



**ECA Amendment Bill**

Parliament

30 November 2018

# ECA Amendment Bill

## Key Issues

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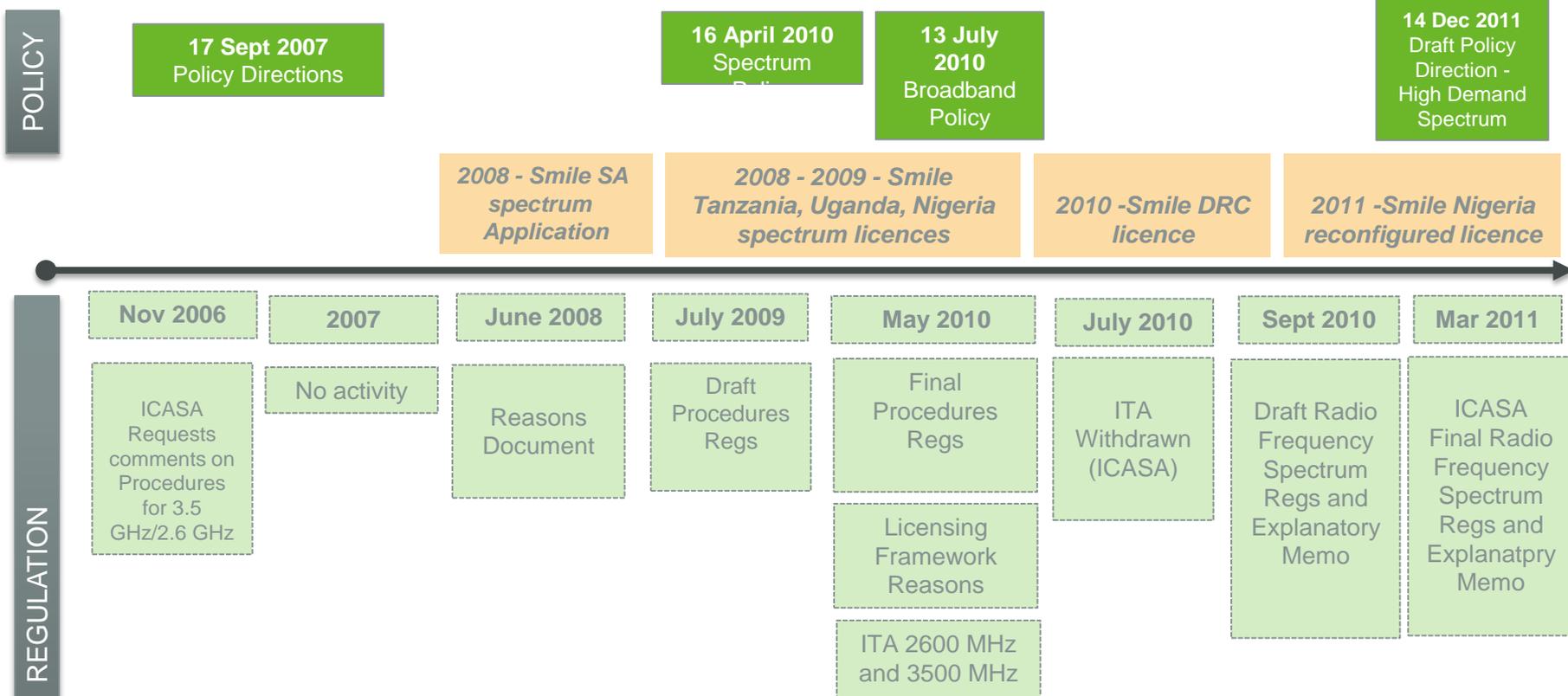


- Long awaited ECA Bill seeks to implement the White Paper which changes the status quo . Represents a fundamental shift and change in approach to promote the **use of spectrum as a public good** for the purposes of social and economic development
- Policy and Bill are clear about need to **change market structure** and **involve players beyond ‘the usual suspects’** – WOAN appears to be the main vehicle
- Bill needs to be more explicit about transformation objectives and the critical role of **new entrants and entrepreneurs** in the WOAN – and in the sector as a whole
- Needs to be clear on the role of the various elements in the **broadband value chain** to support the WOAN

South Africa has fallen behind in broadband development due to 11 years of delays in licensing spectrum – now is the time!

# Licensing of High Demand Spectrum

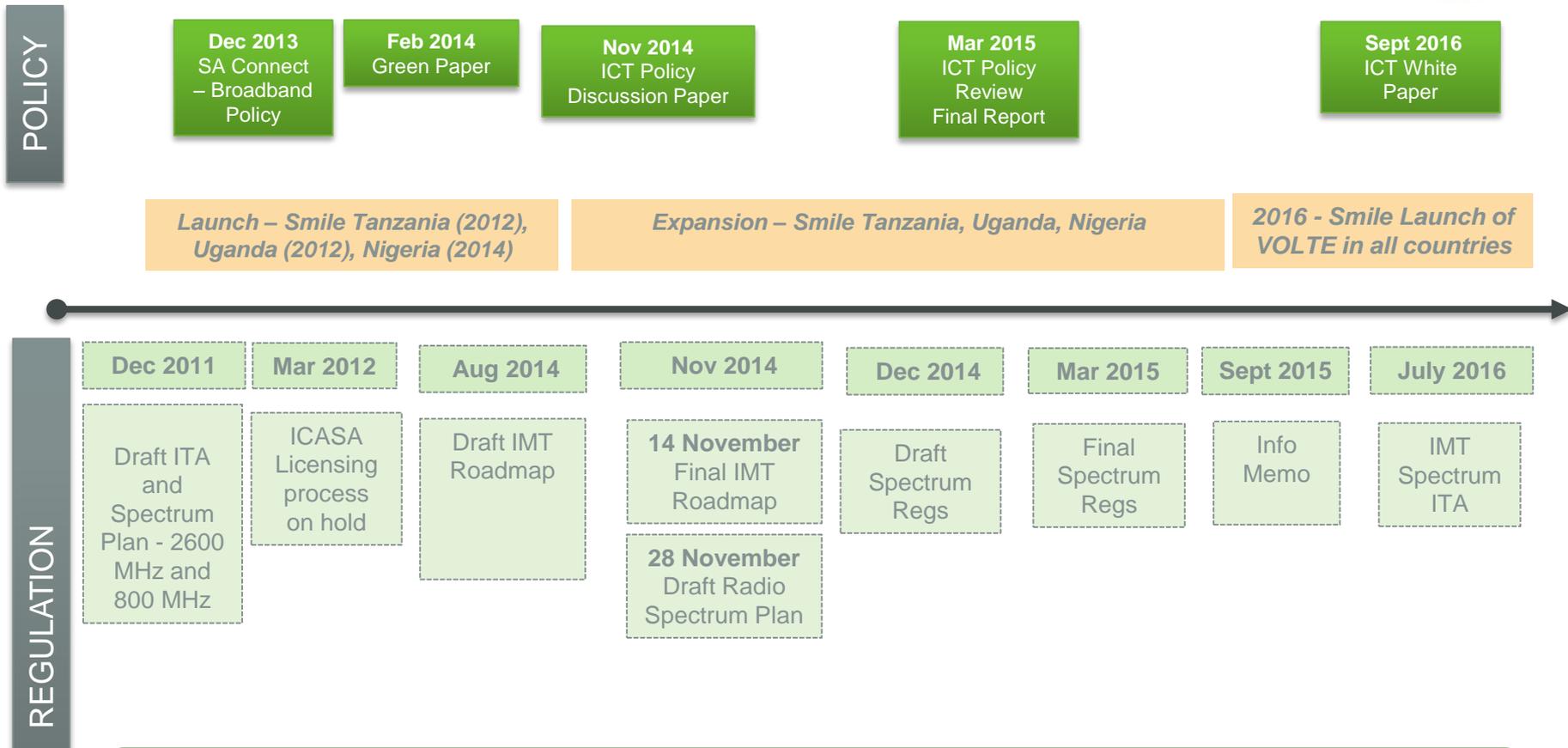
## How did we get here? Policy and Regulatory Timeline (2007 – 2011)



Smile applied for spectrum in 800 MHz and 2.6 GHz in 2008 when it was NOT in high demand; the High Demand Spectrum Policy Direction (draft) was only published in 2011

# Licensing of High Demand Spectrum

## How did we get here? Policy and Regulatory Timeline (2007 – 2016 White Paper)



Since the White Paper (2016) the focus has been on the licensing of High Demand Spectrum and WOAN Framework – industry consultation, CSIR Study and in November 2018 draft Policy Directives

# WOAN Licensing (Section 19E)

WOAN should be a vehicle for transformation and should be assigned all spectrum needed, leaving one block to be auctioned



Principle	Commentary
<b>1) WOAN to be a vehicle for transformation</b>	<ul style="list-style-type: none"><li>• Ownership and transformation targets need to be clearly stipulated in the Bill</li><li>• At least 60% of the WOAN should be black-owned with half of the ownership being women</li></ul>
<b>2) WOAN to be assigned sufficient spectrum [Section 19E and Section 31E (2) (b)]</b>	<ul style="list-style-type: none"><li>• WOAN should be assigned all spectrum needed. Should be assigned 2/3 of 800MHz spectrum leaving one block to be auctioned. Access to the 700MHz band will add a 'future proof' element to the WOAN</li><li>• a provision stating that the WOAN will hold the majority of current and future unassigned high demand spectrum, as may be determined from time to time. The ideal place to confirm this in the Bill would be at section 31E (2) (b)</li><li>• The retention of current spectrum assignments for the remainder of the current license period, provided the spectrum is being used efficiently and effectively.</li></ul>

# WOAN Licensing (Section 19E)

Industry support required in the form of offtake and implementation of open access regime



Principle	Commentary
<b>3) Offtake agreement to support WOAN business case as a late entrant</b>	<ul style="list-style-type: none"><li>• 30% minimum off-take of WOAN capacity by the operators that currently have spectrum.</li><li>• Government must still confirm its capacity off-take commitment from the WOAN through a service provider</li></ul>
<b>4) Lower costs and avoid duplication through Open access framework</b>	<ul style="list-style-type: none"><li>• Access by WOAN to the passive infrastructure and facilities of all existing operators on a fair and reasonable basis (cost plus a reasonable, regulated mark-up)</li></ul>

# WOAN Licensing (Section 19E)

Universal Service is a sector objective; it is not the responsibility of the WOAN alone



Principle	Commentary
<b>5) Asymmetric regulation [Section 19A(9)]</b>	<ul style="list-style-type: none"><li>• Currently the Amendment Bill proposes that the WOAN has more obligations than existing dominant incumbents</li><li>• This needs to be reviewed to ensure that the WOAN, as a new and late entrant, is provided sufficient incentives.</li><li>• A licence fee holiday for the WOAN and discounted spectrum fees for a defined period;</li><li>• provide wholesale capacity to all other electronic service network providers and electronic service providers on a national basis.</li></ul>
<b>6) Universal Service Obligations (Section 19A (8)(a) and 31A)</b>	<ul style="list-style-type: none"><li>• It is inappropriate to apply additional obligations to WOAN given that its mandate is to contribute to increasing increase access and service.</li><li>• Any ECNS licensee that is issued a license for the unassigned high demand spectrum that is not assigned to the WOAN, should be required to commence its rollout and use of the spectrum in rural and underserved areas.</li></ul>

# Spectrum Management Framework **(INSERT SECTION)**

## Spectrum trading, spectrum pooling, and spectrum sharing

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- Smile believes that it is important to align the Bill as closely as possible to the White Paper which was clear in this regard.
- Permission may be granted for spectrum trading, spectrum pooling or spectrum sharing, as long as each of these activities is subject to regulatory approval,

# Conclusion

## South Africa cannot afford to waste any more time



- Final Policy Directive to be issued on licensing of High Demand spectrum – it should be aligned with the actions Parliament is taking on the ECA Amendment Bill. But do not halt that process given potential delays in the finalization of the ECA
- Assigning spectrum is not enough. Incumbents should not be able to prevent WOAN's success through their action, or inaction:
  - WOAN framework takes into account the various inputs needed for it to succeed
  - Where existing operators' towers or other infrastructure are needed for the network to be successful, and to meet national goals, this should be enforced, and the ownership should be biased towards transformation (open access).

**Clear intent, supported by good drafting will bring much needed change to the sector and make the WOAN a reality**



*smile*

Thank you

Merci

Obrigado

Asante

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Nagode

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