THE FREE MARKET FOUNDATION
of Southern Africa

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Comment on the Intended Telecommunications Policy Direction document

Introduction

South Africa finds itself in a brave new world. The successor to the 'Industrial Age' has been defined as the 'Information Age', with this stage in human development characterised by the many ways in which people wish to exchange information, particularly through electronic means of communication.

The intended telecommunications policy direction is therefore one of the most important developments affecting the future of this country. History has left us with a monopoly telecommunications company, but the move towards liberalisation of the sector has many in the corporate world – and especially South Africa's strong IT (Information Technology) industry – excited about the future.

In the E-commerce Green Paper (November 2000) the document states that "the challenge confronting South Africa is to create an ideal **market** structure for e-commerce that will stimulate and modernise network development and infrastructure". Later it states, "Telecommunications regulation and policy need to foster effective and efficient competition…". Whilst these goals are laudable the intended path as laid out in the Telecommunications Policy Direction raise certain concerns. (20 March 2001).

We believe the market would provide better delivery of telecommunications services than the regulatory and licensed environment currently proposed. This comment therefore highlights some of the problems and potential unintended results of the current proposals and suggests alternatives that should be carefully considered before final policy decisions are made and implemented. The IT (Information Technology) sector has already expressed grave concern regarding the published policy direction and it is hoped that this document will offer constructive alternatives to the proposed regulatory environment.

Recognition of need for liberalisation

Liberalisation has been recognised in the policy document as the way to move forward, but is "Managed Liberalisation" the right step? This country has had the handbrake on for so many years and it would appear that we are going to release it only on condition that we keep our feet firmly on the foot brake. South Africa does not have the luxury of time to experiment with this approach. Globalisation and the Internet are not a technology trend. They constitute a fundamental change in the way human beings will engage each other in the future. It is as revolutionary an event in human history as the invention of the printing press. Nothing will ever be the same again, which means that it is imperative that our legislation and policies should immediately be adapted to help foster a free and unfettered environment conducive to international trade and the exchange of information.

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The notion of "Managed Liberalisation" is therefore a matter for concern. If liberalisation is a natural step, then why should the process be a gradual one? The world will not wait for South Africa to play catch-up; we will simply be excluded. These issues have been laid before the Minister at the Telecommunications colloquium and we would urge that the following items be reviewed in the formulation of the final policy:

- Convergence
- Separation of Services
- Licensing of telecommunication services
- Spectrum ownership
- Employment
- Universal Access
- Investment structuring / Historically Disadvantaged Groups

Convergence

The E-Commerce Green Paper document states the following, "Convergence is the ability of different network platforms to carry **essentially similar** kinds of service, or the coming together of consumer devices such as telephone, television and personal computer. These services include **voice**, data, sound and video and the convergence will make them available through **one access point** in the user premise(s) via **any** type of infrastructure whether fixed line or wireless". With such a clear recognition of the importance of convergence, it would appear that with specific exclusions applicable to 'voice', the telecommunications policy has completely missed the point. Consider the following quotes from the industry:

"E-Commerce, the convergence of networking and telecommunications and the ability to carry data, **voice** and video over the network, are just some of the drivers behind the growth of the networking market" – Jennigay Coetzer, Networking & Communications, Business Day April 10 2001

"Technology convergence is not just about the ability to run **voice**, video and data over the same network..." – Tim Pryce, Director at Spescom Data Fusion, Business Day April 10 2001

"Telkom's monopolistic grip is in terms of the Telecommunications Act 103 of 1996. This Act provides Telkom with an exclusive licence for 'voice' only, which in this age of Internet access **is totally outdated**" – Nic Wolmarans, Computing SA, 26 March 2001

Clearly, the IT industry (and the Department of Communications for that matter) does not distinguish between voice and data and so it comes as a shock that South Africa would consider legislation that makes this distinction. Aside from the historical vested interest, there is no technical reason for doing so. The PABX/PBX and Local Area Network technologies will soon converge as Voice-Over-IP protocols are integrated into corporate networks. Firms that span more than a single building will inevitably gear their corporate networks to carry voice data over their networks, and these will extend across local geographic and international boundaries. It therefore cannot be the intention of the South African government to criminalise this legitimate technological corollary of the emerging corporate network.

Perhaps an analogy will help augment the argument. Imagine government wishes to bring to its citizens a new road and puts the building of this road out to private tender Now imagine a regulator is appointed to oversee road management and they insist that no transport of fish be allowed on the road, but rather that it must be moved by rail. What additional costs will now be incurred by fish companies attempting to bring their products to market. What costs will the country suffer as

additional transport network (rail) is now maintained, despite the fact that the original road was adequate. Further, how would the regulator go about prosecuting transgressors of the regulation? If a fish company hires a transport company to take a crate of fish across the road, who is the criminal? The road company, the transport company or the fish company? Does the issue not become more complicated when the fish have been chopped, bread-crumbed, and are now disguised as fish-fingers?

The distinction of voice as a separate data type may still have a bearing in the retail market, but this has rapidly lost all meaning in the corporate/Internet world. The global phenomena of convergence means there is a real danger that technology has run ahead of the policy direction and unless this element of the document is reviewed, we may find ourselves with antiquated legislation made meaningless by practical reality.

Corporate and Internet networks are simply not going to distinguish between voice, data, video conferencing, file transfer, or any other kind of human exchange of information. It is dangerous for our legislation to attempt to create a legal distinction. This element of the policy document should therefore be dropped.

Separation of Services

The decision to introduce competition into our local telecommunications market is long overdue, as this country has had to put up with poor service delivery and protected pricing for too many years. However, if the logic holds that increasing competition in this market would bring better service to the people of this country, and lower prices for the consumer, then why realistically should we stop at two operators? Why not three, or four, or ten?

What is needed is a re-classification of the problem. Telkom currently provides a number of horizontal services that include infrastructure development, switching services, content delivery services, network equipment sales and consultancy. Some of these services were protected in a monopolistic environment by legislation but the reasons have subsequently been made redundant. Telecommunications is no longer about voice. It is about connectivity and service delivery, which need not be supplied by the same company.

It would therefore be constructive for the policy document to distinguish between infrastructural development and the services that are subsequently carried over that infrastructure. For political reasons, there may be an argument that infrastructure would best be built by one other competitor to Telkom, perhaps leveraging assets that South Africa already possesses (Eskom, Transtel). However, there is no sound reason why all other services delivered over these ‘pipes’ would need to be regulated. Rather, it is suggested the market would be far more successful in delivering service to consumers at lower prices. Internet Service Providers, Value-Added-Network Providers, Content Providers, all currently exist in a competitive, unregulated market and the advanced nature of South Africa’s private Internet and network industry is testament to the success of this strategy.

The South African people are looking to their government to create an environment that will foster the development of infrastructure. However, it is not for government to dictate the use of that infrastructure. It may seem bizarre that we receive email messages to our cell phones and talk into our Personal Computers, but one cannot predict how consumers desire to effect their communications. It is driven simply by consumer choice.

For these reasons, it is suggested that the Second National Operator principle is flawed, and that the mindset be changed from seeing a single national operator or a third as introducing competition for Telkom. The correct solution would be to break Telkom into several companies (no doubt reaping

far higher privatisation income), specialising in the horizontal services described above and then deregulate the market. New entrants are already waiting in the wings ready to bring services to the people of this country at affordable prices. Is the creation of another vertically integrated monolith the answer to this country's future telecommunication needs?

Licensing of telecommunication services

Licences, by definition, grant rights to certain operators while restricting the ability of other participants to deliver services. When any regulator raises a barrier to entry – forcibly limiting the number of suppliers – the net result will be an increase in the price of that good or service. With universal access listed as a stated goal of government, the whole concept of licensing stands in opposition to this principle. Any attempt to restrict new entrants to the market, who may bring new or better services to the citizens of this country, has to be self-defeating.

One need only turn to Europe to see how the use of licences will stall the take-up of technologies. The telecommunications industry is now significantly concerned as to the fees it was made to pay for the rights and there is a question about the future viability of these companies and their commitment to development. Further, the knock-on effect in the financial sector may prove disastrous if bankruptcies follow (over half of European commercial debt is lent to the telecommunications sector). If South Africa is in a position to set world-class standards in telecommunications development, then it need not follow the European example which may prove to be flawed.

Licensing is fundamentally incompatible with deregulation. It creates vested interest and price distortions that will not be acceptable to the South African people. It makes prices more expensive and will retard the development of communications in this country. We urge the Minister to look at viable alternatives to the licensing concept such as private ownership of radio spectrum (see below) and unfettered competition in this important sector.

Spectrum ownership

Governments have traditionally licensed operators and other spectrum users. In doing so they have also managed the use of RF spectrum and co-ordinated its use amongst the various users in order to minimise harmful interference. This function needs to be reviewed, not only in South Africa, but also in the rest of the world. We devote special attention to this subject in view of its critical importance.

The most economically efficient method of allocating RF spectrum would be to adopt the concept of private property rights in the spectrum. The advantages of ownership would be infinitely greater than the licensing that is currently accepted as the norm.

Secure and extensive property ownership rights

A political philosophy based on secure and extensive property ownership calls into question the validity of policies that commonly consider certain activities to be the domain of government, simply because that is how it developed historically. Certain landmark historical events left a legacy of licensing as a method of entry control in most countries. However, this does not mean that the method is optimally beneficial to the interests of citizens.

A register for spectrum ownership should be established and maintained and should be recognised by the courts as the means of establishing current ownership. As is the case for other property rights, these rights should then be tradable. In this way government will not only ensure maximum competition between providers of services, it will also ensure that the spectrum is used for its optimum economic purposes, that it is used most efficiently, and that the greatest possible innovation will occur in its use.

Dealing with RF spectrum as property

If intellectual property can have similar rights to those of land ownership, the same rights should be available for radio spectrum. RF spectrum incorporates the dimensions of RF frequency bandwidth, geographic space and time. Parameters are available to demarcate the various dimensions of spectrum, that is, to describe its boundaries, and to attach ownership and property rights to the demarcated units.

Government could establish property rights in the spectrum by legislating that, on a specified date, the existing licensees become the owners of the spectrum they are currently licensed to use. Alternatively, government could sell spectrum by auction, tender, or some other equitable means, giving the existing licensees the right of first refusal. Public interest requirements could be catered for by retention of some parts of the spectrum in much the same way as government holds public land. In some cases users have utilised spectrum for many years without holding licences and their positions could easily be regularised.

Registering spectrum ownership

A register for spectrum ownership should be established and maintained and should be recognised by the courts as the means of establishing current ownership. This can be done in one of several ways. The traditional regulator (ICASA in the case of South Africa) could become the registrar. ICASA would record, in a title deed, the spectrum-related parameters that are now recorded in the licence, keep a database of the spectrum properties, and make information available to anyone seeking properties for purchase. ICASA would ensure that conflict-provoking overlaps with other properties do not occur. Also, ICASA could be registering new properties, perhaps through the identification of new units of spectrum property by means of clever analysis and planning. The registry office would function in the same manner as a deeds office for land registration and the costs would be recovered from fees for registrations (transfer duty).

Subject to South Africa's commitments resulting from the fact that it is a signatory to ITU there is no fundamental reason why the registration has to be carried out by a government body. A database of registrations could be maintained perfectly well by a non-profit, private organisation similar to the domain name registering system of the Internet. Without government involvement this database seems to serve its members very effectively and efficiently. It is entirely feasible for a private "deeds office" to be established to monitor ownership of RF spectrum. Disputes over ownership that are not conclusively covered by title deeds, could be dealt with by the courts in the usual manner, especially in cases where the first possession rule comes into play.

Tradability as a means of ensuring the most efficient allocation and use of the spectrum resource

Property rights in RF spectrum must be tradable if they are to gravitate towards their optimum uses. Tradability is fundamental to the optimal exploitation of this resource, unlike a system of licensing which does not allow for trading. For example, licence holders that have been granted the exclusive use of parts of the spectrum for a fixed number of years now have no incentive to make available any fractions of their spectrum-holdings to other users. However, if they have ownership rights, they will have every incentive to sell any part of their spectrum-holdings they are not using and do not intend to use.

In a "property-rights-in-spectrum" system the rights would be freely tradable at market prices. Intending users would be able to buy spectrum at prices determined by supply and demand and ownership would gravitate to those owners serving the highest consumer demand.

The advantages of tradable spectrum property are unquestionable. The owner of a unit of spectrum will maintain the unit like any good landlord. The owner will not only seek, through self-interest, to exploit the unit of spectrum for all possible applications, but will also seek new ways to optimise its use. For instance, by applying new technologies and techniques the owner could increase the spectrum utilisation efficiency and hence increase the technical capacity and commercial value of the unit owned. A spectrum-owning firm that is innovative and constantly exercises its ingenuity can keep on reaping increased benefits. Not only could it enhance its own service-providing capacity, it could also on-sell or rent out to interested parties the surplus capacity it creates. One of the outcomes of property-in-spectrum would be that the same economic rules that enhance efficiencies in other areas of the economy where resources are limited could be made to work in regard to spectrum. More optimal use of spectrum and its consequent greater availability would have great economic benefits for all South Africans.

Disadvantages of government ownership and licensing of spectrum

The alternative to private ownership of spectrum is government ownership and licensing to users, which is the method now used in South Africa. The existing licensees do not possess an asset that is tradable and the price users are prepared to pay for a licence is influenced by the limitations of the rights they are purchasing. Investors are increasingly questioning the value of a licence that by nature is temporary. It necessarily compares unfavourably with outright property ownership.

The recent auctions of licences in the UK and Germany for third-generation (3G) mobile licences illustrate the shortcomings and failure of the licensing approach to spectrum. These problems could have been obviated if the auctions had been for spectrum as property. Although most of the developed world supported the licensing route for 3G, coupled with auctions for spectrum lease periods, there are now rumblings from the investment and operator communities. There is a realisation that the situation is far from ideal and that somehow things have gone wrong. Operators, investors and governments alike have concluded that the prices paid for the fixed-term licences in the recent auctions were excessive. The industry is considered to have become very vulnerable and unstable, which is not beneficial to the telecommunications consumer. A shake-up, with huge negative consequences for the telecommunications industry, could be imminent. South Africa could spare itself this predicament by following the approach advocated in this submission.

It is the rigidities inherent in the licensing system that are responsible for the worst problems being experienced by the purchasers of the 3G licences. No market can function properly in circumstances where so much uncertainty prevails and where access is governed by so much inflexibility. South African policymakers should therefore give careful consideration to the "spectrum-as-property" option as a means of avoiding the constraints placed on the market by the licensing system.

Catering for government spectrum requirements

Government may wish to reserve certain spectrum for use by central, provincial and local government, as well as other national agencies. For instance, spectrum could be reserved for public safety and disaster relief radio communication (the police, emergency medical services and fire-fighting), defence, amateur, maritime and aeronautical use, etc. Government could claim first possession of the frequencies it requires and allocate them to itself in the "deeds" register. All other frequencies would be available for private property use.

Unforeseen government spectrum requirements can also be met by expropriation as a last resort. The minor complications that may confront government will be far outweighed by the economic benefits to the country.

Common-property spectrum
Certain frequency bands, which have traditionally been used for unlicensed systems, could be treated as common property, such as air and free-running water. Such bands are used for industrial, scientific and medical (ISM) equipment and typically also for unlicensed radio-based local area networks (LANs), automatic door openers and other short-range communication devices.

The national frequency allocation table
Government can deal with the national table of frequency allocations (commonly called a frequency band plan) in a dispensation where spectrum is treated as a property right, by emulating the laws and models that apply to land. As in the case of land, changes can be made to the frequency allocation table, with certain grace periods that allow users to terminate the existing use.

Employment

The advent of additional operators would imply an increased demand for the telecommunication skills in this country. While the market adapts to provide more of these skills, the prices offered to people with these skills will inevitably rise. This will take place across a broad spectrum, from the CIO position through to the cabling and switching engineers. This is because the market for their knowledge will be extended from a single employer to a range of employers. This will bring higher wages as the companies bid for those skills, a prospect for which labour should be most grateful to the Minister.

If one compares the salaries of South Africa's IT industry with other sectors in the rest of the country, it is clearly a well-paid industry. The reason is the constant competition for skilled labour between the many competing firms. South Africa has skills in the telecommunications sector so it cannot be the intention of the policy document to depress labour's wages during this period of competitor exclusion. Surely, this is the kind of capitalist exploitation that labour would rather embrace!

Universal Access and Subsidy

It is critical that in deciding on policy government should place no restrictions on the provision of services. Government's primary role is to protect citizens from external and internal aggression, punish aggressors and adjudicate in disputes between citizens. It should not be involved in the delivery of services that can be delivered more efficiently and at lower cost by competitive private suppliers. It should also not grant any form of monopoly or privilege (whether state-owned or privately owned) to any supplier at the expense of consumers. This is in direct conflict with the stated goals of government to bridge the digital divide. South Africa has to move to a point where voice communications in this country are free. This being the case, competition must be allowed to ultimately drive down prices to zero. This has been achieved elsewhere in the world (USA local calls), so why can South Africa not follow?

The issue of licence obligations has been touched on above, but further mention is required as it relates to Universal Access. In a rapidly changing technological environment onerous obligations laid out five or ten years in the past may lose their relevance. New issues will be raised and a more adaptable policy is required. It is therefore suggested that **licence obligations and universal targets be dropped** as a basis for entry. Property rights in RF spectrum and the removal of all barriers to entry will provide more rapid access and lower cost services than any other method government can devise.

If government wishes, for instance, to ensure Internet access in all public schools in South Africa it should not attempt to oblige a network service provider to provide such access. It should rather subsidise the services out of general taxes and purchase the services from competing suppliers.

Investment structuring and historically disadvantaged groups

The South African government must be clear about whom it is trying to help when suggesting strict conditions regarding corporate capital structuring. Though well meant, these restrictions could have dire consequences when the market adjusts to these limitations. A local shareholder requirement of over 50% will deter foreign investors. International companies wishing to invest large amounts of capital into this country should have the right to control the allocation of that money. A limit of 49% cannot be as valuable to an overseas investor as the possibility of a controlling interest and inevitably this will be reflected in the amount of investment South Africa is able to encourage.

Economic nationalism, which is reflected in limitations on foreign investment, results from excessive focus on the nationality of owners and inadequate focus on the interests of consumers. Competition between the greatest number of suppliers, with the greatest amount of capital, provides consumers with the greatest choice and the lowest prices. Consumers of goods and services are correctly uninterested in the nationality of the suppliers of their purchases. Governments that drive away foreign investors and suppliers therefore do the consumers, which means all the country's inhabitants (the majority of whom are voters) a great disservice. The process of globalisation consists of the liberalisation of the movement of goods, people, services, and capital, to the benefit of consumers everywhere. When political representatives of the people impose limitations on this movement they impose unnecessary costs on their own citizens. Economic nationalism is a costly political phenomenon and if the situation were fully understood by voters they would reject the idea out of hand.

This country will be best served by allowing markets and companies to explore the best allocation of resources as it relates to the telecommunications industry. Any restrictions on capital structuring can only limit investment options.

We need to pursue policies of advancement, not enrichment, as it relates to previously disadvantaged communities

The advancement of previously disadvantaged communities will be best achieved by the provision of superior telecommunications infrastructure across our country at affordable prices. This will bring real benefits to all the people of this country and allow new industries to spring up from the developing technologies and is the form of advancement that should be sought by government. The alternative – affirmative action shareholding requirements and limited overseas equity holdings – will create artificial structures that will lead to price increases and reduced implementation of technology, hurting the very people that the measures are supposedly intended to help.

The current clauses in the telecommunications policy document, though motivated to assist the previously disadvantaged, are targeting the wrong group. The correct groups to benefit are the poor and lower income communities in this country who should benefit from lower telecommunications prices, not a select group of venture capitalists.

Suggestions re policy clauses:

Section 1 – Application of the Policy Direction

1.2.3. It is suggested that the Second National Operator concept be reviewed and that consideration be given to the alternative of removing the barriers to entry into telecommunications by establishing property rights in the spectrum and abolishing licensing. Only unfettered competition can bring the expected benefits of a robust telecommunications industry.

Section 2 – Introduction

"Managed Liberalisation" - If the government recognises that liberalisation will bring benefits to the people and businesses of South Africa, it should aim for the greatest benefit in the shortest possible time. There are no additional benefits to be gained from "managing" and delaying the process. "Management" implicitly means "gradual". With the 21st century and the Information Age upon us, South Africa cannot afford to delay the process. The potential benefits of rapid transformation for the majority of South Africans are too great, and the costs, in the form of lost opportunities, too devastating for government to concede to those who wish to stall the process.

Section 3 – Second National Operator

3.3. This sharing arrangement will merely postpone any natural development that would take place without it. Barriers to entry in this market should be reduced to a minimum in order to allow competitors to enter, which means that investors who do arrive must be ready to invest in this country, creating jobs, wealth, and infrastructure. Sharing arrangements will do nothing to bolster investment.

3.4. Why wait until May 7th 2005? Release the operators of their obligations but allow no restrictions on entrants or alignments. The country cannot afford to wait until 2005 for the development of telecommunications infrastructure.

3.5. If the government can leverage existing state assets in forming a range of new companies providing different levels of service, then they should be offered as part of the privatisation process, creating a host of horizontal service delivery companies. Thereafter, they must be exposed to market forces to ensure continued delivery.

3.6. The focus of this policy document has to be the advancement of the country's people as a whole and not selected groups. A more equitable policy would be to privatise Telkom, giving a large percentage of its shares to historically disadvantaged communities. Statutory shareholding arrangements simply enrich the few at the expense of the many. They also hamper company financial structuring, such as attempts to raise additional equity on overseas markets if it might dilute licence shareholdings. Such investment should not be forestalled merely because of misdirected restrictions.

3.8. Telecommunications is an expensive sector that needs many years to reap rewards on its investment. Capital requirements are high and this capital is available on foreign markets while South African funds are limited. It is surely not the Minister's intention to see investment, jobs and wealth postponed merely because we don't like the colour of overseas money. Financial xenophobia must not interfere with our plans to build a 21st century telecommunications infrastructure.

3.9. The goal should be the development of a 21st century telecommunications network. If a foreign company wishes to invest billions of Rands into the country on condition that it has full control over the allocation of these funds, we should not impose any restrictions that would deter those possible investments. The controlling interest clause should therefore be removed.

Section 4 – Telkom SA Limited

In reviewing Telkom's licence, consideration should be given to removing all its special privileges as soon as possible so as to ensure the rapid entry of all who wish to enter the telecommunications industry in South Africa. Telkom is more than able to stand on its own feet with the infrastructure that it has built up over the years. The company must recognise that it is no longer in the telephone business but in the IT industry. Other companies are able to operate without monopoly protection and it is now time for Telkom to survive in this environment.

Section 5 – Sentech (Pty) Ltd

5.1. Remove licenses. Licensing requirements limit entry and constitute a denial of service to consumers in this country.

Section 6 – Additional licences

Why does the country have to wait? Replace licences with property rights in the spectrum. Allow new entrants and existing service providers to supply competitive and efficient services to the country. The lower costs that citizens would have to pay in a free and competitive telecommunications environment would overshadow the additional revenue that government can earn from selling a protected monopoly. Government would be fulfilling its duty to do what is best for the majority of its citizens if it created an enabling environment for the establishment of the most competitive possible telecommunications industry in South Africa.

Section 7 – Market assessment

The market and the price mechanism are the only correct way for a society to decide upon the allocation of its scarce resources. The date in this clause should be dropped and our suggestions regarding the scrapping of licensing, the privatisation of Telkom, and the non-restriction of entry by new competitors should be adopted. The real market assessment could then begin immediately.

Section 8 – Under-serviced areas

8.1. There should be no restrictions on SMMEs or anyone else to provide services to under-served areas. It is unrestricted competition between suppliers that will most rapidly cater for the needs of the people in such areas.

Section 9 – Value Added Network Services (VANS)

9.1 This policy clause has to be reviewed before it is tested in court. Voice will not be an identifiable type of data in the corporate world and the government runs the risk of criminalising legitimate business behaviour. Further, courts may have to make arbitrary distinctions, creating vagaries in South African law, which create uncertainty and legal expense. Voice has to be treated as data, which is why this clause needs to be reviewed.

9.2 This clause is welcomed but it could be assumed that VANS have all business rights unless explicitly denied them (by techniques such as licensing). We suggest that this clause be removed and that any reference to Value Added Networks also be removed. Government does not need to legislate on the corporate forms in which technology may manifest itself. If it does, it runs the risk of having to carefully describe and differentiate all operators within the IT industry and create regulations accordingly. Obviously, this becomes a difficult task and no doubt an expensive one.

9.4. Government risks getting into a quagmire of legal distinction as convergence merges the various types of voice data. This clause refers to VANS having their licences revoked if they are found to carry voice, but it should be pointed out that many Internet Service Providers carry voice unknowingly with technologies such as IPhone – a home-based Internet tool for converting voice to data. The South African government surely has no intention to criminalise the behaviour of its citizens in communicating with other human beings around the world.

Section 10 – Assignment of 1800 MHz Radio Frequency Spectrum

10. Licensing of radio spectrum is a concept that may turn out to be far more problematic than private ownership of the spectrum. This country has an opportunity to create real infrastructure and wealth for its citizens if licences are replaced by property rights in the spectrum. The government has two choices in terms of our proposal. Either follow Sweden's lead in

registering the current mobile operators as users (and owners) of the 1800Mhz spectrum with a view to encouraging early adoption, or auction the spectrum to new operators granting them property rights which can thereafter be traded. Treating the spectrum as an owned asset rather than licensing limited use rights will reap much greater financial benefit for the people of South Africa and will ensure optimum future use of this resource.

Section 11 – Third Generation (3G)

11.1. Why not more participants? Who are we trying to stop from building infrastructure for this country? If somebody is willing to provide limited 3G services to rural areas, something the large operators may not be structured to provide, why would the government wish to deny provision of these services to the communities involved?

11.2. As suggested above, property rights and ownership of the spectrum should be granted in perpetuity to purchasers. Licensing will not reap the benefits that are desired and will merely serve to distort the way market participants will use the resource.

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2 May 2001