



WORLDSPACE

20 November 2005

The National Council of Provinces  
SC on Labour and Public Enterprises  
P O Box 15  
Cape Town  
8000

**ATTENTION: COMMITTEE SECRETARY - MS PUMZA MPOYIYA**

Dear Madam,

**RE: ELECTRONIC COMMUNICATIONS BILL**

- 1 WorldSpace (Southern Africa) (Proprietary) Limited ("WorldSpace SA") thanks the National Council of Provinces for giving it this opportunity to highlight aspects of the Electronic Communications Bill ("ECB") which are of concern to it and which it would like to be addressed prior to the promulgation of the ECB.
- 2 WorldSpace SA is a company duly incorporated in the Republic of South Africa and carrying on business as the operational and management headquarters of WorldSpace International Satellite Region for the entire continent of Africa and adjacent Indian Islands oceans, Middle East and Southern Europe on behalf of WorldSpace International Network Inc.
- 3 WorldSpace SA provides direct satellite Digital Audio Broadcasting ("DAB") and data services via an uplink facility located at WorldSpace SA's offices in Craighall, Johannesburg, to the AfriStar Satellite, being a geostationary satellite used to receive DAB signals and downlink them to portable radio equipment having appropriate receiving facilities. The DAB services provided by WorldSpace SA are a combination of subscription based and free-to-air services. The WorldSpace SA bouquet of channels includes 47 channels of DAB services and one uni-directional channel and non interactive data service. The content broadcast by WorldSpace SA includes news, information, music and educational programming.

**WORLDSPACE SOUTHERN AFRICA (PTY) LTD**

391 Jan Smuts Avenue, Craighall Park, 2196, Johannesburg, South Africa

P O Box 412466 Craighall 2024, Johannesburg, South Africa

Tel: +27 11 449 4000 Fax: +27 11 886 6394 Email: [sacs@worldspace.com](mailto:sacs@worldspace.com) Reg No.: 1996/03896/07

Noah A. Samara (Chairman)\*\*; Andy Ras-Work (Chief Operating Officer)+; Hamza Farooqui (MD) (\*\* American; +Swiss)

- 4 WorldSpace currently provides its subscription satellite and terrestrial DAB services in terms of the following permissions granted to it under the Broadcasting Act 4 of 1999 ("Broadcasting Act") -
- 4.1 a permission granted in terms of section 4(1)(a) in terms of which WorldSpace SA is authorised to provide a satellite broadcasting service;
- 
- 4.2 a permission granted in terms of section 4(5)(a) in terms of which WorldSpace SA has the necessary authorisation of channels in respect of its broadcasting service;
- 4.3 a permission granted in terms of section 34(1)(a) in terms of which WorldSpace SA is authorised to provide a broadcasting signal distribution service.
- 5 There are a number of other entities who also provide broadcasting and signal distribution services in terms of permissions granted to them under the Broadcasting Act. By way of example subscription sound broadcasting service permissions have been granted by the Independent Communications Authority of South Africa ("ICASA") to MultiChoice (DStv); Sentech (Vivid), Orbicom, DMX Africa Music Services and Comutanet FM.<sup>1</sup>
- 6 Of particular concern with regard to the ECB is the fact that WorldSpace and a number of other entities who currently provide services in terms of deemed licences or permissions are excluded from the transitional provisions contained in Chapter 15 of the ECB. Whilst section 92(5) of the Convergence Bill safeguards the rights of those persons who currently provide services or use the radio frequency spectrum in terms of a permission granted under the Telecommunications Act 103 of 1996 ("Telecommunications Act"), the Broadcasting Act or the Independent Broadcasting Authority Act 153 of 1993 ("IBA Act"), these entities will not be licensed in terms of the transitional provisions set out in Chapter 15.
- 7 The effect of this exclusion is that persons who currently operate under permissions will be required to apply for new licences under Chapter 3 of the Convergence Bill. This in turn may have the unintended consequence that the protections accorded to the existing rights of persons providing services in terms of a permission (as provided for in section 92(5) of the Convergence Bill) may be seriously undermined where such persons are made subject to licensing procedures which are substantially different to those provided for in Chapter 15 of the Convergence Bill.

---

<sup>1</sup> ICASA Inquiry into Subscription Broadcasting Discussion Paper published under Notice 726 of 2004 in Government Gazette No 26289 at paragraph 3.2.1.

- 8 In order to ensure that all existing licensees, deemed licensees and persons who lawfully provide services pursuant to a permission are subject to the same licensing procedures and are accorded the same protections in respect of their existing rights, the following amendments are required to be made to Chapter 15 of the ECB—

- 8.1 Section 92(5) is to be amended to read as follows —

*"Any person, who immediately before the commencement of this Act, lawfully provided any service or used the radio frequency spectrum in terms of the Telecommunications Act , Broadcasting Act or Independent Broadcasting Authority Act without a licence is deemed to have permission to continue to provide such a service on the same conditions and terms, or use the frequency spectrum on the same conditions and terms without a licence until converted by the Authority in terms of this Chapter 15."*

**Deleted:** *such time as the Authority has granted or refused a licence application.*

- 8.2 Section 92(6) is to be amended to read as follows —

*"Existing licences referred to in subsection (1) and existing permissions referred to in subsection (5) must be converted by the Authority in terms of this Chapter within 24 months from the commencement date of this Act or such extension period which must not exceed an additional 6 months from the expiry of the 24 month period."*

- 8.3 Section 93(1) is to be amended to read as follows —

*"Subject to subsection (4), the Authority must convert existing licences and permissions by granting one or more new licences that comply with this Act on no less favourable terms."*

- 8.4 Section 93(2) is to be amended to read as follows —

*"Despite sections 5(10) and 19(1), all licenses and permissions converted in accordance with this Chapter 15 retain their original term of validity unless otherwise specified by the Authority."*

- 8.5 Section 93(3) is to be amended to read as follows —

*"Within 30 days of the commencement of this Act, the Authority must, by notice in the Gazette, publish a schedule, subject to section 92(4), in terms of which the Authority plans to undertake the existing licence and permission conversion process. The notice must —*

- (a) identify the holders of existing licences and permissions; the nature of the existing licence and permission and those services that are exempted as provided for in section 6;
- (b) subject to section 92(4), set out a time frame for such conversion, including but not limited to the expected time frame for granting new licences under this Act;
- 
- (c) set out the form and content, including information that must be provided to the Authority by the holders of existing licences and permissions to assist the Authority in the conversion process;
- (d) set out the process the Authority plans to undertake in converting such existing licences and permissions; and
- (e) confirm the rights of the applicants to participate in such process."

Deleted: and

8.6 Section 93(4) is to be amended to read as follows –

"The following framework must be used by the Authority for converting existing licences and permissions and for issuing new licences:

- (a) Where an existing licence or permission authorises the holder of such licence to both provide services and operate electronic communications facilities or networks, the Authority must issue to that licence or permission holder—
- (i) a licence relating to the electronic communications services or broadcasting services, if applicable, that coincide with the services authorised in the existing licence or permission;
  - (ii) a separate licence relating to any radio frequency spectrum authorised in the existing licence or permission; and
  - (iii) a separate licence relating to the electronic communications network services
- consistent with the licence types set out in Chapter 3.
- (b) As part of the conversion process, the Authority may grant rights and impose obligations on the licensees, in order to that the existing licences and permissions comply with this Act, including the continuation of any obligations imposed upon existing licensees and permission holders by virtue of a previous determination. Such obligations remain in force

*until such time as the Authority completes a review in terms of section 67 (8)."*

8.7 Section 93(5) is to be amended to read as follows –

*"Upon conversion of any existing licence or permission through the process of granting a new licence or exemption of any service in terms of section 6–*

- (a) such new licence or exempted service, as applicable, is governed by the provisions of this Act; and*
- (b) the existing licence or permission is considered to have been surrendered and has no further force or effect."*

8.8 Section 93(6) is to be amended to read as follows –

*"All holders of existing licences or permissions must comply with the terms of the notice for converting their licences or permissions published by the Authority in terms of subsection (3), including -*

- (a) supplying the Authority with any information requested; and*
- (b) participating in any process set out by the Authority for converting the applicable licences and permissions to meet the deadline for converting existing licences and permissions set out in section 92(6)."*

8.9 Section 93(7) is to be amended to read as follows –

*"The Authority may not grant or include in any licence or permission converted in terms of this Chapter any monopoly or exclusionary rights in any network or service contemplated by this Act or the related legislation.*

8.10 Section 93(8) is to be amended to read as follows –

*"Any monopoly or exclusive rights existing by virtue of the related legislation, the IBA Act, the Sentech Act or the Telecommunications Act is null and void; but radio frequency spectrum that is assigned by the Authority to a licence or permission holder is not considered a monopoly or exclusionary rights under this subsection.*

8.11 Section 93(9) is to be amended to read as follows –

"No existing licensee or permission holder may have any claim against the Authority or any other person asserting such monopoly or exclusionary rights."

8.12 Section 93(10) is to be amended to read as follows –

*"During the transition period, existing licences and permissions are considered to be –*

*(a) individual licences for the provision of electronic communications network services, broadcasting services, or electronic communications services, as applicable; and*

*(b) for the use of the radio frequency spectrum granted by the Authority in terms of this Act.*

8.13 Section 93(11) is to be amended to read as follows –

*"Despite section 8, existing licences and permissions remain subject to all terms and conditions associated with such licences and permissions that are not inconsistent with this Act until such licences and permissions are converted and re-issued in terms of this Chapter."*

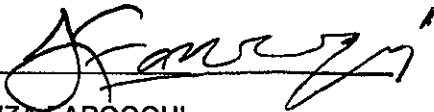
9 Of further concern to WorldSpace is that section 62 (2)(b) of the ECB provides that electronic communications network service licensees that provide broadcasting signal distribution or multi-channel services must provide broadcasting signal distribution only to a broadcasting service provided under an appropriate and valid broadcasting licence. The effect of this provision is that WorldSpace and other entities who provide services under the Broadcasting Act in terms of a permission will be precluded from obtaining broadcasting signal distribution or multi-channel services from electronic communications network service licensees authorised to provide such services.

10 The provisions of section 62 (2)(b) will have a detrimental effect on permission holders under the Broadcasting Act as effectively they will simply be unable to distribute their broadcasting services. This could never have been the intention of section 62 (2)(b) of the ECB and the section must be amended to rectify this unintended consequence. It is therefore suggested that section 62 (2)(b) be amended to read as follows –

*"provide broadcasting signal distribution only to a broadcasting service provided under an appropriate and valid broadcasting licence or permission as envisaged under section 92 (5) of this Act."*

- 11 If, WorldSpace and other entities are not made subject to the licensing process detailed in Chapter 15 of the ECB, they will inevitably be faced with further delays in obtaining licences under Chapter 3 of the ECB as ICASA is likely to first focus on converting existing licences under Chapter 15 before turning its attention to the licensing of new applications under Chapter 3.
- ~~12 WorldSpace and other permission holders under the Broadcasting Act have been waiting for ICASA to put in place the licensing framework for subscription broadcasting services since March 2003 when the legal obstacles in the Broadcasting Act were finally removed thus paving the way for permission holders under the Broadcasting Act to be finally licensed. To date, ICASA is still in the process of setting a framework for subscription broadcasting services despite licence applications having been made to it by all affected parties during the period prescribed in the Broadcasting Act.~~
- 13 It is submitted that any further delay in this process and any requirement that existing permission holders be made subject to a licensing process and licensing terms and conditions which are potentially more onerous than those provided for in Chapter 15 of the ECB will severely undermine investor confidence in the subscription broadcasting sector and in turn will retard the many economic benefits, including job creation which the sector has to offer.
- 14 We would like to once again thank the National Council of Provinces for giving us this opportunity to raise our concerns with the ECB and trust that the appropriate amendments will be made to the ECB prior to its promulgation.

Yours faithfully,



HAMZA FAROOQUI

MANAGING DIRECTOR

WORLDSPACE (SOUTHERN AFRICA) (PROPRIETARY) LIMITED

COPY HEREOF RECEIVED THIS  
\_\_\_\_ DAY OF NOVEMBER 2005

---