

INFORMATION STATEMENT

ON THE PROPOSED ESTABLISHMENT BY THE CITY OF JOHANNESBURG METROPLITAN MUNICIPALITY OF MUNICIPAL ENTITY/ENTITIES FOR THE OPERATING OF TELECOMMUNICATIONS NETWORK AND FOR THE PROVISION OF TELECOMMUNICATION SERVICES

This Information Statement is made public in terms of Sect 84 (2) (a) (i) (aa) of the MUNICIPAL FINANCE MANAGEMENT ACT (Act 56 of 2003).

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(i) EXECUTIVE SUMMARY

The City of Johannesburg Metropolitan Municipality ("the City") is pursuing the provision of its own telecommunication services and selling spare capacity through the establishment of a municipal entity/entities (ME "the Municipal Entity for the operating of telecommunications network and for the provision of telecommunication services" or "the ME"); and embarking on the processes required by legislation before the ME is approved by Council.

This Information Statement outlines the City's plans for the ME, and assesses the impact on the City's staff, assets and liabilities resulting from the shifting of the function that the ME will perform on behalf of the City.

The Local Government: Municipal Systems Act (Act 32 of 2000) vests the City with the authority to establish or participate and/or acquire or hold an interest in a private company. The City may establish a private company or acquire an interest in such private company only:

- For the purpose of utilising the company as a mechanism to assist it in the performance of any of its functions or powers referred to in section 8;
- If the City can demonstrate that:
 - There is a need to perform that function or power in accordance with business practices in order to achieve the strategic objectives of the municipality more effectively; and
 - If the company would benefit the local community.

The City is in the process of in-sourcing the city-wide Johannesburg Broadband Network (JBN) that was deployed by Ericsson and is currently operated by Citiconnect/B-Wired, earlier than originally planned. The opportunity to acquire the network earlier than planned has arisen as a result of breaches of the Build, Operate and Transfer (BOT) agreement with Ericsson SA by Citiconnect, the cessionary party to the BOT agreement.

As a result of matters pertaining to contract termination resolutions and time frame limitations, the City may acquire interest in two private companies and thereby form two entities with sole purpose of consolidating same into one Municipal Entity for the operating of telecommunications network and for the provision of telecommunication services. The City may also enter into certain business activities on behalf of the ME, the full extent of which will be transferred as soon as the ME is established.

Ericsson South Africa was initially commissioned to build and operate the network over a 15 year period, after which the network would be transferred to the City. The City aims to use the JBN to lower its own costs and those of its Municipal Entities (MEs), and to increase access to telecommunications services to its residents in the City, thereby stimulating economic development and improving City service delivery. The network has the potential to support services to businesses, consumers and service providers in the external market, and indeed dark fibre is already being provided to a leading mobile operator. The primary objectives of the broadband project are to:

- Increase the competitiveness of businesses in Johannesburg
- Increase usage and penetration of high speed broadband connectivity
- Facilitate the growth and development of new and existing information and communications technology businesses

- Increase and accelerate access to the benefits of Internet-based communications and achieve digital inclusion
- Reduce the costs of government and improve delivery of services to its citizens

The precise function of the ME will be the provision of City (City and MEs) telecommunication services and selling spare capacity on the network to private parties. This includes:

- Delivery on the City's primary objectives for the JBNP;
- Providing spare capacity on the JBN to ICASA licensed operators at cost related pricing to drive down the cost of telecommunications;
- Managing the delivery of the City's Smart City objectives;
- Managing the City's ICT operations;
- Managing and coordinating access to and use of the City's telecommunications assets in partnership with Department/ME responsible;
- Contracting with and overseeing parties granted approval to use a telecommunication asset; and
- Maintaining a City wide database of telecommunication assets.

A feasibility study commissioned by the City concluded that a Municipal Entity for the operating of telecommunications network and for the provision of telecommunication services is viable and will assist the City achieving stated objectives.

A Service Delivery Agreement (SDA) will be concluded between the City and the ME to effect the provision of the services. The SDA to be concluded between the City and the ME will provide for ongoing negotiations for the ME to undertake additional activities in respect of the other supporting components of the City's telecommunication services regarded as important to achieve optimum integration of telecommunication services.

Subject to Council approving its establishment, it is envisaged that the ME will commence its activities towards the last quarter of 2014 and/or first quarter of 2015.

(ii) INFORMATION STATEMENT

Purpose of information Statement

- (a) On 27 August 2014, the Council of City of Johannesburg Metropolitan Municipality (“the City”) resolved –
- *“That Council notes the contents of the report.*
 - *That Council approves the acceptance of the repudiation by CCC of the JBN BOT Agreement thus terminating the BOT Agreement*
 - *That in order to ensure an orderly termination the City Manager is authorised to enter into early termination arrangements and settlement in the best interest of the City of Johannesburg Metropolitan Municipality*
 - *That Council in principle approves and authorises the City Manager to commence the legislative processes of establishing the Municipal Entity as envisaged in the BOT Agreement in terms of the relevant and applicable provisions of Municipal Systems Act read with the relevant and applicable provisions of the Municipal Finance Management Act.”*
- (b) The purpose of this Information Statement is to give effect to the aforementioned process and to outline the City's plans for the proposed municipal entity, including an assessment of the impact of the shifting of the function or service that the municipal entity will perform on behalf of the City, on the municipality's staff, assets and liabilities.
- (c) The proposed municipal entity is referred to in this Information Statement as the "the Municipal Entity for the operating of telecommunications network and for the provision telecommunication services" or “the ME”.

1. The City's plans for the ME

1.1 Precise function or service

1.1.1 When considering the establishment of a municipal entity, a municipality must first determine precisely the function or service that such entity will perform on behalf of the municipality

1.1.2 The Local Government: Municipal Systems Act (Act 32 of 2000) vests the City with the authority to establish or participate and/or acquire or hold an interest in a private company. The City may establish a private company or acquire an interest in such private company only:

- For the purpose of utilising the company as a mechanism to assist it in the performance of any of its functions or powers referred to in section 8;
- If the city can demonstrate that:
 - There is a need to perform that function or power in accordance with business practices in order to achieve the strategic objectives of the municipality more effectively; and
 - If the company would benefit the local community.

1.1.3 In terms of the City's strategic view for telecommunication services, the City will undertake the overall strategic planning and broad formulation of policy, whilst the provision of the services will be a function of the ME.

1.1.4 The precise function of the ME will be the provision of City (City and MEs) telecommunication services and selling spare capacity on the network to private parties. This shall include:

- Delivery on the City's primary objectives for the JBNP;
- Providing spare capacity on the JBN to ICASA licensed operators at cost related pricing to drive down the cost of telecommunications;
- Managing the delivery of the City's Smart City objectives;
- Managing the City's ICT operations;
- Managing and coordinating access to and use of the City's telecommunications assets in partnership with Department/ME responsible;
- Contracting with and overseeing parties granted approval to use a telecommunication asset; and
- Maintaining a City wide database of telecommunication assets.

1.1.5 A Service Delivery Agreement (SDA) will be concluded between the City and the ME to effect the provision of the services. The SDA to be concluded between the City and the ME will provide for ongoing negotiations for the ME to undertake additional activities in respect of the other supporting components of the City's telecommunication services regarded as important to achieve optimum integration of telecommunication services.

1.2 Implementation plans for the ME

- 1.2.1 The City concluded a Build, Operate and Transfer Agreement (“BOT agreement”) with Ericsson South Africa (ESA) which the latter subsequently ceded to CitiConnect Communications (CCC). The BOT required CCC to build a fibre optic network, to operate it for 12 years including providing services to the City and then to transfer the company owning the network to the City.
- 1.2.2 The City is in the process of in-sourcing (by early termination clause of the BOT agreement, litigation, arbitration and/or settlement) the city-wide Johannesburg Broadband Network (JBN) that was deployed by Ericsson and is currently operated by Citiconnect/B-Wired earlier than originally planned. The opportunity to acquire (by litigation, arbitration and/or settlement) the network earlier than planned has arisen as a result of breaches of the Build, Operate and Transfer (BOT) agreement with Ericsson SA by Citiconnect, the cessionary party to the BOT agreement. The acquisition of the network will be informed by the termination arrangements to be entered into by the parties to the BOT agreement which may include the implementation of the early termination provisions of BOT agreement or a settlement requiring acquisition of majority interest in a private company.
- 1.2.3 Ericsson South Africa was initially commissioned to Build and Operate the network over a 15 year period, after which the network would be transferred to CoJ. The City aims to use the JBN to lower its own costs and those of its Municipal Entities (MEs), and to increase access to telecommunications services to its residents in the City, thereby stimulating economic development and improving City service delivery. The network has the potential to support services to businesses, consumers and service providers in the external market, and indeed dark fibre is already being provided to a leading mobile operator. The primary objectives of the broadband project are to:
- Increase the competitiveness of businesses in Johannesburg
 - Increase usage and penetration of high speed broadband connectivity
 - Facilitate the growth and development of new and existing information and communications technology businesses
 - Increase and accelerate access to the benefits of Internet-based communications and achieve digital inclusion
 - Reduce the costs of government and improve delivery of services to its citizens
- 1.2.4 As a result of the breaches, repudiation of the BOT agreement, matters pertaining to contract termination arrangements, resolutions and time frame limitations, the City may have to acquire an interest in two private companies and thereby possibly initially form two municipal entities with the sole purpose of consolidating same into one Municipal Entity for the operating of the JBN and for the provision of telecommunication services. The City has no intention of operating two telecommunication municipal entities or a municipal entity with a subsidiary. The City may also enter into certain business activities on behalf of the ME, the full extent of which will be transferred as soon as the ME is properly established.
- 1.2.5 Subject to Council approving the establishment of the ME and/or acquisition of majority interest in private companies, as envisaged above and per Council resolution the ME will be established in terms of the Municipal Systems Act read with Municipal Finance Management Act towards the end of the last quarter of 2014.
- 1.2.6 In order to proceed with the potential acquisition of the JBN, the City needed to conduct and conducted an assessment of the feasibility of the business case for owning and operating this network through a Municipal Entity. The City appointed consultants to assist with undertaking of a feasibility study. This feasibility study dealt with Technical,

Commercial, Operations & Organisation and Business Modelling & Business Plan aspects of operating a network municipal entity.

- The Technical Workstream was to assess the current state of the JBN. The work assessed the assets of the municipality that would be transferred into the new ME as a result of the acquisition as well as the assets that would become obsolete as part of the acquisition. The workstream has also considered the impact on the network of new requirements such as Fibre To The Home (FTTH).
- The objective of the Commercial Workstream was to identify and profile current revenue streams, and to characterise and forecast future demand for both existing and future services (based on the network and operational profiles outlined by the Technical Workstream and the Operations & Organisation Workstream).
- The Operations & Organisation workstream was tasked with defining the operations, processes and organisation of the new CoJ business unit which will operate the JBN and provide services to the City and to the external market.
- The objective of this workstream was to co-ordinate and pull together the outputs of the three workstreams described above. The Business Modelling and Business Plan Workstream has provided overall guidance with regard to modelling structure and approach, outputs from the revenue, opex and capex models that are required by the Financial Model. A key task has been to monitor the interdependencies of the workstreams to ensure consistency in the assumptions made. This workstream has also been responsible for identifying key overall risks and sensitivities across the three workstreams, and for formulating overall conclusions and recommendations.

The results of the feasibility study workstreams concluded and indicated that it should be possible to construct a viable business case for the network acquisition and operating an ME.

1.2.7 The ME will receive a mandate to provide the following services to the City:

- Provide spare capacity on the network to ICASA licensed operators at cost related pricing to drive down the cost of telecommunications
- receive the network asset and contracts on the network on the date of transfer due to termination of the BOT
- Contract with and oversee parties granted approval to use the telecommunication assets
- Manage the delivery of the City's Smart City objectives
- Manage the City's ICT operations
- Maintain a city wide database of telecommunications assets
- Facilitate the processing of telecommunications related wayleaves and rights of use
- Regularly inspect telecommunication assets and establish that they are in a good state of use as well as monitor reinstatements
- Manage and coordinate access to and use of the City's telecommunications assets in partnership with the Department/MOE responsible
- Ensure compliance with relevant City policies and By Laws related to the City's telecommunications assets

- 1.2.8 This mandate may possibly be expanded from the initial vision in 2010 by including the Group ICT department as an inward facing component department of the ME and also placing the delivery of the smart city objectives in the ME. The reasoning behind this is to minimize duplication in the delivery of telecommunications, smart city or technology objectives within the City and to centralize accountability for the delivery of such telecommunications, smart city or technology objectives.
- 1.2.9 A Service Delivery Agreement (SDA) will be concluded between the City and the ME to effect the provision of the services.

2. Assessment of impact of shifting of municipal telecommunication service

- 2.1 In terms of section 84(1)(b) the City is required to make an assessment of the impact of the shifting of the municipal telecommunication service to the ME on the City's staff, assets and liabilities.
- 2.2 The impact of the shifting of the municipal telecommunication service to the ME on the City's staff, assets and liabilities is as follows:

ITEM	IMPLICATION / IMPACT
Number of City staff to be transferred to the ME	65
Number of staff that would be made redundant as a result of the creation of the new ME	None identified
Cost to City of any staff retrenchments or the retention of redundant staff	None identified
Assets to be transferred to the new ME	Passive infrastructure, comprising approximately 900km of fibre, ducts, wayleaves, manholes. Active infrastructure, comprising 18 Ericsson SR1200 routers, seven Ericsson ECN430 and thirty six Ericsson EFN/324 or Calix E7-2 Ethernet switches, 462 customer premise equipment, Ericsson OPW150. In addition, all the new active equipment to deliver the BOT services identified in this feasibility report will be assets under the control of the new ME
Assets that will become obsolete as a result of the new services offered by the ME	96 PABXs and end user telephones connected to the PABXs All end-user analogue telephone that are not rented from the service provider (exact quantity not known) All ISDN modems that are not rented from the service provider (exact quantity not known) All DSL models that are not rented from the service provider (exact quantity not known) Approximately 426 LAN switches (mostly Cisco) that are either at or near end of life
Any liabilities of the City to be ceded to the new ME	No liabilities of the City are to be ceded to the ME, save that if the City concludes any contracts referred to above for or on behalf of ME, any obligations placed on the City in terms of such contracts could potentially constitute liabilities which would, pursuant to such assignments, be transferred from the City to the ME.
Any debt of the City attributed to the new ME	There is no debt of the City in respect of those functions to be assigned to the ME which the City will retain.

The City will be released from its annual obligations in terms of the BOT of R279 million over a 12 year period. In an event that an acceptable settlement is reached the City will be required to pay-out the agreed capital amount to acquire the network. Budget provision has been made for the estimated capital amount in 2014/15 financial year. The possible financial benefit is the 100% revenue accruing to the City instead of the revenue sharing mechanism as it was envisaged by the BOT over 12 years

Under clause 40 of the BOT:

- (i) COJ must make payment to Ericsson of reasonable costs (inclusive of loss or damages) incurred in the build of the network;
- (ii) Ericsson must procure the transfer of the equity interest of the Operate Company (BWired) to the COJ
- (iii) By transfer of the equity interest, the transfer of the Network to the COJ is achieved
- (iv) Ericsson must procure the transfer of the contracts on the network to the COJ

3. Conclusion

In light of the results of the feasibility study, assessment of impact of shifting municipal telecommunication services to the ME on staff, assets and liabilities, the City's plans and objectives for the ME there are no adverse financial implications which preclude the approval by the City of the establishment of the ME.

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