



**Submission to the Independent Communications Authority of South Africa  
“ICASA”: “Draft Amendment: Universal Service and Access Licence  
obligations” – Notice 1173 of 2013 of Government Gazette No. 37071  
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## INTRODUCTION

1. Neotel appreciates the opportunity to comment on the Draft Amendment: Universal Service and Access licence obligations (GG no. 37071) herein referred to as the “Draft Amendment”.
2. Neotel also thanks the Authority for the consultative and approachable manner of engagement on this matter.
3. Neotel’s submission is structured as follows: we will commence by providing a brief history of the Neotel licence obligations. This will be followed by comments on specific issues dealt with in the draft amendment, which includes, *inter alia*, section 4(3) of the Independent Communications Authority of South Africa Act no. 13 of 2000 (“ICASA Act”), section 10 of the Electronic Communications Act No. 36 of 2005 (“ECA”), the Neotel universal access and service obligation clause emanating from the Individual Electronic Communications Network Services Licence (“I-ECNS Licence”), the proposed school connectivity implementation model, the role of the Universal Service and Access Agency of South Africa (“USAASA), the implementation deadline and finally, ICASA’s powers to amend licences.
4. The document is numbered for ease of reference for further consultation.

## BRIEF HISTORY OF THE NEOTEL LICENCE OBLIGATIONS

5. Neotel holds an I-ECNS licence and the Individual Electronic Communications Services (“I-ECS”) licence. The I-ECNS licence (004/IECNS/JAN/2009) granted to Neotel in 2009 contains universal service obligations, in terms of which Neotel is obligated to provide Internet access to no less than 2500 (two thousand five hundred) public schools or public further education and training institutions and 2500 (two thousand five hundred) public clinics and hospitals.
6. Section 5 of the I-ECNS licence details the Universal Service Obligations (“USOs”) process. Clause 5.3 addresses the requirement of the Implementation Plan approval process and states in relevant part:

*The details of this provision of Internet Access to the institutions described in clause 5.2.1 shall be contained in the Implementation Plan, which term for purposes of this clause shall mean a plan, submitted to, and approved in writing by the Authority.*
7. The above clause requires the Authority to approve the Implementation Plan in writing – as a pre-condition - before licensees can roll out and meet the proposed obligations.

8. Over the years that have elapsed since the issue of Neotel's PSTS licence in 2006 and then the converted I-ECNS licence in 2009, Neotel has continuously expressed its commitment and intent to meet the licence obligations in a manner that upholds the principles of fairness, equity and consistency in the licensing framework. The implementation of such obligations also needs to be consistent with economic and financial considerations relevant to all licensees, in their infrastructure build life-cycle and relative to market considerations, including the level of competition in the market.
9. In addition, over the years that have passed, Neotel has engaged the Authority on the fact that it had never been given an allocation for schools or clinics nor had its Implementation Plan been approved.
10. Reaching a stage of "impossibility of performance" on the obligations as a result, Neotel submitted an alternative Implementation Plan for approval on 27 August 2010. This plan, while not for the original schools and clinics numbers proposed, would have enabled Neotel immediately to roll-out services to various beneficiaries within the Neotel coverage area in an effort to start meeting its obligations and to give effect to the true intention and purpose of Universal Service Obligations ("USO's", used interchangeably with the term USAO's") to provide services to the under-served.
11. The Authority however, did not approve the alternative Implementation Plan and the resultant licence amendment application and referenced the proposed, future changes to the future Universal Service regulations and the need to streamline obligations post the ECA and the converged licensing framework. The process of defining 'underserved areas' was still pending along with the finalization of the list of schools from the Department of Basic Education ("DBE").
12. Neotel understands the need for there to be symmetry in regulation of this nature and for obligations to be distributed in a fair and equitable manner. Neotel does however note the "lost time" that has resulted from the lengthy period over which this process has run and the fact that Neotel could have by now, met at least half its obligations, if not all of them – at least on the revised, proposed plan submitted.
13. We make this point as Neotel's so-called "non-implementation" of its obligations as expressed in the Draft Amendment document is through no fault of Neotel and further Neotel attempted to offer an alternative roll-out plan that could have addressed the connectivity needs of at least some needy beneficiaries – albeit, not necessarily all

schools and clinics as originally conceived of in the PSTS licence – a licence we hasten to add, that also reflected an entirely different market and licensing framework.

14. Finally, Neotel also wishes to note a significant change in policy between the period in which the SNO was granted its licence (2006) and the period in which the obligations were to be discharged. By this, we point out that when the SNO was licenced with these obligations, it was the only alternative infrastructure provider to Telkom and the mobile operators. Following the 2008 ruling of the North Gauteng High Court in the matter of *Altech Autopage Cellular (Proprietary) Limited v The Chairperson of the Independent Communications Authority of South Africa* (“The Altech Decision”), hundreds of licences were issued with the right to compete at an infrastructure level.
15. No-one could have known the passage of managed liberalisation would be so altered at the time, but had there been an indication, Neotel would in all likelihood have negotiated different licence obligations that reflected the reality and fact of the degree of competition and a liberalised market, rather than those of an operator with a certain level of guaranteed market growth and time to ensure a return on investment – the original rationale for USO’s and licence fees globally. Likewise, the Authority following regulatory best-practice, would have similarly, most likely, granted a different set of obligations. Neotel does note however the two-year period in which it was licensed before the Altech decision and has always undertaken to honour its USO’s in line with this.
16. Neotel believes that the Authority is taking the correct step to ensure parity in obligations in the sector and proposes equitable distribution of licence obligations amongst licence holders who possess the same rights. It is also important to note that apart from 5 licensees in the sector, all other I-ECNS licence holders did not have to pay licence fees to enter the market and are merely subjected to the annual licence fee levy, applicable to all licence holders. As such the equitable distribution must however, take into consideration, financial and economic implications of these obligations; the level of competition in the market; the relative time periods in which licensees received their licences (relative to that level of market competition and maturity) and the relative infrastructure build-out across the country and finally, the operator contributions to the Universal Service and Access Fund (“believes that the Authority is taking the correct step to ensure parity in obligations in the sector and proposes equitable distribution of licence obligations amongst licence holders who possess the same rights).
17. It is also important to note that apart from 5 licensees in the sector, all other I-ECNS licence holders did not have to pay licence fees to enter the market and are merely subjected to the annual licence fee levy, applicable to all licence holders.

18. As such the equitable distribution must however, take into consideration, financial and economic implications of these obligations; the level of competition in the market; the relative time periods in which licensees received their licences (relative to that level of market competition and maturity) and the relative infrastructure build-out across the country and finally, the operator contributions to the Universal Service and Access Fund (“USAF”).
19. It is also not clear that a full costing or impact analysis has been undertaken by the Authority in regard to its proposals, which in turn will impact significantly on the operators concerned. We deal with this point again more fully elsewhere in the submission. Neotel’s recommendation is for the Authority to conduct a thorough analysis of the USAO to ensure the obligations are based on a detailed and informed understanding of the economic impact of the obligations.
20. Finally, Neotel wishes to raise a conceptual issue we have raised before regarding the overall approach to universal service and access regulation. There is no contestation of the objects of the ECA with regard to universal service and access. There is no question as to the importance of the social goals that underpin the policy and regulation which seeks to give effect to the realization of the policy goals on universal service and access.
21. However, Neotel is of the view that the current thinking on allocating USO’s on a per operator basis in this manner, harks to a different regulatory epoch in which a few operators were given the privilege of having a licence in a concentrated market and for that privilege, paid a licence entry fee and took on service obligations. This was so, as in a concentrated market, without competition, the underserved will never be an addressable market and required policy directed at creating access in such areas. The policy goal remains as relevant as ever, but the thinking and mode of trying to give effect to universal service ideals in the same manner, is not, nor cannot be relevant.
22. In this regard, Neotel proposes an entire overhaul to the thinking, away from the mode of regulating in monopoly/duopoly/concentrated markets. Moreover, despite the market changes, even previously, the sector has never had a successful result of universal service delivery on the current model.
23. Neotel proposes that in the post ECA environment, the “Contribution regime” should be applicable, as it is in many parts of the world. By this, operators should (and do) contribute to a Fund and the Fund is administered by an agency (as is the case in South Africa) or a policy desk within government and projects are funded for roll-out on a bidder basis for under-served areas. The capex comes from the fund and all operators contribute on an equitable basis, relative to their size and turnover.

24. This model would allow a rational market response and a rational allocation of resources to fund infrastructure projects. South Africa has the model in place, but has not utilized it.
25. The predictive, arguably premature response that under-served areas will still remain under-served if specific roll-out obligations are not assigned, is neither economically rational nor proven as the model has never been tested, yet has had great success in many other countries. It is also a model in line with an increasingly liberalized (and ultimately de-regulating) framework. Neotel firmly believes that the funds currently within the USAF should be released for “bid-basis” projects in designated areas and for needy beneficiaries and the project management of the build should be in concert with USAASA. The roll-out plan for the country should be conceptualized by USAASA and multiple projects in which operators tender for the project should be the basis of the model – based on the very funds accrued through the application of the Universal Service and Access “contribution” required by all licensees on an equitable basis.
26. We turn our attention now to specific comments below.

#### SECTION 4 (3) (B) OF THE ICASA ACT

27. Section 4 (3) (b) of the ICASA Act mandates and empowers the Authority to “*monitor the electronic communications sector to ensure compliance with the ICASA Act and the underlying statutes*”. Section 5 (12) of the ECA states that *a licence confers on the holder the privileges and subjects him or her to the obligations provided for in this Act and specified in the licence*. These two interrelated sections endow the powers of the Authority to monitor compliance - another important element of which is the clear definition of compliance obligations.
28. Neotel fully supports the process of amending existing licenses, but at the same time ensuring clarity on licence obligations and the ability to monitor, implement and perform under these obligations. For seamless enforcement of licence obligations, Neotel respectfully suggests that the Authority should take all the issues, challenges and proposals into consideration in the process of finalising the new individual licences to be issued.

## SECTION 10 OF ECA

29. Section 10 of the ECA empowers the Authority to amend existing licences to achieve the objectives of the ECA. With regards to the current process, section 10(1)(g) empowers the Authority to amend individual licences to achieve universal access or universal service objectives. The amendment in the current review is to bridge the “digital divide” and provide services in geographic areas specifically identified as underserved areas.
30. Neotel proposes that should our suggestion above in regard to overhauling the entire approach to universal service not find favour with the Authority, then the process the Authority follows should also encompass the amendment of individual licences issued under the post 2009 licensing framework. The individual licences we are referring to in this submission are the individual licences granted during the licence conversion process that did not specify licence obligations in the licence.

## THE NEOTEL LICENCE OBLIGATIONS

31. The USO licence obligation stipulated in the Neotel I-ECNS licence, clause 5.2 reads as follows:

*The Licensee shall for the duration of this licence, provide Internet Access to:*

  - 5.2.1 *no less than two thousand five hundred (2500) public schools or public further education and training institutions at discounted rates in accordance with the provisions of section 73 of the Act, and*
  - 5.2.2 *no less than two thousand five hundred (2500) rural public clinics and public hospitals as have been defined in the Implementation Plan approved by the Authority*
  - 5.2.3 *Internet Access, for the purposes of this clause, shall mean the provisioning of two-way connectivity to the global network of networks known as the Internet, including all facilities beyond the end-use premises and terminating in an appropriate interface at the premises of the end-uses described in clause (1) above, and providing a minimum downstream speed of 256kbps [or more] as may be reasonably necessary. Internet Access does not include the provision of any other information technology support infrastructure, subscriber equipment or other facilities to be located within the end-user premises beyond the interface, such as power supply, personal computers and user terminals, servers, or other local area network equipment or infrastructure.*
32. Clause 5.3 of the licence obligation gives a detailed description of the Implementation Plan and states as follows:

*Clause 5.3.3 states that the areas in which the Licensee is providing or will be required to provide Internet Access in terms of this clause. These areas will be limited to the following municipal areas: City of Tshwane, City of Johannesburg, Ekurhuleni Metropolitan Council, Mogale City Local Municipality, Ethekewini Metropolitan Council, Msunduzi Municipality, City of Cape Town, Nelson Mandela Metropolitan Council, Buffalo City, Mangaung Local Municipality, Sol Plaatjie Municipality, Polokwane Municipality, Mafikeng Municipality, and Mbombela Municipality, until there are insufficient numbers of beneficiary institutions of the kind described in clause 5.3.1 located within the above-described areas to meet the numerical goals of clause 5.3.1.*

33. The Authority has expressed its intention of reviewing the current licence obligation of connecting two thousand five hundred (2500) rural public clinics and public hospitals. According to statistics provided by the Department of Health, the number of rural public clinics is considerably lower than the number stipulated in the Neotel licence.
34. Neotel is of the view that in light of the “impossibility of performance” on the original PSTS licence obligations and in line with a fair and non-discriminatory application of the revised universal service and access regulations, the previous obligations assigned in Neotel’s licence should be replaced by the current proposed obligations with the changes required (i.e. in or close to network reach and without equipment provision) to ensure effective and fair implementation.
35. In view of the changed market conditions, and the efforts to seek an alternative Implementation Plan that could have alleviated some service availability at the time, the previous obligations (2500 schools and 2500 clinics) should fall away.
36. Importantly, as mentioned above, the bulk of the obligations should fall within Neotel’s (and other operator’s) network reach, if not direct coverage, to ensure no adverse or deleterious effects. Further, in line with our comments made above regarding access to the USAF, areas outside of an operator’s coverage should be funded by access to the monies in the USAF collected for such purposes.

## THE PROPOSED SCHOOL CONNECTIVITY IMPLEMENTATION MODEL

37. Neotel proposes that the Authority should embark on a “network coverage identifying exercise”, to pinpoint the network presence of the different operators to optimize the roll-out and coverage. Highlighting network coverage on the national map will assist in avoiding any duplication of infrastructure roll-out, and will result in infrastructure cost-saving and further avoiding excessive demand of the USAF administered by USAASA in subsidizing roll out and universal services in underserved areas.



38. The Authority published a Schedule for school connectivity obligations on 29 April 2013 (“The Schedule Document”). The Schedule Document contained a break-down on the proposed number of schools that must be connected over a period of five years and the standards and specifications of the equipment and peripherals to be used in connecting schools. Subsequent to the publication of the Schedule Document, ICASA convened meetings with all stakeholders. During the industry meeting, Licensees raised questions and requested clarification about the role of USAASA in the implementation and monitoring of school connectivity projects.
39. Licensees further expressed their legitimate concern in regard to the proposed new responsibility of the provision and management of computer equipment and labs and their ongoing maintenance to ensure there are sufficient number of computers connected at all times. Licensees stated that the daily management of the computer labs is the responsibility of the schools and the function of continuous monitoring of the school connectivity project is USAASA’s core mandate as outlined in section 82 of the ECA.
40. After all the issues of concern were raised by the licensees with regards to the Schedule Document, the Authority in consultation with the DBE compiled a standard and specifications document entitled ‘*Proposed ICT solution for schools*’. The ICT solution was approved on 25 July 2013 and the solution is proposed to be used as a tool to support both the school administration, teaching and learning in all schools to be provided with access to connectivity.
41. The ICT solution attempts to provide guidelines on how ICT services should be provided to public schools. The ICT services include the provision of the local area network; the wide area network and the end user devices in schools and training. The solution aims to also offer a more coordinated approach to ensure that all school connectivity initiatives aligns with the specified standards.
42. Section 3 of the ICT solution outlines the hardware components, the minimum number of laptops/notebooks/tablets/slate computers is twenty-six per computer lab. Neotel is firmly of the view that the supply of hardware should not form part of the universal service obligations but do note that personal computers instead of laptops/tablets are a better option as the installation is fixed to ensure security and safety of the hardware.
43. Section 4 of the ICT solution gives a description of the connectivity. The current proposed solution is regarded as a short-term solution and DBE envisages the establishment of the education network on the national level.

44. Neotel advocates the development of an educational portal to ensure all connected schools have access to the vast array of educational resources and services in a protected environment especially for students. Neotel believes the process of finalizing the educational portal should be expedited.
45. Neotel proposes urgent and consistent collaboration between DBE and USAASA to facilitate the overall provision of training to schools.
46. However, as stated above, Neotel believes that if our proposal for the whole re-conceptualisation of approach to universal service does not find favour with ICASA, it is the remit of operators to provide only connectivity to schools and that the provision of equipment (at any level of specification) is the remit of both USAASA and the DBE.
47. If the lowered numbers of schools to be connected with the provision of computer equipment is viewed as a “trade-off”, Neotel questions whether any costing study or impact analysis has been done, to assess the impact of this decision and to evaluate whether it is in fact a less onerous proposal. For example, Neotel has sourced a number of quotations for the provision of equipment to 750 schools with costing estimates from a number of hardware suppliers (on volume discount) reaching between R174 million and R197 million.
48. Moreover, and re-confirming what was stated above, Neotel believes that the reduction in the quantum of schools to be connected is the correct approach for the Authority and one which more accurately reflects the level of competition in the current market. The old assignment of USO’s in the manner previously done under the 1996 Telecommunications Act reflected a different regulatory epoch, in which operators were given certain obligations in recognition of the fact that they were licensed to operate in a concentrated market with fewer competitors. We refer you to our comments at paragraph 20-23 above.
49. The South African ICT market can hardly be said to be concentrated with vigorous competition on price and quality. Neotel is of the view that the market has now reached the level of maturity that requires (relative) increased contributions to the USAF and the USAF being made available to fund needy connectivity projects around the country, with the right oversight and project management and inter-governmental coordination being applied to ensure that such projects are not only implemented, but are also sustainable. We expand on the role of USAASA below.

## THE ROLE OF USAASA

50. The role of USAASA as stipulated in section 82(1) of the ECA, is (a) to strive to promote the goal of universal access and universal service and (b) encourage, facilitate and offer guidance in respect of any scheme to provide (i) universal access or universal service.
51. In addition to our comments made elsewhere in this submission, in regard to USAASA and the USAF, Neotel proposes for the Authority to clearly define the role of USAASA in the implementation of licence obligations. Neotel as a licensee annually contributes to the USAF. Section 87(4) mandates USAASA to administer the USAF to achieve the objective of universal access and universal service. Neotel proposes that the Authority should make a recommendation to USAASA to follow section 88 of the ECA in providing financial assistance for the school connectivity project. Section 88 of the ECA outlines the framework and the purposes of the USA Fund monies.
52. According to section 88, the USAF must be exclusively used for the payment of subsidies. Section 88 (1) (c) is aligned to the school connectivity obligation, and as defined, the subsidy should be utilized for the procurement of broadcasting and electronic communications services and to access to electronic communications networks to public schools and public further education and training institutions.
53. The unofficial proposal made by the Authority is for the Licensee to apply for subsidy to connect schools in underserved areas and to apply for the funds to provide connectivity to schools utilizing the ICT solution model.
54. Neotel respectfully requests the Authority to enter into a Memorandum of Understanding with USAASA to clearly define the role of USAASA and that of the Authority in achieving the outlined objectives. Furthermore, Neotel appeals to the Authority to facilitate the process of concluding a service agreement/contract with USAASA to fund the fifty percent (50%) of the monthly recurring charge and the monthly internet usage charges.
55. Finally, Neotel submits that inter-governmental cooperation between the DBE, USAASA and the Authority is crucial for the success of the school connectivity project and for the sustainability of the project. Moreover continuous monitoring is crucial for the sustainability of the project and we believe that role should be fulfilled by USAASA who have this as their mandate.

## THE IMPLEMENTATION DEADLINE

56. Neotel respectfully requests the Authority to be cognisant of the time period and financial considerations and budgeting cycles. Neotel has budget approval processes that we need to follow to secure the funds for the execution of the approved Implementation Plan.
57. Neotel therefore proposes an extension of the deadline for the first phase of school connectivity. The proposal is that the deadline should be extended to the end of the 2015/2016 financial year, pending the finalisation of the licence obligation review process and the resultant issue of new I-ECNS licences.
58. As a matter of pure practicality, implementation of the first phase in the last quarter of our FY2013/2014 will be impossible given that this review has not yet closed and it is almost the end of January 2014. The Authority is still required to apply its mind to the submissions and if necessary hold further consultation of hearings.
59. The Authority's proposal will undoubtedly have huge monetary implications on operators and it is arguably impossible to implement this within the current proposed time-frames. If Neotel's proposal for a wholesale re-conceptualisation of the universal service obligation framework does not find favour with ICASA, Neotel proposes a full budgeting cycle be given to ensure capex allocation and planning required by operators before an implementation deadline is required and in this regard, Neotel proposes end of Q1 FY15/16.

## SUMMARY AND CONCLUSION

60. The proliferation of the ICT services to the education sector will have significantly positive impact on both the educators and learners. Neotel remains committed to assisting the Authority to realise the objective of promoting the universal provision of electronic communications networks and services.
61. Neotel remains firmly of the view that the best and most effective way to meet these policy goals will be to undertake a wholesale overhaul and re-conceptualisation of the OSO framework and align it to the mechanisms in place already for this purpose – namely, contribution to the USAF and the allocation of build projects utilising USAF funds on an auction of bid-basis.

62. Over the years that have elapsed since the issue of Neotel's licences, Neotel has continuously expressed its commitment and intent to meet the licence obligations in a manner that upholds the principles of fairness, equity and consistency in the licensing framework. This must however be done with a view to market conditions, competition, a different policy epoch in South Africa and the relative positioning of different operators in the sector.
63. Neotel supports the efforts by the Authority to ensure parity in obligations in the sector and proposes equitable distribution of licence obligations amongst licence holders who possess the same rights.
64. Neotel supports the Authorities efforts to reduce the quantum of schools to be connected through USO's as reflecting a more mature approach to a competitive market.
65. Neotel believes that a full costing and impact analysis should be undertaken by the Authority in regard to its proposals in order not to have a negative impact on operators.
66. In light of the efforts to have an alternative implementation plan approved to ensure some implementation of USO's, Neotel believes that the proposed, revised obligations should replace the previous obligations entirely.
67. Neotel proposes that the Authority should embark on a "network coverage identifying exercise", to avoid any duplication of infrastructure roll-out and minimize costs and demand on the USAF.
68. In regards to the assignment of USO's the bulk of the obligations should fall within network reach, if not direct coverage, to ensure no adverse effects on the market. However, for areas assigned for USO's outside of an operator's coverage the monies in the USAF collected for such purposes should be made available.
69. The roles and responsibilities of USAASA and ICASA in this regard should be clarified and the USAF monies should be used to fund equipment needs of schools and other connectivity requirements in areas that remain underserved.
70. Operators should be required to provide connectivity and services to schools, but not computer equipment and maintenance, which is the joint role of the DBE and USAASA and which requires considerable inter-governmental coordination.
71. Neotel respectfully requests the Authority to enter into a Memorandum of Understanding with USAASA to clearly define the role of USAASA and that of the Authority in achieving the outlined objectives.

72. Neotel further requests the Authority to facilitate the process of concluding a service agreement/contract with USAASA to fund the fifty percent (50%) of the monthly recurring charge and the monthly internet usage charges
73. Neotel also respectfully requests the Authority to extend the implementation deadline to the end of the first quarter of the 2015/2016 financial year, pending the finalisation of the licence obligation review process and the resultant issue of new I-ECNS licences.
74. Finally, Neotel submits that cooperation between the DBE, USAASA and the Authority is crucial for the success of the school connectivity project and for the sustainability of the project.

