

**Prepared Remarks of Karen Wrege
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My name is Karen Wrege and I am co-founder of KB Enterprises, LLC a company that specializes in designing and implementing complex government auctions. Our founders were responsible for developing the first simultaneous multiple round electronic auctions of electromagnetic spectrum for the United States Federal Communications Commission in 1994. We have helped both large and small bidders, incumbent licensees and new entrants participate in spectrum auctions and were hired to assist the Telecommunications Authority of Trinidad and Tobago to implement their auction program and were more recently commissioned to help Industry Canada implement their auction for Advanced Wireless Services in 2008.

I was asked by The Open Spectrum Alliance in South Africa to comment on the decisions regarding the assignment of licenses in the 2.6 GHz and 3.5 GHz bands as set forth in Notice 1002 and 1003 and offer recommendations for ICASA to consider in moving forward in these bands.

II. Recommendations

First, the assignment process should be fair, transparent and simple to encourage bidders to participate in the auction.

An important overarching policy goal for effective spectrum management is designing and implementing a fair and transparent assignment process. The use of a market mechanism does not foreclose ICASA from developing and implementing a process that furthers specific social objectives; rather, fairness means that ICASA should establish and publicize full and complete information about license rights, licensee obligations, and application procedures, so that all applicants have a clear understanding of the rules of engagement.

It is also important to consider rules that are simple and straightforward for participants in order to encourage and facilitate participation by a broad range of applicants. Applicants in a license assignment process need to believe that they have a reasonable chance to obtain a license and build out a network to participate in the process in the first place.

Given the goals of fairness and transparency and in order for applicants to prepare to participate in a licensing process using the truncated granting methodology, the following information should be made available no later than three months before the auction.

- Specific terms of the license(s) being offered including geographical area, frequency range, length of the license term, technical license constraints to manage and resolve interference issues, and any other property rights and obligations.
- Specific terms of the eligibility requirements to hold a license in the band and limitations --if any-- on amount of spectrum that can be issued to a single entity.
- Ownership rules, such as BEE requirements, cross ownership rules, etc.
- Detailed evaluation criteria for the evaluation phase with objective measures to qualify and disqualify applicants, which I will comment on more specifically in a moment.
- Specific application instructions including deadlines, required elements, certification statements if any, whether and how an applicant may cure defects.
- Specific financial terms including dates and deadlines for application fees, auction deposits, down payments, and final payments.
- A clear description of anti-collusion rules that apply before, during and after the auction.
- A full description of the auction rules including the auction format, bidding procedures, pricing rule, increment rules, activity rules, closing rule, bidder identity disclosure policies, penalties, etc.
- The public release and wide dissemination of simple and straightforward documentation detailing the timeline of the process and the auction rules including illustrative examples.
- A public outreach program including public seminars and web pages that provide participants with step-by-step information for participating in the process.

Next, ICASA should modify the evaluation criteria and the submission requirements in the truncated assignment methodology to ensure a fair and transparent process and to eliminate subjective criteria that could result in time consuming and costly litigation.

I agree with ICASA that the truncated assignment methodology, as compared to either a purely comparative or purely competitive process, has the potential to meet both economic and social objectives and is the best approach for the assignment of spectrum at 2.6 GHz and 3.5 GHz. At the same time, in keeping with the fundamental goal of fairness in terms of transparency, I believe that the evaluation criteria proposed in Notice 1003 for the comparative phase of the process should be revised.

It is extremely difficult to be objective, non-discriminatory and transparent in a comparative process. This deficiency leads to an increased risk of legal challenges, which may ultimately delay service to the public. The comparative process is also time-consuming, delaying the grant of licenses and ultimately the provision of service. Furthermore, it is extremely difficult for a regulator to design a set of selection and evaluation criteria that is clear and objective, creating a risk that the regulator will disqualify an applicant that could build out a network effectively.

The evaluation criteria proposed by ICASA includes several vague and/or subjective elements that may introduce the appearance of bias and be very difficult to judge objectively. I recommend modifying the proposed criteria, stated in Notice 1003, as follows:

1. The structure of ownership and control of the applicant.

I agree that this information should be included in the pre-auction application to ensure that applicant ownership overlap does not exceed any objective ownership overlap limit. In order to achieve this, applicants should be required to certify that they do not exceed the required ownership overlap limitation, and be prepared to submit proof if it becomes necessary at any point in the process.

Several of the other criteria, including

The nature and extent of consumer benefits; The viability of the business plan; The viability and efficacy of the applicant's technical plan; and The experience, expertise and credibility of the applicant, are difficult to evaluate objectively, because applicants have the incentive to overstate their capabilities. Since there are no clear standards by which to judge the applications, they should not be part of the pre-auction application process. However, in order to provide some assurance that applicants intend, and are financially and technically able, to provide service, ICASA should require them to:

- certify that they are technically and financially capable of building out a network in the public interest;
- provide a letter of credit to verify their certification as to financial capability;
- make a substantial refundable upfront deposit in order to qualify for participation in an auction; and,
- certify that they will use any license awarded to provide service to a specified percentage of the population and/or over a specified geographic area, within a specified time period after license award.

There are several criteria, including *The extent of the applicant's Black Economic Empowerment and the extent of participation by black people, women, youth and disabled people in management, at board level and as professionals and technicians,* that are designed to enhance the realization of particular social goals. To achieve these goals, and maintain the fairness and transparency of the allocation process, ICASA should establish objective measures. ICASA has done this for the Black Economic Empowerment requirement by indicating that applicants will be disqualified if they have less than 30% direct Black Economic Empowerment, however, ICASA has not established any objective measures for board participation, and should do so.

The final item, *any other additional factors that may be deemed necessary,* is vague and should be removed from the evaluation criteria since it will increase the risk of complaints

and litigation and provide arguments by applicants that the process was non-transparent and subject to favouritism or corruption.

As part of the application process, applicants should be required to certify to each of the criteria as revised above and be prepared to provide proof if requested. There should be a substantial penalty for applicants that falsely certify, including loss of upfront deposit --either whole or partial-- , immediate removal from the process and potential disbarment from participation in any licensing process in the future.

Next, License Property rights should be clearly defined in the band before the assignment process commences to reduce regulatory uncertainty and allow bidders time to effectively prepare and evaluate the spectrum before the auction.

In the 2.6 GHz band, ICASA has decided to award licenses in 30 MHz allocations on a nationwide basis. In order to provide the flexibility in the band that ICASA has favoured, I recommend ICASA consider offering smaller blocks of 10 MHz contiguous or 5 MHz pairs and allowing bidders to aggregate up to 30 MHz of spectrum. I also recommend that the auction design be used to relocate the incumbent licensees in the band depending on auction demand for FDD and TDD operations. This would create true flexibility for all auction bidders and allow them to determine whether they prefer 30 MHz or some lower amount of spectrum to build out or supplement their networks as appropriate.

In the 3.5 GHz band, ICASA has decided to award two licenses in 28 MHz allocations on a geographic catchment area basis. As in the case of the 2.6 GHz band, ICASA should specify in advance the complete set of technical terms and conditions for the 3.5 GHz band, including a specific definition of the geographic coverage of each geographic catchment areas, in order for bidders to adequately assess the attractiveness and value of the spectrum before formulating a bidding strategy. I would also recommend that ICASA consider offering smaller blocks of 14 MHz contiguous or 7 MHz paired spectrum and allowing bidders to aggregate up to 28 MHz of spectrum. Also if feasible, I would recommend relocating incumbent nationwide providers if necessary to allow flexibility for TDD and FDD operations to collocate in the band.

Finally, ICASA should put in place auction rules to punish collusive behaviour and to facilitate the participation of new entrants to ensure robust competition in the auction and avoid market splitting and other anti-competitive behaviour.

In addition to stating concerns about deficiencies in a purely comparative process, ICASA also correctly raised concerns about potential deficiencies in a competitive bidding process. These include possible collusive behaviour and the possibility that incumbents may be able to shut out new entrants by bidding above their marginal values. While these are valid concerns, global experience in spectrum auctions shows there are ways to mitigate these deficiencies.

With regard to collusion, there are several ways to minimize the ability of bidders to collude. First and foremost, having clear and strong anti-collusion rules and enforcing them is critical for a fair auction. Applicants should be disallowed from discussing anything relating to the licensing process (including the post-licensing market structure) beginning at the application deadline and ending at the issuance of licenses. Likewise any discussion of bidding strategies or values before and during the auction should be deemed collusion. The proposed 5% cross ownership limitations will also minimize collusion. Penalties for collusion should be clear and should include being immediately barred from this and all future auctions, forfeiture of the upfront payment and subsequent examination by anti-trust authorities. Strong enforcement is the best deterrent.

Second, collusion can be mitigated by suppressing the identities of the bidders that placed specific bids until after the close of the auction. Creating and enforcing bidding coalitions is difficult if bidders are unaware of the identity of the party that placed other bids. For the sake of transparency, the identities of the bidders for each specific bid can and should be made public after the close of the auction.

With regard to the concern that asymmetric budgets between incumbents and new entrants will create barriers of entry for new entrants in an auction, ICASA may consider a new entrant set-aside for some or all of the band like what was done recently in Canada or may consider creating bidding credits for new entrants that could reduce the amount due for winning bids by a specific percentage (for example, offer new entrants a bidding credit that

reduces final payments by 25%). Offering a bidding discount for new entrants would help level the playing field and allow new entrants to more effectively compete with deep-pocketed incumbents but may not be enough as incumbent licensees may have the incentive to block new entrants from obtaining spectrum.

These principles: a fair, transparent and simple process; clear and objective eligibility criteria; clearly defined licenses and property rights that take into account the needs of prospective participants and the establishment of strict anti-collusion rules are important factors for ICASA to consider while working toward a successful allocation and assignment of spectrum in the 2.6 GHz band.

Thank you for the opportunity to appear before you and I will happily take any questions.