41, the analysis of supply-side substitution appears to focus on alternatives for customers, rather than the ability for a supplier of services in an adjacent market to enter the market being examined. In other words, the analysis focus on demand-side rather than supply-side substitutability. In this case, the Authority is discussing the potential for broadcasters to substitute between satellite TV networks and terrestrial TV networks. Supply-side substitutability, when trying to assess whether satellite TV transmission services are in a separate market, would involve assessing whether a provider of terrestrial TV transmission services could enter the market for satellite TV transmission services. The

key tests in respect of supply-side substitutability are whether such entry would be timely, likely and sufficient to defeat a hypothetical monopolist.<sup>3</sup>

21. The Authority might also consider taking into account the possibility of an asymmetric market definition in respect of MTS for television services on the one hand, and a combined market for MTS for radio and television services on the other hand.<sup>4</sup> It is important for the Authority to consider markets from the starting point of each of the narrowest possible markets at issue. Starting from the narrow television MTS market, the Authority's analysis suggests that suppliers of radio MTS would not be able to supply MTS for television services. This suggests that the market for television MTS is separate. However, if the Authority were to begin its analysis from the narrow market for radio MTS, the Authority might find that entry by television MTS providers into the radio MTS industry in response to a SSNIP by a hypothetical monopolist in radio MTS, might be timely, likely and sufficient. We have not done this analysis, and so we don't suggest that this reflects the facts. Nonetheless, if the Authority were to find that entry by television MTS providers into the market for radio MTS would be timely, likely and sufficient in the event of a SSNIP, then a combined radio and TV MTS market might exist, and a television MTS market would also separately exist. This is known as an asymmetric market definition.

#### **D. ASSESSMENT OF MARKET POWER AND IDENTIFICATION OF LICENSEES WITH SMP**

##### *Questions 18 - 22*

22. Neotel is not in a position to comment on whether or not Sentech has Significant Market Power. Nonetheless, Neotel would like to draw the Authority's attention to alternative measures of market share. The wholesale market for terrestrial television MTS identified by the Authority includes Sentech and Orbicom (though the latter supplies only its vertically integrated broadcasters). It is often desirable to examine the capacity of each supplier to supply the market, rather than actual sales data, to measure market power. This is because even though a firm might have a small market share in terms of sales, its potential to supply the market, measured by production capacity, might be large enough to constrain the pricing of other firms in the market. The Authority could consider, in this respect, the capacity for Orbicom to supply the market, rather than viewership, as a measure of market power.
23. In respect of market shares in the market for local radio broadcasting (section 5.4.1), using the number of community radio broadcasters served nationally as a unit of measure for a market share assessment may give rise to a misleading result. For example, a small number of community broadcasters may account for the majority of local radio MTS consumed, and if these broadcasters all self-provide their own radio MTS, for example, then Sentech would not be dominant, at least in those communities.

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<sup>3</sup> See, for example, the US FTC / DOJ horizontal merger guidelines, available at: <http://ftc.gov/os/2010/08/100819hmg.pdf>, last accessed on: 24 August, 2011.

<sup>4</sup> See a discussion on asymmetric market definition by NERA, available at: [http://www.nera.com/extImage/PUB\\_Asia-Pacific\\_AT\\_Review2007.pdf](http://www.nera.com/extImage/PUB_Asia-Pacific_AT_Review2007.pdf), last accessed on: 24 August, 2011.

Sentech might still be dominant in some local markets where community broadcasters are not able to self- provide. Such an outcome would also require distinguishing between geographic markets where there is sufficient competition, and geographic markets where there is not. Neotel does not have a view on what the outcome of this assessment would be. Nonetheless, it may be worthwhile for the Authority to consider alternative measures of market share in the market for local radio broadcasting.

24. Neotel does not unfortunately have further data to provide the Authority in respect of market shares for the markets identified by the Authority, other than estimates prepared by BMI-T of overall ICT spend by media and communications companies, discussed above in paragraph 12.

## E. THE CONSEQUENCES OF MARKET POWER AND INITIAL VIEWS ON PRO-COMPETITIVE REMEDIES

*Questions 22 – 35:*

25. Neotel is not in a position to comment in detail on all of the remedies proposed by the Authority.
26. Nonetheless, to the extent that the Authority plans to implement the proposed remedies, Neotel wishes to draw the Authority's attention to the fact that, in section 6.5.2 (on page 69), the Authority implies that masts should not form part of the Facilities that Sentech should make available in terms of a reference interconnection offer. Sentech's masts are an electronic communications facility, and should therefore be included in the Reference Offer, to the extent that such a remedy is imposed.
27. In general, it would be useful to have Reference Offers for Facilities be available on the website of the Facility provider.
28. Non-discrimination, in general, is particularly useful where the Facility provider is vertically integrated, and customers buying Facilities from the Facility provider have to compete with the Facility provider's own downstream business. In this instance, if an operator were to take up the lease of Sentech's facilities, such an operator would be competing with Sentech in respect of the supply of MTS. Such a new entrant would want to ensure that Sentech complies with the obligation not to discriminate in respect of the supply of its Facilities in favour of its own MTS operations.

## F. CONCLUSION

29. Neotel remains at the Authority's disposal to clarify anything in this submission or to assist in the finalization of this Draft Regulatory Framework.
30. We would appreciate the opportunity to present our views at any oral hearings that the Authority holds on this matter.

