Submissions on National Integrated ICT Policy Green Paper

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As invited by Government Gazette 37261 of 24th January 2014 with extensions running until the 31st March 2014.

Principal Submission: It has been the "managed" rather than the "liberalization" approach to communications policy which has failed the ICT sector. If the Green Paper and subsequent White Paper fail to recognize this self-evident truth they will act as an obstacle to South Africa's economic growth.

Submission Set as at 31st March 2014

Opening Remarks

The greatest obstacle to universal communications in South Africa is government failure – which has included a horrendous degree of regulatory capture. It is only through developing a policy position which excludes scope for political manipulation and which removes government from the center of the ICT sector that South African's can enjoy the rights promised in the Constitution.

South Africa's information technology and communications (ICT) industry remains at an inflection point, and it is possible that major improvements in access to ICT sector for all South Africans will occur in the foreseeable future, but it is equally possible that the final death knell to hopes of a responsive industry will be delivered by the Department of Communications. The greatest danger to the sector is to misdiagnose the cause of underperformance in the sector and to adopt a course of increased interference and intervention by the State in the market under a rubric of "market failure". Claims that "market forces and the private sector will not deliver universal coverage" and that "costs are too high" all fall within the scope of rhetoric which can lead to an increase in the exertion of control by the politically aligned and a decrease in efficiency and market freedom with an inevitable reduction in consumer choice paired with an increase in costs.

It has been the "managed" rather than the "liberalization" approach to communications policy which has failed the communications sector.

The dismissal of Dina Pule as the Minister responsible for this vital sector of the economy represents the possibility of the industry unlocking itself and for major improvements in access will take place. Further the growing preparedness of ICASA to enforce the Electronic Communications Act and continued changes coming through from Telkom are reasons to have hope. The unfortunate and inescapable reality of Pule's term as Minister was a dysfunctional Department of Communications which was more committed to affording special industry interests a platform than adhering the NDP or delivering on governments promises.

The most dangerous thread from the Department of Communications in recent years has been successive efforts to undermine the independence of ICASA and to ignore the precepts of good corporate governance with entities in the sector within

its influence. In so far as the Green Paper under discussion is deeply imbued with a discourse of government control and regulation as a "cure" rather than a recognition that government is an actor in the sector with great powers and must as a consequence of the Rule of Law be bound to a properly formulated set of policies on how it acts.

The engagement of ICASA on Call Termination Rates and the outcome of the misplaced suit of Vodacom and MTN gives further hope however it is vital that the opportunity be used wrap up a proper market investigation and determine how to withdraw the overarching horror of state malfeance from the sector.

Structure and Nature of Submissions

Due to the hope that the Green Paper is a step in ongoing public participation process this submission set preserves a highly modular structure (although paragraph numbering runs continuously with respect to block submission for ease of reference) such that specific sections may be expanded or elaborated on or as they become irrelevant removed for a future dated (or revised) version. In fact this submission was constructed using my submission set furnished during public hearings to the Portfolio Committee of Communication on the 30th July 2013[1].

Due to the fact that the Portfolio Committee on Communications remains ceased with a Costs to Communicate agenda, and I anticipate that same Committee will be responsible for the adoption of a white paper, the cost of communication therefore becomes the lens through which I anticipate any consideration of the work of the Panel will be viewed. The general view of this submission set is to identify that the greatest issue in the cost to communicate is an ICT Policy Formulation Crisis. Consequently while there is an inevitable overlap with the other three pillars of the costs crisis I have advanced to the committee this submission set is largely concerned with the policy crisis. Hopefully by the time the White Paper is prepared part of that crisis would have been addressed and the Committee will be able to confidently move forward.

[1] Hjul P *Submissions to the Portfolio Committee on Communications: Costs to Communicate* 29th July 2013. Annexed

Summary of proposals submitted to the Portfolio Committee on Communications 30th July 2013

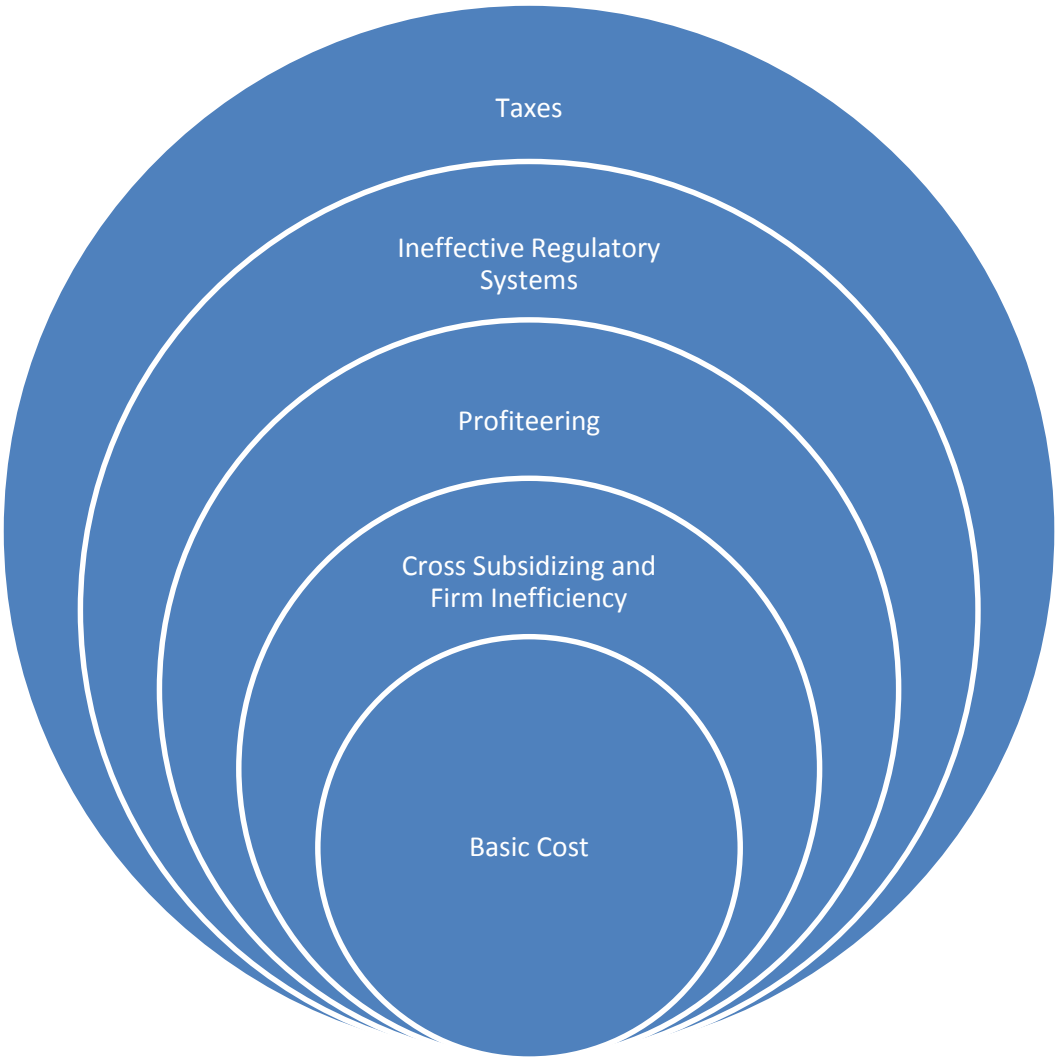
The following submissions we presented to the Portfolio Committee on Communication on the 30th of July 2013. To address the prospective overlap between ICASA processes, Parliamentary reviews on the costs to communicate and the Panel (largely under the aegis of the DoC and the Minister)

- **Allowing for the ICT Policy Review Panel to complete its mandated task by:**
    - **Exercising oversight powers over the Department of Communications to monitor the proper provisioning of resources to the Panel;**
    - **Exercising oversight responsibility with respect to the Minister of Communications to end the running of duplicate processes which only fuel a culture of lobbying activities which undermine good governance;**
- **Exercising oversight powers to recommend to the Department of Communications to take targeted measures to ensure that dominant industry participants are not able to abuse their positions in the market, including:**
    - **Initiating a complaint (as the DoC) against the incumbent dominant mobile operators Vodacom and MTN with the Competition Commission for the period running from the license conversion until the date of the Telkom settlement;**
- **Investigating the viability of introducing an end user (household) orientated National Broadband Network Program with the following criteria:**
    - **Price: Prepaid non-expiring data at R50 per unit (a gigabyte at inception, as matters progress this volume may increase) irrespective of access technology and no more than R500 initial device fee irrespective of access technology;**
    - **Speed: A "best effort" speed of 1Mb/s in the last mile irrespective of access technology irrespective of access technology (may be throttled to 1Mbs);**

- "Grade": Commodity internet which may be shaped to support web browsing and email even at the expense of "realtime" services (particularly VoIP);
- Technology: Most cost effective available last mile access technology – sourced from a network operator connecting to the NBN Operator's fibre backbone (which is leased from existing operators).
- Mobility: While this will ordinarily be a wireless product it is not a mobile product offering.

- Taking measures to ensure accountability of Broadband Infraco and Sentech for the squandering of public funds by:
  - Initiating legislation to transfer responsibility for governments corporate interests in Sentech and Telkom to the Department of Public Enterprises;
  - Recommending to the National Assembly that South Africa adopt a policy of video broadcast by way of satellite rather than terrestrial digital broadcast and the associated discontinuance of funding for Sentech for DTT;
  - Recommending to the National Assembly and the National Treasury that additional funding in large amounts (such as the R100 billion suggested as required) for Broadband Infraco be rejected out of hand;
- Establishing a dedicated ICT funding structure ("bank") which provides loans to network operators subject to their participation in establishing a National Broadband Network.
- Supporting the direction and leadership shown by the current board of Telkom.
- Exploring the possibility of establishing an advertiser funded and opt-in mechanism for the providing of 10 (outgoing) SMSes for each South African citizen or permanent resident on a daily basis.
- Awaiting the finalization of the investigation of the USAASA and on finalization seek further information, particularly as to the suitability of USAASA in the ICT landscape.

Graphical Representation the cause of a High Cost to Communicate



Contents of Submission

INTRODUCTION 10

Perspective of the Author 10

The unanimity of the panel that Market forces will fail the Public is of grave concern 11

SUBMISSION: PREVIOUSLY IDENTIFIED PROBLEMS WITH THE POLICY PROCESS REMAIN UNADDRESSED 13

SUBMISSION: GOVERNMENT MAINTAINS A CULTURE OF MATERIALLY FAILING TO ENSURE MEANINGFUL PUBLIC PARTICIPATION ELECTING INSTEAD TO "WORKSHOP" AND SOLICIT LOBBYING 15

Participation vs Lobbying 15

Parallel Processes 16

SUBMISSION: PUBLIC HEARINGS BY THE PANEL HELD TO INCLUDE OPPORTUNITIES FOR VIDEOCONFERENCING A LIVE STREAMING WOULD BE A POSITIVE DEVELOPMENT 17

LACK OF EMPHASIS ON BROADBAND 18

SuBmission: The Green Paper Inexplicably abandons the "deliberate shift towards GDP linked initiatives" promised in 2012 18

Submission: The National Broadband Council must be properly consulted before a white paper on ICT Policy can be finalized 19

Submission: The policy Formulation of the Department continues to fail to embrace the Internet – both as a set of protocols and as culture – to the detriment of the ICT Sector 20

SUBMISSION: THE ENFORCEMENT OF THE FACILITIES LEASING REQUIREMENTS SHOULD BE VIEWED AS A PRIORITY 22

CALL TERMINATION RATES **24**

"POLICY QUESTIONS" PRESENTED IN THE GREEN PAPER **26**

Chapters 1-3 ..... **26**

Chapter 4 ..... **26**

Chapter 5 ..... **31**

Chapter 6 ..... **33**

Chapter 7 ..... **35**

Chapter 8 ..... **36**

Chapter 9 ..... **39**

Chapter 10 ..... **41**

Chapter 11 ..... **43**

Chapter 12 ..... **44**

Introduction

PERSPECTIVE OF THE AUTHOR

1. I have extensively researched the matter of ICT Policy and have made submissions at almost every juncture on the duplicating processes of ICT policy revision and reform.
2. I have no vested commercial interests in the industry and apart from:
    a. membership of the MyBroadband Community;
    b. subscriptions to various mailing lists of the Internet Society's South Africa chapter ; and
    c. being currently in dispute with the MWEB on their violating a public representation that "we will never throttle" and then proceeding to throttle and to make derogative remarks about their heavy use customers – labeling same as "abusers" based on the quantity of content downloaded on an uncapped account.

am an independent promoter of consumer interests.

3. My engagement on ICT policy has generally focused on Local Loop Unbundling and the advocacy of adopting the ethos and practices that underlie the global network that is the Internet. I am greatly disappointed that the Green Paper has not properly identified that the Government of the Republic should absent good cause to the contrary regard the standards, processes and practices making up the global Internet as binding on the Government.
4. As a disclaimer of a potential conflict of interest: I accepted a nomination (by MyBroadband) to serve on the panel, notwithstanding my reservations about the Minister's duplicating processes, but was not selected. I do not believe that this changes the content of my submissions – which I would make regardless. If anything I enjoy the luxury of being able to write freely.

5. As a further disclaimer I am currently serving as the Chairman of the South African Libertarian Party. Same party is not contesting the 2014 General Election. This submission set does not represent the views of the South African Libertarian Party.

THE UNANIMITY OF THE PANEL THAT MARKET FORCES WILL FAIL THE PUBLIC IS OF GRAVE CONCERN

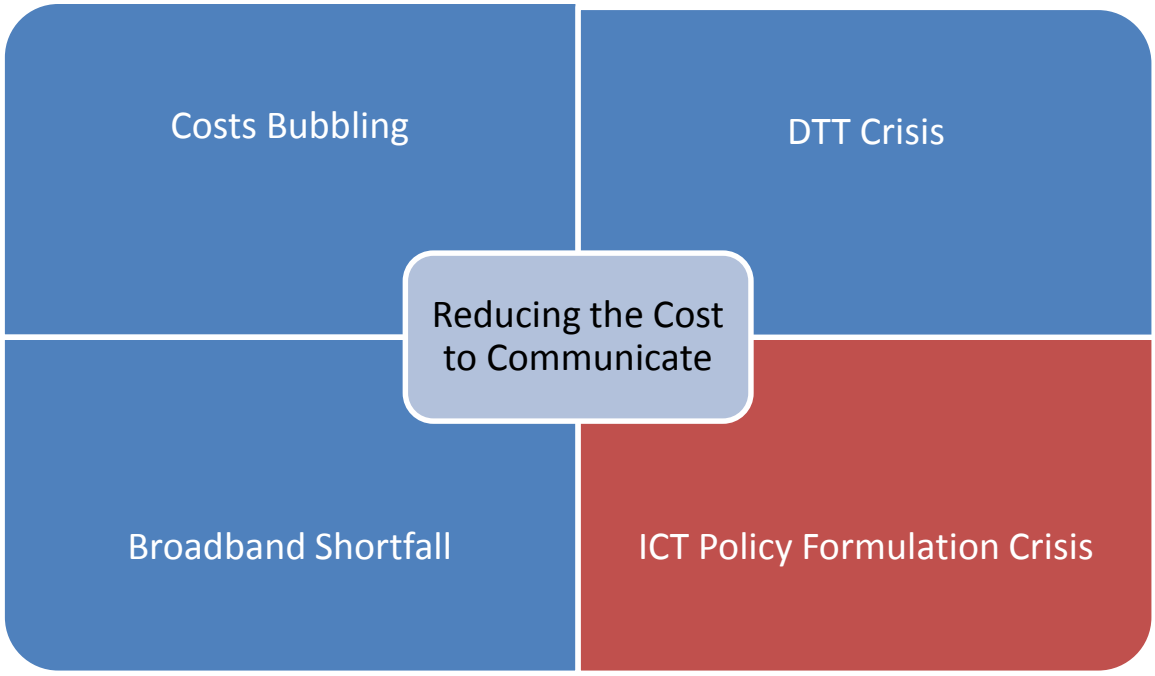
6. It is probable that this submission of 10339 words will be wholly rejected out of hand by the Panel due to the Panel fundamentally misconstruing the actual cause of market failure in the ICT sector in South Africa. To this end the following is gravely worrying and has probably discouraged several potential submitters:

> The Panel is unanimous that if the market was left to its own devices, and should the status quo be left intact, there would be some serious development failures as some sections of the South African population still do not appeal to market forces because of their economic profile. Consequently, the Panel rejects any suggestions that do not support the objective and principles that guide the way to a new communications framework.

7. The market fails not because sectors of the population do not appeal to "market forces" – ignoring the fact that market forces aren't something to which some nature of consumer appeals to but rather are the mechanisms through which the economic activities of economic actors interact with each other in the absence of coercion – but rather because of problematic intervention by the State and a deeply challenged political climate. The reality is that "market forces" have resulted to exceptionally high levels of penetration of mobile phones whilst the subsidization of mobile telephony over fixed line has resulted in serious challenges to the viability of POTS infrastructure in South Africa.

8. The primary motivation for notwithstanding the fact that the Panel may well simply discard the extensive work involved in the submissions is to ensure that the record of submissions at least includes proper caution to the government.

PART 1: The ICT Policy Formulation Crisis



Four Pillars of Reducing the Costs to Communicate

Submission: Previously identified problems with the policy process remain unaddressed

9. In my submission to the Panel titled *Initial Submissions in Respect of the Proposed ICT Policy Review Framing Paper, 2013* dated the 24th April 2013[2] I set forth difficulties that had arisen with the process. To the best of my knowledge none of these difficulties have been addressed and an analysis of Chapter 1 – 3 of the Green Paper reveals that the scope and nature of the Framing Paper has not been resolved although a fairly definitive position on framing has certainly been adopted. For the purposes of ensuring that a proper record is preserved I am repeating the problems in this submission set:

    a. A conflict arises, between the *Outline of the ICT Policy Review Process, 2013* (Notice 277 appearing in *Government Gazette* 36359 of the 10th April 2013) and the *Proposed ICT Policy Review Framing Paper, 2013* with respect to the scope and nature of the Framing Paper and the number of stages which the Panel will undertake – 3 or 5. This conflict is a material impairment to the credibility of the process.

    b. The credibility problem is heightened by the fact that the Minister originally announced a 22 member panel in contravention of the Terms of Reference and there is now 20 members without any explanation of the reduction.

    c. The credibility problem continues when consideration is given to the National Broadband Policy (Notice 350 of 2013 appearing in Government Gazette 36332 of the 3rdApril 2013) document from the Department of Communications[3] together with the appointment of a National Broadband Council.

[2] Annexed to this document

[3] Submissions on the Broadband Policy are annexed to this submission.

d. Despite proclaiming that "Your Views Matter To Us" [p26] and announcing a Twitter Hashtag and Facebook identity it is clear that the degree of public participation in the framing paper was minimal and there is frankly no motivation for the public to participate in light of the numerous parallel processes and the absolute lack of credibility of the Minister and Department of Communications. The Facebook identity does not appear on a search of Facebook and it appears that there is a general lack of activity on Twitter. Media coverage of the work is non-existent.

e. Moreover the R2K campaign has recently taken to making demands concerning access to communications – no mention of the Panel has appeared in their campaign and no doubt if there was a proper engagement process the policy review the nature of their campaign would be different. I submit that regardless of what inputs are received the Panel is duty bound to specifically consult and liaise with the R2K campaign.

Submission: Government maintains a culture of materially failing to ensure meaningful public participation electing instead to "workshop" and solicit lobbying

The ICT Indaba of 2012 and the scandals surrounding it remain a poison on South Africa's communications sector. This particular episode is however a symptom of deeper problem namely the fact that there is a culture that fails to promote meaningful public participation in favour of soliciting special interest lobbying.

PARTICIPATION VS LOBBYING

10. There is a subtle but important distinction between different forms of participation and advocacy, and while lines may very quickly blur I submit that the Panel should recognize these different forms:

    a. Specific enterprise special interest lobbying

    b. Sector special interests lobbying

    c. Sector interests lobbying

    d. Public interest advocacy

    e. Fully democratized participation

11. The status quo in the ICT sector in South Africa is that a great deal of resources are available and expended on the various forms of special interest lobbying. The availability of funding for public interest advocacy is exceptionally limited and in deed the

duplication of process and sheer volume of poorly conceived legislative programs is an absolute burden on the existing civil society resources of the country[4].

12. The most blatant exercise in special interests lobbying in recent years in this particular sector has been the ICT Indaba of 2012, which unsurprisingly has been clearly implicated in corrupt activities with industry dominating firms having expended considerable funds on sponsoring an event to gain favour with the then minister.

13. The Portfolio Committee on Communications launched a Costs to Communicate program in 2013 and while a consolidated "matrix" of public submissions and comments has appeared online little feedback has been announced on the program and it is unlikely that anything will surface before the general election.

14. I submit that on the face of it ICASA is more than prepared to drive an initiative towards democratized participation but fundamentally lack capacity – and respect for their independence by major industry players and government – to accomplish this objective.

PARALLEL PROCESSES

15. The continuous running of parallel processes has the effect of promoting nefarious lobbying as additional processes create additional costs to participate. Moreover the fact that cost effective measures of ensuring public participation are not the norm and despite the fact that the ICT sector is in question the use of teleconferencing and Internet based participation has not taken hold at all.

16. It is impossible for members of the public to actually monitor and participate in policy making in the ICT sector precisely because of the abundance of "talk shops" and uncertainty that any of the talk shops are actually worth pouring energy into.

17. I submit that even media houses are simply unable to keep a proper monitoring of the various processes and that this process is adversely affected simply from fatigue.

[4] The South African Institute of Race Relations has compiled a rather useful but naturally incomplete exposition on the burden - % IRR

Submission: Public Hearings by the Panel held to include opportunities for videoconferencing a live streaming would be a positive development

18. There has to date been no public hearings in the formulation of the Green Paper and it is inevitable that at some juncture public hearings will be held by the Panel. The difficulty of public participation being constrained by the costs of participation however remains and even if multiple hearings are held on a circuit one still has difficulties with costs to participate and moreover the fact that separate hearings are a duplicated process and one has a divide and conquer precept operating.

19. ICASA successfully held on the 18th of February 2014 a workshop on LLU on a facilities leasing premise whereat live streaming of the proceedings was managed by Mindset Learn and where I teleconferenced into the proceedings by Skype. In 2011 the LLU hearings were similarly streamed and a vibrant IRC channel ran its course.

20. I therefore submit that the exercise of demonstrating the viability of public hearings including teleconferencing has been accomplished by ICASA and that the foundation to lay for streaming of hearings and teleconferencing is well established.

21. Furthermore the Supreme Court of Appeal has set parameters as a default position for media streaming at same court by way of a Practice Direction and South Africa is currently experiencing a live televised murder trial. Sessions of the National Assembly are also televised.

22. I am further aware that correspondence has been sent by an industry expert advancing that ICASA proceed with using live streaming and videoconferencing for some of the public hearings on the competition market review which has commenced.

23. There is therefore no reason why the Panel cannot hold a streamed public hearings session. Such streaming is in the public interest and would enhance public participation.

Lack of Emphasis on Broadband

The role that ICTs play in the broader society is underscored by the 2010 World Bank study that found that for every 10% increase in broadband penetration in emerging markets, there is a 1.38% increase in GDP growth (Page 14)

> Despite including provision of the importance of broadband penetration the entirety of the Green Paper skirts the question of broadband and appears wholly unable to recognize that the only real measure of the success of an ICT policy is whether it enables broadband access. Almost every problem can be expressed by demonstrating how successive failures by government have damaged the development of a broadband society.

SUBMISSION: THE GREEN PAPER INEXPLICABLY ABANDONS THE "DELIBERATE SHIFT TOWARDS GDP LINKED INITIATIVES" PROMISED IN 2012

24. In the DoC document titled *Defining a new era in ICTs for all South Africans: The path to creating a National Integrated ICT Policy for South Africa*, appearing in the Government Gazette on 13 April 2012, it was stated at para 3.1.1 (page 12):

> As the DoC enters into a more integrated policy design approach for ICT policy, it is expected that the dynamically changing technology landscape ... will not be completely ignored, but rather where there will be a deliberate shift towards GDP linked initiatives.

25. On this basis I responded to invitation to comment on same document that the governments ICT policy should be formulated on a basis similar to IDPs for local government. That is that a policy of constant policy revision of a National ICT Policy (NIP). To this end at para 17 of Hjul, *Submissions on Department of Communications Policy Review Symposium* (31 May 2012):

> In essence what is required is not simply "a fresh look at the way forward" but rather the emergence of the tools that ensures that our nation is always able to find a "fresh look" and further that this "fresh look" is able to be formulated into integrated national policy and that this policy is implemented.

26. It appears that broadband Internet – and the policy shift of GDP linked initiative - is no longer the measure by which the success of policy is measured.

27. In fairly simple terms concerns about ownership and advancing various agenda at the expense of broadband penetration rate increases directly undermines the prospective GDP increases enjoyable by broadband growth.

    a. In particular the obsession with catering to broadcasters enjoying a free ride with DTT migration at the expense of freeing up spectrum for LTE rollout reveals a confused mandate. Discontinuing terrestrial broadcasting and migrating to an all DVB-S2 platform (with the existing subsidies for poorer households being moved over to acquisition of DVB-S2 STBs) would enable ECNs (particularly the dominant MNOs Vodacom and MTN) to accomplish an increase of broadband penetration by in the region of 30% - an estimated 4% GDP growth – if proper principles are followed.

    b. The policy discussion carries no suggestion of ending fatally flawed transformation policies and persists to subscribe to management rather than liberalization.

    c. Further the approach of the agenda does not map strategically into the National Development Plan and to this end it remains a conflated and confused set of political concerns that undermine actual progress.

SUBMISSION: THE NATIONAL BROADBAND COUNCIL MUST BE PROPERLY CONSULTED BEFORE A WHITE PAPER ON ICT POLICY CAN BE FINALIZED

28. The Minister has appointed a National Broadband Council and I submit that it would be manifestly bizarre if the work of the Council does not feed into the policies adopted.

29. For reasons already set out I submit that the lack of a real discussion on broadband access in the Green Paper is a fatal flaw that will need to be remedied before a credible white paper can be put together.

SUBMISSION: THE POLICY FORMULATION OF THE DEPARTMENT CONTINUES TO FAIL TO EMBRACE THE INTERNET – BOTH AS A SET OF PROTOCOLS AND AS CULTURE – TO THE DETRIMENT OF THE ICT SECTOR

30. I submit that the Panel and Department persist in ignoring the ethos that has enabled the development of a global Internet. This particular argument was presented more fully in my submissions on the Framing Paper (the full Opening Remarks appear hereafter) wherein it was submitted that:

> There is a particular need for the Panel to recognize a fundamental truth of the Internet – which is that no one entity or enterprise is responsible for its being; instead the Internet is the a model of cooperation for mutual benefit driven by volunteers and a spirit of freedom. To achieve progress in ICT in South Africa we need to see the different licence holders together with civil society and academia building networks and relationships. The Internet was achieved not because of imposed consensus or a monolithic approach

31. I have little doubt that the sentiments being expressed are not appreciated by the Government and that it stands somewhat opposed to a statist sentiment but any knowledge of history shows the proper course – and sadly South Africa is not on that course currently.

32. On a very fundamental level[5] during the 1980's and early 90's two different approaches towards global digital networks existed. The first was a system backed by "telecos", national regulatory bodies, massive electronic firms and most importantly the ITU whilst the other was an experiment dominated barefoot bearded "eccentrics" and was initiated primarily on the university campus. The one experiment has grown into the world's largest science project and in some measures the greatest accomplishment of humanity – the global Internet, the other is a set of acronyms which have relevance only in so far as the equipment involved can be used to deliver the Internet.

33. The ashes of ISDN should remain a testimony to the hubris of central planning and we should never forget how fabulous email is as a means of communication in the place of teleco dictated alternatives. The massive success of ADSL as a means of breathing life into "POTS" should be remembered when discourse as to innovation is to be had.

[5] This is one of the many instances where the narrative is more important than the details

Opening Remarks to Submissions on Framing Paper

The greatest obstacle to access and affordability of communications services in South Africa is an inept Minister and incapacitated regulator. Duplicating policy review processes and holding conflicting talk shops where each industry participant has an opportunity to lobby is simply idiotic and needs to be put to an end.

Before rewriting the "rules of the game" we need to identify the actual problems in the ICT Landscape and the primary one is the Government deems itself fit to continuously and malevolently interfere in a manner which promotes regulatory capture and the undermining of the internet.

It is most unlikely that officials at ICASA or the Department of Communications acquaint themselves with the RFCs which essentially make up the policy for the Internet. There is a particular need for the Panel to recognize a fundamental truth of the Internet – which is that no one entity or enterprise is responsible for its being; instead the Internet is the a model of cooperation for mutual benefit driven by volunteers and a spirit of freedom. To achieve progress in ICT in South Africa we need to see the different licence holders together with civil society and academia building networks and relationships. The Internet was achieved not because of imposed consensus or a monolithic approach but instead:

Out of the chaos of new ideas for communication, the experiments, the tentative designs, and crucible of testing, there emerged a cornucopia of networks. Beginning with the ARPANET, an endless stream of networks evolved, and ultimately were interlinked to become the Internet … all the information that erupted with volcanic force from the intensity of the debates and discussions and endless invention that has continued unabated for 30 years.

Quoted from RFC 2468 *I Remember IANA*[6]

[6] http://tools.ietf.org/html/rfc2468

Submission: The enforcement of the facilities leasing requirements should be viewed as a priority

34. The Green Paper does not appear to recognize the importance of facilities leasing as a component of the regulatory environment (and reciprocal undertakings by operators on entry into the market).

35. I submit that facilities leasing is the single most important principle within the regulatory framework sketched by the Electronic Communications Act. The Facilities Leasing Regulations encompass technology neutrality and a framework of open access.

36. Emerging network operators are afforded a right by the Act to utilize the facilities of incumbent operators on a lease basis. A failure by a license holder to lease facilities carries a significant penalty which can be imposed by the Complaints and Compliance Committee of ICASA.

37. The sharing of costs for facilities between networks which facilities leasing entails reduces costs of network construction and expansion and enables the benefits of network effects to be felt by all market participants – with the effect that there is a reduction of costs.

38. I submit that industry participants not complying with the facilities leasing requirements of the Act cause immeasurable harm to the provision of cost effective services and consequently that the full measure of penalty provided for by law should be induced against them as a matter of priority.

39. A clear and direct message that licensees who refuse to lease facilities where required under the Act will face crippling penalties and ultimately the loss of license will fundamentally reduce the costs to communicate. This is abundantly clear with respect to unbundling the “local loop”.

40. For many years Telkom has resisted LLU and argued that there is a significant Line Access Deficit would make LLU unviable and unsuited to the South African market. The

position I submit was largely a consequence of Telkom overvaluing certain of its assets and running as an inefficient firm. An impairment of R12 billion on legacy assets by Telkom has the effect of reshaping the entire landscape and I submit that this paired with the settlement with the Competition Commission will significantly reduce the costs of fixed line communications in South Africa.

41. However there remains a problem with respect to Local Loop Unbundling in that the process of unfinalized regulations on Local Loop Unbundling is being used as a shield by Telkom against the facilities leasing regulations being used to cripple Telkom into leasing the facilities that make up the local loop.

42. The Green Paper asks questions about the suitability of LLU without appearing to recognize the current hold up is one of a policy crisis.

Call Termination Rates

43. On the 31st March 2014 (today) the South Gauteng High Court handed down judgment concerning a challenge to the Call Termination Rates set by ICASA with effect from the 1st April 2014. Unfortunately at the time these submissions are due there has been no opportunity to study the judgment.

44. The full order has not reached the public domain – and the question of costs are quite important – but already at this juncture it is clear that the Big And Ugly Two/Telecos (BAUT) did not accomplish what they had hoped and for the next six months a massive market shakeup will prevail.

45. Distortions such as asymmetry in call termination rates are undesirable but an inevitable consequence of the culture of managing the industry embarked on by government and consequently if part of a glide path away from interference and towards a situation where market players are governed by freely entered contractual relationships[7]

46. I submit that the White Paper will need to have input flowing from the judgment and so invitations for comment originating thereon should be issued.

[7] It should be particularly understood that market forces have directed a large quantity of packet data to be exchanged on a settlement free basis. It ultimately is in the rational interest of a network operator who is not able to depend on monopoly priveleges

PART 2: The Green Paper Questions

“Policy Questions” presented in the Green Paper

CHAPTERS 1-3

No policy questions posed at the end of these chapters

CHAPTER 4

Page 32 (own emphasis and sub-numbering):

> [1] (i) Is the distinction between reserved and unreserved services a clear one in practice? (ii) Should this distinction be maintained into the future? (iii) If so, is the scope of the monopoly broad enough to fund universal service obligations?

47. A distinction between reserved and unreserved services provides an ability to afford scope to operate in exchange for universal service obligations. I submit that the current problem is that SAPO have a reserved service which other operators cannot possibly enter into. This creates a situation wherein an adverse incentive to illegally operate in the space arises without any legitimate alternatives.

48. Further SAPO cannot function efficiently if it remains a constrained firm locked to and protected by a monopoly on service provisions.

49. I therefore submit that the parameter of a monopoly for the SAPO is entirely unjustified, while the distinction and universal service obligations are valid. In essence provision should be made to allow new entrants (particularly those in the existing unreserved service space) to assume the mantle of a full postal service. Such entry should be conditional on universal service obligations.

50. Service of process instituting legal proceedings (of the superior courts, magistrate’s offices and various tribunals) should be considered as an additional service available for

offer from the SAPO which would be shared with the sheriff's profession. The Counter-to-Door document delivery service (of A4 documentation) would simply require an addition of a return tract (back to counter) to provide a cost effective (to consumer) and revenue providing (to SAPO) offering. This additional service would not be a monopoly due to it being shared with the sheriff's profession but it would be a comparative advantage over other postal services.

51. There are further opportunities that SAPO could offer in conjunction with the Department of Justice in providing mechanisms for a civil claims court process[8] which will alleviate work at the magistrates' offices while offering further revenue for the SAPO.

[8] In essence what is envisaged is that a natural person claimant files at a local office of a service provider (the SAPO in this instance but the intention is that retail banking institutions can elect to offer the service) a civil claim whereupon the service provider issues any process deliverable by the SAPO or sheriff. In the event that a matter must be remitted to trial the applicable clerk of the magistrates' office but where the matter remains entirely on the papers the administrative load can be carried by the SAPO at set charges and conveniently addressed by magistrates where appropriate. The attachment of garnishments and execution on warrant and so forth can similarly be processed out from the service provider and dispatched to the Sheriff. The proceeds of attachment or settlement into court would be payable into the account provided by the service provider (the Postbank)

52. The SAPO has massive advantages over other firms seeking to compete with it in that it has a massive scope of reach. By way of example the SAPO is I believe one of only two firms that are able to provide authenticated digital signature services.

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[2] How can SAPO's infrastructure be leveraged to rollout government services?

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53. If the SAPO is a competitive logistics enterprise it greatly aids in the rollout of government services. The reality is that SAPO's infrastructure is not limited to their ability to deliver reserved services but rather the extent to which SAPO is an effective firm in providing logistics and support services.

54. In order for SAPO to flourish it must recognize the value of working in collaboration and competition with other participants in both the ICT and logistics industries[9]. An effective

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Additionally various processes for enforcing existing court orders or upholding rights can be developed on the structure. Civil enforcement of a maintenance order would entail filing complaint at a Post Office and the attachment processes flowing into a Postbank account. Claims processing involving public bodies and so are also possible.

Undoubtedly various attorneys will oppose the introduction of such mechanisms as it taps into a lucrative area of work where they currently enjoy a lack of competition, it must be borne in mind that the proposal however is restricted to natural persons (private individuals).

[9] I was recently very pleasantly surprised by the efficiency of the XPS in the delivery of Trudon's telephone directory. A single phone call from Trudon to establish how many telephone directories were required was followed by an XPS delivery less than 3 days later with a signature confirming delivery and exceptionally professional courier handling. The experience proves that XPS together with Trudon can deliver a large volume of products on specific addresses with minimal fuss and presumably at a very competitive pricing – as Trudon operates without subsidy and the value of a telephone directory is limited.

As a simple example if a project to provide material to matric learners were to be embarked on if SAPO can realistically effect address based delivery to each matric learner at their home massive improvements in the tools available to learners would be accomplished: using a figure of R30 per delivery by the SAPO and R30 printing by a bulk printing service (Trudon or the GPW by way of

SAPO is able to efficiently roll out and deliver all manner of government services including chronic medication.

55. Additionally the SAPO can become involved in aiding the proper administration of justice as discussed above.

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[3] Should the Postbank continue to be a subsidiary of SAPO or should it be a stand-alone fully-fledged independent banking institution?

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56. I submit that the SAPO would function best as a general services provider and that separating the Postbank would not provide any value to the SAPO. Instead the SAPO should develop as a fully-fledged banking institution such as to include small business banking.

57. I am not aware of any problems with the SAPO operating as a banking institution subject to the same regulation by the Financial Services Board and retail banks are able to hold ECN and ECS licences and would be natural prospective seekers of a reserved postal license in addition to SAPO.

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[4] How do we ensure the right of every citizen to an address? Should government continue subsidising SAPO in order to fund universal service?

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example or one of the newspaper publishers) would enable 6 deliveries to each learner at an amount of R360 which can in part be recouped through advertising in the material delivered. Beyond the natural benefits of learning and exercise materials (a phonebook sized exercise book for mathematics) the process of a matriculant receiving such a parcel (and signing for it) bestows a sense of dignity that is well in accord with the Constitution.

The ICT sector largely utilize courier services particularly in online retail operations. If the SAPO is able to operate as an honest broker in the sector and a viable blue chip firm great things can be accomplished. The SAPO having open APIs for brokering ordering between suppliers and couriers (including their own courier services) and providing financial services together with digital signatures would represent a massive enabler for small and emerging businesses.

58. The right to an address does not account for the costs involved in subsidizing the provision of "universal service". The SAPO has made some remarkable accomplishments in achieving universal service and provided that any entity – including the SAPO – which wishes to engage in reserved services is obliged to service on a universal basis any subsidy from government should be diminished and eventually removed entirely.

59. It is preferable for a subsidy to be paid to the SAPO for universal service than for SAPO to be afforded a greater scope of a monopoly. I submit however that no subsidy should be available to any additional entrants into the reserved space.

60. I submit that any subsidy to the SAPO must be conditional on SAPO permitting seeking access to SAPO facilities. In particular SAPO must be open to the use of local post offices as a point from which to receive parcels or documents even with competitors to SAPO in certain markets. Where applicable an appropriate relationship for sending from a local post office should also apply.

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[5] What role should operators in the unreserved segment of the market play insofar as universal service is concerned?

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61. I submit that any operator able to accomplish the universal service obligations should be able to obtain a licence to so operate. An operator that elects not to operate in the reserved segment should have no universal service obligation beyond what they represent to the public[10].

62. The reality is that providing universal coverage is a massive advantage for a postal service provider even if it results in the provider having to internally cross subsidize.

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[6] What role can SAPO play in the roll-out of broadband?

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63. The SAPO should involve itself in the roll-out of broadband as such involvement is viable and in accordance with business operations of the SAPO.

[10] Most courier services represent that they can deliver wherever and whatever it takes. If a courier wishes to provide

64. I submit that the SAPO should be in possession of an individual ECS licence but and should operate as a facilities owner (with ECN licence holders giving network effect to dumb facilities).

65. Additionally the SAPO would be a retailer for the proposed NBN Service.

CHAPTER 5

Page 44 (own emphasis and sub-numbering):

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[1] Should policy promote either a facilities-based or service-based competition environment? Alternatively is there a case for a hybrid competition environment in which both these modes exist?

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66. The existing provisions of the Electronic Communications Act provide for a distinction between facilities based and service based competition and provides different mechanisms for providing for the different "modes". In essence the provisions of the Act are an appropriate approach with facilities competition being structurally inevitable (with facilities leasing and interconnect obligations) and operators would be well placed to structure themselves such as to compete on a facilities basis and for the operators to be deeply interconnected. In such an environment one ECN licence holder would operate services using the most cost effective suitable facilities available and not necessarily the facilities owned by that operator.

67. Service based competition requires significantly more regulatory intervention to impose and therefore must be preceded by a regulatory impact assessment and market review.

68. I submit that fundamentally deeply entrenched facilities competition renders service based competition to be an inevitable consequence and that moves to enforce service competition are generally misguided and should be avoided.

69. I therefore submit that the existing provisions of the Electronic Communication Act should remain the statutory framework and that the facilities leasing obligations should be enforced without further delay.

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[2] What mechanisms are required to ensure effective co-ordination of broadband infrastructure planning and rollout?

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70. There already exists a National Broadband Council (discussed) and I submit that absent proper feed in with the National Broadband Policy a massive problem will emerge.

71. I have already submitted an extensive proposal for establishing a National Broadband Network which appears on pages 13-18 (of 21 pages) in my submissions of the 31st of May titled *Submissions on Department of Communications Policy Review Symposium* (which is annexed). Same mechanism will assist in greater co-ordination on a market basis of broadband planning and rollout.

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[3] Notwithstanding current policy interventions to promote availability and access in the under-serviced areas, the local loop remains a great challenge. Should LLU policy be advanced, and if so, what are the principles which should underpin LLU policy?

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72. I submit that the question is wholly misguided. There is no conflict between LLU and servicing under-serviced areas and seeking to identify a problem in this respect is misguided or dishonest. The simple reality is the LLU is a manifestation of the obligation of facilities leasing. A proper implementation of LLU will see operators more effectively utilizing infrastructure and making rational decisions on further investments.

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[4] What other policy interventions can reduce the Significant Market Power (SMP) of the oligopolies in the South African communication sector?

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73. Every intervention has unintended consequences and should as a matter of course be avoided. The SMP of existing players have arisen as a result of idiotic, misguide and sometimes corrupt government lead interventions in the sector.

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[5] (i) What considerations should inform the new policy and regulatory regime concerning the spectrum management taking into account the anticipated revision of the frequency spectrum regime? (ii) Is there a need for a separate agency to regulate spectrum?

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74. There is no need or rational basis for a separate agency to regulate spectrum. ICASA should simply be afforded the capacity to regulate spectrum. There is a major problem with the current conception of spectrum and the sooner we treat spectrum as a form of

property that has commercial value and move away from a statist control culture the sooner spectrum will cease to be a political football holding up the industry.

CHAPTER 6

Page 49 (own emphasis and sub-numbering):

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[1] Are the regulatory mechanisms adequate to protect consumers in the e-ecommerce environment?

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75. Regulatory measures seldom protect consumers and usually simply create a vicious cycle wherein new measures to undermine consumers are devised by unscrupulous service providers and scrupulous providers are encouraged to abandon fair play in order to survive in an over-regulated market.

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[2] What kind of effective institutional arrangements should be in place to build a robust e-commerce environment in South Africa?

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76. A robust e-commerce environment depends on things not largely accomplishable by ICT policy. A culture of good governance and respect for constitutional institutions by persons in office is an absolute prerequisite – sadly this does not exist: The sheer magnitude of recalcitrance by the government and a growing crisis where civil society must turn to the courts to ensure that the most basic of appointments (including the person responsible for crime intelligence which is deeply connected to ICT security) are made with a respect for the Constitution (and where the almost invariable result) is an absolute affront to the Rule of Law.

77. However as set out earlier an effective SAPO could incubate a robust e-commerce environment.

78. The introduction of additional VAT obligations on electronic services is similarly a disaster in the wings.[11]

79. Government's contempt for the public needs to come to an end. Of course the failing of our e-commerce sector is the least immediately dire of consequence … The

80. In the simplest of terms the wasting of public funds by Jacob Zuma and his family and the refusal of the ANC to hold him to account are a greater cost on the economy than the mere quarter of a billion rand in question.

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[3] Are the current legal measures adequate to deal with cybercrime in South Africa?

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81. The fact that the South African Police Service have not made any arrests of officials at the City of Johannesburg for obstruction of justice and perjury when same attempted to claim that they were hacked when they in fact failed to provide confidentiality to customer data is a good indication of the countries inability to adequately deal with cybercrime.

82. The dismantling of the investigative capabilities of the National Prosecuting Authority (the Scorpions) is further testimony

83. The fact that the Richard Mduli served as head of crime intelligence and was only removed after highly fraught litigation from civil society and that the current Minister for State Security's wife is a convicted international drug dealer do not bode well for confidence.

[11] The issue is relatively complex, and invariably the Department of Communications would regard itself as bound by Treasury on the issue, therefore it would be a waste of energy to fully set forth the problem to e-commerce in South Africa but in very simple terms the moves to impose VAT upon electronic services without a proper landscape in place to address any taxation already accruing on the electronic service in question is going to lead to an increase in the costs of doing business without any value being experienced. This is a grave problem.

[4] What institutional arrangement(s) are required to deal with cybercrime both nationally and regionally?

[5] What are best tools for fighting cybercrime, in terms of policy, regulations and institutions? What other issues should be considered in dealing with cybercrime in South Africa?

84. A respect for the Rule of Law and an effective and dedicated police service are what is required to deal with cybercrime. All other proposals would amount to putting lipstick on a pig.

CHAPTER 7

Page 52 (own emphasis and sub-numbering):

[1] How can the country's IT competitiveness be further enhanced?

85. As set out earlier the improvement of SAPO as an efficient firm and the growth of a responsive industry that is not plagued by a regulatory crisis will enhance South Africa's IT competitiveness. Fundamentally however the removal of strangleholds on the economy will render all industries more competitive and the IT sector will take a life of its own.

[2] Are there further opportunities for the export of IT products, knowledge and skills?

86. There are massive opportunities for South Africa to become a centre for outsourced business processes but the continuous decline in economic freedom and the Rule of Law is a massive challenge that no ICT policy can address.

[3] Has government's FOSS policy been a success?

87. No it has not. The continued use of FOSS policy by state departments is commendable and should continue but there remains serious problems with the acquisition and

development of ICT infrastructure by government and the current FOSS policy has not lead to meaningful engagement with proprietary vendors to see the adoption of FOSS supportive mechanisms by same.[12]

[4] In addition to the above, what other factors are critical for the future growth of the IT market?

88. The use of the recently enacted Special Economic Zone Bill to create dedicated SEZs for IT goods and services.

[5] What role can be played by SMEs in the IT market value chain?

89. The question appears to assume that SMEs form part of a chain rather than are a firm type within a complex interconnected market. Presumably the desired answer is to suggest that SMEs create more jobs than larger firms.

CHAPTER 8

Page 68 (own emphasis and sub-numbering):

[1] What new regulatory approaches should be adopted to support **innovation**, access to affordable services and the creation and promotion of a **diverse range** of high-quality South African public interest programming to all audiences?

90. Innovation is almost invariably strangled by misguided restraints and regulations. In particular a limitation of available services through obscure licensing measures is the antithesis of diversity.

[12] Most computers owned by the Government operate with Microsoft Windows, this is a simple reality and should be acknowledged. However document type adoptions and so on should be conditional upon support of suits other than MS Office.

91. The White Paper should therefore specifically seek to promote the adoption of IP based broadcasting, and enable niche broadcast channels ready entry.

92. Further the exclusion of encryption on STBs provided by the State invariably supports Multichoice and is a horrible form of regulatory capture. I submit that the entire exercise of DTT is a horrible mistake and that an encryption provision on DVB-S2 is the proper course.

93. An additional advantage of utilizing satellite as the basis for broadcast television is access to an entire array of content on Free-to-Air channels.

94. The joint use of DVB-S2 and IP broadcasting (on fixed and wireless broadband connections) will deliver far greater public interest programming to all audiences. In the case of rural audiences without access to broadband there is still DVB-S2 broadcasting.

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[2] Is there a need to review the definition of broadcasting services, given the changing environment, in order to ensure that identified public interest objectives for the sector are met? If so, how?

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95. The existing precept of broadcasting services remain applicable in a converged environment due to the fact that broadcast content is readily consumed without demand selection whilst other content is available on demand. See paragraph 9 of my *Initial Submissions in Respect of the Proposed ICT Policy Review Framing Paper; 2013* of the 24th April 2013 (annexed):

> It is clear that the police document conflates different communications media and whilst there has been convergence between telecommunications and broadcasting in a technological sense a particular distinction continues (and will continue) to exist between content which is "broadcast" and readily consumed (switching on the radio or television) and content which is accessible on demand. The core objective of the framework appears to bootstrap consideration about the "broadcast" content to be grounds to interfere in content on demand. While a case for regulating pornography on television exists no case exists to attempt to regulate the Internet.

96. A lack of recognizing this simple reality and assuming a right to regulate content on capricious grounds will invariably lead to constitutional challenges and is a hallmark of a police state growing.

[3] How should policy ensure that there is diversity of services and content and that 'audiences have access to international, national, provincial and local news, information and other programming of relevance to the given that new services will not be limited to specific licence areas?

97. As set out in paragraph 90 *et seq* the success of diversity depends on allowing IP based broadcasting to find root in South Africa.

[4] What key issues should be considered in relation to spectrum allocation to ensure that the public interest, cultural, social and economic objectives linked to audio-visual and audio content services are met?

98. An approach that conflates issues for spectrum allocation is destined to fail. Give consumers more choices and migrate to broadband as priority and let free agency work its magic.

[5] (i) What **objectives** should the SABC **prioritise**? (ii) How should the **mandate** of the SABC, as described, be funded? (iii) Are the current funding arrangements adequate to fulfill all the requirements placed on the SABC in law? (iv)What should the role of government as the shareholder of the SABC on behalf of the public be?

99. [iv] The government should have no role as a "shareholder" and the current corporatized arrangement under which government holds ownership of the SABC is the root of many of the chronic maladministration problems that continue to plague the SABC.

100. The SABC must be entirely independent of the government of the day. A mutual shareholding structure restricted to natural persons with a board elected and accountable to an annual general meeting of shareholders is the best course to ensure a properly governed SABC.

101. I propose the following approach towards the SABC:

a. The SABC in conjunction with ICASA and the Department of Communications restructure its holding charter from a State owned corporation to a mutual public

company in conformance with the Companies Act 2008 (as amended)[13] with 100 million shares.

b. Shares are available for purchase outright at a calculated price (calculated by the DoC such that if 25 million shares are purchased the full current value of the SABC would be met) or by subscription at the price of the TV licence. All natural persons with a TV licence paid for the previous 5 years will be afforded an unpaidup share with a restriction on calling by the SABC limited to the price of a current TV licence.[14] Additionally South African citizens will be able to purchase a share that is unpaid up at the rate of a TV licence.

c. The South African government will hold 25 million which will be sold by the government at the prevailing share price when other issues of shares have been exhausted.

d. Each shareholder who is a natural person will receive an invitation to attend the AGM and to vote for nominated directors. Shares held by corporate entities and trusts will not be entitled to vote for directors but the shareholder will be eligible to nominate directors. A nominations process needs to close three months before the AGM.

e. Other than the AGM the Board will be in proper control of the company, elected by natural persons on a single vote basis.

f. Shares not fully paid up will give a holder a right to vote at the AGM but any dividend will be payable only in the portion to which a share is paid up and shall be called in.

g. The TV licence will be abolished.

102. This proposal will see SABC shares as a savings instrument with a minor return on investment.

CHAPTER 9

[13] The applicable articles and memorandum would need to be in place to provide for a mutual shareholding structure.

[14] In essence rather than paying a TV licence a person will be paying the call up on a share

Page 79 (own emphasis and sub-numbering):

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[1] What strategies for increasing the affordability of access to ICTs, particularly for low-income users, should be adopted and how should the cost of providing services to needy communities, government institutions particularly schools and clinics be reduced?

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103. I have repeatedly presented a particular proposal for the construction and establishment of a National Broadband Network. This proposal will allow for low-income users to have meaningful access to broadband Internet.

104. With respect to government institutions same should be properly budgeted for and the extensive networks already constructed, and being constructed, by the various operators put to proper use.

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[2] How should government take responsibility for all types of UAS across the ICT sub-sector, telecommunications, broadcasting and postal services?

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105. A free market provides universal access. Universal access has largely been a mechanism to proclaim that the market is inefficient; this is simply nonsense. Access to broadcasting and telecommunications is available throughout the Republic (even the most remote of areas) by way of satellite transmission. Despite the fact that universal broadcasting is possible on DVB-S2 without the massive costs of Sentech there remains an intention to drain the fiscus with DTT.

106. All operators have rational interests in cross subsidizing certain services within their offerings and this naturally drives universal access. The vast majority of South Africans do not have telephone connections because the government imposed line installation requirements on Telkom but rather because the mobile operators saw an opportunity to make money.

107. Adopting my proposed NBN approach will see certain customers enjoying access to the Internet by way of satellite at a massively subsidized rate but between the operators interacting this small number of low volume customers will be offset by massive other advances to the operators.

[3] Should the universal access and service obligations continue in their current format? Are they sufficient for addressing the universal access challenge in light of new technological and market realities in South Africa?

108. The attempts at imposing universal access have failed and been little more than an invitation to malpractice. For this reason apart from establishing a National Broadband Network there should be a move away from universal access obligations.

[4] In a converged environment, should there be differences in the treatment of operators in the different sub-sectors (broadcasting, telecoms and postal) insofar as USAO and the USAF are concerned?

109. Different treatment of operators according to size and sub-sector is inevitable but preserving structural differences in the manner of handling market players should be avoided.

[5] Are the roles of USAASA, MDDA and ICASA still relevant given the developments in the sector?

110. The USAASA has been a dismal failure and it is probably best to await the conclusion of investigations of the full scope of maladministration and failure with the USAASA.

111. ICASA's role forms the basis of several points of query in the Green Paper and the query appears to confuse the issues that have arisen. The role and relevance of a Department of Communications

CHAPTER 10

Page 79 (own emphasis and sub-numbering):

[1] Given this Economic Climate, how can the South African ICT Industry attract and sustain the Investments?

112. A proper functioning industry with reduced government interference and increased certainty will attract and sustain investments.

113. Consideration for a utilities taxation dispensation in conjunction with neighboring States can also be made[15]. A utilities holding enterprise or trust should be considered as a means of encouraging investment with such an enterprise being a special purpose vehicle. The placing of electronic communications facilities into such vehicles could see a flow of capital. Such a dispensation could provide that tax only be charged on income paid to investors rather than recapitalized on condition that the infrastructure be openly available to use by any licence holder on a non-discriminatory basis.

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[2] How do we grow the domestic market amid the high levels of imports without undermining our trade agreements and what other industry-specific support mechanisms both (direct and indirect) should be implemented so that the sector rejuvenated to create jobs and revive South Africa's excellence?

[3] The value of IP does not necessary lie in its registration but its use. How can we promote the use of local IP to drive innovations in the ICT sector?

[4] Considering the economic climate characterized by limited domestic capital, how can South Africa balance FDI and local ownership of ICTs, particularly in those highly regulated sectors such as Broadcasting and Telecommunications services?

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114. There is no need to "balance FDI and local ownership" and every measure in place to regulate or determine ownership of ICT firms has been a disgrace to the economy.

[15] SACU members in essence and this proposal steps far beyond simply infrastructure for electronic communications networks and covers roads and railway lines. It is the idea of taxing a utility on the payments to investors rather than the underlying assets so long as the utility retains an essentially public access character. Due to the size of investments and possible regionally involved investments it is best to devise the policy as a region. It would simply be in South Africa's interests

[5] How can we **re-engineer** ICT SMME development so as to enable them to participate across the entire ICT value chain.

115. The true obstacles to SMME development need to be honestly identified and addressed. Government incompetence and a culture of interventionism paired with cronyism are difficult to address by way of policy. I therefore submit that the question is misguided as we don't need to re-engineer anything at all, but rather simply allow a climate with the existing engineered edifice does not collapse.

116. The best thing which the Panel can do to ensure SMME development is to oppose the nefarious Licensing of Businesses Bill and tell thedti to adopt the radical attitude change that is needed.

CHAPTER 11

Page 85 (own emphasis and sub-numbering):

[1] How can South Africa maximize its human e-Skills capital to take advantage of new technologies to become a more effective part of the Knowledge Society?

117. Existing labour policies and related "redress" laws are not an incubator for human skills development. The daily failing of the government to allow the majority of South Africans to receive quality education and the need for the Minister of Education to be challenged in court to ensure the delivery of textbooks make any attempt to answer within the parameters of the ICT sector idiotic and a side show.

[2] What strategies can be put in place to meet the sector's human resources needs?

118. A competent and dedicated minister responsible for education would be the first essential strategy. Sadly it is the least likely.

119. The establishment of dedicated educational institutions for providing FET coupled with certain higher education traits is a natural measure to grow the human resource pool. This however is generally a concern of the Green Paper on FET Colleges.

CHAPTER 12

Page 93 (own emphasis and sub-numbering):

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[1] (i) How can the provisions for the ministerial policy directives be improved without **undermining the independence** of ICASA? (ii) What changes would safeguard the regulator's independence and at the same time ensure **transparent interaction** between ICASA and government? (iii) What other mechanisms could be used to ensure the alignment between policy and regulation?

[2] (i) Is the existing structure of ICASA appropriate to regulate the **converged environment**? (ii) How should ICASA be **funded**?

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120. ICASA ought to be funded entirely from the proceeds of spectrum management and licensing fees (which ought to gradually diminish). It needs to be assertive of its Constitutional independence notwithstanding the oddities that exist. There needs to be minimal scope for ministerial directives and the movement from policy to regulation needs to be understood in a proper legal context. Almost all of the existing problems arise because the DoC would like to think of ICASA as a government department rather than a Chapter 9 institution. Convergence simply moves the scope of ICASAs regulatory parameters from trying to generate industry specific regulations toward regulating according to first principles which is an improvement.

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[3] The provisions dealing with universal service and access are contained in all the communication laws and policies. Is the institutional arrangements between the decision makers adequate to fulfill the universal service and access provisions?

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121. The power of coordination through rational self-interest far exceeds institutional arrangements which operate on coercive principles. The existing obligations for universal access need to remain imposed on operators who accepted same on entry into the market as adequate consideration for the advantages of entry. However the reality is that most of the universal service requirements are more than met by the operators through ordinary operations and a light hand aimed at assembling universal broadband access at a reasonable price will remove all need in the long term for obscure legislative provisions.

[4] The provisions of the Electronic Communications Act on Universal Service Fund separate the management of the Fund from the determination of under-serviced areas. The definition of needy persons is also separated from the management of the Fund. Is this the best mechanism to promote effective use of the Fund? What measures can be developed to foster cooperation?

122. As already set out the Fund is in an absolute state of disarray and the objective of Universal Access needs to be properly thought out. An investigation into the current state is needed before it can be determined whether the management separation is appropriate.

[5] The domain names are taking on increasing importance as their commercial value rises, and as global internet and e-commerce increase. Cyber-squatting took on global proportions until regulatory regimes dealt with the registration of names by persons not entitled to them. Should South African names that are intrinsically of national importance or relevance be treated differently from corporate or brand names for reasons of public interest.

123. I submit that this concern is wholly misplaced and entirely unworthy of attention.

Schedule of Annexures

- **ANNEXURE A:** ***Submissions on Department of Communications Policy Review Symposium***

  31st May 2012

- **ANNEXURE B:** ***Letter to the Department of Communications***

  16th June 2012

- **ANNEXURE C:** ***Submissions: National Broadband Policy for South Africa***

  15th May 2013

- **ANNEXURE D:** ***Initial Submissions in Respect of the Proposed ICT Policy Review Framing Paper, 2013***

  15th June 2013

- **ANNEXURE E: DRAFT** ***Submissions to the Portfolio Committee on Communications: Costs to Communicate***

  29th July 2013

31st May 2012

Sent via email:
ICTcolloquium@doc.gov.za

Submissions on Department of Communications Policy Review Symposium

Paul Hjul

hjul.paul@gmail.com

INTRODUCTION

PRELIMINARY MATTERS

1. This submission is made in response to the invitation appearing on the Department of Communications website for comments pertaining to the ICT colloquium which was held on 19th and 20th April and is intended to be the first step in a process leading to an Integrated National ICT Vision.

   > Please send any additional comments and/or questions on the process to date as well as your suggestions for the way forward to ictcolloquium@doc.gov.za
   >
   > **NB: This particular method of communication will be kept open until the end of May 2012**

2. The process has been gazetted on the 13th April in the Government Gazette by way of a discussion document *Defining a new era in ICTs for all South Africans: The path to creating a National Integrated ICT Policy for South Africa*[1]. Due to the fact that this submission set specifically addresses the contents of this document all references to paragraphs are to paragraphs in this document.

[1] Government Gazette 35255, 13 April 2012

3. I have attempted to structure this submission *ad seriatim* according to the structure provided in the document. I have frequently been unable at this time to make extensive submissions and have largely been confined to matters relating to broadband internet. In further engagements on the process I may expand my scope.

PERSPECTIVE OF AUTHOR

4. I do not have any professional or commercial relationship with any industry participant and other than:

    a. being a consumer of various ICT companies (Telkom, MTN, Afrihost);

    b. being a great fan of the direction which Mweb and CellC took during the course of 2010;

    c. having had most unpleasant experiences with Vodacom in 2006 which has been the subject of several instances of abusive correspondence from various agents connected to same in the five years following;

    d. being a member of the MyBroadband forum and contributing to their request for input;

    have no current interest in the outcome of the process outside of deriving benefit from a better communications industry.

5. I regard myself as a communications enthusiast and believer in the value of proper internet connectivity.

6. As indicated above I have made contributions to the request by MyBroadband for input that informs their contribution. I have evaluated a draft version of the submission and believe that it is apposite to address the relationship between same submission set and this submission set:

    a. The submission by MyBroadband represents a consolidated set of opinions and views advanced by users of the MyBroadband forum. In effect MyBroadband has acted as a facilitator to garner views and opinions for the process and actively reduced the barriers to participation in large part by providing to the public at no charge the professional assistance of Ellipsis Regulatory Services to compile a

submissions set. This service has been offered to the public without charge and is ultimately of major benefit to both the public and the process.

b. I submit that the Department should on the most fundamental of levels afford specific recognition to role played by MyBroadband and that their submissions should, in those areas where they present submissions, carry significant weight.

c. Should the Department have queries on the contents of an ordinary member of the public's submissions the ability to correspond directly is beneficial, and that for this reason a doubling up of submissions made by members of the public through a MyBroadband and individually is beneficial;

d. Finally I submit that due to the overwhelming power of industry interests there is a pressing need for as many public submissions as possible to be made.

e. I therefore submit that the component of the annexure to the MyBroadband submission which is extracted from my contribution on their online forum represent my views formulated within the context of an internet community forum. While I have endeavoured that this submission not serve as a "mere cut and paste" replication to a certain inevitable degree the contribution on the MyBroadband forum represent

CHAPTER 1,2 AND 3

STARTING PREMISE

7. The starting premise of my submissions is that there is a pressing need for (a) the review of existing South African ICT policies culminating in an Integrated National ICT Policy (hereinafter the NIP); and (b) the establishment of a working process for the systematic revision of the NIP in an credible, open, transparent and participatory manner.

8. I therefore submit that in addition to the mandatory public submission invitations demanded by a Green Paper that the Department organize open public hearings which are streamed on the internet.

9. I submit that the public hearings held by ICASA on Local Loop Unbundling in 2011, which were streamed on the internet, should serve as a template of the nature of such hearings.

10. To this end I submit that the DoC has a special duty to ensure that the NIP is driven in a manner that eliminates undue influence from the major industry participants in the form of collusive discussions behind closed doors and the reliance on "confidential" documentation and the presentation of redacted submissions.

11. A further factor that can threaten the credibility of the process is the running of parallel talk shops on the subject matter.

12. To this end I am particularly concerned that the ICT Indaba (http://www.ictindaba.com/2012/) being held in Cape Town days after the closure of comments on the document will ultimately be an opportunity for decisions to be taken behind closed doors between the commercial interests in the industry in an uncompetitive manner.

13. Even if the ICT Indaba does not foster collusive discussions the fact remains that it is not a publically accessible process – as evidenced by the minimum R4000 attendance fee.

14. The adage "justice must not only be done, but be seen to be done" applies more strongly to truly democratic policy making.

15. I submit that the objective in paragraph 1.6 is unrealistic – due to the fact that proper engagement with stakeholders requires a degree of trust which does exists and may take time to establish – and that a NIP cannot be finalized by April 2013.

16. As indicated earlier the objective in paragraph 1.1-1.3 of constructing "an integrated National ICT policy" through a "constructive critique of past and current ICT policy" is an inadequate exercise as a credible ongoing adaptation of ICT policy is necessary.

17. In essence what is required is not simply "a fresh look at the way forward" but rather the emergence of the tools that ensures that our nation is always able to find a "fresh look" and further that this "fresh look" is able to be formulated into integrated national policy and that this policy is implemented.

18. I submit that a period of three years between NIPs is a suitable timeframe if the rate of technological advancement is taken into account.

19. I therefore submit that a more realistic objective is for the approval of a NIP framework by Cabinet by the start of 2013 with an interim NIP being adopted by cabinet in April 2013 such that the revision cycle is able to start on a fundamentally sound basis such that the first (final) NIP may be in place by June 2014 with a second NIP three years later in 2017 and the third NIP in 2020.

20. The process of re-aligning legislation and policy to the NIP is therefore able to be completed by 2016 which is in line with the *Strategic Plan for the fiscal years 2012 – 2017* and the *Annual Performance Plan for the fiscal year 2012-13* of the Department.

21. My submissions in this respect operate on the basis that the IDP processes utilized by local government are a more appropriate model to integrated ICT planning than the long life process of a green paper and white paper. It may be necessary for legislative amendments to give effect to the NIP to be introduced by April 2013 for my proposed approach to be implementable.

22. I submit that the alignment of ICT policy making to an IDP like process will facilitate a "deliberate shift towards GDP linked initiatives" (paragraph 3.1.11).

ICASA

23. Paragraph 2.2 is headed "DoC's State Owned Companies and Agencies" with the presentation of Independent Communications Authority of South Africa in paragraph 2.2.3.

24. The unfortunate suggestion made in the punctuation is that ICASA is possessed y the DoC. While this may not be intended the reality is that the "independent" component of the name ICASA is open to a great deal of query. This is an unfortunate state of affairs. A serious and "hard" talk is needed as to the institutional autonomy of ICASA and the fulfilment of the requirements of Chapter 9 of the Constitution relating to broadcasting regulation.

25. I submit that ICASA should be a properly autonomous agency due both to the provisions of Chapter 9 of the Constitution and the general international

guidelines pertaining to regulation of the communications sector. Regardless of whether all jurisdictions really implement WTO regulations and guidelines South Africa is constitutionally obligated to give effect to agreements it has made itself party to.

26. I submit that unfortunately the DoC formulated several policies relating to the construct of an independent regulator and market liberalisation (paragraph 3.1.8) on begrudging premises with the result that the policies may be "characterised as being mainly reactive to technology advancements and changes" (paragraph 3.1.9).

27. If the DoC truly gives ICASA autonomy and capacity the DoC is better able to become a catylist and "facilitator .,. taking leadership on a National integrated ICT policy" (paragraph 3.10.9)

RADIO FREQUENCY SPECTRUM

28. The importance of properly managed spectrum cannot be over stated and that this "limited natural virtual resource" (paragraph 3.7.5) can act as a catalyst for the most important resource of the nation – our human resources.

29. I submit that the Office of the Minister simply lacks the necessary capacity to serve as the "custodian of the spectrum on behalf of the people of South Africa" in a manner which is "of the greatest benefit to the entire population" (paragraph 3.7.6) and whilst the current operational structure of ICASA does not lend itself to performing this function ultimately the management of the radio-frequency spectrum is properly within the domain of the communications authority.

30. I submit that specific intervention on the issue of "custody" of the Radio Frequency Spectrum be prioritized.

31. I submit that serious consideration towards the total abandonment of terrestrial television broadcasting should be made. The price discrepancy between set-top boxes for DTT and a satellite orientated set top box coupled with a dish receiver raises the question whether there are not great dividends to be achieved by opting for a satellite only option.

32. I submit that the arrival of TopTV to the market and their approach towards low cost satellite services demonstrates the possible affordability of satellite orientated equipment.

33. I further submit that the radio interference free area requirements demanding by the Square Kilometre Array project will make the national satellite broadcasting approach fundamentally sound.

34. I submit that international experience on spectrum auctions strongly suggest that if government attempts to use its custody of the spectrum as a revenue source the industry will suffer. (Paragraph 3.7.8)

35. However many of the underlying arguments for the auctioning of spectrum do have validity and hybrid models which would see certain spectrum being auctioned with the revenues immediately invested into the ICT industry offer. Such investment can be effected into a dedicated ICT financial services provider (discussed later).

CHAPTER 4

BROADCASTING INDUSTRY

36. Due to time constraints and due to the focus on the "broadband" aspects of the industry I am not able to make submissions pertaining to the broadcasting industry discussed in chapter 4.

37. The submissions made with respect to the migration to satellite technology and the freeing of spectrum has application to the broadcasting industry.

CHAPTER 5

LOCAL LOOP UNBUNDLING

38. ICASA embarked on a process to address local loop unbundling (LLU) in 2011, unfortunately the result has not been the freeing of the local loop from being held hostage.

39. Apart from the established major operators and labour unions support for LLU was effectively universal.

40. The major operators presented submissions which had the sole objective of protecting their domain (Telkom seeking to demand wireless loop unbundling and fending off copper line LLU, whilst Vodacom and MTN insisted that the Authority restrict itself to destroying Telkom while protecting their wireless "service" monopoly on data.

41. I submit that the Authority failed to apply its own precepts pertaining to facilities leasing regulations and ultimately the LLU process remains up in the air.

42. Annexed please find my submissions to the Authority on LLU. In these submissions I advocated that the Facilities Leasing Regulations be ruthlessly enforced and that Local Loop Unbundling would be a natural consequence. I further advocated that if Local Loop Unbundling is a reality – as opposed to something that can be fended off – a space is created to address potential problems of the digital divide which a commercial approach to LLU may create.

43. In light of the proceedings involving Neotel and Telkom in connection with the Facilities Leasing Regulations and the remarks of the Complaints and Compliance Committee of ICASA I submit that my core argument against unnecessary attempts at regulation have more than vindicated themselves.

44. I therefore submit that it is apposite for the NIP process to specifically critically evaluate the failure of roleplayers in securing LLU despite repeated promises and the legal framework which demands LLU.

THE CHALLENGES IN THE REALM OF SOUTH AFRICAN INTERNET (OUTSIDE OF THE LOCAL LOOP BEING HELD HOSTAGE)

Need for Vision and Criteria

45. The first challenge in establishing (near) universal broadband internet services is a lack of a defined vision and objectives as well as a generally dysfunctional and disconnected (mind the pun) industry.

46. Setting specific goals require discussions and I would take a starting point of unrestricted "commodity internet access" (to adopt the concept from academic electronic networks) with access speeds guaranteed to at least 1Mbs and suitable latency requirements.

47. The Blackberry Internet Service and most of the tailored smartphone packages which restrict which sites may be accessed is therefore not within the scope of broadband, nor would tailored content delivery products (such as IPTV through to a complex, obviously a triple play solution which includes commodity internet is broadband if the commodity internet component meets the criteria).

Need for an effective regulator

48. The second challenge is a lack of an effective regulator.

49. It appears that many of the problems emerge from a lack of capacity in the legal department of ICASA. This is simply tragic.

50. ICASA urgently requires idealistic legal professionals or recent graduates who actually understand the legal principles applicable to the converged communications industry. This is both a matter of remuneration and quality of working conditions. Being an "ICASA lawyer" should be a goal and badge of honour.

51. Employees of ICASA's legal department must not be afraid to put in the necessary hours and secure the ire of their colleagues working in the private sector.

Telkom needs to be held accountable

52. Despite the monopolistic protections afforded to Telkom in the 1996 Telecommunications Act Telkom failed to meet universal access requirements. It has never been held accountable for this.

53. Further Telkom managed to escape application of various aspects of competition law for an extended period despite which it is still facing the crippling possibility of billions of rands in fines for contravention of competition law.

54. The industry requires that Telkom be held accountable absolutely – even if this entails bankrupting the company – because the stall and delay ethos needs to be brought to an end. The full scope of the costs which Telkom will face in being held accountable must be reinvested into the industry.

55. There have been major improvements coming from the CEO and Telkom's ability to offer value as a home user ISP clearly exists.

56. I however submit that a government planning document should not overly dive into Telkom because this entrenches the monopolistic parastatal thinking which is the problem.

57. Further SAIX needs to be moved out of Telkom and turned into a true internet exchange enterprise.

The "mobile operators"

58. Vodacom and MTN are I submit contributors to the problems experienced in the telecommunications industry. Both enterprises have a culture that embraces corporate impunity – as evidenced by MTN's debacles in other countries.

59. Ultimately the impunity culture is likely to be a consequence of having been dominant players in a sheltered industry and addressing the challenges require accountability and the addressing challenges found at the regulator.

60. The two cellular giants position opposing "wireless LLU" is particular cause for concern.

Internet Service Provider Giants

61. IS (and by extension Dimension Data) cannot escape particularly in its adoption of certain strategies which verge on parasitic.

62. IS unlike Neotel is not using the Facilities Leasing Regulations to force access to exchanges and ultimately unbundle the local loop.

63. IS argues *ad nausea* that Telkom's network was state funded without dealing with the issue of liability impairments, creating a net scope for Sayre's fights from Telkom.

64. Fundamentally everything that emerges from IS suggests a company which is accustomed to providing internet services at externally determined pricing to those who can afford it.

65. While this might be great for a business sector which requires connectivity and is prepared to pay for it the contribution towards actually building a broadband internet culture is severely restricted.

66. IS and other ISPs will need to adapt to a changed market or will become less significant

PROPOSED INTERVENTIONS TO BE MADE TO GET CHEAPER, FASTER BROADBAND TO MORE PEOPLE?

67. Firstly the brutal enforcement of the Facilities Leasing Regulations; Telkom should be facing crippling fines by this point in time.

68. Secondly ICASA through the processes has to introduce a wholesale per megabyte price for the "wireless local loop" which would be unbundled in this process. (The price runs from device to the point where the operator hands traffic over – so the operator is able by acting intelligently to avoid using its national backhaul capacity.)

69. The simple reality is that wireless based services in urban areas are exceptionally cost efficient as a last mile for moving across reasonably high volumes of data (per user), but in order for a wireless system to deliver high volumes of content you need a concentration of access points and ultimately the wired backbone of the network gets closer to the point of usage. Fundamentally it should be asked whether users should be using a wireless option in an urban area if they are transferring more than 100Gb in a month from a fixed point, inversely does ADSL (or other fixed line) orientated infrastructure makes sense for users who are transferring less than 3Gb in a month. In certain high density environments the mobility of most wireless offerings (3G) is the primary driver … Mobile operators have the power to introduce access at a reasonable rate by introducing products aimed for single tower usage (restricting its mobility and greatly adjusting planning processes). A fixed home broadband solution can be introduced by the evil two operators at R150 per month for 3Gb access with the operators pillaging in funds from the exercise.

70. Thirdly national policy needs to endorse and support open peering and the creation of network internet exchanges and other facilities around the country. The fact that Telkom provides handover for ADSL to ISPs only at three locations is ludicrous.

71. Fourthly the state should avoid putting money into individual operators or trying to put projects out for tender. Instead funding should be directed towards establishing an internet technologies financial services provider which provides suitable loans to the industry as a whole. [Whilst I haven't fully researched the idea the principles applicable to co-operative banks (which the state has passed legislation for in 2007) might actually be beneficial in the industry – essentially communication licence holders (which are juristic persons) as well as natural persons working in the industry are eligible to be members of the co-op and applications for financing are received from licence holders. This approach moves it out of DoC possible problems – supervision for co-op banks lies with treasury and SARB and introduce further democratisation into the process]. If the financial service provider for internet development is truly open and transparent businesses which benefit from the network effects of broadband internet can readily be relied on to provide investments – it makes no sense for Google or the now listed Facebook to install a meter of copper on the last mile as they cannot charge for the access, but it makes sense for them to invest millions if it will see households having access to their service.

72. Fifthly construction and public work policies need to incorporate an open access electronic communications ethos. When SANRAL build a road (with or without corrupt tolls) they ultimately should build them such that fibre can be run without the road being dug up. Basic construction to includes ducts and so forth will avoid stupidity from municipalities seeking to halt fibre roll out.

73. Sixthly we desperately need Class-ECN licence holders to make a mark and build localized network infrastructure, every single local municipality should have one localized ECN operating. There is no point in Broadband Infraco building (or purporting to build) backbone infrastructure when nobody is going to be able to use it.

ADDRESSING THE PROBLEM OF BROADBAND SERVICES IN RURAL AREAS?

74. A wireless last mile is generally presented as capable of ensuring rural area broadband with WiMax being particularly noted. The extent to which this is possible in the area protected for the SKA radio telescope project requires serious consideration. Whilst a major consequence of the SKA is (and will

continue to be) the rolling out of fibre and connectivity for the project this needs to translate into broadband internet services for the communities which are in the area.

75. WiMax is well positioned for low population density areas (where other restrictions do not apply) but it is foolhardy to conduct planning applying the maximum distance possible and maximum speeds available, instead

76. More than the last mile (which can be many many miles) dealing with rural broadband requires a systematic construction of multiple network intensive nodes (data centres, POPs, “inx”s).

77. Whilst it may seem counter-intuitive sneakernets and IP by carrier pigeon should not be entirely scoffed at for moving high volume data which is not time sensitive in rural areas – largely to free up capacity for broadband internet services where latency matters. Most rural households have connections to towns or other nodes where wired internet connectivity at a high speed is possible. When considering offsite backup services for farming communities the benefits of the cloud need to be put into the perspective of whether solutions which sees the uploading of data by way of a continuous upload onto removable storage which is physically taken to a connection point for syncing with the server and where rural based businesses operate servers in datacentres (virtual or otherwise) and perform syncs using physical handover. In essence a farmer may have a torrent server (for legal downloads of course) which is on a high speed internet link away from the farm.

PROPOSAL FOR ESTABLISHING A NATIONAL BROADBAND NETWORK

The current situation

78. Currently both Sentech and Broadband Infraco are performing operations which fall within the domain of a national broadband network.

79. While it has been suggested that these two state entities be merged, numerous reasons exist why such an exercise might ultimately be more of a poison than a cure.

80. Sentech has commenced operations providing broadband connectivity to various institutions while Broadband Infraco operates an open access fibre

backbone which is made available exclusively to other service providers on a wholesale basis. These two features represent major components of a national broadband network (an NBN) as conceptualized in many other countries and therefore any discussion about an NBN needs to consider where Sentech and Broadband Infraco features.

81. Further Telkom is essentially in possession of an NBN as a result of the long term national monopoly held by Telkom and the lack of localized development which occurred in many other jurisdictions and Telkom is heavily investing in its national network.

82. There is also currently being put together a national research network (SANREN) linking academic (universities) and research institutions on a national basis. This network is essentially being assembled by a skeleton staff and makes use of infrastructure leased from operators – particularly Telkom.

83. The major lesson from SANREN is that a high speed network can be acquired without investing billions in building additional physical networks.

84. The mobile operators are also investing in their national networks and collaboration on backbone network infrastructure has emerged – particularly the Dark Fibre Alliance.

85. Ultimately it seems that if government plans to physically build an NBN it should simply invest more money in Broadband Infraco who are ultimately building such a network.

86. If government however is wishing to see the emergence of a broadband product available to all (or close thereto as possible) South African's the focus needs to move away from the laying of building network infrastructure and should rather be placed on building networks using existing infrastructure and facilities.

Are these developments not merely re-enforcing the digital divide?

87. The reality is that network operators focus their investments on projects which can secure a return on the investment and make a profit. Government has attempted numerous strategies to influence the investment to favour rural network investment with the Underserviced Area Licence paradigm being a particular failure.

88. The premise of underserviced areas is in my opinion the fatal flaw. As communication service providers build their services in a manner which enables them to secure a return on investment and the generation of a profit any special dispensation for existing operators or to introduce new enterprise operators is bound to confuse business logic with public finance.

89. Instead of trying to determine what is an underserviced area and seeking to direct network operators to specifically cater for those areas the state should seek to ensure that access to a "people supporting" broadband product is made available throughout the country.

90. An additional target of an NBN should be the creation of economic activity generating nodes in economically depressed (but not necessarily rural) areas. Which I submit is fully in line with transforming South African society.

91. I therefore propose that a Dedicated National Broadband Network Operator (the NBN Operator) be established on a shoe string budget as a strategic state owned enterprise which through the leasing and acquisition of facilities from players – and as a last recourse the construction of its own provisions – systematically assembles a broadband internet network designed to provide 1Mbs internet access on latencies to each household and resells data at a price of R50 per gigabyte – prepaid and with no expiration. (This essentially means that a consumer for R150 has access to 3GB data which is exceptionally well priced but the service becomes less favourable for usage in excess of 15GB where the costing is R750).

92. In constructing the network the NBN Operator will establish network nodes throughout the country which interface between the backbone and the last mile of the NBN network.

93. The capacity planned for each node is proposed to be directly tied to the number of households and it is proposed that 1Mbs of backbone capacity be allocated for each household (a contention ratio of 1/5). Therefore a village or town of 5000 households would be serviced by a 1Gbs network node. This produces a fairly large surplus of capacity at the node which becomes a location where ICT intensive firms could be formed.

94. I propose that the surplus node capacity be resold to SMMEs collocating at the network node and making local employment undertakings. The NBN

Operator in many towns can construct an office park for back end business ventures to start up, therefore generating rental income.

95. The proposal for the shoestring budget is premised on the fact that facilities should be leased from other providers where possible and the NBN Operator has access to the proposed broadband financial service provider (which other operators have access to as well – conditional upon their co-operating with the NBN Operator).

96. Ultimately the network will operate alongside the communication service provider's networks and provides affordable broadband services to end users in a household setting with surplus connectivity being used to foster a decentralized ICT sector and the concomitant job creation.

97. With Grahamstown for example SANREN provides a 1Gb link for the academic institutions and the existent ADSL community is similarly well serviced and the network node should be established for Makana in iRhini, ultimately the business case for digital bridging is inevitable – it is possible in fact that the NBN Operator will construct a 10Gb link from Telkom's termination point to the needed node in iRhini and that 1Gb will be leased from Telkom's POP in Port Elizabeth

Technologies proposed

98. For obvious reasons fibre would be the main technology leased (and where necessary constructed) for the backbone. WiMax seems particularly well suited as a standard last mile technology, unfortunately the SKA may result in WiMax not being permitted in parts of the Northern Cape. Additional technologies for the last mile should be fully explored.

This proposed service only caters to the poor

99. Firstly that isn't a bad thing, secondly it simply isn't true. If a network is constructed providing network connectivity at R50 per GB the mobile operators will be compelled to re-evaluate their pricing for fixed-wireless services and the pressure to improve more data intensive and costly products will be felt by all operators. Secondly the approach adopted is to use the NBN to provide end users with a cost effective broadband product by leveraging (and supporting) existing infrastructure. Ultimately the network effects of more users are felt by all users. While a certain degree of

subsidization underlies the proposal (and government funding – albeit a hopefully shoestring budget) the basic premise of a user pay principle does underlie the proposal.

The proposed financial services provider

100. As stated earlier, I am opposed to the government giving money to specific operators or for numerous reasons and believe that a loan system is better.

101. Ultimately it is anticipated that Broadband Infraco will perform a great deal of the building of the physical network infrastructure and will be fairly dependant on loans from the industry development fund. However if Telkom plays ball (as it is with SANREN) it could emerge as a fairly significant provider of backhaul and if it actually joins the LLU revolution, Telkom could find a lot of unutilized copper lines being given usage through leasing the lines to the NBN Operator who in turn hooks households on the prepaid tariff of R50 per GB for data[2].

102. Sentech could similarly emerge as a major provider of capacity in deploying WiMax installations at the nodes for last mile provisioning and cellular operators can if they wish actually play ball. What is ultimately envisaged though is that Class ECN licence holders will play a significant role in providing last mile access, and will use the industry fund.

103. However it is proposed that co-operation with the NBN Operator is a pre-condition to access to funding through the industry development fund.

104. Further strategic partnerships between the fund and retailers (with PEP being specifically considered) will be required to ensure that communities are able to acquire user equipment and purchase data bundles. A degree of device subsidization is proposed and what is essentially hoped for is a connection device (such as a dongle) retailing at less than R500 which includes 1Gb of data.

[2] The reality of last mile copper facilities is that there is an essential cost in maintaining a copper line between two points and whilst Telkom's current business model strongly depends on voice call volumes or high line access prices. A prepaid pricing on data access can similarly cover the charges.

A final caveat

105. The proposal operates on the basis of connecting households at a fixed point on a technology selected by the NBN Operator to the household according to the local conditions – this could be WiMax, a wired service, 3G or coaxial cable. Mobility is specifically not considered and the network is intended as consumer grade for quality.

106. Whilst the proposal assumes that the ECA will be applied and enforced on market players the exact role of the NBN Operator has not been fully considered and a blanket exemption for the NBN Operator is probably the simplest approach – requiring a statutory amendment and inevitable constitutional challenge by one of the large operators.

CHAPTER 6

POSTAL SERVICES INDUSTRY

107. Due to time constraints and due to the focus on the "broadband" aspects of the industry I am not able to make extensive submissions pertaining to the postal services industry discussed in chapter 6.

108. I submit that the postal services industry is currently somewhat of an anomaly within the ICT sector which has seen various instances and forms of convergence.

109. Despite this anomalous situation I submit that postal services should specifically be considered in developing the NIP.

110. In particular I submit that e-commerce is dependent upon an efficient postal and courier service industry.

CHAPTER 7

E-COMMERCE

111. Due to time constraints and due to the focus on the "broadband" aspects of the industry I am not able to make extensive submissions pertaining to the e-commerce section discussed in chapter 7.

112. I submit that e-commerce is a natural product of broadband penetration and therefore if the NIP succeeds in promoting broadband penetration major benefits to e-commerce will be a consequence.

113. Many aspects of e-commerce fall within the generally domain of trade and industry – consumer protection for example – and subsequently I submit that the DTI has a major role to play in the shaping of the e-commerce components of the NIP.

114. I submit that the proposal I have advanced in connection with the establishment of the NBN and the establishment of network intensive nodes should be geared towards seeing the emergence of the e-commerce enterprises throughout the country.

CHAPTER 8

DIGITISING GOVERNMENT

115. Due to time constraints and due to the focus on the "broadband" aspects of the industry I am not able to make extensive submissions pertaining to the digitising government section discussed in chapter 8.

116. Currently no authentication service providers as envisaged by the Electronic Communications and Transactions Act of 2002 have been accredited. The reason appears to be high costs as a barrier to entry.

117. I submit that there is an urgent need for the emergence of service providers offering authentication services for the adoption of modern technology in many areas of government and business. I submit that consultation with the legal professions with the aim of a collaborative effort of notaries around the country could be exceptionally beneficial.

CHAPTER 9

INVESTMENTS BY STATE INTO BROADBAND INVESTMENTS

118. I submit that the state should avoid putting money into individual operators or placing projects on tender.

119. Instead funding should be directed towards establishing an internet technologies financial services provider which provides suitable loans to the industry as a whole.

120. Whilst I haven't fully researched the idea the principles applicable to co-operative banks (which the state has passed legislation for in 2007) might actually be beneficial in the industry – essentially communication licence holders (which are juristic persons) as well as natural persons working in the industry are eligible to be members of the co-op and applications for financing are received from licence holders.

121. This approach introduces various forms of supervision from Treasury and SARB and introduces further democratisation into the process.

122. If the financial service provider for internet development is truly open and transparent businesses which benefit from the network effects of broadband internet can readily be relied on to provide investments – it makes no sense for Google or the now listed Facebook to install a metre of copper on the last mile as they cannot charge for the access, but it makes sense for them to invest millions if it will see households having access to their service.

CHAPTER 10

HUMAN CAPITAL

123. Due to time constraints and due to the focus on the "broadband" aspects of the industry I am not able to make extensive submissions pertaining to the human capital section discussed in chapter 10.

124. I submit that access to ICT resources is the greatest tool in developing ICT skills. In particular I submit that children interacting with technology as technology from a young age inculcates the necessary confidence in people to use ICT tools effectively.

CHAPTER 11 AND 12

INDUSTRY DEVELOPMENT AND DEVELOPING A FRAMEWORK FOR A NATIONAL INTEGRATED ICT POLICY FOR SOUTH AFRICA

125. Due to time constraints and due to the focus on the “broadband” aspects of the industry I am not able to make extensive submissions pertaining to the industry development section discussed in chapter 11.

126. The contents of chapter 12 are canvassed earlier in this submission set.

CONCLUSION

127. I hope the Department finds these submissions in order and look forward to the Green Paper.

Paul Hjul

Submissions on Local Loop Unbundling

Paul Hjul

PERSPECTIVE OF AUTHOR

1. I do not have any professional or commercial relationship with any industry participant and other than:

    a. being a consumer of various ICT companies (Telkom, MTN, Afrihost);

    b. being a great fan of the direction which Mweb and CellC took last year;

    c. having had most unpleasant experiences with Vodacom in 2006 which has been the subject of several instances of abusive correspondence from various agents connected to same in the five years following;

    have no interest in the outcome of the process outside of deriving benefit from a better communications industry.

2. I regard myself as a communications enthusiast and believer in the value of proper internet connectivity.

STARTING PREMISE

3. The starting premise for this submission set is that the Authority is correct in is view that local loop unbundling is prescribed by the *Electronic Communications Act* and falls within the domain of the *Electronic Communications Facilities Leasing Regulations*.

4. This submission very brief and essentially answers each of the questions upon which the Authority seeks input after which I submit my conclusions.

IS ICASA'S PROPOSED APPROACH TO UNBUNDLING THE LOCAL LOOP THROUGH THE IMPLEMENTATION OF THE FACILITIES LEASING REGULATIONS REASONABLE, FEASIBLE AND ACCEPTABLE?

5. I submit that this question is inherently incapable of being answered:

a. Firstly if the industry participants lack innovation they will find the implementation unfeasible, if they are greedy they will find the regulations unacceptable; there is nothing the Authority can do about this.

b. Secondly the ICT industry is on a fundamental level an industry which defies the issue of feasibility and the construction of markets has never failed to amaze expectations; we know what monopolized local loops achieve, we can't know what unbundled local loops will bring until we have them.

6. In addition to being unanswerable I submit that the question is fundamentally irrelevant to the issue. Assuming that the facilities leasing regulations are valid the Authority has no discretion but to enforce those regulations.

7. I submit that the fundamental problem in the regulatory environment is not a lack of regulation making power but rather a general failure to tackle certain ICT players head on. Quite simply and frankly the former and current parasite-ls and politically connected enterprises persist in making a mockery of the Authority and ultimately it is the industry which suffers.

WHAT FORM OF LOCAL LOOP UNBUNDLING DO STAKEHOLDERS REALISTICALLY FAVOUR IN THE SOUTH AFRICAN MARKET?

8. As I am not a stakeholder I have difficulty making any statement on the question. However adopting the position that a consumer is a stakeholder the very question of "realistically" comes into play. The consumer realistically wants value for money and quality service.

9. I submit that as all forms of local loop unbundling are mandated the Authority should ensure that the unbundling takes place. However I submit that the Authority should I submit focus on bitstream and sub-loop unbundling for the following reasons:

a. Bitstream unbundling entails "quick wins" for the industry and allows gains to be felt.

b. A great deal of hostility towards LLU appears to rest in the "profitable exchanges" in high density, high demand areas in contrast to unprofitable exchanges. In essence the presumption is made that ICT players will focus on drawing easier profits from these exchanges. This presumption is faulted if in the process of accommodating high ICT demand areas the industry is forced to drive investment to the sub-loops – eventually securing fibre to the street, fibre to the building and fibre to the premises.

WHAT OTHER COST ITEMS SHOULD BE INCLUDED IN EACH FORM OF LOCAL LOOP UNBUNDLING?

10. No comment.

SHOULD A STANDARDISED ORDERING SPECIFICATIONS SYSTEM BE DEVELOPED?

11. Whilst standardised ordering specification is beneficial the fear of over-regulation creeps in.

12. The Authority already has a duty to compile lists of essential facilities. I submit that what the Authority should seek to do is to categorise sections of Telkom's local loop according to profitability.

IN THE EVENT THAT AN ACCESS LINE DEFICIT IS IDENTIFIED, WOULD YOU BE WILLING TO CONTRIBUTE TO AN ACCESS LINE DEFICIT RECOVERY SCHEME?

13. I submit that an access line deficit can only be identified while the loop is unbundled and further that its existence will represent continued structural problems.

CONCLUSION: REGULATIONS ARE UNNECESSARY

14. I do not believe that the any regulatory framework pertaining to the local loop will be able to drive the improvements which the Authority is ultimately hoping to achieve. It is telling that despite the facilities leasing regulations having come into effect no publically reported attempt to secure access to the local loop for ADSL provision has surfaced.

15. In particular I submit that if the authority places its focus on the facilities regulations and there enforcement.

16. I therefore submit that whilst it may be desirable for the Authority to promulgate specific regulations pertaining to Local Loop Unbundling of the copper infrastructure used to provide the current loop it is not regulations themselves that will achieve real LLU.

17. An alternative to specific LLU Regulations would be for the Authority to concentrate its focus on implementation and monitoring of the existing *Electronic Communications Facilities Leasing Regulations* and in particular to commence November 2011 with a zero tolerance approach towards large network operators refusing (including stalling) to lease facilities.

ANNEXUREB

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ICT Colloquium, ICT Policy Review Panel and ICT Indaba

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Mr. Themba Phiri

I'd like to make inter-related enquire concerning the relationship between the ICT Colloquium (convened by the Department of Communications), the ICT Review Panel (announced by the Minister of Communications, and appearing on the Department's website) and the ICT Indaba (organized by the Department and ITU jointly). The queries relate to the contents of Government Gazette No. 35255 of the 13th April 2012 (ICT Colloquium Discussion Document) and Government Gazette Government Gazette No. 35408 of the 1st June 2012. The Indaba includes yourself on the contact list and on the assumption that as the Deputy Director General ICT Policy Development the query is best placed to your office.

Firstly I'd like to confirm that my submissions sent by way of electronic mail on 31st May were received in good order. Secondly I would like to enquire as to whether all of the submissions received are available to members of the public at any place or on any website and if not request that arrangements for their publication on line be made or for same to be made available by way of email attachments. I submit that same submissions are by their very nature public documents.

Secondly I wish to enquire whether the ICT Colloquium - and moreover the submissions arising from the document published in April 2012 - is intended to form the basis of the ICT Review Panel's work. Several indicators suggest this to be the case - such as the chapter divisions in the discussion document and the set forth committees of the Panel. If this is in deed the case will the Department process the submissions into the discussion document producing another draft or version of the document from which the Panel will work or will the Panel work with the submissions as made.

Thirdly will the Panel be inviting (or more likely the case the Department in advance of the Panel) further public submissions in light of the ICT Indaba which took place after the close of submissions and the Sector Charter both of which have a material bearing on the direction which ICT Policy takes. Further developments pertaining to the Telkom and KT transaction also affect policy review (in the specific case of my submissions this is not the case) and should also be given revision.

Finally - and in particular light of the barriers of entry and the clear influence of the large operators - what is the role of the ICT Indaba in shaping the policy review process?

Yours Sincerely
Paul Hjul

ANNEXUREC

Submissions: National Broadband Policy for South Africa – 3 April 2013

Paul AH Hjul

As invited by Notice 350 of 2013 appearing in Government Gazette 36332 of the 3rd April 2013.

Principal Submission: This policy development process is a duplication of the process which the ICT Policy Review process should be covering. Increasing the powers of the Department of Communications is the height of stupidity.

Submission Set as at 15th May 2013

1. The Department of Communications appears adamant to maintain parallel and often contradictory policy development and review processes. This exercise is one in futility and amounts to fruitless and wasteful expenditure of public funds.

2. This particular National Broadband Policy proposal is unfortunately in the context of the ICT Policy Review as well as the National Development Commission a duplicated process on which there can be no expectation that the public will meaningfully engage with the invitation in light of the charade that is being played. It is probable that it is the intent of the Minister to run as many contradictory processes as possible in the hope that objectors to her agenda will eventually be worn into submission and that by asking the same question in different exercises the sought answer will eventually arise. This particular cynical approach to achieving a political goal is one of the most deadly cancers in our society and is the height of dishonesty in a democracy.

3. I have decided nonetheless to entertain the invitation and make submissions. I am a consumer of ICT products and services and have no commercial or business interests in any industry participant. I have made repeated submissions on matters of ICT policy including ICASA's invitations to comment on Local Loop Unbundling (where I was I believe the person making submissions in a personal capacity and together with the MyBroadband submissions was the only submissions from a consumer perspective).

4. The policy appears to aim to achieve two evils: Firstly to afford the Department of Communications a broader role in the industry and over ICASA and perpetuates political speech and bullshit[1].

5. The 'I' in ICASA should represent independence not incompetence. Placing ICASA within the DoC guarantees incompetence and defeats independence.

6. With respect to bullshit: The document is so full of meaninglessness and platitudes that it is difficult to believe that it is intended to form part of public policy rather than serve as a prospectus for DepartmentOfCommunicationsAndIncompetence Ltd. The shortness of the document and it being filled with nonsense ultimately means that there is simply nothing coming through other than a manifesto for the DoC getting more funds and power.

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[1] Bullshit here is the concept of language that has no regard for the truth; See: "On Bullshit" *The Importance of What We Care About: Philosophical Essays* (1988) Cambridge University Press: Cambridge

7. I submit that the failure for South Africa to experience high levels of information technology uptake and broadband penetration is a symptom of government incompetence, corruption and unaccountability. The fact that South Africans are forced to carry the burden of a Minister who is unable to discharge her office with dignity, diligence and skill is an insult to our nation.

SERIATIM COMMENTS OF POLICY DOCUMENT

Ad Para 1.2

8. Fixed coper line, fibre, fixed wire wireless, satellite and mobile platforms are used all over the world to provide broadband connectivity. The statement is meaningless and fails to state anything about the differences in usage of different technologies in different markets. The fact that "mobile platforms" is the primary or sole form of internet connectivity for most South Africans is a matter of great significance. [Para 1.2.1]

9. Drawing a triangle with Johannesburg, Durban and Cape Town as nodes will encompass most of the country including "villages, small towns and underserviced areas". The statement appears to attempt to frame the language towards advocating that the Department of Communications have special powers because the private sector fails to provide connectivity outside of the three largest urban areas. This proposition is simply false as the private sector has succeeded in delivering cellular communications services to a larger portion of the country than the government is able to deliver sanitation services. More South Africans have cellphones than have access to toilets. [Para 1.2.3]

10. The statement that 64.8% of households do not have access to the Internet needs to be properly framed. 80% of the population according to para 1.2.4 have access to cellular communications services[2] and based on the ownership of cellphones capable of WAP services and which can act as gateways for personal computers to access the Internet. The reality is that it is a lack of user equipment which acts as a major constraint to internet access. Moreover it is obvious that the figure deliberately excludes access through a place of work or study or through public facilities such as libraries. [Para 1.2.6]

11. The costs for Internet access are materially different to the cost of meaningful broadband access. The paper appears to conflate access capacity and charge on a data usage basis. [Para 1.2.7]

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[2] Which by necessary implication includes access to GPRS

12. The private sector funding model is driven by the market. This works in the absence of government incompetence and corruption or regulatory capture. The National Planning Commission is working to address fragmented and uncoordinated government activity it would be a good first step to coordinate policy making involving the Department of Communications. If the Minister can't be relied on to coordinate between policy programmes how can she be relied on to coordinate broadband expenditure?

Ad para 2.3

13. The connection to SADC integration is bizarre and pure political nonsense speak. SADC integration will assist in building products and services which will be demanded abroad. [Para 2.3.1.2]

14. There is no shortage of competition in the international cable market, government intervention is likely to take the form of giving special concessions to interested parties in exchange for certain kickbacks or as part of a preferential arrangement between nations. [Para 2.3.1.3]

15. It is the function of ICASA to declare a matter an essential facility in terms of the ECA. It makes no sense to usurp that function as the abundance of facilities means that the market is working successfully. Imparting government failure onto the market will simply cause the market to fail. [Para 2.3.1.4]

16. The Department needs to decide whether it is going to nationalize Telkom or let it actually be a successful company. [Paras 2.3.2.1]

17. The need to unbundle the local loop is broadly recognized but has been held up by the failure of ICASA to enforce the Facilities Leasing Regulations. [Para 2.3.3.1]

18. Fixed line access to households is simply an unrealistic proposition that is entirely meaningless. Broadband access must be viewed from the quality of service not the means of deployment. Proper electricity infrastructure that is not subject to rolling blackouts is a priority over separate fixed line infrastructure to deliver broadband internet. With the exception of private developments delivering connectivity over power lines the prospects of quadruple-play appears to be an excuse to provide funds and spectrum to Eskom. [Para 2.3.3.2]

19. Optical fibre to the home needs to be approached from a sustainability and viability perspective. The suggestion in para 2.3.3.3 in bold is idiotic, unrealistic and warrants

contempt and ridicule. The qualification in para 2.3.3.4 does not dampen the stupidity of para 2.3.3.3.

20. Common sense provides for infrastructure and service based completion in all areas and fields subject only to the facilities access requirements built into the ECA. The policy appears entirely unaware of the fact that open access practices make economic sense and arte not a socialist initiative to make the world a fuzzier place.

21. Get good governance in place with respect to spectrum allocation and the rest will follow. Pandering to commercial interests and playing into the highly discredited black economic empowerment approach (beyond what is already entrenched into legislation) is simply to pour more egg onto the face of the Department. [Para 2.3.4]

22. Even where private investment in underlying facilities proves difficult to secure there is no need for intervention beyond Broadband Infraco establishing facilities which are then leased on a wholesale basis to other ECN operators or for that matter sold. [Para 2.3.5.1]

23. The unrealistic and laughable notion of universal fibre to the home is the only reason to discount the ability of the private sector to provide services wherever there is demand.

24. The reality is that the well-known thuggery and intimidation directed at cable laying coupled with copper theft and vandalism is the problem. There is no apparent need for introducing new regulatory measures when the State is failing in its core mandate. [Para 2.3.5.2]

25. The suggestion that publicly funded utility infrastructure projects include the provision of ducts for broadband infrastructure is a welcome part of the policy however it really is an overall ICT issue and has been suggested in ICT policy review submissions – by amongst others myself. [Para 2.3.5.4]

26. The need to ensure that Local Government complies with policy is a prerequisite to making any policy to establish a “one stop shop”. [Para 2.3.5.4]

27. Making access to broadband internet services affordable encourages an increase in uptake and demand. There is little need to develop strategies to make people want broadband internet. [Para 2.3.6]

28. The disaster of set-top box development cannot be allowed to replicate itself across the ICT sector. [Para 2.3.6.2.2]

Ad para 3

29. Telkom's private shareholders are greatly prejudiced by governments mishandling of the company and sector. [Para 3.2.4]

Ad para 4

30. The deployment of broadband infrastructure is an exercise which is successfully done daily by operators in the world over. Telkom, MTN, Vodacom and CellC have all deployed broadband infrastructure. It is a technical exercise not one suited to an Inter-Ministerial Committee. [Para 4.1.1]

31. The suggestion that the Government/Private Sector Liaison Committee will "co-ordinate broadband activities" has a horrendous suggestion that the private sector will be subject to this committee which in turn will liaise with the Inter-Ministerial Committee resulting in government writing the rules, playing the game and tackling the other players.

Ad para 5

32. The policy will not even be implemented instead forming part of strategy that will be developed by an undefined consortium of "stakeholders" (which no doubt will exclude consumers and will probably not have sufficient input from Telkom who actually own a national broadband network). [Para 5.2]

Ad para 6

33. No doubt that the selection of benefits of broadband to list is driven to appeal to specific sectors or segments.

34. The benefits of a proper functioning ICT ecosystem are widely documented and known. The failure of government to allow the ICT sector to betrays all claims to progress.

SUGGESTION: LET TELKOM BE TELKOM, GIVE US SOME SPECTRUM, REMOVE THE INCOMPETENTS AT THE DOC AND ACTUALLY LET THE ICT POLICY REVIEW PROCESS RUN EFFECTIVELY

35. The reality is that the key to broadband in South Africa is the successful transformation of Telkom from a monopolistic player and piggy bank for government into a dynamic internet company participating in a true ICT industry.

36. Rather than inflating the insatiable ego of the Minister, the Department should be brave enough to recognize that Telkom needs to be allowed to devise a strategy and implement it provided that their strategy conforms to the principles and practices of the ECA.

37. It is undoubtable that Telkom will in the knowledge that they will be debilitating fined if they fail to comply with facilities leasing regulations that they will unbundle the local loop.

38. The great tragedy in rollout of radio based services is spectrum. Give the industry the spectrum it needs and let the magic of markets happen.

39. Until the minister is fired or resigns there can be no confidence against the proposition the purpose of the Department of Communication is to harass the Sunday Times with a secondary task of sourcing shoes.

40. Finally the Department has received copious documentation on ICT policy review. Use it.

ANNEXURED

Initial Submissions in Respect of the *Proposed ICT Policy Review Framing Paper, 2013* – 24th April 2013

Paul AH Hjul

As invited in Notice 429 of 2013 appearing in *Government Gazette* 36408 of the 24th April 2013.

Principal Submissions: The ICT Policy Review Panel needs to accept that the core future of ICT lies in the Internet and an adoption of the principles and ideology – the culture of freedom and experimentation – of the Internet is a necessary condition. South African ICT policy will only be successful if it is built on continuing the greatest human experiment – the Internet.

Contradiction arise between the scope presented in the Minister's invitation and the contents of *Outline of the ICT Policy Review Process, 2013* (Notice 277 appearing in *Government Gazette* 36359 of the 10th April 2013).

Submission Set as at 15th June 2013

Opening Remarks

The greatest obstacle to access and affordability of communications services in South Africa is an inept Minister and incapacitated regulator. Duplicating policy review processes and holding conflicting talk shops where each industry participant has an opportunity to lobby is simply idiotic and needs to be put to an end.

Before rewriting the "rules of the game" we need to identify the actual problems in the ICT Landscape and the primary one is the Government deems itself fit to continuously and malevolently interfere in a manner which promotes regulatory capture and the undermining of the internet.

It is most unlikely that officials at ICASA or the Department of Communications acquaint themselves with the RFCs which essentially make up the policy for the Internet. There is a particular need for the Panel to recognize a fundamental truth of the Internet – which is that no one entity or enterprise is responsible for its being; instead the Internet is the a model of cooperation for mutual benefit driven by volunteers and a spirit of freedom. To achieve progress in ICT in South Africa we need to see the different licence holders together with civil society and academia building networks and relationships. The Internet was achieved not because of imposed consensus or a monolithic approach but instead:

Out of the chaos of new ideas for communication, the experiments, the tentative designs, and crucible of testing, there emerged a cornucopia of networks. Beginning with the ARPANET, an endless stream of networks evolved, and ultimately were interlinked to become the Internet … all the information that erupted with volcanic force from the intensity of the debates and discussions and endless invention that has continued unabated for 30 years.

Quoted from RFC 2468 *I Remember IANA*[1]

[1] http://tools.ietf.org/html/rfc2468

1. As a disclaimer of a potential conflict of interest: I accepted a nomination (by MyBroadband) to serve on the panel, notwithstanding my reservations about the Minister's duplicating processes last year, but was not selected. I do not believe that this changes the content of my submissions – which I would make regardless.

2. A conflict arises, between the *Outline of the ICT Policy Review Process, 2013* (Notice 277 appearing in *Government Gazette* 36359 of the 10th April 2013) and the *Proposed ICT Policy Review Framing Paper, 2013* upon which these submissions comment with respect to the scope and nature of the Framing Paper and the number of stages which the Panel will undertake – 3 or 5. This conflict is a material impairment to the credibility of the process.

3. The credibility problem is heightened by the fact that the Minister originally announced a 22 member panel in contravention of the Terms of Reference and there is now 20 members without any explanation of the reduction. The credibility problem continues when consideration is given to the National Broadband Policy (Notice 350 of 2013 appearing in Government Gazette 36332 of the 3rdApril 2013) document from the Department of Communications[2].

4. Despite proclaiming that "Your Views Matter To Us" [p26] and announcing a Twitter Hashtag and Facebook identity it is clear that the degree of public participation has been minimal and there is frankly no motivation for the public to participate in light of the numerous parallel processes and the absolute lack of credibility of the Minister and Department of Communications. The Facebook identity does not appear on a search of Facebook and it appears that there is a general lack of activity on Twitter. Media coverage of the work is non-existent.

5. Moreover the R2K campaign has recently taken to making demands concerning access to communications – no mention of the Panel has appeared in their campaign and no doubt if there was a proper engagement process the policy review the nature of their campaign would be different. I submit that regardless of what inputs are received the Panel is duty bound to specifically consult and liaise with the R2K campaign.

SUBMISSION: THE CONSTITUTION FORMS THE BASIS OF ALL POLICY BEING STATED CAPTURES ALL OF THE "PRINCIPLES"

[2] Submissions on the Broadband Policy are annexed to this submission.

6. The document consists of a shopping list of 13 “principles” which are actually little more than slogans. Each slogan is open to multiple interpretations and abuse.

7. I submit that a simple statement that any regulation of communications and all policy must be firmly rooted in the Constitution and the individual and collective rights contained therein renders the slogan list moot.

SUBMISSION: PRIMARY PRINCIPLE LACKING FROM FRAMING DOCUMENT IS “SOUTH AFRICAN’S HAVE THE RIGHT TO PARTICIPATION IN THE INTERNET”

8. The Invitation explicitly states:

> We seek for example your views and inputs on:
>
> > The relevance of the existing objectives set out in related policy and legislative frameworks.
> >
> > What, if any, new principles or considerations need to be incorporated given the changing environment?
> >
> > What important policy and regulatory issues do these principles raise that need to be considered by the Policy Review Panel

9. It is clear that the policy document conflates different communications media and whilst there has been convergence between telecommunications and broadcasting in a technological sense a particular distinction continues (and will continue to) exist between content which is “broadcast” and readily consumed (switching on the radio or television) and content which is accessible on demand. The core objective of the framework appears to bootstrap consideration about the “broadcast” content to be grounds to interfere in content on demand. While a case for regulating pornography on television exists no case exists to attempt to regulate the Internet.

10. The document lacks any policy principle which prohibits the government from interfering at its whim and appears to give grounds (couched in loose principles) for the government to dictate on numerous premises – protecting children, cultural rights, universal access – in the process each of these premises will become a basis for censorship and the driving of a dangerous government agenda. This failure is not only glaringly obvious but its absence testifies to the true intent of the policy reform agenda of the Minister.

11. Until the South African government commits itself to Internet Freedom and the related adherence to the loose regulatory and consensus amongst technical experts South African's will continue to be short changed in ICT.

12. Every single member of the Panel has an ethical responsibility to acquaint themselves with Hayek and the history of the Internet. If they fail to do this they will produce a set of principles which lead us to information serfdom.

13. The spirit of the Internet has always been freedom and experimentation. The government of the United States of America had the foresight and courage to entrust resources with academic institutions to provide humanity with the fruit of humanity's greatest experiment[3]. The policy process appears destined to kill the very lifeblood of the Internet.

14. I submit that if members Panel fails to explicitly state that the Minister must not interfere in the operations of an industry participant they will be complicit in eroding Internet freedom in the Republic.

15. I further submit that if the Panel is driven to adopt principles and practices to suit current industry participants they will be guilty of perpetuating the current state of regulatory capture.

16. It is at this early stage which the Panel must decide whether it wishes to work towards establishing a future where all South Africans are participants in the Internet or whether that right will be denied to millions of South Africans who must settle for an inferior government and cartel participant tailored communications system.

17. I submit that the core principles can be stated simply as:

    South African's have a right to be active participants in the Internet in accordance with the Constitution of the Republic of South Africa.

    South African's have a right to receive broadcast electronic media content which is in accordance with the Constitution and to participate in the creation and selection of the content in an equitable manner.

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[3] Vint Cerf (a father of the Internet) has poignantly remarked that the IP4 address space crisis is a result of his failure to foresee that the experiment grow in the manner which it has.

ANNEXUREE

Submissions to the Portfolio Committee on Communications: Costs to Communicate

Paul AH Hjul

As invited by the Secretary to the Portfolio Committee for the Public Hearings for the Eastern Cape 29th and 30th July 2013

Principal Submission: The Committee has a limited opportunity to ensure that the correct framework and parameters are set to ensure that the General Costs to Communicate in South Africa are reduced.

DRAFT Submission Set as at 29th July 2013

Opening Remarks

The greatest obstacle to universal communications in South Africa is government failure – which has included a horrendous degree of regulatory capture. It is the duty of Parliament, and the committees thereof, to appropriately intervene.

South Africa's information technology and communications (ICT) industry is at an inflection point, and it is possible that major improvements in access to ICT sector will occur within the next 18 months. The greatest danger is to misdiagnose the cause of underperformance in the sector and to adopt a course of increased interference and intervention by the state with the market under a rubric of "market failure". Claims that "market forces and the private sector will not deliver universal coverage" and that "costs are too high" all fall within the scope of rhetoric which can lead to an increase in the exertion of control by the politically aligned and a decrease in efficiency and market freedom with an inevitable reduction in consumer choice paired with an increase in costs.

It has been the "managed" rather than the "liberalization" approach to communications policy which has failed the communications sector. Previous Parliamentary scrutiny which resulted in a schedule for reductions in the Mobile Termination Rates has unfortunately had a limited positive impact on communication cost reductions. It is the continuous inability of ICASA to promulgate an efficient regulatory framework and to enforce that framework which underlies the government failure in electronic communications.

The dismissal of Dina Pule as the Minister responsible for this vital sector of the economy represents the possibility of the industry unlocking itself and for major improvements in access will take place. The unfortunate and inescapable reality of Pule's term as Minister was a dysfunctional Department of Communications which was more committed to affording special industry interests a platform than adhering the NDP or delivering on governments promises. The new Minister has an exceptional task ahead of him.

Parliament needs to ensure that the independence of ICASA is enhanced and respected by the executive branch of government and large industry players.

The most dangerous thread from the Department of Communications in recent years has been successive efforts to undermine the independence of ICASA and to ignore the precepts of good corporate governance with entities in the sector within its influence.

Summary of proposals submitted to the Committee

I wish to propose that the Committee adopt the following measures to contribute towards a reduction in the costs to communicate in South Africa

- **Allowing for the ICT Policy Review Panel to complete its mandated task by:**
    - **Exercising oversight powers over the Department of Communications to monitor the proper provisioning of resources to the Panel;**
    - **Exercising oversight responsibility with respect to the Minister of Communications to end the running of duplicate processes which only fuel a culture of lobbying activities which undermine good governance;**
- **Exercising oversight powers to recommend to the Department of Communications to take targeted measures to ensure that dominant industry participants are not able to abuse their positions in the market, including:**
    - **Initiating a complaint (as the DoC) against the incumbent dominant mobile operators Vodacom and MTN with the Competition Commission for the period running from the license conversion until the date of the Telkom settlement;**
- **Investigating the viability of introducing an end user (household) orientated National Broadband Network Program with the following criteria:**
    - **Price: Prepaid non-expiring data at R50 per unit (a gigabyte at inception, as matters progress this volume may increase) irrespective of access technology and no more than R500 initial device fee irrespective of access technology;**
    - **Speed: A "best effort" speed of 1Mb/s in the last mile irrespective of access technology irrespective of access technology (may be throttled to 1Mbs);**
    - **"Grade": Commodity internet which may be shaped to support web browsing and email even at the expense of "realtime" services (particularly VoIP);**

    - **Technology: Most cost effective available last mile access technology – sourced from a network operator connecting to the NBN Operator's fibre backbone (which is leased from existing operators).**
    - **Mobility: While this will ordinarily be a wireless product it is not a mobile product offering.**
- **Taking measures to ensure accountability of Broadband Infraco and Sentech for the squandering of public funds by:**
    - **Initiating legislation to transfer responsibility for governments corporate interests in Sentech and Telkom to the Department of Public Enterprises;**
    - **Recommending to the National Assembly that South Africa adopt a policy of video broadcast by way of satellite rather than terrestrial digital broadcast and the associated discontinuance of funding for Sentech for DTT;**
    - **Recommending to the National Assembly and the National Treasury that additional funding in large amounts (such as the R100 billion suggested as required) for Broadband Infraco be rejected out of hand;**
- **Establishing a dedicated ICT funding structure ("bank") which provides loans to network operators subject to their participation in establishing a National Broadband Network.**
- **Supporting the direction and leadership shown by the current board of Telkom.**
- **Exploring the possibility of establishing an advertiser funded and opt-in mechanism for the providing of 10 (outgoing) SMSes for each South African citizen or permanent resident on a daily basis.**
- **Awaiting the finalization of the investigation of the USAASA and on finalization seek further information, particularly as to the suitability of USAASA in the ICT landscape.**

Structure and Nature of Submissions

Due to time constraints and the hope that the Committee is committed to an ongoing public participation process this submission set is specifically structured to be highly modular (although paragraph numbering runs continuously with respect to block submission for ease of reference) such that specific sections may be expanded or elaborated on or as they become irrelevant removed for a future dated (or revised) version. The document broadly consists of two forms of submission namely explanatory or structural material and "block submissions". It is intended that "block submissions" may be removed whereas structural material is integral to the reasoning I am applying. I submit that a framing paper appearing in the government gazette from the Committee upon which public comment is sought with a sixty day window is an appropriate further step to this process and should such a course be adopted a revised submission set will be prepared for the Committee.

In compiling this submission, a difficulty with potential room for contradiction arises on the very question of whether this process of public hearings by the Committee should be happening at all. This problem arises because of a culture of duplication which has permeated the ICT regulatory system. It is a culture which allows for excessive industry lobbying while shutting out any actual public issue advocacy.

The position which I have adopted is as follows:

> Parliament, and committees thereof, have an unquestionable authority to, in the exercise of their oversight role and to better enact legislation[1], seek out information[2]. These hearings clearly fall within the parameters of such an inquiry. However ICASA as a "chapter 9 institution"[3] ought to be afforded some deference by the legislative authority and as a general matter of

[1] As set out in section 55 of the Constitution. I wish to give specific attention to the power that exists in section 55(1)(b) "initiate or prepare legislation, except money Bills".

[2] Section 56 of the Constitution, which provides Parliament with extensive powers to garner information, and I submit that the Committee should consider using their power to cause the production of evidence to secure greater information about the ICT landscape from the large operators.

[3] There is I submit a fairly complex issue underlying ICASA as a "chapter 9 institution" as it is not included in section 181 of the Constitution and section 192 provides for a broadcasting authority to be independent for the purpose of content diversity:

> > National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society.

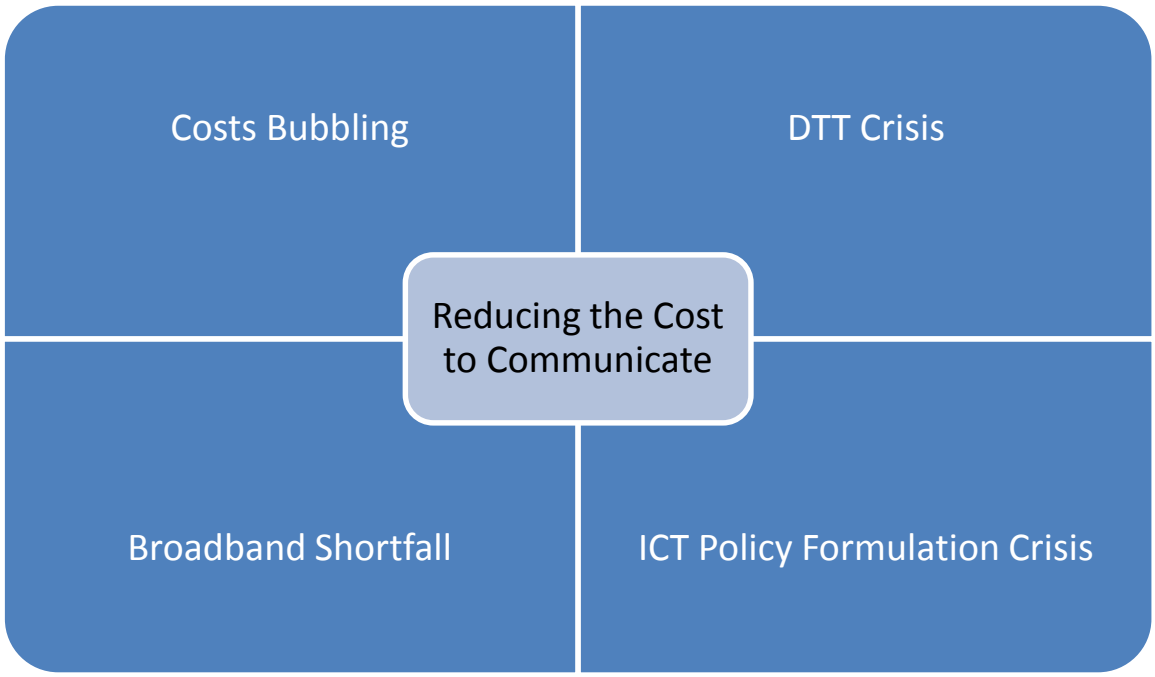
separating powers the legislature should look at ways of addressing very real public concerns about the costs of communicating without undermining the cost of communicating project of ICASA. This is a difficult exercise but I believe some movement is able.

To this end I have made various submissions with the aim of assisting the Committee to exercise Parliamentary oversight on the Department of Communications and I am specifically advocating that the legislature take a hard line that ICASA is to be independent and autonomous of the Department.

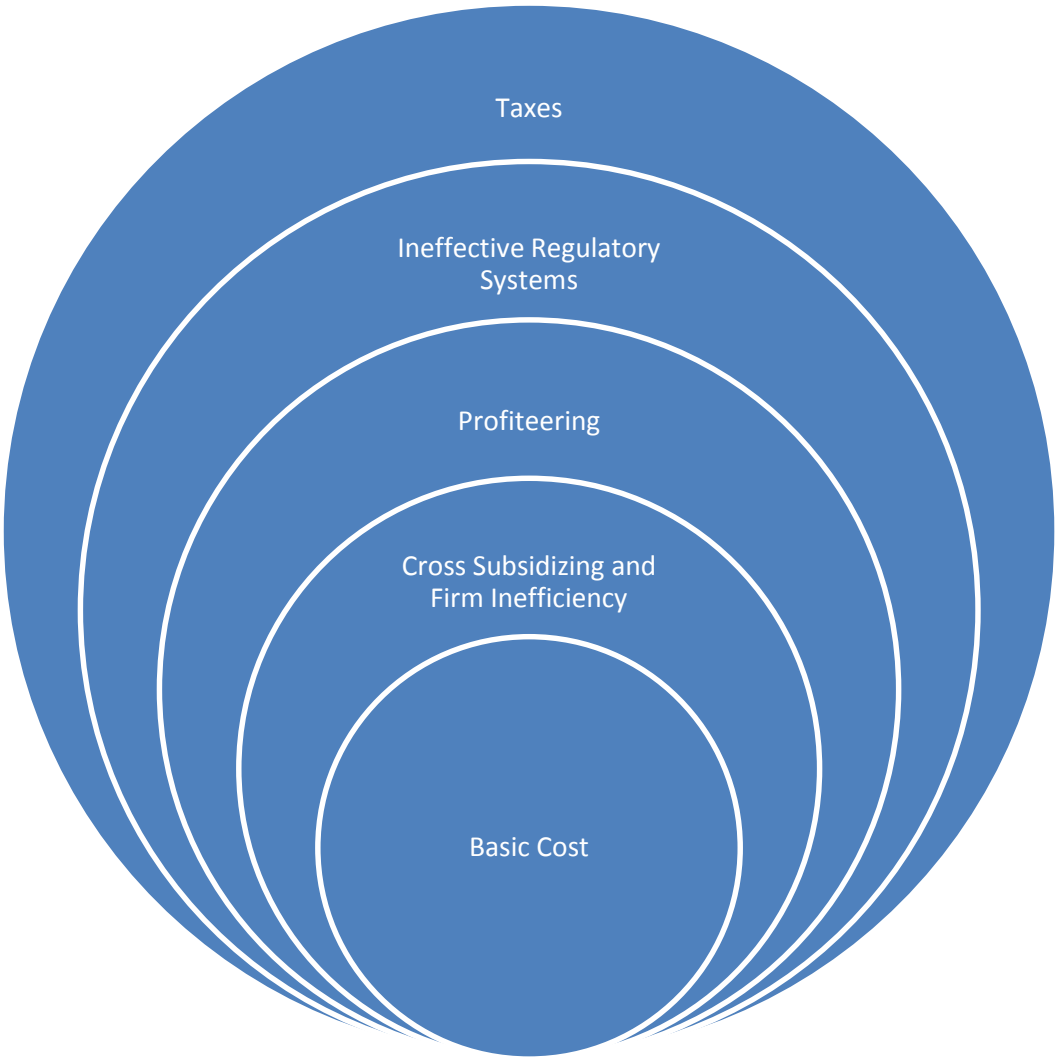
Further I am advancing the proposition that the ICT Policy Review Panel which has been convened, and includes persons with technical and expert knowledge on ICT Policy, should similarly not have its work upended by the legislature. This proposition is not based on any approach towards the separation of powers, or any expectation concerning the value of output from the Panel, but rather stems from the fact that the Panel itself will produce work for Parliament (particularly the Committee) to scrutinize at an appropriate juncture and that it is premature to at this time to undo the preparation and work of that Panel. I have however included my submissions to the Panel – as invited – and moreover am submitting my submissions to the Department of Communications for the ICT Colloquium in 2012 upon which almost every practical or implementation orientated suggestion is included.

One area where I believe the Committee would not be remiss to move forward in spite of ICASA officially have the matter on their agenda is the issue of Local Loop Unbundling. I submit that in this area however developments at Telkom and the finalization of the proceedings with the Competition Commission necessitate that for the immediate future intervention may both be unnecessary and deleterious in effect. I submit that the Committee should resolve to conduct public hearings on Local Loop Unbundling in early 2014 if there is a failure for Local Loop Unbundling to have been effected by November 2013.

- **PART 1: Cost Bubbling – Some thoughts on growing communications costs**
- **PART 2: The ICT Policy Formulation Crisis**
- **PART 3: The DTT Crisis – Sentech, Crowding Out, Control of Spectrum**
- **PART 4: The Broadband Shortfall**
- **PART 5: Reducing the Cost to Communicate**



Graphical Representation on Core Proposition on Costs to Communicate



Contents of Submission

SUBMISSION: THE COMMITTEE SHOULD RECOMMEND TO THE DEPARTMENT OF COMMUNICATIONS TO LAY A COMPLAINT WITH THE COMPETITION COMMISSION IN RESPECT OF POSSIBLE ANTI-COMPETITIVE PRACTICES BY VODACOM AND MTN 13

Precedent of Telkom Settlement 13

SUBMISSION: THE DEPARTMENT OF COMMUNICATIONS AND ICASA MATERIALLY FAIL TO ENSURE MEANINGFUL PUBLIC PARTICIPATION, ELECTING INSTEAD TO "WORKSHOP" AND SOLICIT LOBBYING 17

Participation vs Lobbying 17

Parallel Processes 18

SUBMISSION: THE ICT POLICY REVIEW PANEL MUST BE ALLOWED TO COMPLETE ITS WORK 19

SUBMISSION: THE ENFORCEMENT OF THE FACILITIES LEASING REQUIREMENTS SHOULD BE VIEWED AS A PRIORITY 20

PART 1: Costs Bubbling

- **Taxes**
    - **Communications services are provided by operators who price taxes of various forms (ranging from ordinary income taxes on firms through to compulsory contributions to the USAASA) into the cost of communication. Whilst these taxes ought to contribute towards the States fulfilment of its Constitutional obligations to the people of South Africa they invariably contribute towards increasing the costs of communication services. The poor spend a disproportionate portion of their income on this taxation imposed and the effect of cost bubbling which taxation brings means that the government must exercise great caution not to overtax communications services.**
    - **Spectrum fees in particular are a charge imposed on users of communication services which is paid over to the State in exchange for the spectrum within the Republic. This is justified on the basis that the electromagnetic spectrum belongs to all South Africans however there is a great need on the part of government to recognize that it is a trustee of this spectrum and South African's the actual owner – rather than the government.**
    - **I submit that currently communications services are overtaxed and present a barrier to entry. To this end I submit that the Committee should exercise oversight powers to obtain information from the Department of Communications and the National Treasury to reduce the scope of taxation on communications services.**
- **Ineffective Regulatory Systems**
    - **The failure to effectively implement and enforce the Electronic Communications Act is a major contributor to an uncompetitive and uncertain regulatory environment**
    - **I submit that a climate of uncertainty with a rapid succession of persons holding ministerial responsibility and clear factionalism which contaminates service delivery has pervaded the sector for far too long.**

- **Profiteering**
    - **Due to the limited number of firms providing core communications services – those businesses holding both an IECNS and IECS license – there is a great risk of profiteering by the firms.**
    - **I believe that a case has been made that cellular operators are profiteering with respect to SMS charges.**
    - **I submit that the Department of Communications should institute a complaint with the Competition Commission**
- **Cross Subsidizing and Firm Inefficiency**
- **Basic Cost**

Submission: The Committee should recommend to the Department of Communications to lay a complaint with the Competition Commission in respect of possible anti-competitive practices by Vodacom and MTN

There is general discontent with the pricing of cellular communications products with an inevitable suspicion of anti-competitive practices by the two dominant firms in the market – Vodacom and MTN – and a *prima facie* case can readily be presented that the two firms are engaging in cross-subsidization to the detriment of prepaid offerings.

PRECEDENT OF TELKOM SETTLEMENT

1. The recent finalization of a settlement agreement – including an admission of contravention of the law – between the Competition Commission and Telkom will have a major impact on the electronic communications industry and undoubtedly will reduce the costs of communication to a far greater extent than the negligible impact of the mobile termination rate reductions of 2012.
2. Whilst the primary focus of the Telkom matter has been in the provision of internet services, particularly to business customers, the outcome of reducing the cost to communicate is undeniable.
3. Moreover I submit that this settlement provides a blueprint for a degree of structural division within Telkom, which may be more appropriate to apply to MTN and Vodacom if the objective is to see a reduction in the costs to communicate.

4. In particular I submit that MTN during the Local Loop Unbundling processes specifically advocated for the mandatory division structural division of Telkom. It would be the height of hypocrisy for MTN to ignore the extent to which Vodacom and MTN are "incumbents" in the mobile space. To adopt MTN's submission to ICASA for Local Loop Unbundling:

> Any vertically integrated monopolist firm can leverage market power to squeeze the (profit) margin available to competitors by setting wholesale charges above costs and/or engaging in cross-subsidy to set retail rates below costs. A combination of the two would make it difficult for competitors to achieve market share and earn a normal return through a combination of a price ceiling on wholesale charges and a price floor on retail rates. (p12)

5. I submit that the difference between a monopolist firm and a duopolist firm is negligible.

6. In particular I submit that the challenges posed in providing for competition within the space of the so-called "wireless local loop" which no doubt the ISPs and ISPA are desirous to have needs to be addressed either with reference to competition law or with respect to licensing matters. I have no doubt that the provision of wholesale access to Vodacom and MTNs capabilities to deliver connectivity to end user devices in a manner analogous the current ADSL arrangement would result in competitive data products from ISPs.

7. I reiterate however that it should not be for the Committee, or the Department or even at this juncture ICASA to drive an agenda of forcing Vodacom and MTN to reevaluate their structures in the industry but rather that the knowledge that existing laws relating to competition will be enforced would have the inevitable effect to cause the two dominant MNOs to pause and consider whether their respective structures and conduct are apposite to the South African economy and their own long term interests or whether a voluntary restructuring is in order.

8. The reality is that the Competition Commission has had more success in introducing competition into the ICT market than ICASA and has been infinitely more successful than the Department of Communications. Moreover specific time frames for anti-competitive practices enables the policy review structures to seek means of providing

9. I submit that as a result of the independence of the Competition Commission a committee of the National Assembly should not, in the absence of good cause, exercise any influence on the Commission. However the proposition that the Committee recommend

that a department over which it has oversight responsibility refer a matter to an organ of state is a reinforcement of the independence of that organ of state.

10. Moreover such an approach of the Department of Communications being charged with initiating an investigation by the Competition Commission has the feature of not undermining any policy review process or initiative of ICASA.

PART 2: The ICT Policy Formulation Crisis

Submission: The Department of Communications and ICASA materially fail to ensure meaningful public participation, electing instead to "workshop" and solicit lobbying

The ICT Indaba of 2012 and the scandals surrounding it are a poison on South Africa's communications sector. This particular episode is however a symptom of deeper problem namely the fact that there is a culture that fails to promote meaningful public participation in favour of soliciting special interest lobbying.

PARTICIPATION VS LOBBYING

11. There is a subtle but important distinction between different forms of participation and advocacy, and while lines may very quickly blur I submit that the Committee should recognize these different forms:

    a. Specific enterprise special interest lobbying

    b. Sector special interests lobbying

    c. Sector interests lobbying

    d. Public interest advocacy

    e. Fully democratized participation

12. The status quo in the ICT sector in South Africa is that a great deal of resources are available and expended on the various forms of special interest lobbying. The availability of funding for public interest advocacy is exceptionally limited.

13. I submit that while as a matter of a legal requirement all legislation and policy considerations need to be placed in the government gazette these requirements have done nothing to promote genuine public participation.

14. The most blatant exercise in special interests lobbying in recent years in the sector has been the ICT Indaba last year, which unsurprisingly has been clearly implicated in corrupt activities with industry dominating firms having expended considerable funds on sponsoring an event to gain favour with the then minister.

15. I wish to express that my experience with the Committee has been most positive in this respect, and I submit that there is a genuine and general political will in South Africa for public participation but this will needs to be translated into deconstructing a political culture which is unaccountable.

16. I submit that on the face of it ICASA is more than prepared to drive an initiative towards democratized participation but fundamentally lack capacity – and respect for their independence – to accomplish this objective.

PARALLEL PROCESSES

17. The continuous running of parallel processes has the effect of promoting nefarious lobbying as additional processes create additional costs to participate.

18. It is impossible for members of the public to actually monitor and participate in policy making in the ICT sector precisely because of the abundance of "talk shops" and

19. I submit that even media houses are simply unable to keep a proper monitoring of the various processes and that this process is adversely affected simply from fatigue.

Submission: The ICT Policy Review Panel must be allowed to complete its work

20. The ICT Policy Review Panel is currently in existence and apart from a splash of publication in the form of the gazetting of an *Outline of the ICT Policy Review Process, 2013* in April.

21. It remains unclear – despite my writing to the Department of Communications in June 2012 – whether the submissions which were received consequent to an invitation to comment form part of the work of the Panel.

22. I submit that it is unlikely that the Panel will be able to deliver meaningful recommendations on the current timeframes[4] and it is almost inevitable that the ICT Policy White Paper will not be ready by the end of March 2014.

23. I submit that the Panel is accountable to Parliament and it would be opportune for the Committee to inquire from the Panel on its progress particularly as there has been minimal public reporting on the progress of the Panel and the Panel is publicly funded.

24. However I submit that it would be manifestly wrong for the Committee to through workshops and public hearings and such other means assume a role and function similar to that of the Panel.

25. I submit that the Committee should therefore request a progress and problems report from the Panel. If the Panel is having any capacity or operational difficulties I submit that the Committee should hold the Department of Communication accountable and responsible to resolve the problems.

[4] As set out in *Government Gazette* 36359 of 10th April 2013

Submission: The enforcement of the facilities leasing requirements should be viewed as a priority

1. I submit that the Facilities Leasing Regulations are the single most important principle within the regulatory framework sketched by the Electronic Communications Act. The regulations encompass technology neutrality and a framework of open access.

2. Emerging network operators are afforded a right by the Act to utilize the facilities of incumbent operators on a lease basis. A failure by a license holder to lease facilities carries a significant penalty which can be imposed by the Complaints and Compliance Committee of ICASA.

3. The sharing of costs for facilities between networks which facilities leasing entails reduces costs of network construction and expansion and enables the benefits of network effects to be felt by all market participants – with the effect that there is a reduction of costs.

4. I submit that industry participants not complying with the facilities leasing requirements of the Act cause immeasurable harm to the provision of cost effective services and consequently that the full measure of penalty provided for by law should be induced against them as a matter of priority.

5. A clear and direct message that licensees who refuse to lease facilities where required under the Act will face crippling penalties and ultimately the loss of license will fundamentally reduce the costs to communicate. This is abundantly clear with respect to unbundling the "local loop".

6. For many years Telkom has resisted LLU and argued that there is a significant Line Access Deficit would make LLU unviable and unsuited to the South African market. The position I submit was largely a consequence of Telkom overvaluing certain of its assets and running as an inefficient firm. An impairment of R12 billion on legacy assets by Telkom has the effect of reshaping the entire landscape and I submit that this paired with

the settlement with the Competition Commission will significantly reduce the costs of fixed line communications in South Africa.

7. However there remains a problem with respect to Local Loop Unbundling in that the process of unfinalized regulations on Local Loop Unbundling is being used as a shield by Telkom against the facilities leasing regulations being used to cripple Telkom into leasing the facilities that make up the local loop.

PART 3: The DTT Crisis – Sentech, Crowding Out, Control of Spectrum

<SUBMSSIONS TO BE REWRITTEN IN LIGHT OF RECENT DEVELOPMENTS>

PART 4: The Broadband Shortfall

<NBN Proposal>

PART 5: Reducing the Cost to Communicate

- **What tools do we have?**
- **Should the industry be left to reduce costs – as it invariably will – or should intervention happen**
- **How best to expend public funds?**