



5 March 2012

Acting Deputy Director General: ICT Policy Development
Department of Communications

For attention: Mr Norman Munzhelele
c/o Jullecsia Saul Jullecsia@doc.gov.za

Dear Sir

WRITTEN INPUTS TO THE DEPARTMENT OF COMMUNICATIONS ON THE ICT COMPONENT OF
THE NATIONAL DEVELOPMENT PLAN

1. We refer to letter from the Department of Communications (“the Department”) dated 21 February 2012 calling for written inputs on the draft National Development Plan (“the NDP”) released for comment by the National Planning Commission (“the NPC”).
2. ISPA is grateful to the Department for this opportunity to contribute to the formulation of a consolidated response to the NPC and sets out its comments below. ISPA confirms that it will attend the Red Room Discussion scheduled for the 8th March 2012.
3. ISPA finds itself in broad agreement with the vast majority of proposals and suggestions in the NDP.
4. In particular ISPA supports:
 - 4.1. The explicit identification of the need to facilitate greater competition in the ICT sector and the need for greater efforts to be made to allow equitable access to critical electronic communications infrastructure such as the local loop and radio frequency spectrum.

ISPA supports the call in the NDP for “South Africa to express an unambiguous commitment to intensifying competition”¹.

(our emphasis)

¹ p174

ISPA Management Committee:

Graham Beneke, Ant Brooks*, Marc Furman, David Gentleman, Wilmari Hannie*, Rob Hunter, Jenny King,
Mike Silber, Jaap Scholten, Elaine Zinn* (*ex officio)

The NDP foregrounds the perceived weakness of ICASA and the consequential onus on the Department to provide a clearer and more detailed policy framework within which ICASA will be required to function. ISPA submits that the starting point for such a policy framework is to make it explicit that policy and regulation of electronic communications as a whole must be viewed through the top-level objective of promoting competition in the provision of network services and the provision of retail electronic communications services.

- 4.2. The urgent need to introduce competition into the retail market for mobile electronic communications services, currently dominated by the duopoly between Vodacom and MTN given that the majority of South Africans will access broadband and voice services over wireless networks.
- 4.3. The singling out of Local Loop Unbundling (LLU) as an issue of particular importance to competition in the sector, coupled with the implementation of the structural separation of Telkom SA Ltd (“Telkom”). As indicated above the focus on local loops should apply to both wired and wireless local loops. Likewise vertical integration is not exclusively a characteristic of Telkom but is also evident in the mobile services market.
- 4.4. The recognition of the critical role of electronic communications in what the NDP identifies as “social protection”. The NDP regards electronic communications as a service which must be provided to citizens in order to secure and ensure their financial and social well-being;
- 4.5. The importance of developing m-Government to complement e-Government and the provision of information and education products and services which are accessible to all and which will ultimately lead to 100% e-literacy in South Africa;
- 4.6. The call for a far-reaching review of ICASA in order to clarify roles, strengthen accountability, update legislation and regulations and perform institutional design.
- 4.7. The creation of a unit in the Presidency (Monitoring and Evaluations) to undertake periodic regulatory reviews and to provide them with advice and support.

SPECIFIC COMMENTS

5. ISPA has set out its comments in line with the structure of the sections of the NDP dealing with the ICT sector.

Policies and planning priorities

6. The NDP identifies the following six policies and/or planning priorities for the ICT sector:

- Implement an enabling co-ordinated and integrated e-strategy
- An ICT sector that enables economic activity
- Affordable, widely available broadband for economic and social development
- Demand stimulation and job development
- The state, market structure and institutional arrangements
- Institutional capacity building and competencies

7. ISPA believes this is an acceptable classification of policy and planning priorities – although the first two could perhaps be merged - and will discuss each in turn below.

8. Implement an enabling co-ordinated and integrated e-strategy

8.1. ISPA believes that there is a clear and urgent need for a national e-strategy of the type proposed by the Commission. There needs to be recognition that all Government Departments and sectors of the economy have an interest in ICTs as a common economic enabler and that potential synergies between these department and sectors and the Department of Communications are translated into tangible benefits.

8.2. ISPA submits that one obvious example is the housing of Broadband Infraco (Pty) Ltd within the Department of Public Enterprises, while Sentech Ltd – which is earmarked to provide similar wholesale network services – falls under the Department of Communications. ISPA respectfully submits that such arrangements restrict the State from realising the full set of benefits available through the co-ordinated activities of SoEs.

8.3. ISPA further submits that there needs to be a discussion on the role of Telkom as a partly public and partly private entity within a developmental state. ISPA recognises the need to balance Telkom's imperative to be competitive in the market against its role in facilitating social development but – given the status of Telkom as a line organisation under the Department, we believe that a clear policy regarding its role in the market should be communicated.

8.4. ISPA supports the inclusion of the following principles in the national e-strategy as proposed in the NDP:

8.4.1. The need for an analysis of the benefits and costs of infrastructure duplication and options for infrastructure sharing;

8.4.2. The need for an analysis of the benefits and costs of infrastructure-based and service-based competition;

8.4.3. The need for targeted plans to develop the specialised institutional capacity required for policy responsiveness and the effective regulation of the sector; and

8.4.4. The need for a co-ordinated focus on both supply- and demand-side interventions.

8.5. A clear, shared vision informed by a detailed implementation plan is absolutely necessary.

9. An ICT sector that enables economic activity

9.1. ISPA welcomes the explicit recognition in the NDP that the main contribution of ICTs to economic development is indirect in that it has the potential to enhance communication and information flows in such a manner that general productivity and efficiency across industries is experienced. It is to be hoped that such recognition leads to a greater focus on and increased dedication of resources to the ICT sector.

9.2. The NDP notes that the current situation is characterised by an effective duopoly in the provision of mobile electronic communications network services and mobile electronic communications retail services as well as the “overwhelming dominance” of Telkom as a backbone and fixed access network provider.

9.3. The NDP recognises that this has resulted in “very high input costs” for business – which has a knock-on effect throughout the economy and retarded growth in related industries such as business process outsourcing – and that this is partially due to ineffective regulation.

9.4. The NDP proposes that this situation must be changed in order to ensure that ICTs are an enabler of economic activity in South Africa and not a retardant.

9.5. ISPA supports this proposal and submits that the introduction of competition in the mobile services market, through, *inter alia*, the drafting of regulations which will require incumbents to allow roaming and mobile virtual network operators (MVNOs), . The impact of even limited

service competition in the fixed line environment has unquestionably resulted in consumer benefits: lower per-Gigabyte pricing, uncapped products and a greater variety of innovative services being examples. 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.

10. Affordable, widely-available broadband for economic and social development

10.1. ISPA is aware that the Department has already placed broadband access at the top of its agenda and looks forward to engaging further with the Department in this regard.

11. Demand stimulation and job development

11.1. ISPA agrees with and supports the policy of investing in South Africa's future through investment in education around the use of ICTs.

12. The state, market structure and institutional arrangements

12.1. The NDP recognises spectrum assignment² as “perhaps the biggest regulatory bottleneck in the proliferation of rapidly deployable wireless technologies to meet the diverse needs to the society and economy”³.

12.2. ISPA agrees with this position but believes that the draft policy directions currently being finalised by the Minister of Communications will go some way to facilitating efficient assignment of radio frequency spectrum in future.

12.3. ISPA submits that the proposal in the NDP to look at alternative assignment methods for radio frequency spectrum licences in rural areas, such as reverse auctions, merits further investigation.

12.4. ISPA strongly supports the position taken in the NDP that spectrum once assigned must be fully-tradable⁴.

12.4.1. ISPA is aware that ICASA had proposed the introduction of fully-tradable spectrum in the drafts leading up to the publication of the final ICASA Radio Regulations 2010 but

² The NPD refers to “allocation” of spectrum but we submit the more correct term is “assignment”

³ p174

⁴ p174

that provisions designed to achieve this were omitted from the final version. ISPA is of the view that no substantial reasons were given for such omission other than to indicate that the proposal needed further study.

12.4.2. ISPA believes that the case for the introduction of fully-readable spectrum rights is obvious and urgent. Not only will this increase the overall efficiency of use of the South Africa's spectral assets but it will also facilitate the entry of SMME serving smaller geographic areas outside of the major urban centres.

12.4.3. The current dispute between Sentech Ltd and Screamer Communications, while regrettable, clearly illustrates the benefits to all parties of allowing a spectrum licence holder to sub-lease or sell a part of its spectrum holdings. In this way valuable spectrum which is lying fallow can be put to work for the socio-economic benefit of South Africa.

12.5. ISPA also supports the NDP's call for regulations to be finalised that will discourage spectrum hoarding. ISPA believes that an effective "use-it-or-lose-it" regime is long overdue.

12.6. ISPA recognises the balancing act to be performed in assigning spectrum to new entrants to facilitate competition as against ensuring that incumbents are not restricted from adopting new technologies. ISPA believes this to be a balance which needs to be achieved on a case-by-case basis taking into account the total spectrum assets available for assignment. ISPA wishes to emphasise that it is a fallacy that only incumbents are able to build national networks which adopt the latest technologies – there are a number of local and international entities who have already expressed an interest in doing just this.

12.7. In the "Trade-Offs" section of the NDP's ICT proposals, the NPC notes that there is a trade-off between auctioning spectrum now in the knowledge that this is based on inaccurate information about current assignments and usage levels and delaying until after the completion of the audit. ISPA does not believe there is any reason that the audit for the 0 – 3 GHz range should not be completed prior to the expected assignment process taking place in late 2012 or early 2013.

13. ISPA agrees with the role of an independent regulatory authority identified by the NPC, viz.:

"These regulators should ultimately safeguard reliable and competitively priced services for consumers, and promote affordable access for poor and remote households. They should ensure that utilities and operators are efficient and financially viable, so that can invest in maintaining, refurbishing and extending these networks."⁵

⁵ p138

13.1. ISPA submits that the role and authority of ICASA should be no more and no less than is required to discharge this mandate. ICASA, for example, should not have a direct consumer protection function as this is more properly the focus of the National Consumer Commission as a cross-sectoral regulator. Indirect consumer protection through pricing interventions and the enforcement of quality of service minima should remain the ambit of ICASA.

13.2. If ICASA is to effectively discharge even this restricted mandate then it is immediately apparent that the structure of the regulator and the availability of resources to it need to be addressed urgently.

14. Institutional capacity building and competencies

14.1. The NDP highlights the ongoing structural conflict occasioned by the State's ownership of a substantial shareholding in Telkom and calls for more coherent approaches and clearer strategies to be applied where the State is involved in setting policy for itself and its competitors. This also applies to the participation of Sentech and Broadband Infracore in the sector and the increasing focus on broadband networks at provincial and local government levels.

14.2. ISPA supports this call and the balance of the points raised by the NPC under this heading.

Phasing

15. ISPA supports the short term (2012-2015) objectives set out in the NDP. In particular ISPA submits that the Department should take cognisance of the following:

15.1. The need to fast-track the local-loop unbundling process;

15.2. The need to ensure that legal obstacles to the introduction of full service-based competition in the retail services market are removed and an open access model is adopted across the board in the electronic communications network service or infrastructure markets.

15.3. The urgent need to assess the current status of radio frequency spectrum assignment and usage in South Africa and to take steps to free up underutilised spectrum for efficient use.

15.4. The need to ensure adequate development of backhaul facilities;

15.5. The need to review State Owned Enterprises (SoEs) to ensure that they are being effective in reaching their objectives

15.6. The need to effect structural separation of Telkom SA Ltd (“Telkom”) to ensure that the national backbone is separated from the services offered by the historical incumbent to create a common carrier with open-access policies to ensure access by service competitors.

16. ISPA submits that the following should also be short-term objectives:

16.1. The need to develop the Guidelines for the Rapid Deployment of Infrastructure as contemplated in section 21 of the Electronic Communications Act 2005 (“the ECA”). The deployment of fibre is critical to a competitive future and ISPA submits that the Department should do everything possible to facilitate co-ordinated deployment of fibre networks to handle the massive explosion in backhaul requirements that will accompany greater broadband penetration.

16.2. The need to create a practical and effective legislative framework and institutional capacity to regulate anti-competitive conduct and price distortions in the electronic communications market. The current process under Chapter 10 of the ECA is cumbersome and provides too many opportunities for legal review and ICASA is ill-equipped to utilise it.

16.3. The need to create a practical and effective framework setting out the meaning and content to be ascribed to the term “open access” and the manner in which it will be enforced.

17. ISPA supports the medium term (2015-2020) objectives set out in the NDP. In particular ISPA submits that the Department should take cognisance of the following:

17.1. The full enablement of e-Governance; and

17.2. The focus on stimulating entrepreneurship and the development of local content and software development industries.

18. ISPA supports the long term (2020-2030) objectives set out in the NDP. In particular ISPA submits that the Department should take cognisance of the following:

18.1. The provision of electronic communications services to all schools, health facilities and similar social institutions in South Africa; and

18.2. Ensuring that all South Africans have access to affordable voice and data communications.

CONCLUSION

19. ISPA thanks the Department for their consideration of these submissions and looks forward to the participating in further discussion. We believe that we are currently in a make-or-break window of opportunity in the sense that our actions now will determine whether or not ICTs play their role in the facilitation of growth and job creation in South Africa.

Regards

INTERNET SERVICE PROVIDERS' ASSOCIATION

Per:

ISPA Joint Chairs

(the above intended as an electronic signature)