



10 February 2016

Independent Communications Authority of South Africa

Attention: Mr Godfree Maulana

Per e-mail: ecsecns.compliance@icasa.org.za

Dear Sir

REGULATORY IMPACT ASSESSMENT – USOs PHASE II

1. Introduction

ISPA refers to the General Notice: Regulatory Impact Assessment: USOs Phase II (“**the General Notice**”) and is pleased to provide the Authority with its response.

2. Scope of submissions

2.1. ISPA’s response is structured as follows:

- 2.1.1. General remarks and comments on the problem statement and objectives;
- 2.1.2. Responses to questions posed;

3. General Submissions

3.1. Problem Statement

- 3.1.1. ISPA – as set out in its prior submission in this consultation - does not agree with the assertion that “only 1% [of service licensees] have universal service and access obligations with the objective of closing the ICT gaps within the communities”.
- 3.1.2. In this regard we refer the Authority to paragraphs 5 – 8 of our prior submission and incorporate the submissions contained therein into this submission.

ISPA Management Committee:

Ant Brooks*, Graham Beneke, Guy Halse, Jenny King, Siyabonga Madyibi,
Duncan Martin, Mohammad Patel, Mike Silber, Elaine Zinn* (*ex officio)

- 3.1.3. The correct position is that – through the operation of the USAF Contribution Regulations and the E-Rate Regulations – all service licensees have equivalent USOs. Specific USOs have historically been attached to those licensees who have enjoyed the benefit of assignments of “high-demand” radio frequency spectrum.
- 3.1.4. The core problem is not therefore that some licensees have obligations while others do not. As recognised in the Final Resolutions of the ICT Policy Review Panel the institutional framework created to design USOs and manage their implementation is dysfunctional and must be reformed before any substantive progress can be made in meeting universal access and service challenges.
- 3.1.5. We submit that progress in addressing universal access and service challenges is slow due to systemic problems, many of which were explicitly foregrounded as the reasons for failure of the existing USO regime in the BMI-T / Mkhabela Huntly Adekeye report referenced in footnote 2 of the Notice. Systemic issues include:
 - 3.1.5.1. Failure to implement, monitor and enforce USOs;
 - 3.1.5.2. Lack of transparency on application of USAF funds: this makes the USAF contribution a general tax and not a targeted funding mechanism for incentivising or bolstering universal access and service initiatives.
 - 3.1.5.3. Institutional failure: The Final Report of the ICT Policy Review explicitly recognises the failure of the current institutional arrangement to deliver and calls for its reform.
 - 3.1.5.4. Lack of information: while the Problem Statement contains many statistics these are by no means generally accepted as reflecting the current state of the universal access and service challenge in South Africa. It is not possible to design and implement USOs without a clear understanding of the extent of the problem.
 - 3.1.5.5. Lack of co-ordination: the reference in the Problem Statement to connecting schools illustrates this perfectly. It is not possible to keep track of the different initiatives from the public and private sector to provide schools with connectivity and there is no attempt to coordinate this. Progress has been painfully slow and the different figures provided cannot be reconciled.
 - 3.1.5.6. Failure to recognise the structure of the market: USOs must be formulated and implemented taking into account various ecosystems, including the needs of the targeted communities or class of beneficiaries and the nature of service provision in a tiered and multi-dependent industry. Can a downstream provider be subject to a specific USO without the involvement and parallel commitment of its upstream provider(s)?
- 3.1.6. ISPA’s position is that these issues must be remedied before there is consideration of imposing new forms of USOs on licensees.

3.2. Objectives

3.2.1. ISPA has no intrinsic difficulty with the objectives set out in the General Notice but reiterates that these will not be achieved without remedial action in respect of the issues set out above.

4. Responses to questions posed

ISPA's responses below should be read in the context of its submissions above.

Option 1: First option is to do nothing.

5.1. In deriving at the different possible options it is always advisable that in the face of an issue at hand the Authority considers doing nothing i.e. no intervention at all. Considering this statement do you think it would be advisable for the regulator to take this position? In essence leave the status quo as is and let market forces play out and eventually the market will reach all these under-served and under-served areas.

ISPA submits that the preservation of the status quo through inactivity is not desirable. There is acceptance that market forces will not meet the socio-economic objectives of South Africa with regard to broadband as encapsulated in South Africa Connect and that there is therefore a need for constructive intervention from the policy maker and the regulator.

Option 2: Voluntary commitment to roll-out into under-served areas and providing services to targeted recipients in the communities. The commitment will be a binding agreement between the licence holder and Authority to deliver on a specified obligation to the Authority/Community at specified timelines.

The obligation shall be:

Size of entity ¹⁷	Obligation	Timeline
R10-20million	WSP: <ul style="list-style-type: none">• 1 public health institution• 1 public service institution	To be completed within 12 months
R20 – 50million	<ul style="list-style-type: none">• 5 public schools• 1 community centre internet cafe	12 – 16 Months
R51 – 100million	<ul style="list-style-type: none">• 20 public schools• 5 government service departments Optic Fibre Entity:	24 months 3 years

	<ul style="list-style-type: none"> • 10 PoP in identified Local Municipalities 	
R101 – 500million	<ul style="list-style-type: none"> • 50 public schools • 10 government service departments Optic Fibre Entity: <ul style="list-style-type: none"> • 20 PoP in identified Local Municipalities 	3 years
R501million - above	<ul style="list-style-type: none"> • 100 public schools • 20 government service departments Optic Fibre Entity: <ul style="list-style-type: none"> • 30 PoP in identified Local Municipalities 	3 years

6.1. The second option is for licence holders to voluntarily commit to providing services to under-served and under-served areas. Give us your opinion on voluntary commitment? Should the Authority pursue this avenue and why?

ISPA has no intrinsic difficulty with this approach but notes that this approach did not work at all when attempted during the licence conversion process circa 2009.

ISPA does not support this approach principally because it does not employ any incentivisation of licensees to voluntarily assume obligations by, for example, allowing a rebate against licence fees or the annual USAF contribution or by using the USAF to provide matching finance for an assumed obligation.

Furthermore, it would be our understanding that these USOs are arbitrary in that they are not situated within a proper understanding of the universal service and access challenges and there has been no attempt to relate them to or align them with existing USOs and South Africa Connect.

Notwithstanding which, the principle of differentiating between USOs based on the size of the targeted entity is sound.

6.2. Considering your response above. How should the voluntary commitment be structured and what binding considerations should be considered?

The structure of the commitment must incorporate incentivisation. An approach which invites licensees to adopt – voluntarily – a USO and threatens to then penalise them if they do not meet this commitment, will not succeed.

6.3. Considering your response to 6.1 and 6.2 above. What should the Authority do in case fewer

licence holders or no licence holders come forward to volunteer?

This is likely to be the response. A great number of licensees have already adopted informal USOs within their communities: this includes incumbent providers through their various charitable foundations as well as smaller providers providing free or discounted services to schools and community organisations within their area of operation. Why would they seek to formalize these commitments on pain of sanction for not meeting them in future?

6.4 If option 2 were to be considered, what are the costs associated, that will be incurred in meeting committed requirements? Kindly provide a detailed cost assumption breakdown.

ISPA is not able to provide such a breakdown.

6.5. Are there any administrative costs associated with meeting the commitment requirements from the licence holder's perspective? Provide in detail the costs associated with meeting compliance.

ISPA is not able to provide such detailed costing.

6.6. The voluntary commitment outlines the different expectations of targets to be met based on the size of the entity. Kindly provide your opinion on the targets and criteria used?

As stated above, the principle of differentiating according to the size of the targeted entity is sound and it would also make sense to do so based on the services provided. The targets and criteria are not substantiated and not aligned with other policy and regulation.

Option 3: Two types of obligations, first roll-out of backhaul fibre (by licence holders that specialise in optic fibre and currently do not have obligations) to under-served areas where there is absolutely no fibre. Second the roll-out of wireless internet access by licence holders that currently are providing internet services by installing wireless access points.

Each licence holder with core business to roll-out optic fibre to be allocated specific areas to provide a point of presence (PoP). The allocation of specific areas will depend on the proximity of the licence holders existing fibre. Existing PoP must be made accessible to licence holders that are given an obligation to provide connectivity with enough capacity (bandwidth) for future expansion.

Each licence holder will be allocated a targeted recipient to provide access, either a school, police station or community hall. If it is a community hall licence holder shall set up an internet "café" to be operated by appointed person as per licence holder criteria. The speeds will be in line with SA Connect targets, the roll-out will exclude any hardware.

The above intervention would be through the process of amending the Licence Terms and Condition of Licence holders, similar obligations for groups of licensees amendment and consultation done as a collective.

7.1. This option requires that the USAO's are done through licence amendment processes via consultation. The Authority proposes to conduct a collective consultations process. Kindly provide your views on the process?

ISPA does not support this approach other than perhaps through a broader approach which allows for the necessary coordination.

7.2. The option will formulate obligations which will be the same for licence holders depending on the same criteria as option 2. Kindly provide your view if any.

None.

7.3. Licence holders will be allocated areas to provide services which is in contrast to option 2 whereby the licence holders will chose areas on their own since they are volunteering. Kindly provide your view if any.

None.

7.4. Is there any administrative costs associated with meeting the commitment requirements from the licence holder's perspective? Provide in detail the costs associated with meeting compliance.

ISPA is not able to provide such a detailed costing.

We trust that the above will prove to be of assistance and look forward to further constructive engagement with the Authority in this regard.

PER

ISPA REGULATORY ADVISORS