



31 May 2012

The Honourable Minister of Communications

Per email: ICTcolloquium@doc.gov.za

Dear Minister Pule

ISPA SUBMISSIONS ON A NEW INTEGRATED NATIONAL ICT POLICY FOR SOUTH AFRICA

1. We refer to the ICT Policy Colloquium Discussion Document published on 13 April 2012 and the National ICT Policy Colloquium (“the Colloquium”) hosted by the Department of Communications (“the Department”) on the 19th & 20th April 2012.
2. ISPA strongly supports the launch of a process to review electronic communications policy in South Africa and will participate enthusiastically in all of the steps leading to an integrated policy framework designed to provide both pervasive access as well as ensuring international competitiveness.
3. ISPA is aware that the Discussion Document and the Colloquium represent the beginning of a lengthy process and that there will be an opportunity for interested parties to submit comment to a Green Paper to be published later this year.
4. Nevertheless ISPA wishes to offer some submissions on the future policy at this early stage, in the hope that these will prove helpful.
5. ISPA will make a more comprehensive submission in response to the publication of the Green Paper.

ISPA Management Committee:

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Mike Silber, Jaap Scholten, Elaine Zinn* (*ex officio)

GENERAL COMMENTS

6. ISPA believes that the focus on creating a Digital South Africa by 2030 is appropriate but is concerned that we should not lose sight of policy and regulatory interventions which are generally regarded as being desirable and which could be implemented in the short term. It is critical to ensure that we move with purpose wherever possible to ensure that we do not fall further behind our peers and miss opportunities currently presented.
7. ISPA wishes to submit the following list of interventions which we believe fall into this category.

Ensuring that the Department is appropriately and adequately capacitated to take up a lead role in the push towards 2020 and 2030

8. The Department is aware that it needs to ensure it has adequate human and other resources to meet the challenges which it is outlining for itself as the lead agency driving change towards a digitally inclusive and competitive South Africa.
9. ISPA is of the view that the success of the new policy initiative and South Africa's digital future lies to a large extent in a strong Department capable of involving itself in and steering the direction of the industry and market.

Facilitating deeper competition, particularly in the mobile services market

10. ISPA submits that perhaps the most important and far-reaching short-term market intervention would be the introduction of competition in the mobile services market.
11. There is no doubt that universal service will be achieved in the first instance through the mobile networks, with people using their handsets as the device with which they access broadband and other services. Already the mobile networks have close to 99% "2G" coverage with pervasive "3G" coverage likely in the next 2-4 years.
12. It follows that South Africa has an "affordability gap" more than an "access gap".
13. Any intervention specifically targeted at lowering the cost of broadband and other services obtained from the mobile networks is therefore likely to have the largest impact on increasing the uptake of broadband services in South Africa.

14. ISPA submits that the clear lesson to be learnt from the fixed-line broadband services market is that the key intervention is the introduction of greater competition.
15. ISPA wishes to state its case for greater mobile services competition in the following strong and simple terms:
 - 15.1. In the fixed-line broadband market there has been a massive pricing and service benefit to ADSL customers over the past two years as a result of strong competition in the fixed-line broadband services market.
 - 15.2. Consumers have seen per GB pricing falling from R70 to current pricing which is as low as R8 per GB. At the same time competition from aggressive ISPs has seen the explosion of uncapped broadband product, with an uncapped 1 Mbps account now costing as little as R199 per month excluding line rental costs.
 - 15.3. It is no exaggeration to say that full competition has revolutionised the provision of fixed-line broadband services in South Africa. This has created significant value for consumers and facilitated productivity in the SMME and corporate markets which typically use ADSL as their primary broadband connection.
 - 15.4. This is amply illustrated by the manner in which ISPs immediately passed on to their customers the benefits of the 30% IPC cost reduction provided by Telkom, indicative of a market in which the benefits of full competition are being absorbed by consumers.
 - 15.5. The Department, in partnership with industry, has set an objective of universal access to broadband services for all South Africans by the year 2020.
 - 15.6. There is agreement that the vast majority of South Africans, who currently do not have access to broadband access will, initially at least, obtain such access through a mobile network using a smartphone or other handset.
 - 15.7. But service competition is largely absent in the mobile services sector outside of the incumbents, notwithstanding that there are a substantial number of new entrants who would enter the mobile services resale market were the incumbents to create opportunities to do so.

- 15.8. Although APN solutions are currently available from mobile operators they are not price competitive, making it impossible for ISPs or other operators to resell mobile broadband at competitive prices. In fact it is cheaper to buy mobile broadband in the open market than it is to buy it from the mobile operators on an APN solution. The kind of APN solutions available are not the kind that allow ISPs to resell on an 'open basis', they are typically only corporate-type APNs.
- 15.9. Currently there is also no regional breakout at competitive pricing.
- 15.10. ISPA notes the contrast between the immediate passing on by ISPs of the reduction in the wholesale IPC rate and the failure of the mobile network operators to reduce pricing in response to the reductions in another wholesale rate – the call termination rate. Cell C's recent pricing initiatives are only now providing an inkling of the potential benefits of competition in this sector.
16. The form of intervention to be made is relatively simple and, with sufficient political will, easy to implement.
- 16.1. ISPA strongly suggests that the mobile network operators should be regulated to offer wholesale solutions on their networks to ISPs at prices below current retail pricing, taking into account overhead charges and a profit margin.
- 16.2. This will create a fully-competitive reseller market below the mobile network operators, in the same manner that such a market exists below Telkom.
- 16.3. Properly regulated, we have no doubt that this will have a substantial impact on broadband penetration and usage in South Africa.
- 16.4. Once a fully-competitive reseller market has been established, ISPA suggests that ICASA conclude regulations introducing wireless local loop unbundling, commonly known as MVNO Regulations.

Facilitating deeper competition in the fixed-line services market

17. As noted above, ISPA is of the view that the fixed-line services market is far more competitive than the corresponding mobile services market. As the Department is aware, however, there are still many challenges relating to facilities-based competition in the fixed-line infrastructure market.

18. Local Loop Unbundling (LLU) has proven to be complex and will take a relatively long time to fully implement. The implementation of LLU will not only require massive capital investment by operators that want to participate, but will also cause such operators' business models to change. This requires time.
19. ISPA supports the implementation of LLU in simple phases to ensure the effective roll-out thereof and to achieve the goals set out for LLU, specifically continued competition and job security. Phased implementation will allow existing players to adopt their business models and will also allow smaller companies to raise capital that is needed to remain competitive and survive the onslaught from the large well-established operators. A "big bang implementation" approach may lead to only a small number of very large corporate players, which can afford the capital that is required for LLU, to remain in the industry.
20. IP Bitstream (Phrase 1): This phase is a significant improvement on the current IPC option provided by Telkom as an ADSL wholesale model. The ADSL subscriber's session will terminate on Edge Service Routers (ESRs) in the access seeker's network; the access seeker can therefore provide differentiating product features and control cost and service levels more effectively. This solution is relatively simple to implement and does not depend on potentially problematic issues like facilities leasing. The benefit for the ISP is that it gives them better control over the end user experience and also offers better product differentiation opportunities. In all the scenarios there is still the problem where the network from the end user (consumer) to the ERS may be congested. This solution when implemented will have to address the access provider's reporting, upgrading and fault finding obligations and service level commitments. It also needs to ensure that all parties are treated as equals on the network. ISPA is working with ICASA to ensure these outcomes.
21. Naked ADSL: ADSL is increasingly competing against mobile broadband solutions. As Telkom does not allow for the ADSL line portion to be subscribed to as a stand-alone, it makes for an uncompetitive offering. It also increases Telkom's ability to bundle voice minutes with the ADSL line portion which weakens competitor offerings. This in turn holds back job creation by ISPs as their own growth is impacted.
22. Quality of the IPC network: ISPs have no insight into the Telkom network and often the capacity ISPs purchase from Telkom is not delivered to the end users as a result of serious network congestion on the backhaul from the end user to the Telkom core. Even if ISPs buy additional IPC capacity the backhaul cannot cater for the demand and the bandwidth does not reach the end user. This despite the significant high prices the ISP pays for the IPC capacity.

23. ISPs also do not have any insight into the Telkom network to ensure that the ISPs' traffic has the same priority on the Telkom network as Telkom's own traffic to its end users. There is clearly a need to regulate this and for specific service level agreements to be attached to IPC or similar Bitstream services.

Finalising the audit and assignment of spectrum available for the provision of broadband access services in South Africa

24. Industry stands ready to utilise this spectrum to deepen broadband penetration. While the IMT-Advanced standards will not solve all of the challenges, it is imperative that South Africa takes steps now to allow the deployment of technologies which are spectrally efficient and suitable for broadband service provision in rural areas.
25. In line with its comments above regarding competition, ISPA supports the position set out in the Draft Policy Direction on the Assignment of High-Demand Frequency that the final Spectrum Assignment Plan must allow for an efficient and fair open access / wholesale model.
26. ISPA is aware that, pursuant to the new Radio Frequency Spectrum Fees Regulations which came into force on 1 April 2012, some licensees have approached ICASA as regards the return of spectrum licensed to them but not optimally used. It therefore appears that there is an indirect form of "use-it-or-lose-it" at play.
27. ISPA nevertheless submits that it would be worthwhile to request all current spectrum licensees with holdings below 4GHz to account for their usage of spectrum assigned to them so that an assessment can be made of the efficiency of use.

Finalising the Guidelines on the Rapid Deployment of Communications Infrastructure contemplated in section 21 of the Electronic Communications Act ("the Rapid Deployment Guidelines")

28. South Africa is in the midst of an explosion in the roll-out of optical fibre networks and there is a critical need for more base stations to be deployed to cater for the exponential growth in data carried over mobile networks. At the moment – noting events in Ekurhuleni and elsewhere – it appears that a failure to facilitate and co-ordinate network builds will cost the country dearly in the medium-to-long term.

29. ISPA notes from the Strategic Plan to 2015 lodged by ICASA with the Portfolio Committee on Communications that ICASA intends to lodge recommendations on the Rapid Deployment Guidelines with the Minister at the end of June 2012.
30. ISPA calls on the Minister to prioritise the finalisation of this document and related initiatives pertaining to infrastructure sharing.

Universal service and a National Broadband Network

31. History indicates that investment in development of infrastructure in rural areas is not commercially viable for the private sector, suggesting that Government must assist with this in order to promote affordable broadband in rural areas.
32. The International Telecommunications Union GSR11 Best Practice Guidelines on Regulatory Approaches to Advance the Deployment of Broadband, Encourage Innovation and Enable Digital Inclusion for All (“the GSR11 Guidelines”) suggests “public private partnerships”.

“Where public funds are committed to broadband infrastructure investment, or in the case of essential facilities, regulators may employ open access arrangements (i.e. unbundling) to maximise the economic benefits across as broad a base of users and suppliers possible. The sale or lease of such infrastructure facilities should be implemented in a transparent and non-discriminatory manner, so that it does not distort the associated markets.”

33. The GSR11 Guidelines also note that, where a Universal Access Service Fund exists, it could serve “as a funding mechanism for broadband networks into rural and high-cost areas through support both at the retail end (e.g. shared access), as well as at the wholesale end (e.g. through subsidising intermediary network facilities such as backbones, wireless towers and other passive infrastructure).”
34. Any plan for a National Broadband Network would be welcome, however complete management should not be left to any SOE to deploy. There must be collaboration between government, industry and society to ensure proper and effective roll out and management. The GSR11 Guidelines state further that:

“The establishment of coordinating bodies, such as a national broadband or digital inclusion commission or council, encompassing the public authorities, investors and users as well as wider range of stakeholders can serve as a platform for developing a common understanding, vision and strategy.”

Increased investment in the last mile

35. For broadband to achieve its potential and for the Internet access industry to grow and create jobs, consideration should be given to the awarding of subsidies to companies that invest in last mile infrastructure. Because such investment in infrastructure will benefit the entire country, ISPA believes that such subsidies can fall within the ambit of the Universal Service and Access Fund (USAF).
36. Such subsidies should be made subject to the condition that infrastructure built with subsidies are open to all licensees and subject to proper pricing principles, allowing for a level playing field for all.

Taking steps to ensure that ICASA is able to discharge its mandate efficiently and effectively

37. The capacity constraints at ICASA are a long-standing issue dating back to SATRA days. While ISPA appreciates that ICASA has achieved some notable successes of late, it remains true that without structural and budgetary reform the communications regulator will continue to struggle to perform its role in introducing competition and lowering the cost to communicate.
38. It is further the case that ICASA's performance is hampered by certain of the provisions of the Electronic Communications Act. The complexity, for example, of section 67 of the Act relating to market interventions, coupled with ICASA's inadequate resources, means that little progress has been made in introducing pro-competitive measures into the market.
39. ISPA has noted from the Strategic Plan for the Department for 2012/2013 and the MTEF Period to 2017 that the Department intends achieving some reform through an Electronic Communications Amendment Act and an Independent Communications Authority of South Africa Amendment Act, both to be introduced before October 2012.

Focus on SMMEs

40. Notwithstanding the stated focus on the enablement of SMMEs and the identification by Government that they play a crucial role in job creation, this sector of the industry remains largely neglected.

41. This is true both at a policy level – the Department has not sought any meaningful engagement with this sector or included them in the Jobs Compact signed with the Top 30 ICT Companies grouping – as well as at a licensing and regulatory level.
42. The only concession currently given to licensees with regard to their size is an exemption from the payment of annual licence fees if their total annual turnover is less than R13 million. Other than this even the smallest holder of a class electronic communications service (CECS) licence is required to comply with ICASA regulatory requirements such as the submission of reports on substantially the same basis as incumbent providers holding an individual electronic communications network service (IECNS) and an individual electronic communications service (IECS) licence.
43. ISPA submits that there is a great deal that can be done to facilitate the development of small, local service providers rooted within communities. This will serve the dual purpose of creating jobs while deepening broadband penetration.
44. ISPA has developed materials for a training course for SMMEs and entrepreneurs looking to take up opportunities as ISPs or hotspot providers and will gladly share these with the Department if required.

Finalise the digital migration process

45. ISPA calls on the Minister to do everything within her power to complete the digital migration process as soon as possible. Only once this process has been finalised will valuable digital dividend spectrum be made available for broadband service provision.

Incentivise skills development, training and R&D funding

46. There is a critical shortage of specialised IT skills in South Africa, a phenomenon which is seeing increasing outsourcing of work to overseas entities.
47. It is obviously crucial that this trend gets turned around as soon as possible so that going digital leads directly to job creation in South Africa.

CONCLUSION

48. ISPA thanks the Minister and the Department for their consideration of these submissions and trusts they will prove to be of assistance.

Regards

INTERNET SERVICE PROVIDERS' ASSOCIATION

Per:

ISPA Joint Chairs

(the above intended as an electronic signature)