



SMILE COMMUNICATIONS'
ENQUIRIES ON ICASA'S INVITATION TO APPLY ("ITA")
FOR A RADIO FREQUENCY SPECTRUM LICENCE
TO PROVIDE MOBILE BROADBAND WIRELESS ACCESS SERVICES
FOR URBAN AND RURAL AREAS
USING THE COMPLIMENTARY BANDS, 700 MHZ, 800 MHZ AND 2.6GHZ
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1. Introduction

Smile Communications ("Smile") is grateful for the opportunity to submit enquiries on the ITA to ICASA. Smile was surprised to learn of the publication of the ITA on 15 July 2016 as the expectation was that a **draft** ITA would follow the Information Memorandum issued in 2015, and precede the issuing of any final ITA by the Authority. Notwithstanding this, Smile welcomes the opportunity to submit the enquiries herein, on the proposed design of the 700 MHz, 800 MHz, and 2.6 GHz auction as well as the processes followed to arrive at this point.

Smile is aware of the social and economic impact of broadband. Smile furthermore has the unique experience of understanding first-hand how to roll out and operate broadband networks in the 800

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MHz band given its experience in Nigeria, Tanzania and Uganda where it has national spectrum licenses in the 800 MHz band; in Tanzania, Uganda and DRC Smile holds 2.6 GHz licenses as well. Smile's comments take into account its practical experience operating broadband networks in African countries, and are geared at ensuring that this process increases competition, encourages the efficient assignment and use of spectrum, ultimately enabling South Africa to meet the targets set out in South Africa Connect (the National Broadband Policy), the National Development Plan and any other relevant policies.

Smile's principal concern is that under the current proposals as set out in the ITA, new entrants such as Smile are not considered as potential successful bidders. Smile believes that the auction is, in its design, geared towards entrenching the market power of existing operators, and in particular existing mobile operators.

In Smile's opinion, the ITA is drafted in a manner that presents a clear bias in favour of incumbent operators who already have access to frequency spectrum resources, against new entrants in the local market. This is demonstrated through our enquiries set out in this document which relate to Smile's concerns about:

- The selection of an auction as the method for assigning the spectrum – auctions are known globally to favour incumbents with deep pockets.
- The open access obligations for MVNOs, which demonstrate ICASA's assumption that new entrants should be MVNO's on incumbents' networks and not network providers in their own right.
- The fact that the short timeframes (less than 3 months) for the response to the ITA, which are suited towards established players which already have the information readily available, especially in relation to the market research and network and radio planning that is necessary to prepare a bid.
- The exorbitant reserve price of R3 billion which is far in excess of what has been paid historically in the South African market for access to spectrum; and which favours players with deep pockets.
- The imposition of a 100% coverage obligation by 2020 which, notwithstanding the fact that it is not achievable using wireless technology and the IMT spectrum available through the proposed auction alone; is prejudicial to new entrants. New entrants will have to spend a significant amount in Capex in just two to three years (depending on when the licenses are issued), in order to meet the coverage obligation. The obligation implies that the spectrum will be used as an 'add on' to an already existing network.

These issues of bias against operators that are not already in the market are discussed in detail in our submission and enquiries.

In addition, Smile has noted some inconsistencies in the drafting of requirements in relation to Historically Disadvantaged Individuals' participation in the licenses; the involvement of consortia, the application and enforcement of universal service and access obligations and how they are structured, and the licensing of Lot A and/or a wholesale open access network operators. These issues are discussed in our submission.

2. Process



Smile has elected to use this as an opportunity to seek clarification on all areas of the ITA – ICASA will note from the nature of Smile’s questions that the outcome may require the withdrawal of the ITA, and possibly a reversal of the decision to proceed with an auction at all even though the ITA is drafted as final. Smile trusts that ICASA is open to such decisions should the outcomes of the consultation that is underway warrant them.

2.1 Existing Applications

As ICASA is aware, Smile applied for 800 MHz in February 2009, and to date has not received a decision on, or clarity around the proposed treatment of our application. Our application was made seven years ago before the spectrum was deemed to be in ‘high demand’. Smile seeks ICASA’s explanation of:

- What decision was reached by ICASA on Smile’s application? Can ICASA provide reasons for said decision?
- How has the decision in relation to Smile’s (and any other application ICASA may have received), impacted the approach that ICASA has taken in designing the ITA?

3. New Entrant Bias

3.1 MVNO Obligation

3.1.1 Clause 50 of the ITA sets out a requirement that successful bidders must support three MVNO’s each, with 51% HDI ownership as an open access requirement. It appears that such a requirement will only serve to entrench the dominance of incumbent operators (who are likely to win the auction as currently structured). In addition, the requirement appears to imply that ICASA views the role of new entrants as MVNO’s and not as network operators. It is furthermore concerning as it is not clear if ICASA has considered whether the market can support 12 MVNO’s and whether any market analysis was done to support this requirement.

4.1.2 Thus, Smile seeks clarity on:

- What the basis of the MVNO requirement is?
- Can ICASA confirm its position on the role it envisages for new entrants in the ICT sector?
- Is one objective of the ITA and the envisaged licensing process to promote competition, diversity and the entry of new players in the ICT sector at all layers of the value chain?

3.2 Spectrum Cap

3.2.1 Clause 7.7 puts in place a spectrum cap. Smile seeks ICASA’s explanation of whether spectrum caps as a policy in general have been considered to ensure fair competition?

The application of the spectrum cap principle that is proposed in the ITA would be beneficial in general and players that already have IMT spectrum, particularly in relation to those with resources sub 1GHz band, should have limitations in terms of their participation in this process. This will enable the entry of new players in the market.

3.3 Design of the Lots

- 3.3.1 Smile notes that the Lots that have been proposed by ICASA in the ITA are different from those that were proposed in the Information Memorandum. Smile seeks clarity on what the basis for the changes between the ITA and the Information Memorandum were? Will a Reasons Document be published to explain the changes?
- 3.3.2 Smile furthermore notes that the proposed Lots are not all the same size. Lot E has the least spectrum with 2 x 20 MHz. However, there is a single reserve price for all Lots regardless of the size or capacity available. Smile therefore seeks ICASA's clarification on why it has taken this approach, and how it has determined what the reserve price should be? Will all Lots, regardless of the size and characteristics, have the same reserve price?

4.3 Wholesale Open Access

4.3.1 The broader policy environment has indicated that South Africa is in favour of introducing a wholesale open access operator. South Africa Connect indicates that the IMT spectrum should be assigned on an open access basis. Open access is one of the key regulatory tools used to encourage competition, as well as transparency in wholesale prices and the provision of such services. The 2015 Information Memorandum proposed that Lot A be set aside for wholesale open access – the ITA however; is silent on wholesale open access. It indicates that Lot A will be dealt with in a separate process (clause 22).

4.3.2 In light of this, Smile seeks ICASA's confirmation of

- What will Lot A be set aside for? Will it be for wholesale open access?
- If so, what is the envisaged structure of the wholesale open access network? This is critical for bidders to understand so that the entire process is understood and considered in context. If Lot A is reserved for a consortium such as those proposed in Mexico and Kenya, that has different implications than a single operator in partnership with the government, as in Rwanda. Information on what is the intended plan or policy decision on Lot A needs to be communicated at this stage to assist bidders to make an informed decision.

4.3.3 Smile also notes that if Lot A is for wholesale open access, a wholesale open access network that is licensed with IMT spectrum after the incumbents and other players have rolled out their own networks (with IMT spectrum), is highly unlikely to succeed. There will be little or no incentive for existing players to use such network.

- Has ICASA done any analysis on the impact of the timing of the licencing of Lot A on its competitiveness and on the viability of any licence / operation that uses said spectrum, given that it will enter the market at a later stage? Please can ICASA share any such analysis?

4.4 Universal Service and Access

4.4.1 Smile commends ICASA for seeking to prioritise universal service and access. However, although it is the stated intent of the licensing process, the ITA does not appear to do this. Smile is of the view that the 700 MHz band is well suited to assist in meeting national UAS goals. However, it is not dealt with in the ITA. Smile seeks clarity on:

- Which bands ICASA thinks are best suited to meet the capacity and coverage challenges that need to be addressed to meet national universal service objectives?



- Also, can ICASA clearly indicate what universal service and access obligations will be linked to this spectrum, how their achievement will be measured, and how they will be imposed beyond 2020, given that the licenses are for 15 years?
- In terms of enforcement, can ICASA please advise bidders of what the penalties for non-compliance with the universal service obligations will be? This is an important consideration given the fact that even established players will find it difficult to achieve 100% coverage, and in light of the historic enforcement of universal service obligations.
- New entrants will need to spend significant amounts to meet the universal service obligation (100% coverage), in order to retain the license. The challenge is that this may be done at the expense of encouraging competition – particularly in terms of pricing. The new entrants' rollout will have to be focused on achieving immediate national coverage and other market effects may be compromised.

4.5 Consortium Structure and Requirements

4.5.1 Smile notes that a consortium may apply for the spectrum licences.

- Can only one party in the consortium hold a licence and therefore the HDI status of the party holding the license only will be considered? or must the consortium as a whole will hold the licence and if so, how will the HDI requirement be calculated or assessed?



4. Conclusion

Smile thanks ICASA for the opportunity to pose questions on the ITA. Smile reiterates its concern that an auction is not the best approach to address the specific challenges facing the South African ICT sector today. An auction, especially in the form set out in the ITA, will merely serve to entrench the incumbents' dominance, and Smile is concerned that the ITA appears to be drafted in a manner that does just that.

We have therefore focused our queries on the role envisaged for new entrants in the sector going forward, and specifically in this process.