

Chairman's Review and Executive Summary

IT is my pleasure to present to Parliament the annual report of the Independent Communications Authority of South Africa (ICASA) for the financial year 1 April 2005 – 31 March 2006.

Suffice to say that the period under review has been eventful, with gigantic challenges and daunting tasks. This notwithstanding, we at ICASA believe that we rose to the occasion as perusal of the detailed annual report will testify.

In summary the Authority has delivered on its mandate on the following licensing and projects:

- Community Radio Policy Review;
- Licensing 12 Community Radio Stations in the Nodal Points of the Integrated Sustainable Rural Development and Urban Renewal Programme;
- Granting Radio 702 an FM licence;
- Amendment to the KAYA FM licence;
- Amendment of the P4 licences, Cape Town and Durban;
- Amendment of Orbicom licence;
- Publication of Regulation and Invitation to Apply for Subscription Broadcasting Services;
- Analysis of Commercial Radio Secondary Market Applications;
- Self Help Regulations;
- Granting of Special Events Licences;
- Code of Practice for telecommunications and Broadcasting sectors;
- Licensing the Second Network Operator;
- Amendment to the WBS Licence;
- Approval of several telecommunication operators tariff lodgements;
- Licensing of Value Added Network Services (VANS);
- Processing Cell C's 3-G application;
- Licensing frequency Spectrum Operators
- Facilitating the Square Kilometer Array (SKA) bid;
- Numbering Plan Framework;
- Mobile Number Portability;
- Mobile COA/CAM;
- Type Approval;
- Regulation on Standards.

Invited Public Comments on:

- 5.725 – 5.875 GHz for broadband Fixed Wireless Access;
- broadcasting and non-broadcasting operators;
- ADSL Satellite Licensing Framework;
- Possible Sharing of the 800 MHz frequency spectrum between Draft Regulations;

- Draft Regulations and Guidelines on Interconnection and Facilities Leasing;
- Handset Subsidy Inquiry;
- Mobile Pricing Inquiry.

The enactment and promulgation of the Electronic Communications Act and the Icasa Amendment Act is indeed the crossing of the Rubicon and a giant quantum step in the journey towards a truly liberalized and deregulated market.

The new legal framework provides ICASA with an additional mandate to:

- Establish a Consumer Advisory Panel for strengthening consumer protection and redress;
- Establish a Complaints and Compliance Committee for expediting the resolution of complaints;
- Prescribe regulations setting out a Code of Good Practice on People with Disabilities applicable to all categories of licences;
- Encourage competition in the communications industry and deal with pricing issues;
- Promote delivery of affordable services, universal access and Bridging the Digital Divide;
- Promote investment in the communications industry;
- Incorporate the Postal Regulator into ICASA.

Phased implementation of the Act within the first 2 years will entail the following:

- Audit of all telecommunications, broadcasting and radio frequency spectrum licences, regulations, notices and position papers to facilitate conversion to a new regulatory regime;
- Redraft existing licences and continue to license new market entrants;
- Identify exempt services;
- Publish a Conversion Gazette within 30 days of ECA commencement;
- Map the licence conversion process;
- Launch Public Awareness Campaigns to ensure public awareness and participation, as well as to ensure certainty in the communications industry.

We will also have to continue with Current Licensing Projects for:

- Under Serviced Area Licences (USAL) for Phase 3;
- Secondary Markets Broadcasting Applications;
- Invitation TO Apply on community Sound Broadcasting;
- Invitation To Apply on Subscription Broadcasting;
- Interconnection and Facilities Leasing Guidelines;
- Handset Subsidy Regulations;
- Mobile Pricing;
- Telkom Licence Amendment process;

- Swiftnet Licence Amendment process;
- Broadcasting Ownership and Control amendment proposal before the Minister;
- Invitation To Apply on Community Television;
- Broadcasting licence renewals.

The ramifications of the new legislations are a great challenge in themselves. The key principles by which the market for services will be governed are:

- Creating competitive safeguards by putting appropriate measures in place to prevent major suppliers from engaging in anti-competitive practices such as cross-subsidization, predatory pricing, and margin squeeze;
- Ensuring that procedures, terms and conditions applicable to SMPs are non-discriminatory at rates no less favourable than those provided for subsidiaries or affiliates. They should be offered in a timely manner at cost oriented rates in a transparent manner and be publicly available in the form of a Reference Interconnect Offer (RIO).
- The definition of universal service obligation to be imposed;
- Information to be publicly available on the criteria and the terms and conditions of individual licences. The reason for any denial of a licence application should be made known to the applicant upon request.
- That the regulator is separate from and not accountable to any supplier of services. The decisions and procedures used by the regulator must be impartial with respect to all market participants;
- The allocation of scarce resources such as radio frequencies and numbers must be earned in an objective, timely transparent and non-discriminatory manner.

The general policy objectives of the Electronics Communications Act (ECA) are to include:

- increasing the availability and quality of services to domestic and business users;
- encouraging and supporting the successful introduction of new technologies and services especially mobile telephony and access to internet and other information technologies;
- encouraging the injection of capital and knowledge through domestic and foreign direct investment;
- creating and maintaining a pro-competitive market through effective and transparent regulation;
- the equitable and meritocratic allocation of scarce resources between different market participants;
- maximizing the net economic and social worth of the sector including its strategic use as a catalyst for economic, social and technological development in other areas of the economy;
- provision to broaden economic participation in the sector by SMME and primarily historically disadvantaged groups

The primary focus of the ICASA Amendment Act (IAA) is with the fundamental governance of the sector and establishing a solid legal basis by which decisions can be made and disputes are adjudged. The detailed mechanisms and procedures by which this governance will be achieved will be described in the form of regulations pursuant to the twin Acts.

It is therefore incumbent for one to establish a common understanding by analyzing or as it were unpack these twin legislations. The basic structure and functioning of the Authority is defined by these Acts. Organizationally the regulatory model is a three-level hierarchy where:

- Policy development vests with the Minister of Communication while;
- Detailed regulation and policy implementation is the remit of the Authority and;
- Service provision fall within the ambit of the various network operators and service providers.

The placement of the Authority in this fashion facilitates the transparent and non-discriminatory implementation and application of policy especially where the Government still retains ownership rights to one of the principal operators.

In order to be productive and efficient, the regulator will continue to establish and maintain effective relationships with the three core groups most affected by its work; the government, users and operators.

The relationship between the regulator and various regulated operators must be maintained and based on mutual trust and respect and recognition that a successful regulatory regime and ICT sector is in the best interest of all parties involved.

The relationship between the regulator and the Ministry will continue to be one of ongoing trust and confidence. The regulator can only operate with the sustained support of the government with which rests ultimately the responsibility for the health of the sector.

The collegial style regulator, such as ICASA offers greater capacity for deliberation and debate prior to decisions being made and is less likely to be suborned by particular political or commercial interests.

It is important to acknowledge that effective regulation cannot be accomplished without adequate funding. The attainment of regulatory objectives is contingent upon the Authority being able to hire skilled professional staff and purchase consulting services. Fortunately the Government is conscious of this fact and is pro-actively in consultation with the National Treasury for relief.

We aim to establish an organizational structure which is capable of engaging and retaining staff that have appropriate qualifications, motivation and experience, are highly trained and are capable of understanding and assessing technological and industry trends.

The maintenance of an on-going training and staff development programme will be critical and the organizational structure will be flexible enough to accommodate change. Where the Authority lacks certain skills in-house consideration will be to engaging external experts on an interim basis.

The key responsibilities of the Authority are to be:

- a driver and manager of sector reform;
- a facilitator of broader socio-economic objectives;
- a defender against undue dominance of the marketplace by one or more participants ;
- a catalyst for private investment;
- an arbiter of disputes;

It is important that the Authority changes with the markets and technological trends.

The external influences and pressures in determining an appropriate course of action at any given time are:

- Pressures to achieve short term gains at the expense of long-term objectives;
- Political pressure as a result of lobbying by operators, suppliers and users;
- Fashions and trends across the ICT sector;
- Trends towards international and regional harmonization of regulatory practices;
- The need to attract investments in the sector;
- Political and popular pressure to prioritize social and environmental objectives above commercial considerations;
- Budgetary constraints in financing the regulators internal resources;
- The effect of heightened public and media interests;
- General suspicion of or resistance to change;
- A risk of unwillingness on the part of individuals to take necessary but unpopular decisions if they fear that such a course action may harm their career prospects once their term of regulatory tenure expires.

In pursuance with building credibility and trust, the Authority will continue to demonstrate the highest possible standards of efficiency, impartiality, and professionalism in all its activities. Our goal is to secure the goals which have been set by the government for the welfare of the commonwealth.

We will be unhesitating in challenging any unacceptable conduct on the part of market participants. We will at all times remain consistent with accepted

regulatory norms of efficiency, independence, objectivity, professionalism and transparency.

One of our functions and responsibilities, as the regulator, is to support educational and health institutions in carrying out their programmes through electronic communication and to facilitate access to services for the physically disabled.

The remit of ICASA, the regulator, is in licensing and resource management. We have to develop the criteria and procedures for the creation and awarding of new licences as well as the regulatory fee structures levied in respect of licence awards. Reasonable and equitable access to resources such as radio frequency spectrum and telephone numbering blocks is a prerequisite for a competitive environment as well as an important source of income for the government.

We will, on a continual basis, place on at least the larger operators, obligations to provide a defined range of minimum services to vulnerable members of society.

Relevant provisions for competition are to include obligations that may be placed upon designated Significant Market Players (SMPs) such as:

- resale of their services;
- the provision of interconnection access to network elements including unbundled local loops at cost oriented and non discriminatory terms and conditions;
- the mandatory cost oriented rates and tariffs.

With regard to Inspection Control and Enforcement , the law describes the powers of the Authority to monitor and investigate the activities of the market players and where necessary to apply and enforce sanctions against those deemed to be infringing either the terms of the applicable legislation or of the law itself.

In order to support such monitoring the law provides for the statutory reporting of information by operators to the Authority and for the legal right of the regulator and its designated representatives to enter premises, require information or obtain documents subject to appropriate confidentiality restrictions.

In the case of infringement, provisions will be made for a suitable system of enforcement such as the issuance of a formal notice requiring full compliance within a specified period. Where compliances have proven ineffective or for particularly serious offences , these may range from restrictions of licence through suspensions or revocations of the licence, the imposition of a financial penalty or even criminal prosecution..

Consideration is also made for an appeal to a court of law where it is claimed that the regulator's decision lacks proper legal grounding or is unjust.

The convergence, blending and integration of IT, broadcasting and telecommunication has increased the rate of change exponentially over the last 10 years and has affected all business organizations. We therefore have no other choice but to embrace change, be adaptive and generative. ICASA is by design or default at the hub of this hurly burly.

It will therefore be remiss if we do not redefine ourselves in order to be a responsive, efficient, credible, independent and effective Authority.

Let me therefore take liberties in redefining the purpose for ICASA's existence. ICASA's vision has been articulated in different formats at different times throughout its brief history.

It can be simply crystallized into **THE TRANSFORMATION SOUTH AFRICA INTO AN INFORMATION SOCIETY AND KNOWLEDGE BASED ECONOMY.**

At a basic level the concept of the knowledge based economy or information society revolves around increasing access to essential services such as education, healthcare and government services for all members of society especially those living in remote rural areas.

Pursuant to the vision the mission is to **REGULATE THE ICT SECTOR SO AS TO ACHIEVE A COMPETITIVE DEREGULATED ENVIRONMENT DELIVERING A WIDE RANGE OF SERVICES AT AFFORDABLE PRICES.** This, we believe, will assist in the overall economic growth and social development of the country.

The supporting generic goals will be to:

- to create a competitive environment to support the national economy by ensuring that there is a comprehensive and sound framework for ICT services;
- develop and implement regulations that should promote an environment that will encourage investment in the sector as the basis for the development of the information economy;
- establish regulatory policies that promote competition, innovation and investment in services and facilities providing widespread access to ICT;
- ensure the availability of the best high speed national and international connectivity at prices competitive with those on offer in other international markets.

The strategies that will be deployed for accomplishing for achieving the objectives are:

- identification of operators with Significant Market Power (SMP) and ensuring that they offer wholesale services at cost based tariffs;

- promote and advance universal service;
- establishing a National Numbering Plan providing capacity for at least the next 20 years;
- create an environment that stimulates investment and innovation in new broadband technologies;
- provide mission-critical training and development of staff and offer relevant educational and advancement opportunities in order to ensure excellence.

The detailed plans of action for implementing the strategies are:

- issuing licences in an open and transparent manner taking into account the effective use of scarce resources;
- establish licence fees which reflect the cost of regulation and effective use of scarce resources while ensuring that the price remains reasonable for the consumer;
- encourage universal access in a manner that is consistent with competition;
- make available, allocate, assign and manage spectrum and numbering resources in an efficient and non-discriminatory manner;
- develop and implement an appropriate interconnection regime to assure non-discriminatory interconnection at cost based prices using fully allocated cost accounting principles;
- develop and implement an appropriate tariff regulation regime to assure competition and availability of services consistent with a reasonable return on operators' investments;
- foster both facilities-based and service competition;
- increase digital broadband competition from multiple technology platforms;
- issue licences in an open and transparent manner taking into account the effective use of scarce resources and the sustainable provision of competitive services;
- set and collect regulatory fees on the basis of cost recovery;
- enforce licence conditions and cease unlawful services;
- ensure the development and enforcement of guidelines for the deployment of xDSL and unbundled local loop on a non-discriminatory basis at cost based prices;
- eliminate unnecessary regulatory barriers to the deployment of broadband services;
- identify ways to leverage technology to improve or streamline various operations such as licensing, regulatory fee assessment, registration and financial operations in order to minimize waiting time and responsiveness to consumers and service providers;
- employ by matching people to job description, train, equip and retain a diverse and expert staff essential to the regulators critical functions;

- draw up detailed terms of reference and appoint international consultants in transparent manner.

Finally I would like to express my greatest appreciation and thanks to:

- His Excellency the President for expressing his confidence and trust in appointing me as the skipper of the organization to help in contributing to the policy objectives of the government;
- The Minister, Deputy Minister and the Director General in the DOC for their sustained support and upon whose shoulders rest the ultimate responsibility for the health of the sector;
- The Portfolio Committee on Communication for their watchdog role, advice and support they continue to provide;
- Ex Chairman of ICASA for anchoring and laying the foundation for this organization;
- Outgoing Councillors for the legacy they have bequeathed;
- Fellow councilors, management and staff at ICASA for the sacrifices, endurance blood sweat and tears in bearing up with me and ensuring that ICASA delivers on its mandate;
- The customers, end-users and subscribers, our prime constituency, their patience and forbearance for falling short in meeting their needs;
- The network operators and service providers for mutual trust and respect we have towards each and noting that we are all in this together;

We hope that the new vistas and opportunities that the new legislation will usher in the millennium and the general welfare of the commonwealth by contributing towards the economic growth and social development of the country.