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23 August 2007

Mr E N N Ngcobo, MP
 Chairperson
 Portfolio Committee on Science & Technology
 Parliament RSA
 CAPE TOWN
 8000

Attention: Zelna Jansen

Email: zjansen@parliament.gov.za

Dear Mr Ngcobo

**RE: TRANSNET LIMITED'S COMMENTS ON THE ASTRONOMY GEOGRAPHIC
 ADVANTAGE BILL**

Transnet Limited ('Transnet') wishes to thank the Portfolio Committee on Science & Technology for the opportunity to comment further on the Astronomy Geographic Advantage Bill (the 'AGA Bill'). Transnet welcomes and supports the objectives and principles of the Bill particularly with regards to the attention, which will be given to development of the science and technology discipline in South Africa.

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General Comments

We propose the following amendments to the Astronomy Geographic Bill [B17-2007] ("AGA Bill"):

1. Amend Section 7(3) for the Minister of Science and Technology to issue a declaration to any affected organ of state in the proposed core astronomy advantage area, prior to the commencement of the public participation process, by registered post to the last known postal address of the organ of state.

- 1.1 It is recommended that section 7(3) be amended with the addition of a new section 7(3) (b) to read as follows –

"S 7(3) – In addition to subsection (2), a declaration under subsection (1)(a) may only be issued if the minister has prior to the declaration –

- (a) *conducted a public participation process in terms of section 42 and the Minister has in conducting this process compiled a permanent register of interested and affected parties for the core astronomy advantage area;*
- (b) *sent any relevant private land owner or any organ of state having an interest within the proposed core astronomy advantage area a copy of the proposed declaration, prior to the commencement of the public participation process, by registered post to the last known postal address of the land owner; and*
- (c) *where possible informed in an appropriate manner any other lawful occupier of the land within the proposed core astronomy advantage area of the proposed declaration and the public participation process."*

2. Section 9(3) of the AGA Bill must be amended to require the Minister of Science and Technology to issue a declaration under section 9(1)(a) only

after the proposed declaration has been sent to any affected organ of state in the proposed central astronomy advantage area, prior to the commencement of the public participation process, by registered post to the last known postal address of the organ of state.

2.1 In the circumstances, section 9(3) must be amended by the inclusion of a new section 9(3)(b) to read as follows –

"S (9)(3)(b) In addition to subsection (2), a declaration under subsection (1)(a) may only be issued if the Minister has prior to the declaration –

(a) *conducted a public participation process in terms of section 42 and in conducting this process the Minister has compiled a permanent register of interested and affected parties for the central astronomy advantage area;*

(b) *sent any relevant private land owner or any organ of state having an interest within the proposed central astronomy advantage area a copy of the proposed declaration prior to the commencement of the public participation process, by registered post to the last known postal address of the land owner; and*

(c) *where possible, informed in an appropriate manner any other lawful occupier of the land within the proposed central astronomy advantage area of the proposed declaration and the public participation process".*

3. Section 16(2)(a) of the AGA Bill must be amended to also impose an obligation on the management authority to consult all organs of state having an interest in the astronomy advantage area.

3.1 Transnet therefore proposes that the following amendment be made to section 16(2)(a) –

"S 16(2) When preparing a management plan for an astronomy advantage area, the management authority concerned must consult –

- (a) private land owners and affected organs of state within the astronomy advantage area."

4. Amend Section 17(2)(b) to include a reference to organs of state to read as follows –

"S 17(2)(b) Rules made under subsection (1)

- (b) must be communicated or made available to land owners and affected organs of state, visitors and other affected persons within the core astronomy advantage area."

5. Amend Section 18(2) to include the payment of financial compensation by the State to any person who is required to undertake any agreed activity in fulfilment of an objective or requirement under a co-management agreement. In this regard, it is proposed that the following amendment be made to clause 18(2), namely -

"S18(2) A co-management agreement may provide for –

- (a) occupation of the area or portions thereof;
 (b) prohibitions or restrictions on the use of any interference source, mobile radio frequency interference source or short range device or any other device, equipment or instrument which may cause light pollution or radio frequency interference or have other detrimental impacts on astronomy and related scientific endeavours or astronomy advantage in the area;

- (c) prohibitions or restrictions on activities which may cause light pollution, radio frequency interference or have other detrimental impacts on astronomy and related scientific endeavours or astronomy advantage in the area;
- (d) access to the area and procedures for the admittance of visitors to the area;
- (e) financial and other support to ensure effective administration and implementation of the co-management agreement; and
- (f) the payment of financial compensation to any person who is required to undertake any agreed activity in fulfilment of an objective or requirement under a co-management agreement;
- (g) any other relevant matter".

5.1 Consequently section 18(2) will have to be renumbered.

6. Amend Section 18(4) to allow for the cancellation of a co-management agreement after a public participation process as provided for in section 42. In order to give effect to this requirement, it is proposed that section 18(4) be amended to read as follows -

"S18(4) The management authority may cancel a co-management agreement after giving reasonable notice to the parties and after having conducted a public process in terms of section 42, if the -

- (a) co-management agreement is not effective or is inhibiting the attainment of any of the management objectives of the astronomy advantage area; or

- (b) *other party to the agreement remains in breach of any obligation or undertaking made in the co-management agreement after having been given a reasonable opportunity to rectify the breach."*

7. Amend Sections 20(2)(d) and 20(2)(d)(ii) to include reference to organs of state and should read as follows -

"S (20)(2) Subsection (1) does not apply to -

- (d) *the owner or lawful occupier of any private land or organ of state having an interest within any core astronomy advantage area who may -*
- (i) *enter and reside on such private land; and*
- (ii) *in accordance with the provisions of any co-management agreement entered into between the owner or lawful occupier or organ of state and the management authority, conduct any other activities listed in subsection (1) on such private land."*

8. Amend Section 22 (2) for Minister of Science and Technology to consult the Minister of Transport and the Minister of Public Enterprises as well as any other affected organ of state before issuing any notice in the gazette as provided for in this section.

- 8.1 Accordingly, it is suggested that the section be amended to read as follows -

*S 22(2) Pursuant to the authority granted in subsection (1) and after consultation with ICASA, the Minister responsible for communications, the Minister of Public Enterprises, the Minister of Transport and any affected organ of state, the Minister may, by notice in the Gazette –

- (a) prohibit completely or restrict in any way the use of specific frequencies within the radio frequency spectrum or the radio frequency spectrum in general within a core or central astronomy advantage area;
- (b) require the conversion, within a reasonable time period, of analogue transmissions in the radio frequency spectrum within a core or central astronomy advantage area, to digital transmissions;
- (c) require any user of the radio frequency spectrum which transmits or broadcasts into a core or central astronomy advantage area to migrate onto a radio frequency or utilise alternative technology that more effectively protects radio astronomy observations; or
- (d) exempt from the provisions of such notice any person or organ of state who has entered into an agreement with the management authority of the core or central astronomy advantage area to mitigate their impact on the radio frequency spectrum within the relevant astronomy advantage area*.

9. Amend Section 23 (2) (b) to provide for the payment of financial compensation to any person who incurs costs in having to comply with a

prescribed condition in terms of this section. Section 23 (2)(b) should cater for this requirement by the inclusion of a new sub section to be numbered section 23(2)(c) and which is to read as follows -

"S 23(3) *The Minister may, in relation to the activities contemplated in subsections (1) and (2) -*

(a) *require that any activity cease, subject to the payment of compensation, if required by section 25 of the Constitution; or*

(b) *prescribe conditions under which any activity may continue in order to reduce or eliminate the impact of the activity on astronomy and related scientific endeavours or astronomy advantage in the relevant area; and*

(c) *financially compensate any person who incurs costs in having to comply with a prescribed condition in terms of section 23(1).*"

10. Amend Sections 29 (1)(a) to (c) to impose an obligation on the management authority of an astronomy device to perform any function under the section in compliance with the safety and or other reasonable requirements of any owner of the land or railway etc. The following amendment is suggested to this section -

"S 29 (1) *The management authority of an astronomy device may, for the purpose of performing its functions -*

(a) *enter upon any land, including any street, road, footpath or land reserved for public purposes, any railway and any waterway in the Republic;*

- (b) *construct and maintain an astronomy device upon, under, over, along or across any land, including any street, road, footpath or land reserved for public purposes, any railway and any waterway in the Republic; and*
- (c) *alter or remove its astronomy device, and may for that purpose attach wires, stays or any other kind of support to any building or other structure,*

provided that in the performance of its functions under subsections (a), (b) and (c) the management authority shall at all times comply with the safety and other reasonable requirements of the private owner land owner and the affected organ of state"

- 11. Amend Section 41 to include a reference to notices or declarations issued in terms of sections 18(4), 22(3), 23(1), 23(4) and 24(4) of the AGA Bill. The following amendment is recommended -

"S41 *Subject to section 42, before issuing a notice under sections 5, 7(1), 9(1), 11(1), 18(4), 22(3), 23(1), 23(4) and 24(4), the Minister may follow such consultative process as may be appropriate in the circumstances, but the Minister must consult-*"

- 12. Amend Section 43 to include reference to notices or declarations issued in terms of sections 18(4), 22(3), 23(1), 23(4) and 24(4) of the AGA Bill. The following amendment is recommended -

"If it is proposed to make a declaration in terms of sections 7(1), 9(1), 18(4), 22(3), 23(1), 23(4) and 24(4) in respect of an area that consists of or includes -....."

We wish to thank you for the opportunity to provide additional comments on the Astronomy Geographic Advantage Bill and await your confirmation of receipt of our comments and your further advises in due course.

Yours faithfully

Cleopatra Shiceka

GENERAL COUNSEL: TRANSNET FREIGHT RAIL