Myanmar Telecommunications Masterplan- Public Consultation

As submitted to the

Myanmar Ministry of Communications and Information Technology

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The Myanmar Centre for Responsible Business (MCRB) welcomes the consultation on the draft Telecommunications Masterplan and the opportunity to provide comments on the published draft. MCRB commends and appreciates the quality and clarity of the draft Masterplan, which presents thoughtful consideration and commitment to reforming Myanmar's telecommunications sector, creating a new ICT "ecosystem" and fostering innovation and growth. Many of the elements in the Masterplan about the impacts of telecommunications reflect points also made in MCRB's draft sector-wide impact assessment[1] which will be published in September.

MCRB welcomes the overall approach of the Masterplan (described in p9) of consulting on and adopting a Masterplan as a form of policy statement/White Paper rather than a law to promote the development of the telecommunications sector. We believe that this approach is appropriate to the rapidly changing environment, and is also more widely applicable to other sectors of the Myanmar economy such as tourism and energy.

However we regret that despite the suggestions in our letter from MCRB and the Myanmar ICT Development Organisation (MIDO) dated 10 June, the publication of the draft in early July was not widely made known. In addition to advertising in New Light of Myanmar, in future a press release should be issued to non-government owned media organisations to raise wider awareness of the consultation process. Furthermore, organisations such as MCRB, which had been earlier included in meetings and had expressed an interest in contributing to the consultation, were not alerted by email to the publication of the draft. We also regret the absence of a published Burmese translation during most of the consultation period. We welcome that the deadline for comments has been extended.

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[1] http://www.myanmar-responsiblebusiness.org/news/ict-swia-draft-for-consultation.html

Below we provide more detailed comments, following the structure of the draft.

Section 1: Introduction and Vision (P5)

The broad vision of the Telecommunications Masterplan is "to establish Myanmar as a mobile first, digitally connected nation" through 3 objectives:

1. Create a Myanmar national broadband **infrastructure** asset
2. Deliver communications content and **services** for the Myanmar people
3. Create an enabling **institutional framework**

MCRB supports all the broad outlines and objectives in the document.

Vision 1: Connect the people of Myanmar nationally and globally

MCRB suggests inclusion in this section of the Constitutional right to freedom of expression (Article 354 - Every citizen shall be at liberty to express and publish their convictions and opinions freely), a right that is intrinsically linked to the use of telecommunications and online services. Furthermore, telecommunications support the enjoyment and fulfilment of other rights such as education and health as outlined in Vision 2.

> **Proposed amendment**
> *The Ministry expects that all available telecommunications technologies, namely terrestrial (fixed and mobile) and satellite, must be free to play a role in the emergence of a digitally connected Myanmar **which will support the citizen's right under the constitution to freedom of expression as well as the enjoyment of other human rights.***

Vision 2: Empower Myanmar's economy with ICT and Innovation

Vision 3: Enable the journey to eGovernment with infrastructure and mobile applications (p7, 8)

MCRB supports the focus on "mExtension" services such as m-Health, e-Learning and eGovernance. We note that civil society groups are already developing innovative ways to utilise ICTs during the upcoming elections, such as disseminating information about voter lists[2] and assisting with election monitoring.[3] This demonstrates a first and immediate step towards eGovernance, and should be encouraged and supported by the Government of Myanmar. We also recommend that M-banking be also considered a priority "mExtension", and that support for minority languages in addition to Burmese be provided where this is necessary for universal access.

It is important to note that the development and use of these innovative tools and services in Visions 2 and 3 depends on **reliable and continuous connectivity.** The liberalization of International Gateways (IGW) on p16 will also contribute to the security of the network.

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[2] http://www.irrawaddy.org/burma/electoral-education-underway-as-batch-of-voter-lists-is-released.html
[3] http://www.irrawaddy.org/burma/civil-society-groups-learn-harness-ict-tech-camp.html

It is important that the Government of Myanmar commits to not disrupting or shutting down communication services except in the most extreme and clearly defined emergencies. These circumstances are not currently outlined in the Telecommunications Law or elsewhere.

Proposed amendments
   (1) …..“mExtensions” such as m-Health**,** m- or e-Learning **and m-Banking.**

   (2) ……The creation of usable services for healthcare, education and other uses will require developing Myanmar **and other minority** language-based services to be delivered directly to consumers and citizens.

   (3) MCIT will support these initiatives by:
….
   - managing the Government's cyber security needs; and
   - **defining clearly the types of extreme emergencies which will lead the Government to shut down communication services and with it access to e-government and other vital services.**

1.3 Telecoms Masterplan approach (P9)

Please see initial comments on the need for wider publicity for this and future consultation processes. If '**Masterplan Framework'** is a genuinely copyright term, we suggest the source is footnoted.

The plan rightly notes the need for *'Elements of the Masterplan [to] require the cooperation of other bodies outside the MCIT's jurisdiction for the objectives to be fully realized'* and encourages the President's office to put the coordination structures in place to ensure this (see also comment on Lawful Interception below).

The first of the three objectives of the Masterplan is to *"create a Myanmar national broadband infrastructure asset"*. It is noted that a priority for this objective is "*building infrastructure as quickly as possible"* (p10).

MCRB understands and supports this urgency, and in particular the need to remove administrative and interdepartmental bottlenecks. But we advocate that time is given to ensure:
   - Local level stakeholder engagement and communication. Because there is a requirement to meet national rollout targets as quickly as possible, making time for two-way communication is sometimes overlooked and can lead to misunderstandings.   Operators need to take the lead on this, but will work through subcontractors to deliver it
   - Requiring and enforcing adequate health and safety protection for workers particularly as concerns working at heights. Again operators, but also government inspectors, need to monitor performance and publish injury rate statistics.

The second objective is to "*deliver communications content and services for the Myanmar people".* While this section refers to a need for "localised services in Myanmar language", services should also be made widely accessible in ethnic regions in ethnic languages, according to user-defined need.
It is important to recognise in this section the role of civil society organisations in institutional framework, including groups whose specific focus is not telecommunications. (P10)

Proposed amendment:

*Government, private sector, **civil society organisations** and the people at large all have a role to play in Myanmar's institutional framework for telecommunications, and the Masterplan must offer benefit to all Myanmar citizens.*

SECTION 2: Create a Myanmar national broadband infrastructure asset (P12)

2.1 Connecting Myanmar (p13)
MCRB appreciates the work that has gone into creating a detailed Spectrum Management Plan, and recognises the "transmission challenges" outlined regarding fiber, such as creating ducts and trenches, making use of unused fiber (known as dark fiber) and maximising use of fibre optic cable in use (known as lit fiber). In the pursuit of laying fiber and maximising its use, we re-iterate our earlier recommendation to ensure sufficient time for companies to conduct stakeholder engagement, and ensure adequate labour and health and safety standards. MCRB's sector-wide impact assessment showed very mixed practices in Myanmar.

We welcome the importance attached by the Masterplan to transparent auctioning and note that MCIT continues to lead the way in Myanmar on transparent tendering practices and policy development.

That said, although the draft Masterplan says that '*Full details are available in the NFP15 which can be accessed at the MCIT website'* MCRB was not able to identify the National Fiber Policy (NFP15) on MCIT's website or through Googling and encourages the Ministry to publish this in a publicly and easily accessible place and communicate it through the media.

Fill coverage gaps (P17)
MCRB welcomes the time-bound elements of the Masterplan, including the setting up of a "universal service fund" (USF) to make telecommunications service available to the poor and those in remote areas, as well as the disabled and differently-abled (as mentioned on page 7).

The draft Masterplan (p17) commits the Ministry to '*establish a **universal service fund** by mid-2017. Universal service funds will be made available through operator proceeds which may be collected from as early as 2018 or from 2020, depending on the performance of operators to meet their licensed obligations to connect Myanmar. The organization will be established prior to this date, leaving enough time for it to establish itself and create a program of universal service requirements before it collects funds for deployment. The purpose of the USF will be to allocate funds to support connectivity to basic services and high-speed internet in remote areas of the country, where commercial network economics cannot justify the build out alone. Further details for the fund organization itself are included in the section on Institutional Framework. The Ministry will recruit consultants to prepare a strategy, funding and organization plan for the fund'.*

We recommend that the Fund is designed as a Universal Service <u>and Access</u> Fund. Prior to the establishment of such a USAF, we encourage MCIT to first establish a **Universal Service and Access Policy for Myanmar** through an open debate with citizens and their representatives, particularly those who are most likely to be excluded such as those in remote areas and

vulnerable groups. This could be achieved through the publication of a consultation or 'green' Paper or draft policy document. The draft policy should be consulted upon with the new Parliament and other stakeholders from business and civil society. Business and in particular civil society not directly concerned with telecommunications, for example groups advocating the use of ethnic minority languages, and groups concerned with gender, children and disability, will have an interest in the provision of **universal access.** Extra efforts should be made to reach these groups. The idea of an Affordable Internet Taskforce floated on page 22 (and mentioned again on page 26) should be taken up and given a lead in helping Myanmar shape a Universal Service and Access Policy. However business should be included in such as Taskforce, in addition to government and civil society, since it is business which will need to deliver.

Such a Policy will be wider that the Fund Strategy envisaged in the Masterplan, as some elements of achieving Universal Access may not be require support from a USF. Furthermore, the extensive coverage and rollout requirement set by the Ministry for operators are currently proving the most effective lever for achieving universal service, and a Fund should not be put in place which gives operators incentives not to meet their coverage requirements.

> **Proposed amendment**:
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> *The Ministry will establish a* **universal service and access fund** *by mid-2017. Universal service funds will be made available through operator proceeds which may be collected from as early as 2018 or from 2020, depending on the performance of operators to meet their licensed obligations to connect Myanmar. The organization will be established prior to this date, leaving enough time for it to establish itself and create a program of universal service requirements before it collects funds for deployment. The Ministry will recruit consultants to* **prepare a draft Universal Service and Access Policy to serve as the basis for wide consultation with business and civil society organisations, particularly those representing the views of the poor and those in remote areas, as well as the disabled and differently-abled. The consultants will draw up proposals for a strategy, funding and organization plan for the fund, drawing on lessons learned from the poor performance of USFs elsewhere.** *Further details for the fund organization itself are included in the section on Institutional Framework.*

When designing a USF, Myanmar should learn from the failure of other USFs, particularly those without private sector involvement in their governance, and from the few examples of good practice. Myanmar can draw on technical inputs from the Alliance for Affordable Internet initiative including information shared at their 27/28 July 2015 workshop in Yangon[4]. A reference to Myanmar being the first Asian country to join the Alliance, in March 2015 could be added to the 'Affordability' section (page 20), as well as the above mentioned amendment to the Affordability Task Force concept on p22.

2.5 Security (p22)
In the diagram on p23, the main box is titled "Security and Privacy", however there is no mention of privacy protections in the paper, aside from a disclaimer in section 3.3 Consumer Rights (p27) that states, *"Matters related to data privacy are outside the purview of the sector Ministry and will be*

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[4] [A4AI-Myanmar USF Workshop & Coalition Meeting – July 27-28, 2015](#)

handled elsewhere in Government, as a common issue to apply across consumers in all industries and sectors."

Growth, innovation and data privacy go hand in hand and considerations on plans to protect user privacy and data should be included in the Masterplan. Privacy protections help users trust in and utilise services. Even if the MCIT is not the lead Ministry in this area, the Masterplan should identity the action points for how these issues will be handled in Government. Without privacy protections, MCIT's vision outlined in the Masterplan – for example concerning m-Health - can be undermined.

MCRB notes the reference to lawful interception (p23), *"Once the policy has been created by the Union Government, the MCIT will play a key role in implementation of the national cyber security policy and in applying standards for legal interception of telecommunications networks. With external assistance from the Council of Europe and local consultation, MCIT is exploring the options for developing the appropriate protocols for legal interception which are in line with leading international practices."*

To address the current legal vacuum, the Masterplan needs to identify who in the Union government will take the lead on creating this much needed regulatory framework, and what the timeframe will be.

MCRB would also like to draw the Ministry's attention to *Lawful Interception and Surveillance: The Characteristics of a Rights Respecting Model[5]*, a paper developed by MCRB which outlines seven principles to include in lawful interception regulation:

1. **Pre-requisites** before lawful interception should be considered;
2. **An authorisation processes**, including judicial authorisation, which Myanmar has already committed to;
3. **Oversight** by an independent body from those requesting or authorising lawful interception or surveillance;
4. **Notification of individuals** after they have been targets of surveillance;
5. **Access to remedy** for those who believe they have been placed under surveillance illegally;
6. **Transparency,** including clear and accessible laws and the government publishing aggregate yearly figures on the number of requests for lawful interception or surveillance, and
7. **The provision for framework review** to ensure rights are protected.

SECTION 3: Develop communications and content services for the Myanmar people (P24)

MCRB commends efforts in the Masterplan to bridge the "digital divide" (in particular with the @MM initiative), foster Internet innovation culture and start up community.

This section in particular would benefit from some focus on user rights and protections when using telecommunications services. MCRB advocates for inclusion of:

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[5] This model is currently an annex to the draft ICT Sector Wide Impact Assessment (SWIA), available here (pp. 224-228) http://www.myanmar-responsiblebusiness.org/pdf/SWIA/ICT/2015-06-15-MCRB-ICT-SWIA-Draft-Report_en.pdf?v=1

- Consideration of privacy and security of users: There is a lack of understanding in Myanmar about why privacy online is important and basic steps users should take to protect it. The Masterplan should include a commitment to raise public awareness around the importance of privacy when using ICTs, including foundational knowledge, such as the need for a strong and secure password.
- Education for users on improving digital literacy.
- A commitment to net neutrality (that all online services will be equally accessible and preference will not be given to one service over another in terms of connection speed, regardless of the source.)
- Establishment of social media guidelines to be used by institutions, including in the private and public sector.

Concerning consumer rights (section 3.3), MCRB has highlighted above the need for a clear government roadmap and Ministerial responsibilities to establish cross-sector data privacy regulation.

MCRB warmly welcomes the emphasis given in the Masterplan to effective consumer complaints handling mechanisms being put in place, in the first instance by service providers, but with the possibility of recourse to the Regulator. Such complaints mechanisms should not be only for consumers but should be for anyone whose rights are negatively impacted by the service provider. The effectiveness criteria[6] for establishing 'operational grievance mechanisms' contained in the UN Guiding Principles on Business and Human Rights is relevant both for companies and the Regulator. MCRB has made available translated resources related to this and would welcome the opportunity to work with the Regulator on the additional dispute resolution mechanism which is planned[7].

SECTION 4: Create an enabling Institutional Framework (P28)

4.1 Competitive market, responsible business

MCRB welcomes the Ministry's inclusion of a set of principles to promote responsible business (as outlined on p28), and the emphasis placed on occupational health and safety. Additionally, MCRB encourages the Ministry to work with MOECAF to develop an E-waste policy, and also to encourage companies to follow the IFC's Environmental Health and Safety guidelines, including for the Telecoms Sector (these date from 2007 but are currently undergoing revision). MOECAF are using IFC Guidelines as a basis for their engagement with companies on environmental and social issues. Further amendments are suggested below, also reflecting MCRB's comments above.

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[6] The Effectiveness criteria say that complaints or grievance mechanisms should be (1) legitimate (2) accessible (3) predictable (4) equitable (5) transparent (6) rights compatible (7) a source of continuous learning and (8) dialogue based

[7] UN Guiding Principles on Business and Human Rights (Burmese translation) http://www.myanmar-responsiblebusiness.org/pdf/2014-11-04-UNGPs-Burmese.pdf
IPIECA Good Practice Survey on Operational Level Grievance Mechanisms (Burmese translation) http://www.myanmar-responsiblebusiness.org/resources/ipieca-guide-translation.html

Proposed amendments

The Ministry is committed to the following principles to promote responsible business, which it will pursue in coordination with other Government agencies and Ministries:

- ***promoting** workplace health and safety across the industry, with an initial emphasis on engineering sites and for network operations and maintenance*

- ***respect for decent working conditions and international labour standards***

- *due protection, through law, of intellectual property rights in Myanmar for local and foreign investors who are active in the telecommunications industry*

- ***establishing clear standards for organizations collecting, storing, or sharing user data.***

- ***transparent processes, including for regulation, procurement, and allocation of licences***

- *attention to environmental measures to ensure compliance and reasonable standards, **including e-waste***

- ***encouraging engagement with and consultation of stakeholders, and effective complaints mechanisms***

- ***continuous assessment of the social, health, human rights and environmental impacts of telecommunications in Myanmar, including cumulative impacts***

The Ministry also encourages all companies in the telecommunications sector to use the International Finance Corporation (IFC)'s Environmental, Health, and Safety Guidelines for Telecommunications[8] to guide their business activities, in addition to any requirements under Myanmar law.

4.2 A new industry ecosystem (P29)

The diagram of this new ecosystem on page 30 appears to envisage MCIT as running the Universal Service (and Access) Fund (USF). Based on a study of other countries, such a purely government-run model is closely associated with failure to achieve objectives including the disbursement of funds. MCRB encourages the government, as part of the consultancy envisaged on page 17, to consider other models including public-private model adopted in Pakistan; and to amend this diagram (and relevant text on page 32) to allow for the possibility of co-management with other stakeholders.

While including regional governments, the diagram also fails to identify the other Ministries who are integral to the success or failure of network rollout, including Construction, Home Affairs, and possibly others (the role of these Ministries is alluded to on page 32). These should be added to the chart, to ensure that the importance, and accountability, of other Ministries for delivering the government's objectives of rapid rollout is also clear.

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http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/ehsguidelines

The draft (p32) states, *"MCIT will set policy for information and cyber security, and will be the implementing agency within Government for such programs. This will include the implementation of the Government's requirements for legal intercept of telecommunications networks."*

MCRB hopes the Master Plan - which will be approved at Cabinet level and therefore offers the opportunity to promote coordinated government action - will include a description of how those requirements will be established, including Ministerial accountability and a timetable for the presentation of draft lawful interception regulations for public consultation and then to Parliament (see above).

Myanmar Communications Commission (MCC) (P33)

Under the organisational reconfiguration, the telecommunications regulator,r the Post and Telecommunication Department (PTD) will become the Myanmar Communications Commission (MCC). The MCC will publish an annual report of its activities. MCRB recommends that **MCC commits to publishing either as part of this report, or separately, a "transparency report",** which outlines the number of requests it receives for network shutdowns, online content removal or any other request that make impact on user rights such as freedom of expression and privacy.

Myanmar Posts and Telecommunications (MPT) (P35)

The Ministry has decided to corporatize MPT with immediate effect, so that it transfers from being a Government department housed under the MCIT, to being a wholly independent state owned corporation, partnering under a joint operating agreement with a with a consortium comprising KDDI Corporation and Sumitomo Corporation from Japan. As above, MCRB recommends that **MPT commits to publishing an annual "transparency report",** which outlines the number of requests it receives and complies with for network shutdowns, online content removal or any other request that make impact on user rights such as freedom of expression and privacy.

Licensees (P35)

This section states that, *"within a year the PTD has issued 35 [telecommunication] licenses in all to 33 unique organisations".* MCRB recommends that **all telecoms licences be published**, together with any 'CSR' commitments made by operators. The public needs to know, for example, what the geographical coverage commitments are, and what the penalties of USF levy will be if these are not met, to be able to participate the debate about universal access and service.

Proposed amendment (p36)

(after …4 Applications Services Licenses) ***These, and all future licences, will be published.***