

## **ISOC-ZA Response to ICASA ADSL Draft Regulations**

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Would you like to make an oral representation (Yes or No): Yes

## Introduction

ISOC-ZA welcomes the opportunity to make another submission to ICASA on the draft ADSL regulations.

In general the spirit and intention of the draft ADSL regulations appear to be admirable and supported by ISOC-ZA. For the sake of clarity the comments are made under the draft regulations:

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## SCHEDULE

### 1. Definitions

In these regulations any expression or word to which a meaning has been assigned by the Telecommunications Act, 1996 (Act No 103 of 1996), as amended, (hereinafter referred to as "the Act"), shall have the same meaning in these regulations, unless the context otherwise indicates: -

**"Access Charge"** means the initial charges in respect of costs relating to the set-up and connection of a subscriber to the network for ADSL services.

**"Asymmetric Digital Subscriber Line"** means a modern technology that converts twisted-pair telephone lines into access paths for multimedia and high speed data communications. The bit rates transmitted in both directions are different.

**"Broadband"** means an always-on data connection that is able to support various interactive services, and has the ability of a minimum download speed of 256 Kbps or as many as may be prescribed by the Authority from time to time.

#### **Comments:**

*ISOC-ZA welcomes the definition of broadband, especially the minimum download speed of 256 kbps. While this speed is relatively low it is still above the stated "broadband" speed from Telkom and so we believe will force the network operators to provide this speed as their lowest offering for "broadband". However many users would be willing to accept slower download speeds. The question of whether the services is a "broadband" or*

*"narrowband" appears to simply affect the question of marketing and ought not to prevent a lesser offering which is reduced in price.*

*It should be borne in mind that the South African market is very price conscious and the lower end of the market has considerable scope to benefit from increased competition. Thus prohibiting any service is not in the interests of competition.*

## **2. Fees and Charges**

2.1. The structure of an ADSL tariff shall comprise of a connectivity charge, a monthly telephone line rental for basic telephony and a bandwidth charge.

### **Comments:**

*Agreed, with the proviso that where a subscriber that doesn't wish to use the phone service as provided should not be charged for the services related to the phone service that are not connected to the provision of ADSL services.*

2.2. The connectivity charges shall be levied once off at the inception of the services, where after access charges shall be restricted to line rental. The network operator shall only levy a connectivity and rental for basic telephony. The bandwidth charge shall be a monthly charge levied by the Internet Service Provider (ISP).

### **Comments:**

*ISOC-ZA believes that ADSL (or any data) line rental, and the cost of a voice service should be separated. Whilst we recognise the reason that it would be quicker and simpler to install an adsl service once a voice service is installed (or vice versa), we see no reason why an ADSL subscriber must first acquire a (Telkom or SNO provided) voice service before - or as a requirement for - an adsl or other broadband service.*

*ISOC-ZA supports the exclusion of the voice service (line) requirement for ADSL subscribers, and believes that this is a step in the right direction. However ISOC-ZA is concerned that*

*the complete scrapping of the connectivity charge will discourage other service providers to compete in this market.*

2.3. The connectivity charged to ADSL services shall be a once off charge for the cost of providing connectivity of such services. A network operator or a licensed service provider of broadband infrastructure shall offer users an option to pay the connectivity charge over a specified period of time which shall not be longer than twelve (12) months.

**Comments:**

*While this clause is also welcomed within the above model where voice and data must be purchased together, it may be wise to indicate that existing ADSL subscribers would not be liable for any connectivity charges after the promulgation of these regulations.*

*However ISOC-ZA would, as described above, prefer to have a model where voice and data would be able to be purchased separately.*

*It is a further concern that the network operators will use the connectivity fee to subsidise the revenue that has been lost due to the demise of the additional line rental as set out in clause 2.1.*

*The payment structure of 12 months, while laudable in its intentions, should not be as distinctly specified. Rather the impending National Credit Bill should instead be used to regulate reckless credit (as defined in the Bill) in this regard. It should be noted that the provision of credit in this respect could lower the barrier to entry for lower income groups. Credit itself is not a barrier but an enabler. It is reckless credit that is damaging, not credit itself.*

*It is suggested that then that the customer could pay off the installation cost over any appropriate period bearing the above comments in mind, but would nonetheless be entitled to use another ADSL service after providing one month's notice.*

2.4. Service Providers shall purchase bandwidth from network operators at a wholesale rate agreed between the parties and

any benefits derived there from shall be equitably shared with the subscribers.

**Comments:**

*This clause is to be welcomed. ISOC-ZA is more concerned with the way in which this will be implemented from a practical standpoint. Telkom has been notoriously adept at delaying the implementation of regulations that are not suited to the company. While clause 2.5 allows for the intervention of ICASA if no agreement is able to be reached, it is submitted that a time frame be set down to encourage the resolution of the agreement as soon as possible.*

*On a related issue, ISOC-ZA recognises that larger ISPs – especially Telkom- will not interconnect (peer) with smaller ISPs, which often results in local packets of information requiring an international route (eg IS and Telkom). We believe that this behaviour results in higher costs for all the ISPs in the market, and hence higher costs for the consumer. This issue is particularly sensitive when it comes to broadband. ISOC-ZA feels that in order to encourage competition and to save our economy wasted costs and inefficiencies, all licensed broadband providers should be regulated to peer with all other licensed broadband providers*

2.5. The Authority shall, at the request of the parties, intervene and make a determination whenever there is a disagreement on wholesale rates.

**Comments:**

*While this clause is to be welcomed, see the clause above.*

### **3. Consumer Protection Issues**

3.1. Subscribers who enlisted for the ADSL service prior to the introduction of the cap shall have the option to renegotiate and amend or vary the terms of service with the network operator in circumstances where the cap has negative implications on subscribers.

**Comments:**

*It is likely that the perception of the word "negative" by the subscriber will be disputed by Network operators. In the circumstances it is submitted that ICASA once again provides for the resolution of a dispute as to what "negative" implications are on the subscribers, provided that ICASA has the capacity to do this. Alternatively various test cases could be determined by ICASA to provide some direction to the parties.*

- 3.2. Subscribers that have reached the monthly cap shall be allowed to top-up or purchase extra bandwidth without the need to purchase a new user account.

**Comments:**

*Agreed.*

- 3.3. Network operators shall inform subscribers, at all times during the course of the month, of their bandwidth usage until the monthly threshold has been reached. The subscribers shall also be in a position to track their bandwidth usage on a daily basis.

**Comments:**

*While various ISP's already provide this service, the requirement that this information be provided is to be welcomed.*

- 3.4. Local bandwidth usage shall not be subject to the cap. The cap shall be increased to a minimum level of 10 Gigabytes (GB) per month.

**Comments:**

*Despite prolonged debate amongst our members we were unable to come to a consensus on this issue.*

*On the one hand an increase in the cap from 3Gb to 10Gb – an increase of more than 300% - is substantially different and would force Telkom to increase the amount of data available to each user. This in turn would encourage the growth of the use of the Internet which some members believe would be beneficial to the country.*

*On the other hand the imposition of a minimum cap would discourage competitors who would have been able to - through the natural competitive process – reduce the cost of connectivity.*

*This debate seemed to be influenced by the realistic likelihood of the SNO being able to provide real competition to Telkom in the near future. While some members were optimistic about the time frame involved, several were concerned that the incredible delays that have already been experienced to date would continue and leave South Africa in a similarly uncompetitive position in five years time.*

3.5. Subscribers that have entered into ADSL contracts prior to the promulgation of these regulations shall have an option to substitute the existing contracts, at no extra cost to such subscribers, with the new contracts that comply with the new framework.

**Comments:**

*Agreed.*

3.6. The licensee shall publish updated information on ADSL-enabled exchanges in the white papers.

**Comments:**

*Agreed.*

3.7. The network operators shall install the ADSL service within fourteen days of receipt of an application if the applicant resides within an ADSL enabled area.

**Comments:**

*While this clause is to be welcomed, anecdotal evidence suggests that this is not currently the case. If the network operator were to breach this regulation the sanction that would be imposed is unclear. In addition it is suggested that the inclusion of the word "calendar" before "days" would clarify the exact time frame that should be adhered to.*

#### **4. Throughput Speeds**

Network operators and service providers shall guarantee minimum broadband speeds that are in line with ITU recommendations for the ADSL service so as to ensure that it does not lose its broadband character.

##### **Comments:**

*Once again the lack of specificity is a concern. By when must the service providers adhere to this clause and what are the sanctions if it is ignored? It is of course vital that the sanction involved would outweigh the cost of providing the minimum speeds.*

#### **5. Port Prioritisation**

Network operators shall charge subscribers only according to the throughput speed provided to the subscribers. There shall be no distinction in respect of cost and priority of customer's service over others within the same ADSL service.

##### **Comments:**

*ISOC-ZA welcomes this move away from censorship and has always believed that it was not up to the service providers or Network operators to dictate which data should be prioritised. It is precisely this type of freedom which has fostered the culture of innovation and creativity that is inherent in the Internet.*

*However ISOC-ZA would suggest that, in addition to the unshaped service as indicated in this clause, a shaped service could be provided to the customer on the customer's request.*

#### **6. Contention Ratios**

The network operator shall publish the contention ratio as a commitment to good business practice.

##### **Comments:**

*Since, as Telkom acknowledges, contention ratio's are already known, it is submitted that the contention ratio's be published as*

*a matter of urgency. The effort required to implement this clause is minimal and it is clearly best practice on a global scale.*

## **7. 24 Hour ADSL Service Reset**

The network operator shall not periodically reset the ADSL service. Any such reset if required for the service maintenance shall be done with a prior notification of at least seven (7) days to the subscribers.

### **Comments:**

*This regulation could be of great importance to the Internet. While this ensures an uninterrupted flow of data, it implies the introduction of static IP addresses which will allow for the provision of hosting of web sites using ADSL lines. Bearing in mind the historical trend of hosting internationally, it is hoped that this will encourage businesses to be willing to relocate their web sites back to South Africa.*

*There has been some concern that the introduction of static IPs may result in some security concerns and could result in more malicious attacks than would have occurred had the IP addresses been dynamic. Bearing this in mind ISOC-ZA recommends that - at no additional cost - a dynamic IP could be provided to the customer on his request.*

*In addition an ADSL consumer must be able to request one or more fixed IPv4 addresses or one dynamic IP address or a customer allocation of IPv6 addresses. All IP addresses that are assigned to a customer by their ISP, should be routable IP's (i.e. -NOT NAT type addresses) and this must be part of the cost of this product.*

## **8. Service Level Agreements**

The parties shall enter into service level agreements and such agreements shall determine, among others: -

- (i) complaint processes and procedures;
- (ii) dispute resolution mechanisms;
- (iii) turn around times in effecting repairs;
- (iv) penalties for failure to effect repairs and issues thereto in time;

- (v) for local loop length of a given distance what is the guaranteed maximum downstream data rate;
  - (vi) at the guaranteed maximum downstream data rate in what time shall the ADSL deliver a 3MB file;
  - (vii) the data portion of the ADSL circuit shall be like a leased line and no dial-up procedure shall be required for connection of the Internet;
  - (viii) the connection to the Internet shall be permanent; and
  - (ix) the ADSL service shall operate up-stream at maximum rates of 384 kbps.
- (x) The ADSL supplier should be upfront with the technological limitations of ADSL with regard to:
- (i) distance limitations;
  - (ii) loop impairments;
  - (iii) digital loop carrier (DLC) systems;
  - (iv) installation difficulties

**(xi) UADSL**

In the event that a Universal ADSL (UADSL0 or G.lite is used the supplier shall:

- (i) give the customer a guaranteed maximum downstream data rate as well as the upstream maximum data rate; and
- (ii) indicate whether there is degradation of the quality of service where there is simultaneous use of a voice call and data transfer.

**Comments:**

*This clause drew mixed reactions from ISOC-ZA.*

*On the one hand while transparency was to be encouraged, it was suggested that the requirement of an SLA would create a further barrier to competition that was not in the best interests of the market.*

*On the other hand there was some support for the idea that this would force transparency which would allow customers to accurately assess the service being provided. In addition it members supporting this position suggested that an inadequate*

*response or a lack of response to a complaint is able to be escalated so that it may be heard by ICASA in order to ensure that the complaint mechanism functions.*

The Authority may, at the request of any party, intervene to resolve any dispute in instances where a service level agreement cannot be concluded in sixty (60) days.

*Once again it would be of assistance if the regulations could indicate that the SLA must be concluded within 60 "calendar" days. The comments as indicated above remain valid. In addition that an SLA that is concluded that doesn't allow for the independent determination of a dispute by a third party (i.e. the ADSL supplier keeps all dispute mechanisms in-house) should be able to be escalated further. Thus it is not only the publishing of a service level agreement, but also the publishing of an acceptable service level agreement that should be considered.*

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## **Conclusion**

There can be no doubt that ISOC-ZA would aim to have a competitive telecommunications environment that would be able to reduce costs in line with the normal competitive process. Whether the creation of a truly competitive process is possible at this stage remains a point of contention between our members. Most, if not all of our members believe that declaring the SAT3 cable an essential resource and unbundling the local loop would essentially introduce competition in the time it takes for such a decision to be made.

Until these changes are made, these regulations, while very welcome, are destined to have a lesser impact on the currently unacceptable state of data costs in South Africa.

ISOC-ZA thanks the ICASA for its consideration of this submission.