



19 October 2009

**The Deputy-Director: Infrastructure**

Department of Communications

**Attention: Mr Petrus Khoza**

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**ISPA SUBMISSION IN RESPECT OF THE DRAFT NATIONAL BROADBAND POLICY**

We refer to the call for submissions on the Draft National Broadband Policy published by the Department of Communications and attach hereto the Submission of the Internet Service Providers' Association (ISPA).

Regards

INTERNET SERVICE PROVIDERS' ASSOCIATION

Per:

ISPA Joint Chairs

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**ISPA Management Committee:**

Ant Brooks\*, Marc Furman, Rob Hunter, Jenny King, Greg Massel, Lynne Orrock,  
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**INTERNET SERVICE PROVIDERS' ASSOCIATION**

**SUBMISSION ON THE**

**DRAFT NATIONAL BROADBAND POLICY**

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## **Introduction**

1. The Internet Service Providers' Association (ISPA) congratulates the Department of Communications ("the Department") for the publication of a Draft National Broadband Policy ("the Draft Policy") and for its recognition of the need for a policy framework to inform the development of broadband infrastructure and services in South Africa.
2. ISPA, noting the decisions of the South African Government relating to the building of an all-inclusive information society and the central role of broadband infrastructure and services in achieving this, wishes to pledge the unequivocal support of its members to the realisation of the social and economic benefits identified in the Draft Policy.
3. Hindsight reveals that initiatives undertaken by the public and private sectors designed to address the lack of affordable broadband infrastructure and services in rural areas of South Africa have been hampered by a lack of clear policy guidance and concrete objectives. ISPA is hopeful that the development of the current set of policies relating to broadband, spectrum and local and digital content will serve to remedy this state of affairs, which flows from the Electronic Communications Act ("the ECA") being adopted and implemented without a preceding policy process.
4. We have set out below our submissions in respect of the Draft Policy and confirm that we would wish to avail ourselves of an opportunity to participate in any public hearings or the like which the Department may choose to conduct.

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## About ISPA

5. ISPA, formed in 1996 to further the interests of the Internet access and service provider industries, is an Industry Representative Body (IRB) recognised by the Department of Communications (“the Department”) under Chapter 11 of the Electronic Communications and Transactions Act 25 of 2002.
6. ISPA currently has more than 150 members, comprising large, medium and small Internet service and access providers and is the largest representative body of ECS and ECNS licensees in South Africa.
7. The vast majority of ISPA’s members are providers of broadband services while a large number are also broadband infrastructure providers with many others in the process of planning or rolling out such infrastructure. It is only since January 2009 and the completion of the licence conversion process that ISPA’s members have had their right to construct and operate broadband infrastructure confirmed. There has accordingly been insufficient time for the full effects of the infrastructure licence liberalisation flowing from licence conversion to make a significant impact on the availability and affordability of broadband infrastructure and services.
8. ISPA’s members accordingly have a direct interest in the development of a National Broadband Policy for South Africa.

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## **Submission relating to the depth and inclusivity of the public participation process**

9. ISPA submits that the public participation process to be followed in the finalisation of the Draft Policy does not, with respect, appear to provide sufficient opportunity for all stakeholders to prepare considered representations to the Department on a matter which is both complex and of fundamental importance to not only the electronic communications industry but to the whole of South Africa.
10. ISPA has noted the 2009 World Bank study indicating that an increase in broadband penetration of 10% equates to a 1.38% increase in Gross Domestic Product (GDP) in developing countries. Stated in these terms, the imperative of increasing South Africa's broadband penetration rate is a blunt challenge to Government and industry to play their part in ensuring this and the further benefits associated with broadband and identified in the Policy are realised.
11. ISPA believes that a broadband policy and the process leading up to its finalisation represent the opportunity for the Department to solicit the maximum possible buy-in from all stakeholders and that a process of obtaining specialist input and debating the relevant issues would be extremely useful in obtaining the commitment of roleplayers and agreement on the roles to be played.
12. It is in this light that ISPA is of the belief that the Department has missed an opportunity - beyond the limited opportunity presented by a call for written submissions with a thirty day deadline - to draw on the contributions of industry and myriad other stakeholders. It is also unfortunate that the limited opportunity to comment on the Draft Policy coincides with calls for comment on two other critical documents – the Draft National Spectrum Policy and the Draft Local and Digital Content Development Strategy – as also recent events surrounding the reduction of mobile termination rates.
13. ISPA respectfully submits that, given the importance of a National Broadband Policy, a more consultative process should be followed. ISPA calls on the Department to adopt such a process in order to ensure that the finalised policy reflects the input of all interested parties and is the strongest document it can possibly be.

## **Submissions relating to the definition of broadband**

14. ISPA notes that the Draft Policy defines broadband as “an always available, multimedia capable connection” and agrees with the Department’s assessment that there are a large number of divergent definitions of the term used both locally and internationally. As stated in the Draft Policy these definitions vary principally according to the minimum speed required before a connection will be regarded as a broadband connection.
15. ISPA notes further the proposed distinction to be drawn between basic and commercial broadband. Although this distinction and its intended use within the context of the Draft Policy are not developed further in the document, ISPA is of the view that it could prove to be a useful one, particularly with regard to catering for variation in demand-side requirements as between developed and underdeveloped economic areas in South Africa.
16. ISPA respectfully submits that it would be preferable, notwithstanding the variety of connection speeds used internationally to define broadband, to link the definition of broadband to be used in South Africa to a specific (yet flexible) connection speed.
17. Although ISPA has not had sight of the international benchmarking report compiled for the Department by BMI-T, we note from media articles relating thereto that South Africa was found to have high broadband tariffs in conjunction with the slowest broadband speeds of the peer countries surveyed.
18. It follows that the Draft Policy should seek to address both the affordability and quality of broadband in South Africa.
19. ISPA wishes to makes the following suggestion in this regard for the consideration of the Department:
  - 19.1. As noted above, the Draft Policy refers to the ITU standardisation sector definition of 1.5 to 2 Mbps & the ITU development sector definition of 256 kbps.
  - 19.2. In order to align the development of broadband in South Africa with its development globally, ISPA suggests that the Department consider tying the definitions of “basic” and “commercial” to the ITU development and standardisation sectors respectively. The term “broadband” and the basic and commercial variants thereof could be defined in the National Broadband Policy with reference to the corresponding ITU definitions:

“Basic Broadband” is defined as per the current definition adopted by the Development Sector of the International Telecommunications Union (ITU)”

“Commercial Broadband” is defined as per the current definition adopted by the Standardisation Sector of the International Telecommunications Union (ITU)”

- 19.3. The definition to be employed must contain an aspect relating to the speed of the broadband services being provided and this speed must be determined to be adequate to meet the two sets of user demands for basic and commercial services respectively.
- 19.4. These definitions would need to be reviewed regularly to reflect bandwidth demand from new applications and services. The current movement towards “cloud computing” – in terms of which applications are located on the World Wide Web and not on the users’ computer or device – is of itself likely to result in a raising of the minimum speed needed by commercial users of broadband services.
- 19.5. ISPA believes that an approach which references definitions to be adopted under the policy with those adopted by the ITU would allow valuable international perspective in evaluating South Africa’s progress in building an information society as against its peers and the broader global community. Any review of these definitions by the ITU would perforce amend the definition adopted in South Africa.

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## **Finalisation of the USAASA Definitions Project**

20. ISPA calls on the Department to take such steps as are available to it to ensure that the long-running Definitions Project currently being undertaken by USAASA is now brought to a rapid conclusion.
  
  21. ISPA regards the outcomes of this Project as critical to informing the finalisation of a national broadband policy and the evaluation of its impact in moving South Africa towards an all-inclusive information society. It is also critical to a number of other initiatives including the review of community service obligations imposed on electronic communications licensees.
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## Submissions relating to the Broadband Policy Objective

22. The Draft Policy states that its objective is:

“To facilitate the provision of affordable access to Broadband infrastructure to citizens, business and government and also stimulate the usage of broadband services at national, provincial and municipal levels.”

23. ISPA wishes to place the following before the Department for its consideration in finalising this Objective:

23.1. ISPA suggests that the Objective should explicitly recognise the socio-economic objective which a national broadband policy seeks to pursue – the building of an all-inclusive information society. This reflects the three key objectives which are specified in Section 2 of the Draft Policy, ensuring that they are all properly captured in its overall Objective.

23.2. ISPA suggests the Objective should refer to access to broadband infrastructure and access to broadband services.

23.3. ISPA suggests that the Objective should refer to the co-ordinatory role of the national broadband policy in providing a coherent framework for initiatives aimed at stimulating broadband penetration.

23.4. ISPA believes that the reference to “national, provincial and municipal levels” constitutes an unnecessary limitation on the Objective. The National Broadband Policy should seek to stimulate usage by all citizens – natural and corporate – and by all levels of Government.

24. ISPA accordingly offers the following suggested amendments to the Objective as set out in the Draft Policy:

““To build an all-inclusive information society by facilitating and co-ordinating the provisioning of affordable access to Broadband infrastructure and services to citizens, business and government and also to stimulate the uptake and usage of broadband services. ~~at national, provincial and municipal levels.~~”

25. ISPA further calls on the Department to be bold and to set concrete goals and milestones for South Africa’s progress in becoming an all-inclusive information society. South Africa needs to be aggressive in its pursuit of this objective and in seeking to improve its relative position according to relevant

international indices measuring broadband penetration, quality of broadband services and the extent of the intra-national digital divide.

26. ISPA supports the call raised by the South African National Broadband Forum, to whose draft policy ISPA is a signatory, for South Africa to be the leader on the African continent in terms of penetration and cost of broadband by 2014. Alternatively the Department may wish to specify goals and milestones derived from its own benchmarking study.

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## **Context for policy interventions related to affordability of broadband services**

27. Paragraph 3.1.3.1 of the Draft Policy confirms that competition is a mechanism to be used to drive down the cost of electronic communications. It then, however, continues to state that “[B]etter availability of Broadband will increase competition in the market place, which will effectively bring down the cost to communicate”. ISPA is of the view that it is competition – together with State intervention and demand-side stimulation - which will in the first instance create greater availability of broadband and that it is this increase in supply and choice which will lead to a lowering of costs.
28. ISPA believes that an overview which distinguishes the five primary elements of the cost of connectivity is useful in placing the intervention in context:
- 28.1. International peering and transit in London and other termination points: this area is already highly competitive and accordingly characterised by low costs and market efficiency.
  - 28.2. International submarine connectivity: this area has already seen increased competition with significant future developments in progress or in advanced planning stages. South Africa stands happily on the brink of resolving the high costs associated with this element and the SAT-3 monopoly.
  - 28.3. National long distance connectivity: this element remains subject to price distortions, notwithstanding a major increase in deployments on a shared and individual basis. It is likely that constraints in the supply of national long distance connectivity services will be emphasised by a vastly increased supply of international bandwidth. ISPA believes that the Draft Policy correctly stresses the need for further deployment of national long distance links. ISPA also supports the intended Broadband Infraco intervention to correct pricing distortions in this market segment, subject to the clear delineation of the obligations of Broadband Infraco in its licence document.
  - 28.4. Metro-reticulation / backbone: this element remains dominated by Telkom with municipal projects in the metros largely underperforming although other operators are slowly building capacity. ISPA submits that this element is subject to pricing distortion but that is likely to ease due to increased self-provision by licensees and players such as Dark Fibre Africa (Pty) Ltd.
  - 28.5. Access / last mile: this element remains the most problematic, principally due to the fact

that infrastructure is owned and operated by a single provider. It is evident that, until there is effective unbundling of the wired and wireless loop, the benefits of interventions higher up the connectivity chain will not be realised to the advantage of South Africans. The lack of progress in opening up the local loop to competition has been exacerbated by the lengthy delays experienced in the issuing of new licences for radio frequency spectrum suitable for the deployment of access networks.

29. While the benefits of competition are being felt in all of the other cost elements set out above, they remain absent in the provision of broadband services and network services over the “last mile” and it is no exaggeration to state that the unbundling of the local loop is the single most important regulatory intervention as regards lowering the cost of broadband services in South Africa.
30. ISPA accordingly calls on the Department to give explicit recognition in the Draft Policy to the vital importance of the unbundling of the local loop to the achievement of the objectives of South Africa's National Broadband Policy and to reaffirm its commitment thereto.
31. ISPA also calls on the Department to give explicit recognition in the Draft Policy to the importance of optic fibre deployments both at national and local level in ensuring that South Africa is capable of keeping pace with global developments and the needs of its citizens in the medium to long term.

## **Submissions relating to the Key Priority Areas set out in the Draft Policy**

32. ISPA welcomes the explicit recognition of a right to basic broadband held by all citizens in South Africa.
  - 32.1. ISPA submits that the Department should give consideration to grounding this right within the fundamental right to freedom of expression in the Bill of Rights in the South African Constitution.
33. ISPA welcomes the policy statement in paragraph 4.1.4.1 of the Draft Policy to the effect that “appropriate frequency spectrum will be identified and set aside for Broadband applications”.
34. ISPA takes issue with the statement in 4.2.2.3 that “Government ... discourages the duplication of network infrastructure in such areas”. There are few areas where no infrastructure at all exists. However, that infrastructure is usually in the hands on one, or a few, operators, which therefore are able to enjoy monopoly pricing. South Africa needs competition in physical infrastructure between at least five major players, plus some minor players, for true competition to exist, and therefore for the pricing benefits to be felt by the public. Furthermore, the technologies used in broadband respond well to the availability of alternative routes in the event of a failure of the primary route. For both these reasons, duplication of infrastructure should be considered a benefit, rather than as something to be discouraged.
35. ISPA supports the emphasis on physical infrastructure sharing as set out in paragraph 4.2.4, subject to the above.
36. ISPA supports the expression of the role of the State as set out in paragraph 4.4.1.1 with particular reference to the identification of such role as being to enable competition and the development of broadband infrastructure and services by industry while not operating directly in the retail market.
37. As stated above, ISPA supports the right and interest of the State to invest where there is market failure but urges the Department to recognise that there is currently regulatory failure in South Africa and that policy in the past has sought to constrain rather than enable competition. It is thus in most instances extremely difficult to state categorically that there has been a market failure due to the fact that markets have not been permitted to develop or operate without policy and regulatory restriction.
38. ISPA supports the expression of the role of provincial and local government as expressed in section 4.4.2.2 and the recognition of the need for strict control of local government entities which choose to operate their own electronic communications networks to ensure that these are optimally employed.

39. ISPA respectfully submits that it is an oversight for the Draft Policy not to specify the roles of ICASA and USAASA in attaining the objectives of the National Broadband Policy. Both parties have critical roles to play and ISPA would expect that these roles should be clarified. Indeed it is noteworthy that ICASA, which has a critical role to play in lowering the costs of communications and overseeing the development of an access framework and the unbundling of the local loop, is not mentioned throughout the Draft Policy.
40. ISPA repeats its calls for the Department to take urgent steps to ensure that the communications regulatory authority is in a position to play its role. At the time of making this submission there are a number of critical sets of regulations which are long-outstanding and the failure of ICASA to finalise these is prejudicing competition and, it is submitted, holding back the development of a wider choice of Broadband services for South African consumers.
41. ISPA notes that the Department has recognised the importance of stimulating demand for broadband infrastructure and services and that this is a central feature of the Draft Local and Digital Content Development Strategy currently being finalised by the Department.
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## Base-level broadband penetration and assessment of the success of the National Broadband Policy

42. Paragraph 1.1.3 of the Draft Policy sets out the current broadband penetration statistics for South Africa: just over 1 million broadband connections translating into a penetration rate of approximately 2%. ISPA notes that these figures tally with those published by the ITU.
43. Paragraph 4.5.2 of the Draft Policy provides that broadband penetration will be used “as the measure to determine the success of this policy” and notes that the policy and its implementation will be reviewed should broadband remain inaccessible and unaffordable to citizens in South Africa.
44. ISPA wishes to bring to the attention of the Department the latest figures relating to broadband penetration which it has been able to gather.

Licensee / Industry sector	Subscriber numbers
Vodacom 3G/HSDPA	825 000 <sup>1</sup>
Telkom ADSL	548 015 <sup>2</sup>
MTN 3G/HSDPA	300 000 <sup>3</sup>
iBurst	120 000 <sup>4</sup>
Neotel NeoConnect & NeoFlex	30 000 <sup>5</sup>
Wi-Fi/WISP	40 000 <sup>6</sup>
Sentech MyWireless	0 <sup>7</sup>
	<b>1 836 015</b>

45. ISPA also wishes to make the following submissions regarding the criteria to be utilised in assessing the impact of the Draft Policy and informing any review or changes in implantation which may be necessary.

45.1. ISPA believes that a more nuanced approach than looking broadly at broadband

<sup>1</sup> Figure as stated by Vodacom CEO; Vodacom exceeds 1 million broadband connections, 11 August 2009, <http://mybroadband.co.za/news/Broadband/9131.html>

<sup>2</sup> Telkom SA Ltd Annual Report for year ending 31 March 2009

<sup>3</sup> This is an estimate as MTN do not release subscriber figures

<sup>4</sup> Figure as stated by iBurst CEO: iBurst network growth. 13 October 2009  
<http://mybroadband.co.za/news/Wireless/9991.html>

<sup>5</sup> Latest announcement by CEO: Neotel increases coverage, user base, 22 September 2009  
<http://mybroadband.co.za/news/Broadband/9711.html>

<sup>6</sup> Estimate based on figures provided by the Wireless Access Providers Association (WAPA):  
<http://www.wapa.org.za/2009/04/17/wapa-industry-survey-results-2008/>

<sup>7</sup> To be discontinued November 2009

penetration percentage is required. This is not to deny the relevance of this figure, which remains a key indicator, but it does not necessarily reflect the meeting of a key objective of the Draft Policy, namely the bridging of the digital divide. Neither will broadband penetration of itself indicate improvements in the use of broadband in the health and education sectors or in the delivery of Government services over broadband connections.

- 45.2. ISPA therefore calls on the Department to develop a more comprehensive set of indices for use in evaluating the suitability of the Draft Policy and the efficacy of its implementation. Ideally those indices relevant to specific objectives should be informed through consultation with relevant stakeholders. By way of example: criteria for assessing progress in the provision of broadband infrastructure and services in under-serviced areas should be set in conjunction with USAASA and relevant Government departments and NGOs.
- 45.3. In assessing the impact of the policy in increasing broadband penetration it is also necessary to assess the rate at which broadband connections are currently being added in South Africa, i.e. to establish the current rate of increase in broadband penetration.
- 45.4. Evidence of the success of the Draft Policy can then more properly be assessed through its impact on the rate of increase in broadband penetration, rather than as a shift from a static base point.

## **Structure and style of the Draft Policy**

46. ISPA is of the view that the Draft Policy would be better set out in the form of a Preamble – setting out the rationale for the policy and the benefits of broadband - followed by a straightforward statement of policy and policy objectives.
  47. ISPA respectfully suggests that the Draft Policy be subjected to the scrutiny of a professional copywriter and proofreader prior to finalisation.
  48. ISPA submits that the term “electronic communications” should be preferred to the term “telecommunications” where it appears in the Draft Policy.
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## **Conclusion**

49. We trust that the Department will find the above submissions of value in its efforts to finalise the Draft Policy and place ourselves at your disposal should any further assistance be required.

Regards

INTERNET SERVICE PROVIDERS' ASSOCIATION

Per:

ISPA Joint Chairs