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## GENERAL NOTICE

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### NOTICE 2610 OF 2003

#### **FINDINGS AND CONCLUSIONS IN TERMS OF SECTION 27(8) (a) OF THE TELECOMMUNICATIONS ACT (NO. 103 OF 1996) ON THE SECTION 27 ENQUIRY ON THE PROVISIONING OF WIRELESS INTERNET ACCESS USING ISM FREQUENCIES**

##### **1. Background**

- 1.1 On 19 June 2003, the Independent Communications Authority of South Africa (ICASA/the Authority) published a discussion document under Notice number 1757 of 2003 in Government Gazette number 25120, requesting representations from interested parties on the provision of wireless internet access using ISM band frequencies. The enquiry was to assist the Authority with the provision of wireless data access, in particular through the medium of WLAN in public areas such as restaurants, cafés, libraries, and bus stations ("hotspots").
- 1.2 The Authority received eighteen (18) written representations on 19 July 2003. Representations were made by Telkom SA Ltd (Telkom); Mobile Telephone Networks (MTN); Vodacom (Pty) Ltd; Cell C (Pty) Ltd; M-Web; Internet Service Providers Association (ISPA), Transtel/Eskom/Nexus, Nibu Consultancy Services (PTY) Ltd., Chilli Consultancy Services, Cisco Systems, Inc., Intel Corporation, Internet Solutions (Pty) Ltd., Motorola Southern Africa (Pty) Ltd., Ross Orwin (DRG Distribution CC), Spectra Consulting and Cow Information Technology, Tel-net-com Consulting (Pty) Ltd., Wireless G, and T-Systems South Africa (Pty) Ltd.
- 1.3 The Authority's Council appointed a special committee in terms of section 17 of the ICASA Act number 13 of 2000 to conduct the public hearings which were held on 5 September 2003. Seven (7) respondents requested the opportunity to make oral representations. Oral representations were made by Telkom SA Ltd (Telkom); Mobile Telephone Networks (MTN); Vodacom (Pty) Ltd; Cell C (Pty) Ltd; M-Web; Internet Service Providers Association (ISPA) and Transtel/Eskom/Nexus.

##### **2 Findings**

In terms of the provisions of section 27(8) (a) and in light of the above-mentioned the Authority has made the following findings:

###### **2.1. General**

2.1.1 Although the Authority's enquiry originally focused on the use of Wireless Local Area Networks (WLAN) for 'wireless internet access', respondents brought to the Authority's attention the fact that the WLAN is not only wireless internet access but can enable connectivity to the Internet, intranet; corporate databases as well as other value added services. For example, a video store might transfer digital copies of movies to your PDA or Notebook using WLAN technology. It was thus rightfully proposed that the phrase "wireless internet access" could be replaced with "wireless data access".

2.1.2 As a point of departure the Authority will, in making its findings and conclusions, view Wireless Local Area Networks (WLAN) as a Local Area Network (LAN) as WLAN only suggests that the medium is different for the LAN. This was also pointed out by several representatives at the hearings.

## **2.2 Customer Premises Equipment**

2.2.1 Arguments were presented by various stakeholders, both in written submissions and during the oral hearing, in an attempt to demonstrate that wireless local area network (WLAN) equipment that is situated on the premises occupied or used by the LAN owner can be regarded as Customer Premises Equipment (CPE).

2.2.2 According to Telkom's Licence CPE is defined as<sup>1</sup>:

*"An item of approved equipment which does not form part of the Public Switched Telecommunications Network but is connected or intended to be connected to terminal connection equipment, whether fixed or portable, and by means of which signals are initially transmitted or ultimately received."*

2.2.3 Local Area Networks are always regarded as being on customer premises equipment and as such the difference between a LAN and a public switched telecommunication network is clearly defined. WLAN equipment constituting a LAN on customer premises is therefore without a doubt CPE.

2.2.4 It is evident from the submissions that WLAN equipment (access point and access card) is freely available in the market at retail outlets. The free availability of this equipment clearly indicates that it is within the competitive and liberalised customer premises equipment market.

2.2.5 The WLAN access point is owned by the LAN owner, who is stationed on his/her own customer premises, while the access card may be owned by the end-user or LAN owner who uses the LAN.

## **2.3 Telecommunications Service Argument**

2.3.1 One of the issues that the Authority sought to determine is whether a person providing public access to a wireless LAN, is indeed providing a telecommunication service, and if so must such service be licensed.

2.3.2 Several representatives referred to the Internet Café model where the Internet Café owner is offering Internet access to the public at a nominal fee. They argued that so called "hotspots" (venues where public wireless Internet access can be obtained) are no

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<sup>1</sup> CPE definition found in Telkom SA's PSTS licence.

different, except that the medium of access has now changed to that of radio instead of cable.

2.3.3 A noteworthy point which was raised related to the Radio Act Declaration (Notice 1790 of 1995), section 2(d), which places a restriction on a LAN owner in that he/she/it may only provide the LAN on his/her/its own premises and between computer systems of the same user. According to this provision it would not be possible to provide a commercial service to the public via the LAN as such users and their computers are not viewed as being from the same user.

2.3.4 However, it is the Authority's view that the 1995 Radio Act Declaration (Notice 1790 of 1995) places an unnecessary limitation on the use of WLAN which is not related to any spectrum efficiency argument, namely that LAN's "shall be confined to the same premises/building and between the computer systems of the same user". The Authority will accordingly amend the regulation as follows: the whole phrase "and between the computer systems of the same user" will be deleted<sup>2</sup>.

## 2.4 Local Access Telecommunication Service

2.4.1 Once the service provided by the LAN owner is provided beyond the border of the customer premises on which he/she/it resides, then the LAN owner is providing a local access telecommunication service and is illegally providing such a service if such service is provided without a telecommunications service licence in accordance with section 32 of Telecommunications Act.

2.4.2 In terms of the definition in section 1 of the Telecommunications Act:

*"Local access telecommunication service means a telecommunications service provided within a defined geographical area comprising the conveyance of signals-*

- a) Between any customers of the licensee within that area; and*
- b) To and from a customer of the licensee and the network of any public service telecommunication licensee with whom the licensee is interconnected at a point in that area" ..*

2.4.3 Given that the defined geographic area in the definition above excludes the customer premises according to section 36B(2) and section 41(2)(b), the LAN falls outside the scope of a local access service. If the service provided by the LAN was a local access service, it would have had to comply with both provisions (a) and (b) above.

2.4.4 The LAN service provided by the owner on his/her/its premises is not part of the local access telecommunication service.

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<sup>2</sup> Regulations in respect of use or possession of certain radio apparatus without a radio frequency spectrum licence, certificate, authority or permit, more commonly referred to as the Short Range Devices (SRD) regulation reflects this change and is currently in the process of being promulgated by the Minister of Communications.

## **2.5 Public Switched Telecommunication Service**

2.5.1 Telkom has argued that the LAN service falls within the PSTS service licence category. However, section 36 B (1) deals with the content of the expression of the public switched telecommunications network (PSTN).

Section 36B (2) states:

*“The systems contemplated in subsection (1) shall not include telecommunication equipment located on the premises of a customer, unless it is meant for public pay-telephones or mobile telecommunications on the premises of a customer”.*

2.5.2 Therefore, in terms of section 36B(2) of the Telecommunications Act, the LAN does not form part of the PSTN.

## **2.6 Services Provided on a Customer Premises**

2.6.1 As indicated above the service provided by a LAN owner on his/her/its premise is not a local access service and does not form part of the PSTN.

2.6.2 Traditionally, the Authority has not licensed Internet Cafes, but they are selling LAN services. The Authority has found that there is no need to licence LAN services provided on customer premises as the precedent already exists with Internet Cafes. Thus, in the interest of technology neutrality the Authority does not want to treat wireless LANS differently.

2.6.3 Noting the need to encourage new players into the market and in an attempt to create an environment for innovation that will benefit the sector, and for the avoidance of doubt, the Authority will exempt all commercial services provided on customer premises from requiring a service licence in terms of section 33 (2) of the Act.

## **3. Conclusions**

In the light of the above-mentioned findings the Authority has reached the following conclusions:

### **3.1 Customer Premises Equipment**

3.1.1 WLAN equipment is CPE.

### **3.2 Telecommunication Service Argument**

3.2.1 In terms of section 36B (2) of the Telecommunications Act, the LAN equipment does not form part of the PSTN.

3.2.2 The service provided to the public on the premises occupied by a customer (i.e. Hotspot owner) is not part of the local access telecommunication service.

3.2.3 LANs are providing a service on a customer premises. Services provided on a customer's premises have historically not been licensed by the Authority and therefore the Authority sees no need to treat WLANs differently.

3.2.4 The 1995 Radio Act Declaration (Notice 1790 of 1995) places an unnecessary limitation on the use of WLAN which is not related to any spectrum efficiency argument, namely that LAN's "shall be confined to the same premises/building and between the computer systems of the same user". The Authority will amend the provision in the Radio Regulation (Notice 1790 of 1995) as follows: the whole phrase "and between the computer systems of the same user" will be deleted.

3.2.5 In an attempt to create an environment of innovation that will benefit the sector, and for the avoidance of doubt, the Authority will exempt all commercial services provided on customer premises from a service licence in terms of section 33(2) of the Telecommunications Act.

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