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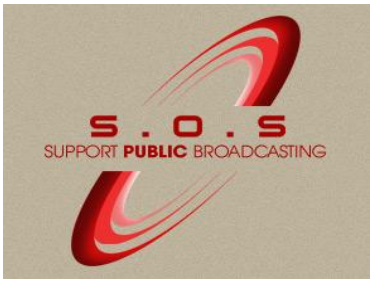

Attention: Ms M Mphahlele
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WRITTEN REPRESENTATIONS BY THE SOS SUPPORT PUBLIC BROADCASTING COALITION ON THE PROPOSED ELECTRONIC COMMUNICATIONS AMENDMENT BILL 2012

1. INTRODUCTION

1.1. In Notice 572 published in Government Gazette No. 35525 dated 18 July 2012, the Hon. Minister Dina Pule of the Department of Communications ("the DOC") published the proposed Electronic Communications Amendment Bill, 2012 ("the Proposed Bill") and invited written comments thereon.

1.2. These written submissions are made by SOS Support Public Broadcasting Coalition ("SOS"). The SOS Coalition represents a number of trade unions including COSATU, COSATU affiliates CWU and CWUSA, FEDUSA, BEMAWU and MWASA; independent film and TV production sector organisations including the South African Screen Federation (SASFED); and a host of NGOs and CBOs including the Freedom of Expression Institute (FXI), Media Monitoring Africa (MMA), and the Media Institute of Southern Africa (MISA-SA); as well as a number of academics and freedom of expression activists.

1.3. SOS formally requests the opportunity to make oral representations at public hearings on the Proposed Bill should the DOC hold same.

1.4. SOS has considered the Proposed Bill and its accompanying explanatory memorandum carefully. SOS wishes to participate in the on-going debate about ICT policy development in South Africa because it is of the view that ICT is critical to the future development of the country.

1.5. Before setting out its detailed responses to the Proposed Bill, SOS believes it important to state that the current ICT Policy Review Process which got underway at Gallagher Estates earlier in the year is long overdue, particularly but not only, with respect to broadcasting. SOS is excited at the prospect of a participatory, transparent DOC-lead ICT Policy Review Process which to overhauls the country's policy and re-ignites growth and development in the ICT sector. Consequently, SOS is concerned to see that a number of the issues addressed in the Proposed Bill ought not to be dealt with outside of the ICT Policy Review Process currently underway and thus it is premature to be tabling legislative amendments thereon. However, SOS does recognise that the Electronic Communications Act, 2005 ("the ECA") was passed with a number of errors, inconsistencies, and problems within its provisions and agrees that technical amendments designed to address same are not out of place, even during the ICT Policy Review Process.

1.6. Consequently SOS respectfully sets out only its concerns with certain provisions of the Proposed Bill. However, it must be respectfully pointed out that all of SOS's concerns are serious, alerting the DOC to, among others: errors, unconstitutionality, anti-competitive provisions or those which are otherwise unworkable or inconsistent or those provisions which require robust debate thereon as part of the ICT Policy Review Process before these are enshrined in legislation. SOS is concerned at the number of serious concerns that it has and respectfully urges the DOC to reconsider these provisions accordingly.

2. OVERVIEW

2.1. It is often difficult to comment coherently on a proposed amendment Bill because of the myriad issues a Bill might address. This is particularly so with this Proposed Bill which is 52 pages long and which contains amendments to the ECA starting from section 1 and continuing right the way through to section 95.

2.2. SOS addresses the following critical issues in the following order:

2.2.1. radio frequency spectrum management;

2.2.2. ownership and control matters;

2.2.3. competition matters;

2.2.4. definition of "community broadcasting service";

2.2.5. proposed changes to licence categories for ECS licensees;

2.2.6. proposed changes to procedures for transferring or ceding a class licence;

2.2.7. proposed introduction of bifurcated ICASA powers in relation to Ministerial Policy And Policy Directions;

2.2.8. proposed changes to Ministerial titles; and

2.2.9. proposed changes to the provisions regarding the Universal Service And Access Agency.

3. AD: PROPOSED AMENDMENTS TO SECTIONS 30-34 OF THE ECA – RADIO FREQUENCY SPECTRUM MANAGEMENT

3.1. SOS notes with extreme concern the myriad changes that the Proposed Bill proposes to South Africa's radio frequency spectrum management regime. The range of changes proposed is breath-taking in scope, including, without limitation, denuding ICASA (the Constitutionally-mandated independent authority to regulate broadcasting), of all its powers in relation to the national radio frequency spectrum save for assignments for non-governmental use, and the introduction of an entirely new agency, the proposed Spectrum Management Agency ("SMA") with a broad range radio frequency spectrum-related powers.

3.2. SOS is of the view that the following represent just some of the serious legal and technical flaws with the Proposed Bill's provisions with respect to radio frequency spectrum management:

3.2.1. First, the proposals are entirely at odds with the Minister's own National Radio Frequency Spectrum Policy which was finalised only some two years ago and is published in Notice 306, Government Gazette No. 33116 dated 16 April 2010 ("the National Spectrum Policy"). In this regard section 2.5.2. of the National Spectrum Policy, sets out ICASA's responsibilities and these expressly include, *inter alia*:

3.2.1.1. section 2.5.2.1, which specifies that ICASA is responsible for: "administering and managing usage of the radio frequency spectrum" (that is, taking responsibility for frequency allocations) "and for the licensing thereof" (that is, taking responsibility for assignments);

3.2.1.2. section 2.5.2.3, which specifies that ICASA is responsible for: "the implementation of this policy"; and

3.2.1.3. section 2.5.2.4, which specifies that ICASA is responsible for: "the assignment of radio frequency spectrum to licensees and for the development of national assignment plans".

3.2.2. second, the Proposed Bill cannot, on its own terms, stand on its own, and it requires the passage of, at very least, a Bill to establish the proposed SMA[1]. Consequently it is impossible accurately to gauge the appropriateness of the Proposed Bill's provisions on the functions of the SMA without the proposed SMA Bill having similarly been published for public notice and comment;

3.2.3. third, there are very real constitutional concerns arising out the proposed establishment of the SMA because of the broadcasting-related powers that are taken away from ICASA. Section 192 of the Constitution of the Republic of South Africa, 1996 ("the Constitution") requires an independent regulator to regulate broadcasting in the public interest. It is internationally recognised that frequency allocations and assignments are integral and critical aspects of broadcasting regulation. Indeed Articles 3 and 4 of Part 1 of the African Charter on Broadcasting specifically require allocation and licensing processes to be open and fair and to ensure a fair proportion is allocated for broadcasting. The frequency spectrum provisions in the Proposed Bill undoubtedly raise constitutional concerns because:

3.2.3.1. the SMA is to be responsible for all frequency allocations, including in respect of broadcasting; and

3.2.3.2. the SMA is to be responsible for all frequency assignments in respect of governmental-use, which term is not defined and, arguably, could be interpreted as including the public broadcaster as it is a national public entity under the Public Finance Management Act, 1999,

and in this regard, SOS respectfully submits that it would be unconstitutional for an entity other than the Constitutionally-mandated broadcasting regulator to be responsible for broadcasting frequency allocations and assignments;

3.2.4. fourth, SOS is at a loss to understand the need for the establishment of the SMA in the first place. Neither the Proposed Bill nor the Explanatory Memorandum that was published along with the Proposed Bill gives any indication of the rationales for the

[1] See paragraph d) of paragraph 2.16 of the Explanatory Memorandum which was published alongside the Proposed Bill.

establishment of the SMA and for taking radio frequency spectrum management and licensing responsibilities away from ICASA. Certainly SOS is aware of no government, industry or market study which has revealed an inability on ICASA's part to perform its radio frequency spectrum tasks adequately and for the need for a separate agency to perform same;

3.2.5. fifth, given ICASA's clearly adequate performance in radio frequency spectrum management and licensing to date, SOS is concerned at the many downsides to establishing the SMA. SOS is concerned that the establishment of the SMA will result in:

3.2.5.1. forum shopping by licensees;

3.2.5.2. overlapping responsibilities that lead to delays in allocations and licensing;

3.2.5.3. on-going conflicts between the SMA and ICASA; and

3.2.5.4. wasted financial and human resources which frankly neither the Government nor the country can afford; and

3.2.6. lastly, and most importantly, the radio frequency spectrum issues that are dealt with in the Proposed Bill can in no way be said to be amendments of a "technical nature" which is how the Minister has previously characterised the provisions of the Proposed Bill. Such massive changes to the institutional arrangements governing the radio frequency spectrum can, in SOS's respectful view, only be introduced after a participatory, transparent and thorough policy review process such as the ICT Policy Review Process currently underway.

3.3. As a result of the myriad problems which SOS has raised identified in respect of the radio frequency spectrum management regime changes contained in the Proposed Bill, any or all of which militate against proceeding with the proposed amendments given the likelihood of successful legal challenges thereto, SOS respectfully suggests that the proposed amendments to sections: 30, 31, 32, 33, and 34 of the ECA (and indeed any other sections that make reference to the SMA, including in the definitions section) be scrapped from the Proposed Bill in their entirety and that the underlying policy concerns giving rise to their proposal be dealt with fully as part of the ICT Policy Review Process.

4. AD: PROPOSED AMENDMENTS TO SECTIONS 3, 65, AND 66 OF THE ECA – OWNERSHIP AND CONTROL MATTERS

4.1. SOS notes that the Proposed Bill contains a number of provisions that deal with ownership and control matters and further notes that a number of the amendments contained in the Proposed Bill are indeed technical in nature and are aimed at filling *lacunae* in the ECA arising out of Parliament's failure properly to important key provisions of the Schedules to the now-repealed Independent Broadcasting Authority Act, 1993 ("the IBA Act") into the ECA itself. Consequently SOS does not take issue with all proposed ECA amendments in relation to ownership and control issues that are provided for in the Proposed Bill.

4.2. However, SOS has significant concerns regarding the legality, workability or rationales behind a number of the proposed amendments and also has concerns regarding the appropriateness of some of the more far-reaching proposed amendments given the ICT Policy Review Process which is currently underway. Ownership and control issues are central to the future development of the ICT sector and it is clear that these issues are at the heart of the ICT Policy Review Process and therefore SOS queries the wisdom of making far-reaching amendments which ought, undoubtedly, to be made only after the completion of such a process.

4.3. <u>Ad Proposed Section 3(1)(aA)</u>

4.3.1. This proposed new sub-section specifically entitles the Minister to make policy in respect of "ownership and control, including foreign ownership and control of individual licences".

4.3.2. SOS questions the appropriateness and/or legality of this policy-making power when:

4.3.2.1. the ECA itself contains detailed provisions regarding ownership and control limitations and requirements and Parliament can amend these at any time;

4.3.2.2. Broad-Based Black Economic Empowerment ("BBBEE") is specifically provided for in the ECA and in the BBBEE Act, 1999, and when an ICT Sector Charter has already been promulgated by the Minister of Trade and Industry and is in force for the sector[2]; and

4.3.2.3. within the context of governing legislation, ownership and control matters fall squarely, in respect of broadcasting, within the remit of the Constitutionally-mandated independent broadcasting authority, namely ICASA.

[2] See Notice 485 published in Government Gazette No. 35423 dated 6 June 2012.

4.3.3. SOS therefore does not support this proposed amendment and respectfully suggests that overall national requirements be contained in legislation as is currently the case. In any event, and has been set out above, it is critical that ownership and control issues, including in respect of BBBEE and foreign ownership be dealt with as part of the ICT Policy Review Process.

4.4. Ad Proposed Amendments to Section 65:

4.4.1. SOS has a number of serious concerns regarding the proposed amendments to section 65 which are contained in the Proposed Bill.

4.4.2. The Explanatory Memorandum to the Proposed Bill states in its objects section that part of the rationale for these changes are to "incorporate the Authority's recommendation on ownership and control of broadcasting services". However, when one looks at ICASA's recommendations as contained in the Review of Ownership and Control of Broadcasting Services and Existing Commercial Sound Broadcasting Licences Position Paper dated 2004 ("the 2004 Ownership Position Paper") and in the Review of Ownership and Control of Commercial Services and Limitations on Broadcasting, Electronic Communications Services and Electronic Communications Network Services contained in Notice 624 published in Government Gazette 34601 dated 15 September 2011 ("the 2011 Ownership Review"), the proposed changes to section 65 bear no relation to such recommendations.

4.4.3. Ad s65(1)

The effect of the proposed amendments to section 65(1) read with the proposed deletion of section 92(3) is that the Multichoice group would no longer be able to control both its DSTV licence and its M-Net licence. SOS would be happy to comply with such a requirement (that is that a commercial broadcaster is limited to one commercial television licence) it is essential that all broadcasters are treated equally and if Multichoice is entitled to more than one commercial television licence then other commercial broadcasters must also be so entitled.

4.4.4. Ad s65(2)

4.4.4.1. While SOS supports doing away with the distinction between FM and AM commercial sound broadcasting services it fundamentally disagrees with this proposed amendment which effectively reduces the number of commercial sound broadcasting services a single person may control, from four to three, that is, lower than the threshold than currently exists.

4.4.4.2. Further, this proposed amendment moves in exactly the opposite direction to that proposed by ICASA in its 2004 Ownership Position Paper which favoured adopting a percentage-based test, namely, that "no person exercise control over more than thirty-five *percent* of the total number of licensed commercial sound broadcasting services…".

4.4.4.3. Since the original IBA Act was promulgated there have been a number of new commercial sound broadcasting services licensed, and consequently effectively to go backwards is, SOS submits, irrational.

4.4.4.4. Sound African commercial sound broadcasting companies need to be able to consolidate their holdings and acquire additional radio stations in order to be able to become sizable media companies with sufficient resources to operate elsewhere on the Continent. This is particularly true of BBBEE media companies which, to date, have been hamstrung by low growth because of the legislation's unwillingness to countenance large media companies with sizable broadcasting assets within a single corporate stable.

4.4.4.5. As a result of the above, SOS is of the view that either this amendment not be made or that it be changed to refer to "four" as opposed to "three" licences, whereafter the ICT Policy Review Process can deliberate upon further changes to be made to the commercial radio ownership regime.

4.4.5. <u>Ad s65(3)</u>

4.4.5.1. SOS respectfully points out that the proposed amendment to section 65(2) renders the proposed amendment to section 65(3) superfluous and meaningless.

4.4.5.2. SOS suggests that the proposed amendments to section 65(3) would make sense only if SOS's proposal set out in paragraph 4.4.4.5 above is adopted.

4.4.6. <u>Ad s65(4)</u>

SOS is extremely concerned at the poor drafting that is in evidence in the proposed amendments to section 65(4). As they currently stand there is a direct contradiction between the provisions of proposed section 65(4) and proposed sections 65(2) and 65(3) respectively.

4.4.6.1. SOS respectfully suggests that section 65(4) be amended such that it is line with SOS's proposed amendment to section 65(2) set out in paragraph 4.4.4.5 above. Thus:

4.4.6.1.1. proposed section 64(4)(a) ought to be deleted as its provisions would be contained in proposed section 64(2) (provided SOS's proposed amendment to section 65(2) set out in paragraph 4.4.4.5 above is adopted).

4.4.6.1.2. proposed sections 65(4)(b) and (c), respectively need to be amended such that the references to "two" licences ought to read "four" throughout, in accordance SOS's proposed amendment to section 65(2) set out in paragraph 4.4.4.5 above and to address consequential numbering issues as a result of there no longer being a need for section 65(4)(a).

4.4.7. Ad s65(5)

4.4.7.1. SOS is extremely concerned at the poor drafting that is in evidence in the proposed amendments to section 65(5). As they currently stand there is a direct contradiction between the provisions of proposed section 65(5) and proposed sections 65(2), and 65(3) respectively.

4.4.7.2. SOS respectfully suggests that section 65(5) be deleted as its provisions are catered for in proposed section 65(3) – again this is subject to SOS's proposed amendment to section 65(2) set out in paragraph 4.4.4.5 above being adopted.

4.4.8. Ad s65(6), (7) and (8)

4.4.8.1. SOS notes that consequential numbering amendments would need to be made to these sections in light of the proposed deletion of section 65(5).

4.4.8.2. SOS agrees with the proposed changes to section 65(6) in regard to the grounds for granting an exemption from the requirements of section 65 but queries why a similar exemption has not been considered in respect of the foreign ownership limitations contained in section 64 of the ECA? SOS would support an amendment of that section to provide for a similarly worded exemption clause.

4.5. Ad Proposed Amendments to Section 66:

SOS applauds many of the proposed technical amendments to the provisions of section 66 which provisions have been illogical and unworkable since their inception in the IBA Act. However SOS respectfully suggests that the exemption contained in section 66(6) ought to set out the grounds of exemption and suggests that the DOC use proposed section 65(6), with the necessary changes, as a basis for such grounds of exemption. In this regard SOS also respectfully suggests that section 64 (relating to foreign ownership and control of broadcasting services) also be amended to contain an exemptions provision along the lines of that set out in respect of proposed section 65(6).

5. AD PROPOSED AMENDMENTS TO SECTION 67 – BROADCASTING-RELATED COMPETITION MATTERS:

5.1.1. SOS applauds many of the proposed technical amendments to the provisions of section 67 which provisions have proved unworkable since their inception in the ECA. However SOS respectfully suggests that the pro-competitive licence terms exemption contained in section 67(6) are not sufficiently appropriate to broadcasting as they appear to be focused on issues that are appropriate for telecommunications operators.

5.1.2. SOS respectfully submits that specific provisions relevant to ensuring sustainable competition in the broadcasting sector need to be inserted into section 67(6). Without being prescriptive, these ought to include, at the very least, empowering ICASA to impose premium content-related conditions, including in respect of premium sports content, and allowing for open windows for new subscription DTT broadcasters in order to promote sustainable DTT broadcasting going forward.

6. AD: PROPOSED AMENDMENT TO DEFINITION OF COMMUNITY BROADCASTING SERVICE

6.1. SOS is extremely concerned at the proposed amendment to the definition of “community broadcasting service” to stipulate that a community broadcasting service must serve a particular “geographically-defined” community.

6.2. SOS submits that South Africa’s broadcasting regime has for nearly two decades now recognised that community broadcasting can represent a geographically-defined community **or** a community of interest (our emphasis), and that is in line with international best practise on broadcasting regulation.

6.3. Further SOS submits that the transition to Digital Terrestrial Television ("DTT") makes the proposed change even less rational given the frequencies that will be freed up as a result.

6.4. Lastly, SOS submits that such a radical change to a key aspect of South Africa's broadcasting landscape ought not to be legislated until the issue has been thoroughly canvassed and debated as part of the on-going ICT Policy Review Process.

6.5. For the above reasons SOS does not support the proposed amendment to the definition of "community broadcasting service".

7. AD PROPOSED CHANGES TO SECTION 5 – LICENCE CATEGORIES FOR ECS LICENSEES

7.1. SOS is extremely concerned about the proposed amendments to section 5(3)(c) ad 5(5)(c) in relation to the type of licences, individual or class, which ECS providers would require to operate.

7.2. Currently the ECA makes it clear that only ECS "consisting of voice telephony utilising numbers from the national numbering plan" are required to obtain individual licences. This has meant that national or provincial ECS providers which do not provide services consisting of voice telephony utilising numbers from the national numbering plan have been able to operate as class licensees. The benefits of this from a competition point of view are obvious and the range of ECS services now widely available to the public is testimony to the success of this opening up of the ECS sector.

7.3. The proposed amendments to sections 5(3)(c) and 5(5)(c) would make all national and provincial ECS providers, irrespective of whether or not they providing voice telephony making use of numbers from the national numbering plan, have to have an individual licence. This has massive ramifications for the ECS market because of the very real barriers to entry that the process for applying for an individual licence raises. Section 9(1) of the ECA makes it clear that no one may even apply for an individual licence unless an invitation to apply has been issued by ICASA. This will undoubtedly stifle competition and growth in the ECA market, undermining all the pro-competitive benefits realised since the coming into force of the ECA.

7.4. SOS obviously has a number of serious concerns with the above, including that:

7.4.1. the DOC gives no rationales for the proposed amendments;

7.4.2. the DOC gives no indication as to how the DOC intends to operationalize the new requirement given the dozens (if not hundreds) of class ECS providers that currently exist and which provide services on a national or regional basis;

7.4.3. such a significant change to the entire ECS sector clearly is not a “technical” amendment of the type that the Proposed Bill is aimed at addressing;

7.4.4. such a retrogressive step is entirely counter to many of the objects of the ECA;

7.4.5. this will undoubtedly undermine government’s specific objectives regarding the roll-out of broadband services and other ECS critical for the development of an information society; and

7.4.6. such a significant legislative change cannot be proceeded with without the issues having been thoroughly canvassed and debated in the ICT Policy Review Process.

7.5. In light of these serious concerns, SOS respectfully submits that the proposed amendments be deleted in their entirety and that the issue be held over until the finalisation of the ICT Policy Review Process.

8. AD PROPOSED AMENDMENTS TO SECTION 16 – PROCEDURES FOR TRANSFERRING OR CEDING A CLASS LICENCE

8.1. SOS notes the proposed amendment to section 16(6) of the ECA which would have the effect, *inter alia*, of removing the requirement for ICASA’s prior written approval of a transfer or cession of class licence, including a class broadcasting licence.

8.2. SOS is of the respectful view that this is inappropriate, particularly in a broadcasting context, given the non-profit and community-related requirements that pertain to class broadcasting licences and ICASA must be able to satisfy itself that any transfer or cession of a class broadcasting licence continues support the objects of the ECA and to comply with the legal requirements for class broadcasting licences.

8.3. SOS supports the proposed amendment in respect of the 30 notice period but is of the view that ICASA’s prior written approval must continue to be required although it would support a deeming provision such that if ICASA does not respond to such notice being given to it within 30 days its approval of the transfer or cession of the licence is presumed.

9. AD PROPOSED SECTION 20(3): INTRODUCTION OF BIFURCATED POWERS IN RELATION TO MINISTERIAL POLICY AND POLICY DIRECTION

9.1. SOS is extremely concerned about a single aspect of this proposed section 20(3) and that is that it introduced a bifurcated level of powers in respect of Ministerial Policies and Policy Directions. It provides that in respect of Chapter 4 matters (that is, electronic networks and electronic communications facilities) that ICASA is to act "in accordance with the policy and policy directions, if any, contemplated in terms of section 21".

9.2. One of the very great problems with the previous regimes in terms of which telecommunications and broadcasting were regulated under entirely separate pieces of legislation was ICASA's bifurcated levels of powers in respect of Ministerial Policy and Policy Directions. In respect of broadcasting matters, section 13A(5)(b) of the IBA Act provided that ICASA "must consider" any Ministerial policy or policy direction while section 5(4)(d) of the Telecommunications Act provided that ICASA shall perform its functions "in accordance with" any such Ministerial policy or policy direction.

9.3. The ECA entirely did away with these bifurcated levels of powers. Section 3(4) of the ECA provides that ICASA "in exercising its powers and performing its duties in terms of this Act and the related legislation *must consider* policies made by the Minister…and policy directions issued by the Minister…" (our emphasis). Indeed the DOC was applauded for doing away with such bifurcated powers in ECA which was undermining convergence regulation.

9.4. SOS is therefore extremely perturbed to see the proposed reintroduction of bifurcated powers through this proposed new section 20(3) and respectfully suggests that the words "taking in account" replace the proposed words "in accordance with" in proposed section 20(3) to ensure that no conflict arises between the provisions of section 20(3) and 3(4) of the ECA and to avoid such bifurcated powers in respect of Ministerial policy and policy directions.

9.5. If SOS's amendment proposed in paragraph 9.4 above is not made, SOS does not support the introduction of subsection 20(3) and suggests that this matter be shelved until after the finalisation of the ICT Policy Review given the significant departure from existing principle and practise that such an amendment would represent.

10. AD PROPOSED AMENDMENTS TO SECTION 21(1): MINISTERIAL TITLES

10.1. SOS notes the various proposed changes to a number of Ministerial titles in the proposed amendments to section 21(1).

10.2. SOS respectfully suggests not using the exact titles, as is done in the proposed amendment, but instead to make reference to “the Ministers responsible for co-operative governance, rural development and environmental affairs”. If SOS’s suggested amendment is not made then an amendment will be required to this section every time an official title change is made to a particular Ministerial portfolio.

11. AD PROPOSED CHANGES TO SECTIONS 83, 86, 87, 88 AND 89: THE PROVISIONS REGARDING THE UNIVERSAL SERVICE AND ACCESS AGENCY

11.1. SOS has serious concerns with the numerous proposed amendments to the provisions of the ECA dealing with the Universal Service And Access Agency (“the USAAA”). In particular, SOS is concerned that:

11.1.1. such a significant change to the operations and functioning of the USAAA clearly is not a “technical” amendment of the type that the Proposed Bill is aimed at addressing; and

11.1.2. such a significant legislative change cannot be proceeded with without the issues having been thoroughly canvassed and debated in the ICT Policy Review Process.

11.2. In light of these serious concerns, SOS respectfully submits that the proposed amendments be deleted in their entirety and that the issue be held over until the finalisation of the ICT Policy Review Process.

12. CONCLUSION

12.1. SOS thanks the DOC for the opportunity of making these written representations and reiterates its desire to make oral representations at any hearings on the Propose Bill held by the DOC and/or the Minister.

12.2. SOS further reiterates that it supports many of the technical and necessary amendments put forward in the Proposed Bill. However it is also of the respectful view that many of the proposed amendments:

12.2.1. go far beyond necessary technical amendments;

12.2.2. are unconstitutional,

12.2.3. conflict with existing provisions of the ECA;

12.2.4. are otherwise unworkable; and/or

12.2.5. represent such significant policy shifts that they ought not to be proceeded with until after the finalisation of the ICT Policy Review Process.

12.3. Please do not hesitate to contact the writer if SOS can be of any further assistance to the DOC and/or to the Minister or if you have any queries or require any further information.

Thank You

Yours Faithfully

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