
GENERAL NOTICE

NOTICE 558 OF 2008



**Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146**

NOTICE IN TERMS OF SECTION 4B OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ACT

The Independent Communications Authority of South Africa ("the Authority"/ "ICASA") hereby gives notice and invites written comments in terms of section 4B of the Independent Communications Act of South Africa Act 13 of 2000, as amended, ("ICASA Act") on the interpretation and application of the definition of Under Serviced Area ("USA") as defined in the Cell C licence attached in Annexure A below.

The purpose of the enquiry is to assist the Authority in making a determination whether or not there has been compliance by Cell C with its Universal Service Obligations (USOs) as set out in the Cell C licence.

Interested persons or organisations are hereby invited to submit written representations or documentation, including an electronic version in Microsoft Word or PDF, on their views in accordance with the provisions of section 4B of the ICASA Act by no later than 60 (sixty) days from date of publication of this notice.

Persons or organisations who wish to make any representation or submit any relevant documents must also indicate whether they would like an opportunity to make oral presentations at a hearing., which must not exceed one (1) hour in duration.

Written representations or documentation may be posted or hand delivered, for the attention of:

Ms. Michelle Morgan, Acting Senior Manager: Licensing and Compliance

Private Bag X 10002	or	Block A, Pinmill Farm
Sandton,		164 Katherine Street
2146		Sandton, 2146

Where possible, written representations should also be e-mailed to MMorgan@icasa.org.za

All written representations or documentation submitted to the Authority pursuant to this notice shall be made available for inspection by interested persons at the ICASA library and copies of such representations and documents can be obtained upon payment of the prescribed fee.

Interested persons or organisations who submit written representations or documentation should indicate, upon submission, whether there is any part thereof which should be treated as confidential. The request and reasons why any part of the representation or documentation be treated as confidential must be submitted at the same time with the written representations.

ICASA will consider whether to grant or refuse the request for confidentiality in accordance with the provisions of the ICASA Amendment Act and other applicable legislation. Where the Authority refuses to treat any part of the representation or documentation as confidential, the person or organisation making such representation may withdraw the representation or documentation in question and the Authority will not take it into consideration when making its findings.

In order to provide for a wider basis of representations to be made and documents to be submitted during the inquiry, the Authority has compiled questions pertinent to this issue.

These questions have been incorporated into the annexure hereto entitled "INTERPRETATION OF THE DEFINITION OF UNDER SERVICED AREA ("USA") AS DEFINED IN THE CELL C LICENCE".

The findings and conclusions or recommendations made by the Authority following the enquiry will be published in a Government Gazette as provided for by section 4C of the ICASA Act.

PARIS MASHILE
CHAIRPERSON
ICASA

ANNEXURE A:**INTERPRETATION OF THE DEFINITION OF UNDER SERVICED AREA ("USA") AS DEFINED IN THE CELL C LICENCE****1 Background**

In terms of its Mobile Cellular Telecommunications Service (MCTS) Licence, Cell C is obliged to roll out 52 000 CSTs, within the period of 17 November 2001 to 17 November 2008. Cell C is required to submit to the Authority its roll out plans for CSTs in the Under-Serviced Areas (USAs) it has identified.

On 18 September 2003 ICASA took a decision to approve certain roll out plans submitted to it by Cell C in respect of the establishment of CSTs for the period up to 31 August 2003. The decision was challenged in a judicial review instituted by MTN.

On 26 February 2007, the High Court handed down judgment, reviewing and setting aside the Authority's decision of 18 September 2003. Accordingly, the Authority is now required to reconsider the Cell C CST roll out plans anew.

The remaining sections detail the Authority's views of the various components of the Cell C USA definition and its roll-out obligation.

2 Definition of an USA

Clause 1.47 of the Cell C licence defines an USA as follows:

"any city, town, township, shanty town, location, village or human settlement or any part thereof where less than 10% of the inhabitants of the area have access to PSTS exchange lines at the date of issue of this licence and where it is necessary to roll out Community Service Telephones to address the reduction of geographical disparities through proportional distribution of such phones and shall, in any event, not be areas in the territory that are listed in Annexure A2";

3 Key Components of the Definition

Set out below are the key components of the definition and the interpretation guidelines the Authority proposes to adopt in respect of each component:

- **"any city, town, township, shanty town, location, village or human settlement or any part thereof"**

- 3.1 This could be interpreted to mean collectively, any area or settlement inhabited by human beings.
- 3.2 It is proposed that, from a practical point of view, "any part thereof" should be construed to mean a municipally or other **officially** demarcated area including a sub-place name within a city, town, shanty town, etc. By way of an example, it would mean an officially identifiable suburb of a town or city, or a municipally defined section, ward or zone of a township or sub-place name as referred to by Statistics South Africa.

Question 1.: Do you agree with the Authority's view that only an officially defined area, as per Statistics SA, is acceptable?

- **"where less than 10%"**
- 3.3 The 10% refers to 10 % of the inhabitants of an area (e.g. city, town, shanty town, etc) or any part thereof.
- **"inhabitants" (that have access to PSTS exchange lines)**
- 3.4 The word should bear its ordinary meaning i.e persons who live in or occupy a place. The words "live" and "occupy" should be interpreted to mean living in or occupying a place with some degree of permanency.
- 3.5 In addition, for the purposes of this definition, reference to persons (as inhabitants) should be interpreted to mean individual persons as opposed to households. It is the Authority's view that having regard to the totality of the choice of words used in the definition, it was clearly the intention of the Authority to deviate from any meaning that would relate to households.
- 3.6 From the point of view of access to accurate data, the Authority proposes using the same definition of "inhabitant" as Statistics SA did in the 2001 census and as discussed in section 3.10 below.

Question 2.: Do you agree with the Authority's definition of "inhabitants"?

- **"access to PSTS exchange lines as at 21 June 2001"**
- 3.7 **"PSTS"** - this refers only to access to PSTS exchange lines as opposed to mobile cellular phones (mobile penetration). It includes normal Telkom fixed line and public pay