



ISPA Submission

in response to the

Discussion Document on the Review of Universal Service and Access Obligations

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Introductory remarks

1. ISPA welcomes the publication by the Authority of a well-researched and considered Discussion Document and comprehensive accompanying consultant's Report ("the Report"). A detailed review and overhaul of the regulatory framework governing the role of holders of service licences in meeting Government Universal Access (UA) and Universal Service (US) targets is overdue.
2. ISPA looks forward to participating in the regulatory processes leading to the finalisation of this framework and is of the view that the Discussion Document and ensuing process has the potential to be pivotal in ensuring a sustainable bridging of the digital divide in South Africa.
3. ISPA hereby indicates its willingness and desire to participate in any public hearings which the Authority may hold regarding the subject-matter of the Discussion Document.

Structure of this Submission

4. ISPA has set out a number of general submissions regarding the content of the Discussion Document and USAOs in general before detailing its preferred model and thereafter providing direct answers to the questions posed in the Discussion Document.
5. ISPA recognises that – for historical reasons - Universal Service and Access Obligations (USAOs) have not been directly imposed on the vast majority of its members and that it is therefore not able to provide comprehensive answers to certain of the queries raised in the Discussion Document.

Universal Access and Service in South Africa

6. While ISPA supports the comprehensive and considered nature of the Discussion Document we hold the view that the Authority will be hamstrung in its efforts to translate this work into a concrete and constructive USAO regulatory framework due to the lack of parallel progress from other stakeholders which are critical to the success of UA and US interventions in South Africa.

7. ISPA interprets the logical role of the Authority in striving to achieve UA and US as being one in which it works directly with licensees in order to attain UA and US objectives while ensuring that it creates a stable regulatory environment which focuses on bringing down the high cost of communication in South Africa.
8. It is apparent, however, both from the history of USAOs in South Africa and the current realities that a lack of policy direction coupled with a lack of basic tools and information means that the context within which such interaction must occur is deficient.
9. This deficiency – ISPA submits – runs through the Discussion Document and makes many of the specific queries raised extremely difficult to answer. It is not possible, for example, to make any meaningful comment on whether the current USAF Contribution level of 0.2% is sufficient or insufficient to meet UA and US objectives. This is because:
 - 9.1. There are no empirically-supported UA and US objectives and there is no clear idea of what it is that needs to be done in order to meet the objectives which existed under the Telecommunications Act. Furthermore it is not clear to ISPA that the data and information required to inform the setting of such objectives currently exists.
 - 9.2. There is no explicit approach which seeks to model UA and US objectives within the context of the state of competition and regulation in South Africa.
 - 9.3. USAASA has not effectively managed the USAF and there is no meaningful empirical evidence on which to base an assessment of whether funds contributed to date and available for disbursement have been sufficient.
 - 9.4. The Department has not issued the required policy directions nor has it finalised the basic tools necessary for building a regulatory framework.
 - 9.5. There is insufficient clarity on the role to be played by State-owned enterprises such as Sentech and Broadband Infraco.
10. ISPA is obviously aware that there is little that the Authority can do other than to seek to discharge its mandate according to the realities before it and it is to be hoped that the Discussion Document process will serve to bolster the delivery of other stakeholders.

11. The Discussion Document acknowledges these deficiencies. It also:

11.1. Explicitly highlights that USAOs by themselves are not sufficient to meet the need to bring modern communications to as much of South Africa's population as possible and to empower them to greater participation in the socio-economic and political spheres.

11.2. Highlights that global experience unequivocally indicates that "the most successful initiatives have been the market-based reforms associated with the liberalisation of the mobile sector, supported by a stable regulatory environment and the subsequent exponential growth in customers in these developing countries. These initiatives have allowed market forces to contribute fully and thereby close the market gap".

12. It therefore appears to ISPA that there is both a direct and an indirect approach to attaining UA and US objectives:

12.1. Direct: the setting of UA and US policy and objectives and the implementation, co-ordination, monitoring and review of interventions. This is the subject-matter of the Discussion Document.

12.2. Indirect: the meeting of UA and US objectives through the implementation of the ECA and the removal of legal and regulatory barriers to competition with a particular focus on:

12.2.1. Competition and price regulation under Chapter 10;

12.2.2. Interconnection and facilities leasing and sharing; and

12.2.3. The liberalisation of the regulatory framework surrounding radio frequency spectrum.

13. It is also apparent that the South African market is currently in a phase which is seeing a greater impetus toward competition at both an infrastructure and a service level. At the same time there appears to be a natural expansion of service availability as competition increases and technological efficiencies are realised. The recent refarming of spectrum in the 900 MHz band by Cell C (now also being undertaken by MTN) is just one example of the manner in

which both discovered and introduced efficiencies contribute to achieving UA and US objectives through the indirect approach.

Should we have USAOs?

14. The Authority has – at paragraph 3.1 of the Discussion Document – stated that the term USAO is a general term which can “include various financial and other types of obligations imposed on licensees, related either to their service or frequency licences”.

15. When referring in this submission to a USAO ISPA is referring to specific obligations imposed on licensees pursuant to a competitive process. ISPA is not referring to:

15.1. Obligations to provide directory services;

15.2. Obligations to implement pro-competitive remedies under Chapter 10 of the ECA;

15.3. HDI obligations; and

15.4. Obligations imposed on a once-off basis and linked to the awarding of a frequency or service licence. As an aside in this regard ISPA concurs with the view expressed in the Report that there is no basis in the ECA for the association of USAOs with radio frequency spectrum licences.

16. Contributions to be made to the USAF should be viewed as a specific, uniformly-applied USAO, the obligation to pay such Contribution being a consequence of the holding of a service licence issued by the Authority under Chapter 3 of the ECA.

17. ISPA believes that there is no real debate that USAOs – within the meaning set out above - have a role to play in meeting UA and US objectives.

ISPA's preferred model

18. ISPA has noted the expressed preference for the following model:

"Pay and Play are coordinated, with participation in the competitive tendering process broadened:

Licensees carry USAOs and contribute into USAF. ICASA reserves the right to still impose USAOs on licensees and at this stage licensees have to continue to pay the same percentage towards the USAF. No existing USAO license obligations are carried over as none of them are efficiently or effectively implementable in their current form. At this stage only existing obligations that have already been implemented have to be maintained and ICASA reserves the right to impose new appropriate USAOs in the future. The ECA needs to be amended to rectify the existing problems including those relating to the subsidy and competitive tendering process and to allow for all licensees (not only existing ECNS licensees) as well as other qualified contenders (companies that can fulfil the requirements of a license if they win the bid and are awarded a license) to also be able to participate in the competitive tendering process for US and UA projects. All USAOs are coordinated through a single US and UA strategy with cooperation between ICASA and USAASA with legislative changes that allow USAASA to co-ordinate, manage and monitor all USAOs."

19. ISPA supports most elements of this proposed model. In particular ISPA supports:

19.1. The development of a single US and UA strategy of which the Authority and USAASA are joint custodians (noting, however, that the participation of the Department will also be required).

19.2. The coordination, management and monitoring of USAOs by USAASA subject to the necessary reform of that institution so as to ensure that it has sufficient capacity to undertake these tasks.

19.3. The maintenance of the current percentage calculated on annual turnover derived from licensed services as the required USAF Contribution. This support is premised

on the fact that it is not possible at this time to gauge whether or not this percentage is appropriate or correct.

19.4. The maintenance of existing USAOs imposed under the Telecommunications Act at least to the extent that these have been implemented and have brought a tangible benefit to communications consumers in marginal areas.

20. ISPA does not support the retention of the current model of imposing specific USAOs on specific licensees in part exchange for the issuing of licences for the following reasons:

20.1. It is abundantly evident from the Report that this form of intervention has not worked in South Africa to date. ISPA recognises that there are many reasons for the failure of USAOs applied in this manner and that it may be that the fault lies not with the theoretical model employed but with the deficiencies in the practical implementation of this model. Nevertheless ISPA submits that – even accepting the foregoing – the model should not be further pursued as it South Africa does not possess the institutional means and capacity to sustain it.

20.2. As noted in paragraph 3.7 of the Discussion Document the ITU has stated that, while in some countries obligations were given to all operators, the “trend is now to more competitive procedures”.

20.3. It does not appear that section 8(4) of the ECA accords the Authority the necessary basis for the imposition of USAOs in this manner given that it refers only to making provision for the designation of licensees to whom US and UA obligations are to be applicable.

21. Insofar as respondents to the Discussion Document have been requested to express their own preferred model and have been afforded significant latitude in doing so, ISPA makes the following submissions:

21.1. ISPA holds a strong view that in future USAOs should be assumed by licensees only pursuant to a competitive process.

21.1.1. ISPA believes that in order for a particular intervention and the related USAO to be sustainable the intervention and the competitive process designed to lead to its implementation must be designed so to make it attractive to qualifying licensees. This involves moving away from a mindset based on the imposition of USAOs to one based on the willing and voluntary assumption of USAOs by licensees.

21.1.2. This shift in mindset needs to take place on both side of the equation: licensees need to cease to view USAOs as unwelcome intrusions on their commercial independence or as part of the price they pay for being issued with a licence while the Authority (and other institutional stakeholders) needs to appreciate that a sustainable UA and US programme will only be achieved where the means exists to incentivise licensees to provide networks and services in marginalised areas.

21.1.3. Assuming that an intervention flowing from a competitive process is sufficiently targeted and defined then it should also be the case that the related processes of coordination, implementation and monitoring will be greatly simplified and facilitated.

21.2. ISPA believes that the Community Service Telephone (CST) initiative serves as an excellent illustration of the correct approach. Although none of ISPA's members have been directly involved in the CST initiative, it appears that this intervention to promote UA in respect of voice telephony has been successful largely because the operators regarded it as a business and commercial opportunity. While the USAO Compliance Review of Licensees makes – for the most part – dismal reading, the success of the CST initiative stands out:

Operator	Target	Rolled-out
Vodacom	22 000	115 713
MTN	7 500	22 000
Cell C	52 000	Complied (no figure given)

- 21.3. While the CST obligations were not imposed as a result of a competitive process they do serve to indicate that for USAOs to be taken up they need to be commercially and / or competitively attractive to the licensees to which they will apply. The failure of the licensees reviewed to comply with the majority of other USAOs imposed stands – in contradistinction – as evidence of the inappropriateness of USAOs which simply seek to impose a cost on licensees (something which the USAF Contribution regime already does).
- 21.4. As noted by the ITU there has been recognition around the world that competitive procedures are a more effective manner in which to address meeting UA and US targets and that this allows “the responsibility of universal access and service (UAS) provision to be able to be shared more proportionally as all players have an opportunity to participate in the provision of UAS”.
- 21.5. ISPA supports the notion of a USAO regulatory framework which accords with the principles outlined by the WTO and as set out in paragraph 3.6 of the Discussion Document, i.e. that USAOs should be:
- 21.5.1. Not anticompetitive;
 - 21.5.2. Administered in a transparent , non-discriminatory and competitively neutral manner; and
 - 21.5.3. Formulated so as not to create unnecessary burdens on service suppliers.
- 21.6. It is self-evident that the degree of success of a model which derives its strength from the relevance of targeted competitive process is directly dependent on the quality and relevance of the data and information which underpins the need for the intervention. As indicated in the Report and elsewhere in this submission, it is unfortunate that there is no clear policy regarding UA and US objectives and that the data required to inform specific interventions does not appear to exist. It is critical to the success of UA and US that this is remedied.

Answers to the specific queries raised in the Discussion Document

15.1. Legislative and Regulatory Issues

15.1.1. *Must licensees continue to carry USAOs? (in answering these questions you are requested to comment on whether broadcasters must carry such obligations)*

22. ISPA does not support the retention of the current position of imposing specific USAOs on specific licensees.

23. ISPA does support the voluntary assumption of targeted USAOs assigned pursuant to a competitive process.

24. To the extent that there is an identified need to achieve a US target relating to broadcasting then this approach may also be applicable to BS licensees.

15.1.2. *If so:*

15.1.2.1. *which factors/considerations must be taken into account in determining whether a particular licensee or category of licence must carry USAOs or not?*

25. Taking into consideration the definitions of UA and US it seems logical that the primary focus of UA and US obligations would be ECNS licensees as the initial step to take in most cases would be the provision of network infrastructure to service the area in which an intervention is required.

26. Once this network infrastructure is in place then it should be made available to ECS and BS licensees for the provision of services to consumers in that area on an open access basis. Furthermore the Authority should seek to enforce infrastructure and radio frequency spectrum sharing rules where suitable. This should underpin the sustainable nature of any given intervention.

27. There may be circumstances, however, in which the Authority regards it necessary to create a competitive process targeting ECS and/or BS licensees as has been the case with the E-Rate in the past. ISPA wishes to note, however, that it regards the E-Rate as an example of a USAO which, although targeted, was ill-considered and almost impossible to implement in a sustainable manner.

28. The factors or considerations to take into account in determining a particular category of licensee to which a competitive process would be open would be dictated by the nature of the proposed intervention, i.e. does it involve the roll-out of network infrastructure or the provision of electronic communication services where infrastructure already exists.

29. ISPA does not support obligations attaching to any particular licensee other than as the outcome of a competitive process.

15.1.2.2. which licensees (electronic communications network service ("ECNS"), electronic communications service ("ECS") and / or Broadcasting Licensees ("BS")) must carry the USAOs, taking into account the answer to 12.2.2.2). You are requested to provide reasons for your answers;

30. Please refer to the previous answer. The nature of the intervention underlying the initiation of a competitive process would dictate which category or categories of licensee would be able to participate in that process.

15.1.2.3. should all licensees or some continue to carry USAOs (ECNS, ECS and BS) or which, if not all, must carry USAOs? Please indicate what the role of licensees no longer carrying USAOs) should be towards the goal of achieving US/UA. You are requested to provide reasons for your answers;

31. The competitive process itself would dictate which category or categories of licensee would be able to participate in that process. The old model of attaching USAOs to specific licences is no longer relevant in a post-licence conversion environment.

32. Licensees that do not accrue USAOs through a competitive process would be obliged to continue to contribute to the USAF/MDDA.

15.1.2.4. Do you submit that licensees falling within the same category of a licence must carry the same obligations, including similarity in terms of nature and quantity? You are requested to refer to experiences encountered in the implementation of the existing obligations, if any.

33. Within ISPA's preferred model, licensees falling within the same category of licence must be given the same opportunities to take up USAOs subject to the specific nature of such USAOs such as the geographic area in which UA or US objectives are to be met. Where a competitive process is employed only those who are successful will assume obligations and these will not therefore be uniform across all licensees within the same category of licence.

15.1.3. What approach should be carried in respect of USAOs obligations imposed under the Telecommunications Act which were not carried over into the converted licences issued under the ECA? You are also requested to consider what should happen to such obligations which were not carried over into the converted licence.

34. USAOs imposed on specific licensees under the Telecommunications Act were an element of the *quid pro quo* on the basis of which these licenses were obtained and, in most cases, the advantages that were obtained in respect of monopoly rights. The USAOs imposed on Telkom in respect of the extension of its PSTN monopoly are a case in point: Telkom derived a substantial commercial benefit from this extension but, should its USAOs be removed, will not have paid the full price set by the South African Government for this extension.

35. ISPA notes, however, that - in expressing its preferred model – the Discussion Document explicitly recognises that “[N]o existing USAO license obligations are carried over as none of them are efficiently or effectively implementable in their current form”. Insofar as it has already been determined that existing USAOs are at best irrelevant and at worst a major misappropriation of resources then it seems clear that they should not be retained (subject to what is stated below regarding the maintenance of already implemented USAOs).

36. As regards USAOs not carried over in the licence conversion process ISPA is unaware of the legal basis in terms of which the Authority decided not to include USAOs in converted process and is further unaware of this omission at any stage being made public. While at least one operator has launched court proceedings relating to the alleged failure of the Authority to convert its licence on “no less favourable terms” it seems to ISPA to be irregular that certain obligations have simply lapsed through the licence conversion process.

36.1. In making this submission ISPA wishes to note that it agrees with the view expressed in the Discussion Document that USAOs cannot attach to radio frequency spectrum

licences under the ECA and we are accordingly aware of the challenges faced by the Authority in converting such radio frequency spectrum licences.

36.2. ISPA further wishes to register its disquiet at certain of the results of the USAO Compliance Review of Licensees.

36.3. ISPA respectfully submits that it should not be acceptable for a licensee – which has held its service and/or frequency licensing on the condition that it comply with set USAOs – to adopt the position that it will not indicate whether it has complied with these obligations and furthermore that such obligations have lapsed because they were not carried over into its IECS and IECNS licence.

37. Although ISPA has no specific information relating to which USAOs were not carried over and which licensees were the beneficiaries of this process, it appears that there is potential inequity in that some licensees may have benefited while others did not. As noted above, the lapsing of USAOs represents an effective reduction in the price paid by a licensee for its licence and the benefits associated therewith (historically at least), and ISPA urges the Authority to exercise caution in ensuring equal treatment of all licensees.

15.1.4. what kind of obligations must be imposed on the licensees that you submit need to carry USAOs? You are requested to refer to experiences in implementing the existing obligations, if any, that you think must be taken into account in determining obligations that individual licensees or licences have to carry. You are requested to deal with BS licensees separately in your answer;

38. Within ISPA's preferred model the nature of the USAO obligation which will be the subject of a competitive process will be dictated by the nature of the specific UA and/or US objectives sought to be met through such competitive process.

39. As noted above with regard to the CST intervention, the nature of the obligations will largely dictate the success of their implementation. Ideally obligations should:

39.1. Be based on a specific gap analysis indicating the need for an intervention in a particular area or areas;

- 39.2. Be holistic in the sense that they take into account related socio-economic and other challenges, including infrastructure, power supply and computer literacy;
- 39.3. Be self-contained and complete in the sense that no further rounds of engagement and clarification are required prior to them being implemented – it appears from the USAO Compliance Review of Licensees that implementation of USAOs was in some cases bedevilled in that they required the Authority to provide a list of recipients or required the approval of an implementation plan. In future these items should be included in the competitive process;
- 39.4. Set out specific and measurable implementation targets which relate back to the underlying gap which the obligation is seeking to address; and
- 39.5. Conceived in such a manner so as to incentivise licensees to participate in competitive processes and to achieve and even exceed the stated targets.

15.1.5. Would you submit that there is currently a clear or sufficient link between USAOs and the processes undertaken by USAASA and the MDDA in terms of the ECA? You are requested to provide full details in your answer.

40. No. ISPA has no detailed knowledge of the functioning of the MDDA but believes that there is abundant evidence that USAASA has not constructively engaged with the USAOs imposed on licensees under the Telecommunications Act and that this is evident from the Report.

41. After a flurry of activity in early 2008 little has been heard from USAASA, which appears to have capacity issues.

15.1.5.1. If not so what would you submit has to be done to improve the harmonization of those processes towards the achievement of the goal of USAOs?

42. ISPA believes that it is crucial that there is greater co-ordination between the various stakeholders involved in the formulation, implementation and monitoring of UA and US objectives and plans. We are of the view that such co-ordination is most properly the role of

the Department and that the Department does not appear to have assumed this role in a constructive manner to date.

15.1.6. What should happen to the obligations which were not completed or implemented at the time of the conclusion of the licence conversion or were not carried over into the converted licences and those that were carried-over into the converted licences, where applicable, and new ones which were imposed upon conversion of the licence, where applicable)?

43. This query has been answered above.

44. Where a licensee has obtained new USAOs through the licence conversion process ISPA understands that such USAOs were not imposed but were derived from voluntary undertakings made by that licensee.

15.1.6.1. Would you submit that licensees should carry an obligation to maintain the obligations that have already been implemented? Please provide reasons for your answer.

45. There is a strong argument that such obligations should be maintained due to the fact that the recipients of the benefits thereof should not be adversely affected by the review of USAOs. ISPA appreciates that affected licensees may be of the view that this will lead to an inequitable distribution of USAOs but would nevertheless emphasise that it is important to hold onto such gains as may have already been achieved in UA and US, at least until such time as the obligations being maintained can be substituted by obligations assumed pursuant to a competitive process.

46. As stated above it is evident from the USAF Compliance Review of Licensees that the previous sets of USAOs were, for the most part, badly conceived, formulated and designed and that it will probably not achieve anything to continue to insist on their observance.

15.1.7. Must licensees continue to make a contribution into the USAF?

47. The ECA is clear in this regard and licensees are accustomed to making USAF Contributions. The difficulty experienced to date does not relate to the USAF Contribution but

rather to the capacity and other problems experienced by USAASA and other institutions which has led to contributed funds not being constructively employed.

48. Within the context of ISPA's preferred model the obligation to make USAF Contributions can function as a useful default form of participation in meeting UA and US objectives in South Africa.

15.1.7.1. if so taking into account your answers above on whether licensees should carry or not carry USAOs, would you submit that the existing amount of contribution is or would be sufficient?

49. As set out above, it is not possible – given the history of the USAF – to make any meaningful comment in this regard.

15.1.7.2. If not so from which sources do you think the USAF should be funded?

50. ISPA is of the view that Government should have the option to either contribute directly to the USAF or to support UA and US objectives financially through other avenues where this is deemed necessary or desirable. This would be supplementary to the contributions made by licensees.

51. It is evident from the case study undertaken of Chile that greater Government support – financial and otherwise – is a key determinant in the degree of success of UA and US interventions.

15.1.7.3. If you submit licensees should not continue to carry USAOs, what would you submit the role of licensees should be towards contribution to the goal of US/UA?

52. Where a licensee has not assumed USAOs through a competitive process which specifically provides for the offset of USAF contributions or a portion thereof against the assumption of the USAO, then such licensee will continue to contribute to achieving UA and US goals through the payment of the USAF Contribution.

15.1.7.4. If you submit that licensees should continue to carry USAOs, would you submit that such obligations must be adjusted up in view of the relief from contribution into the USAF?

53. Yes. An exemption from the obligation to pay USAF Contributions can form part of the model to be employed in assigning USAOs through competitive processes. Stated differently: a rebate or exemption on USAF contributions may form part of a set of incentives designed to make assumption of USAOs attractive and their implementation sustainable.0

15.1.8. Which concepts or terms used in the ECA that have a bearing on USAOs and/or the USAF must be defined or amended? You are requested to refer to difficulties encountered in implementing or interpreting such terms and/or concepts, if any.

54. ISPA agrees with the analysis undertaken in the Report in this regard.

15.1.9. Which method has to be used in defining or amending such terms and/or concepts, including whether in the ECA itself, by ICASA, USAASA or any other relevant body?

55. The process should obviously be consultative and take place within the context of existing legal instruments. ISPA has no further comment in this regard.

Implementation Issues

15.2.1. Would you submit that the current USAOs' implementation system needs to be maintained (in the absence of a move towards a new model)? In this regard, you are requested to express your views also on the initial processes for the development and determination of the USAOs and the processes for the co-ordination and actual rollout of the USAOs.

56. As noted above ISPA does not support the retention or maintenance of the existing model of imposing specific USAOs onto licensees. We believe that it is imperative that a new model be employed within the context of well-researched and relevant UA and US objectives and a co-ordinated effort from stakeholder institutions.

15.2.2. If so are there any areas that need improvement in the:-

15.2.2.1. determination of USAOs? Please provide full details.

15.2.2.2. coordination of USAOs? Please provide full details.

15.2.2.3. monitoring and evaluation of USAOs? Please provide full details.

57. ISPA has alluded to the apparent difficulties in the determination, coordination and monitoring and evaluation of USAOs and is of the view that these have been reflected in the Report. ISPA has little specific knowledge relating to the manner in which USAOs have been determined to date but it is clear from the current state of affairs – including the irrelevance of certain USAOs and the fact that very few have been capable of implementation or implemented – that no alternative model will be successful in the absence of a proper and ongoing determination of USAOs.

58. In the same vein it is apparent from the Report that there has been little coordination between the Authority, USAASA and the Department in managing such USAOs as have been imposed on licensees and that USAASA has not played an active role in the monitoring and evaluation of these USAOs.

15.2.3. If not so please identify the shortcomings and/or problems associated with the current system.

59. ISPA has highlighted what it regards as the shortcoming and problems associated with the current system throughout this submission.

15.2.4. As stated in the ECA, should only the ECNS licensees be eligible for the competitive tendering process for US and UA projects?

15.2.4.1. If yes, state why

15.2.4.2. If no:-

(a) should any other licensees who carry USAOs also be considered?

(b) should this be broadened to include other non-licensed qualified contenders as a way of opening up the market further?

60. ISPA has answered this query above.

Policy Issues

15.3.1. As regards the recommended model, can it be implemented under the existing provisions of the ECA?

15.3.1.1. If so, please provide full details.

15.3.1.2. If not so, please indicate whether a legislative amendment would be required and identify provisions of the ECA that need to be amended and/or new provisions that need to be introduced.

15.3.2. What should be the focus areas of USAOs in terms of infrastructure and services?

61. Section 90 of the ECA sets out a framework for competitive tenders for UA and US projects and that ISPA's proposed model could function within such framework. ISPA believes that this framework could be clarified and strengthened but believes that specific comments in this regard are premature at this stage of the process to review the USAO regulatory framework. It is possible that – subsequent to the adoption of a new model – changes to the ECA should be pursued so as to facilitate the implementation of this model.

62. ISPA has reviewed the analysis of the relevant provisions of the ECA as set out in the Report and believes that this constitutes an excellent exposition of the difficulties and inconsistencies presented by such provisions.

General

63. ISPA wishes to make the following general suggestions for the consideration of the Authority:

63.1. Given the current difficulties in co-ordinating UA and US efforts it would make sense to form a dedicated body constituted of those stakeholders with a direct interest or role in formulating and attaining UA and US targets. To the extent that such a body may already exist there is a clear need to reinvigorate it.

63.2. In order to address the fundamental lack of base data and information ISPA suggests that the Authority attempts to co-ordinate its efforts with Census 2011 to be undertaken by Statistics South Africa (SSA) next year so as to ensure that information

relating to UA and US is gathered during this process. This represents a fantastic opportunity to obtain the base data needed to inform a comprehensive and targeted UA and US programme.

- 63.3. Without derogating from the technology-neutral underpinning of the ECA it is apparent that wireless technologies will be at the forefront of addressing UA and US objectives given the lower cost of deployment of such technologies. It therefore makes sense for ISPA that the Authority should evaluate the linking of assignments of radio frequency spectrum in specified geographic areas to competitive processes relating to UA and/or US interventions in such areas.
- 63.4. It would be extremely useful to contract with a research house or university in order to obtain data on the difference which a UA or US intervention makes in a particular area and to what extent it acts as a catalyst for the economic upliftment of those affected. This information could be used both to lobby for greater support from Government and to refine future interventions.
- 63.5. Where socio-economic and infrastructure challenges hinder the attainment of UA and US interventions due consideration should be given to designing USAOs which explicitly adopt a multi-disciplinary approach that seeks to meet the socio-economic and infrastructure challenges and the UA/US intervention in a co-ordinated manner. ISPA appreciates that such a system will require careful design.
- 63.6. Where indicated by base data and a gap analysis it may be desirable for UA and US interventions to take place on a “micro-scale”. This approach would see an intervention on a community level and may involve:
- 63.6.1. The extension of backhaul infrastructure linked to a national backbone network to a predetermined point (as is contemplated in the Broadband Infraco intervention); and
- 63.6.2. A competitive process for small wireless operators with expertise in providing low-cost infrastructure in rural areas to create a local area network in a community linked to the backbone point of presence.

Such an approach may have the further advantages of empowering local SMMEs and ensuring that the service provider is more responsive to community needs.

63.7. In attempting to take a more holistic approach to USAOs the Authority should recognise existing social development initiatives within industry and seek to take advantage of these. ISPA has, for example, trained more than 1 600 teachers in schools in previously-disadvantaged areas under its Teacher's Training Programme (for further information see <http://www.ispa.org.za/social-development>).

Conclusion

64. ISPA trusts that the above submissions will be of assistance and will gladly provide any further assistance which may be asked of it.
