Executive Summary

"By 2030, ICT will underpin the development of a dynamic and connected information society and a vibrant knowledge economy that is more inclusive and prosperous. A seamless information infrastructure will be universally available and accessible and will meet the needs of citizens, business and the public sector, providing access to the creation and consumption of a wide range of converged services required for effective economic and social participation – at a cost and quality at least equal to South Africa’s main peers and competitors ... ICT will continue to reduce spatial exclusion, enabling seamless participation by the majority in the global ICT system, not simply as users but as content developers and application innovators".

The National Development Plan: 2030

1.1 Vision

This executive summary highlights key recommendations made by the ICT Policy Review Panel to government on proposed policy approaches to adopt to achieve the goal of a fully connected society outlined in the National Development Plan (NDP).

In making these recommendations, the Panel notes that the policy review process is not undertaken in isolation from other policy developments such as the National Broadband Policy (South Africa Connect) adopted in 2013. The recommendations further recognise that the environment is changing rapidly and that policy interventions will need to be continuously assessed against objectives set. The recommendations are thus presented with a 2030 vision, but a focus on the next five years, after which an assessment against the vision should take place.

1.2 Towards a new integrated ICT policy

The policy review process was initiated by government recognising that new technologies have the potential to further the rights set out in the Constitution. Increasing access to broadband, the Internet and Internet Protocol services provides opportunities for South Africa to better implement its socio-economic and cultural development goals and for increased participation by all citizens, communities, the private and NGO sectors in determining these goals and policies. The policy recommendations in this report recognise that the majority of South Africans still rely on traditional mail delivery and broadcasting services, and do not have access to or cannot afford broadband services. According to the 2011 Census, over 64% of households have no access to the Internet.

In taking an integrated approach, the Panel further notes that inclusive development requires not only access to infrastructure, devices and affordable services, but also to content, information, digital products, services and applications. It is critical that these are relevant to the most
disadvantaged sectors of society, support welfare and entrepreneurship and are available in a range of South African languages.

It is also essential that indicators and concrete targets are set, together with appropriate monitoring mechanisms, so that delivery can be measured and policy adapted where necessary. This requires that benchmarks, goals and metrics are developed, and that there is continuous assessment of achievements against the policy objectives – including, for example, regular analysis of what new information divides might be developing.

Finally, the panel agrees with a number of submissions that the problems in the sector have perhaps less to do with policy than with weak institutions, inadequate oversight thereof, and a lack of effective monitoring.

1.3 Scope of the ICT Policy Review

In 2012 Cabinet endorsed a review of all existing ICT related policies (telecommunications, broadcasting, postal services and e-commerce) in order to develop an integrated ICT related White Paper for South Africa. An ICT Policy Review Panel was appointed to assist government in that process. The scope of the Panel was to:

- Review the functioning of the policy, legislative and regulatory frameworks for telecommunications, broadcasting, postal and e-commerce services in South Africa and assess their effectiveness in achieving appropriate policy objectives for the knowledge-based society.
- Review the structure of the broadcasting, telecommunications, content, postal and e-commerce industries in South Africa, and the role of the Independent Communications Authority of South Africa (ICASA) and take into account the views and expectations of the public in general.
- Determine policy goals and strategies for ICT research and development, applications development promotion, human capital development, investment in ICT markets for growth and development.
- Propose universal service and universal access policy goals for South Africa, including methods of policy execution.
- Propose ICT market regulation, and structures, institutional alignment for delivering universal access and universal service policy goals.

1.4 Outputs of the policy review

The process undertaken in developing these Recommendations broadly followed the approach identified in guidelines on the implementation of regulatory impact assessments issued by the Presidency in 2012 (“the Guidelines”). These state that the basic rationale for regulatory impact assessments is to assist “policy-makers and decision-makers in the design, implementation and monitoring of improvements for regulatory systems”.

---

3 All of the panel related outputs, and research reports are available online at: [http://www.dtps.gov.za/documents-publications/ict-policy-review.html](http://www.dtps.gov.za/documents-publications/ict-policy-review.html)

Key milestones include the following:

- **Framing Paper**: A Framing Paper issued in April 2013 sought input on what the objectives and goals of policy should be. These principles remain largely the same as those set in 1994, though the means to realise these have changed.

- **Research**: Under the direction and guidance of the Panel, the Department commissioned research which provided input into the formulation of the Green Paper.

- **A Green Paper** released in January 2014 reflected on achievements against the original vision, and asked what have been the major impediments to implementation and what core issues and problems need to be addressed in future policy.

- **A Discussion Paper** was published in November 2014. It presented a range of policy options and possible policy approaches to realise the objectives set in the Framing Paper.

- The final milestone of the Panel, is this **Recommendations Report**.

### 1.5 Overarching policy objectives

The following overarching objectives are proposed as a foundation for a fully integrated ICT policy framework:

<table>
<thead>
<tr>
<th>Number</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>i.</td>
<td><strong>Freedom of Expression</strong>: Facilitate and extend the right of all South Africans(^5) to freedom of expression.</td>
</tr>
<tr>
<td>ii.</td>
<td><strong>Diversity</strong>: Ensure all South Africans have access to a diverse range of creative content, applications and services.</td>
</tr>
<tr>
<td>iii.</td>
<td><strong>Universal Access and Service</strong>: Ensure that all South Africans have universal, affordable and equal access to communications infrastructure, services and content.</td>
</tr>
<tr>
<td>iv.</td>
<td><strong>Access to Information</strong>: Extend access by all South Africans to a broad range of information, opinion, news and analysis of relevance to their communities and lives.</td>
</tr>
<tr>
<td>v.</td>
<td><strong>Economic Growth</strong>: Facilitate access by all South Africans to quality communication infrastructure and services, - across all technology platforms- which enable economic growth, employment and wealth creation.</td>
</tr>
<tr>
<td>vi.</td>
<td><strong>Social Development</strong>: Ensure that all South Africans benefit from the ability of the communications sector to facilitate social development and improve the quality of life for individuals and communities.</td>
</tr>
<tr>
<td>vii.</td>
<td><strong>Cultural Enrichment</strong>: Promote innovation and creativity and support communication mediums, services and programmes that allow users and audiences to celebrate their cultural heritage in the language(s) of their choice (including sign language), to access compelling South African content and create and share content and information.</td>
</tr>
<tr>
<td>viii.</td>
<td><strong>Investment</strong>: Promote and stimulate domestic and foreign investment in ICT infrastructure, manufacturing, services, content, and research and development.</td>
</tr>
<tr>
<td>ix.</td>
<td><strong>Accessibility</strong>: Ensure accessibility for all sectors of the population in respect of services, devices and infrastructure, so that all can equally enjoy and benefit from communication services.</td>
</tr>
<tr>
<td>x.</td>
<td><strong>Values</strong>: Ensure that communications services and content reflect, respect and uphold constitutional and community standards and values.</td>
</tr>
<tr>
<td>xi.</td>
<td><strong>Privacy and Security</strong>: Safeguard the right of all South Africans to privacy, the protection of personal information, and to a safe communications environment.</td>
</tr>
</tbody>
</table>

---

\(^5\) Note, that opportunities for public consultations prevailed after each milestone. The period between the Green Paper and Discussion Paper entailed the most intensive public consultation with hearings having been scheduled in each of the provinces.

\(^6\) Note that reference to “all South Africans” in this section implies that Persons with Disabilities are included in the parameter of the specific policy objective.
1.6 Regulatory Principles

The policy and legislative focus since 1994 has been on regulating the ICT sector “in the public interest”. It is recommended that this core approach continue to guide regulation of the sector. The following principles are key to ensuring the vision and objectives for policy are realised:

- **Public Interest**: Recognise and endorse the responsibility of Government to maximise the overall public benefit derived from the use of public resources and to facilitate access to public information, participation in public processes and efficient delivery of services.

- **Innovation and Competition**: Facilitate innovation, fair competition and equitable treatment of all role players to ensure a range of quality services are available to end-users and audiences.

- **Transparency and Accountability**: Reinforce the right of South African citizens and consumers to maximum transparency in how services are delivered and conditions under which they are delivered.

- **Environmental Protection**: Ensure that the design, use, and eventual disposal of ICTs recognise and protect the right to an environment that is not harmful to health or well-being.

In line with this, the following are the recommended **values to underpin regulation-making**:

i. Any interventions must be **necessary** to meet clearly defined public interest objectives.

ii. Any interventions must be **proportionate, consistent and evidence-based** and determined through **public consultation**.

---

7 See Recommendations 1 and 2 (Chapter 2) in the detailed report.
iii. The regulator must make its decisions without any political or commercial interference and must perform its functions without fear, favour or prejudice.

iv. The policy maker and regulator must consider the least intrusive mechanism to achieve the defined public interest goal/s, and will consider, where appropriate, alternative models such as co-regulation and/or self-regulation.

v. The regulatory impacts of any action will be assessed and considered before imposing regulations, rules and/or conditions.

vi. The policy maker and regulator will act fairly and ensure regulatory parity in defining markets and deciding on interventions.

1.7 Regulatory approaches

1.7.1 Open Internet

i. A net neutrality policy is an important step to ensuring fair competition between different content and service providers. A net neutrality policy would mean that rules are set to ensure that Internet traffic should be “treated equally, without discrimination, restriction or interference, independent of the sender, receiver, type, content, device, service or application”. Such a policy could also specify that no preferential treatment should be given to any data and include requirements relating to equal charges regardless of user, content, site, platform, or mode of communication.

ii. The Panel has considered all of the implications of net neutrality and recommends that an open Internet policy based on net neutrality principles is adopted. The Panel further recommends that the regulator is mandated to assess the extent to which regulatory intervention is required to uphold the public interest and the principles of an open Internet.

iii. The Panel has further noted the declaration of the United Nations Human Rights Council and recommends that it is necessary to broaden provisions and to declare that broadband Internet infrastructure is an essential facility.

1.7.2 Green ICT policy

i. The Panel has noted Government’s National Climate Change Response Policy (2004) which emphasises the need for policy implementation across all sectors. The Panel has noted the ramifications of e-waste, including the disposal of ICT hardware and is of the view that a sustainable e-waste solution in South Africa will deliver significant economic value through job creation in growing a green industry sector.

---

8 See Recommendations 3 to 6 (Chapter 2) in the detailed report.
11 This policy is in the process of being updated.
ii. The Panel therefore recommends that a Green ICT policy must be developed in consultation with the Department of Environmental Affairs and other stakeholders. This policy must be aligned to the National Climate Change Response, and provide for a mix of self-regulation and formal regulation.

1.8 Infrastructure and Services Recommendations\(^\text{12}\)

The ICT Policy Review Panel endorses the centrality of government in creating an enabling environment to ensure affordable access to the full range of services required for effective participation in a modern economy and society. The recommendations focus on ensuring economic and societal benefits and enabling users to access the broadest range of ICT products and services to spur innovation, creativity, efficiency, and competitiveness.

1.8.1 Postal Services

a) Future of the Postal services
   i. The digital age presents a range of opportunities, and thus a future South African Post Office (SAPO) must be positioned as a preferred provider for certain digital services.
   ii. The state must continue to subsidise services in the rural areas. Postal and related services are like any other services delivered by government thus the state should continue to intervene where there is market failure.

b) Postal market structure and competition
   i. It is necessary to provide legislation which makes it explicit that protection of universal service provision of postal services takes precedence.
   ii. Further policy must provide for a periodic review of such protection and take into account the need to preserve the provision of postal services in rural areas.
   iii. Regulation should be enforced to ensure that government subsidies continue to be wholly used to safeguard universal service provision.
   iv. There should be an ongoing review of SAPO’s monopoly. As such the regulator must be appropriately resourced to ensure its capacity to regulate the sector.

c) National Address System (NAS)
   i. An effective and reliable NAS for the country must be established which includes a country NAS Database that caters for rural areas and informal settlements.
   ii. Policy must specify that SAPO is the custodian of national address rollout and the creation and management of the Address Database.

d) Postal Universal service and access
   i. All players in the market should be required to share the responsibility of universal service. A policy revision is thus required to extend obligations to market players in the unregulated space.

\(^{12}\) Refer to Recommendations 7 to 54 (Chapter 3) in the detailed report.
ii. A detailed market study should be undertaken to determine the best approach to this, including an assessment of the possibility of introducing levies on other postal services licensees to ensure funding of postal UAS.

e) Postal Services

i. Policy must extend the mandate of the Postbank to function as a developmental bank which offers services to the unbanked, co-operatives, SMMEs, and other sectors.

ii. SAPO must be encouraged to evolve its services to areas such as e-commerce and freight and logistics, only if a business feasibility study makes a strong case for profitability.

iii. Public interest services must be prioritised and services such as freight and logistics must be differentiated as profit-making services.

f) SAPO network infrastructure

i. Given the extent and reach of SAPO’s network infrastructure, it must be mandated to provide opportunities for its facilities to be used to provide Points of Presence.

ii. The post office must transform into a key provider of basic Internet and e-government services to local communities through wireless media such as Wi-Fi.

1.8.2 Regulating for Convergence

The Panel notes that policy needs to evolve to respond to real-world changes associated with convergence, rather than being a barrier to the benefits of those changes. The Panel therefore recommends that:

i. The realities of a converged market must be entrenched in policy.

ii. This necessitates a careful and ongoing assessment of market dominance and the effects of convergence on the evolution of new services. This requires the regulator to monitor convergence and flexibly evolve regulations as and when it is necessary.

iii. The objectives which must underpin policy in respect of convergence are:

   - **Promotion of technology and service neutrality:** This allows for competition that benefits consumers, lowers the cost of infrastructure roll-out and enables the uptake of new technologies and innovation. It allows service operators to offer multiple services;

   - **Ensure same treatment of content in all platforms:** Access and distribution of content can be done using different platforms. For this to happen the acquisition, handling, distribution and provision of content should be regulated in an equivalent manner irrespective of the underlying media or platforms;

   - **Remove bottlenecks and allow for the expansion of the market** through entry of new players and services.

1.8.3 Market structure and Competition

a) Annual Sector Performance and Market Reviews

i. Policy and legislation must specify that the regulator must regularly publish an overview of sector performance across all identified markets.
ii. The regulator is therefore required to develop a set of indicators for which licensees must be required to provide annual data, where such data allows for an evaluation of market performance.

iii. Such market reviews should guide the regulator in determine what, if any, additional interventions are necessary to achieve objectives and which regulations are no longer necessary.

iv. ICASA and the Competition Commission must be required to regularly consult with each other and put in place mechanisms to ensure cooperation so as to achieve their respective mandates with regards to market determination.

b) Development of indicators to assess the market-gap in support of Universal Service provision

i. The development of a robust set of indicators, to ensure the continuous assessment of the access gap, must be fast-tracked.

ii. The policy maker (currently DTPS) must undertake a regular market gap analysis in consultation with the regulator. The policy maker is therefore also responsible for the development of the associated set of indicators and the regulator shall be required to provide the necessary information, as per the indicators set to support the market gap analysis.

iii. The policy maker must ensure that the requisite information is provided to the regulator to enable the regular declaration of underserviced areas.

c) Application of competition rules and enforcement thereof

i. The current framework for competition in relation to ex-post and ex-ante regulation should remain in place to deal with the conduct of operators in the market.

ii. However, policy should ensure that the Competition Commission and ICASA collaborate more closely and that the regulator draws on the expertise in the competition regulator to ensure effective competition regulation in the public interest.

iii. The current provisions in the Electronic Communications Act (ECA) relating to mergers and acquisitions must remain but further consultation and coordination with the Competition Commission on approval of such mergers must be required in policy and law.

iv. Policy must promote a combination of facility-based and services-based competition subject to different markets conditions and facilitate a healthy balance of competition between incumbents and new entrants.

v. Policy must provide for greater powers for the regulator to intervene in the substantive content of interconnection agreements in the public interest while balancing the need for speedy resolution of agreements.

vi. The principles of the Presidential Framework for Review of SOCs and the recommended questions outlined in the Principles for reviewing Institutional arrangements (see Recommendation 143 in the main report,) are to be used to consolidate SOEs and determine their individual roles.

d) Broadband and Internet infrastructure

i. A strategy must be developed in the short term for the exploitation of international satellite capacity to position South Africa as a leading communications hub of broadband in Africa.
ii. South Africa must consider in the medium to long term investing in its own satellite so as to provide an alternative connectivity solution for areas that are currently underserved or un-served and which are not suitable for terrestrial connectivity.

iii. With regards to municipal points of presence (PoPs) a hybrid approach should be pursued including placing obligations on licensees to roll-out PoPs as part of universal service and access obligations and/or facilitating government investment in PoPs in line with proposed State Aid rules, based on the access gap assessment conducted.

e) Promoting backbone connectivity

i. The recommended approach to ensure broadband connectivity across the entire country must include both private sector participation and state investment as follows:
   - Effective regulatory tools and mechanisms should be put in place to extend the network to reach all South Africans and address gaps and bottlenecks in the rollout of broadband;
   - The policy and legislative framework must ensure that the regulator has the capacity and resources to regulate proactively;
   - The market should be involved in the roll-out of broadband services with public resources utilised to address the gaps in areas where the market cannot offer services profitably;
   - The market should be restructured into an open access regime in which all players with significant market power (SMP) are required to offer services in line with open access principles and to interconnect with other networks;
   - Policy should reinforce the continued role of the National Broadband Council in facilitating the co-ordination and integration of current and future broadband infrastructure into an interconnected open access national broadband network.

ii. A rapid deployment policy and guidelines encompassing the activities of various national, provincial and local authorities in dealing with the various permissions that are required to roll-out infrastructure must be developed.

iii. Public sites, such as police stations, schools, clinics and government sites must serve as anchor tenants, thus reducing the required funding from government.

iv. In areas that are not commercially viable for the private sector, government would fund the entire network construction and own the infrastructure, on an open access basis.

Minority view – That rather than government funding and owning the infrastructure, a least-subsidy competitive tender process under the USAF (or the proposed evolved fund) beor through budgets of municipalities be considered.

v. Open access on all platforms including fixed, wireless and fibre must be mandated through policy to achieve full last mile connectivity and policy in this regards must be developed which provides for fair pricing and quality of service.

Minority view – A clear policy on open access must be developed specifying that it should be applied only after a forward looking regulatory impact assessment has been conducted. Open access conditions should apply to specific networks/processes such as the assignment of 700 / 800MHz spectrum and government funded networks.

vi. With regards to Government’s role in the mapping of fibre installations, the DTPS must take responsibility for fibre mapping, given that this is aligned with its role as the SIP 15 coordinator.

f) Use of innovative application processes to fast track rapid deployment of infrastructure
i. A national coordination centre, working together with the SIP 15 infrastructure team should be established to support rapid deployment and interface with local municipalities to fast track rights of way and way-leave approvals.

ii. Mechanisms should be put in place to streamline the application process such as developing standardised automated application and approval processes.

iii. Government must provide indirect investment of infrastructure deployment through, for example, funding trench digging via the Public Works Fund, and making government high sites available for broadband equipment installation.

iv. The Local Government Sector Education & Training Authority (LGSETA) and the Media, Information and Communication Technologies SETA (MICT SETA) must develop training interventions to capacitate officials to effectively deal with applications relating to infrastructure investment.

g) Open Access System

i. Given the modest results which have been achieved to date through the use of the competition clauses of the EC Act, the following policy objectives must be pursued in promoting an open access regime: Creating a clear access regime that is enforceable; Creating a uniform access regime that takes into consideration all technologies and services; Ensuring a fair return on investment.

ii. The principles for an open access regime which the regulator must be mandated to develop regulations in terms of, must include a definition of what constitutes an open access network. It is recommended that an open access network satisfies all of the following:
   - Offers effective access to the infrastructure;
   - Offers transparent services;
   - Offers access in a non-discriminatory manner.

h) Infrastructure Sharing

i. Infrastructure sharing must be regulated at all levels of the network including the infrastructure layer of the network, through enabling sharing of passive infrastructure such as masts and ducts, and the transmission media layer, through enabling the sharing of copper (LLU) and fibre infrastructure.

ii. Active network sharing must be encouraged and facilitated through an appropriate legal and regulatory framework which must ensure smooth roaming arrangements between operators without any uncertainty.

1.8.4 Universal Access & Service (UAS)

a) Universal Access and Service (UAS) Definitions in the Era of Convergence

i. The definitions for UAS must be aligned to the ITU guidelines to include in its scope availability, affordability, accessibility, awareness and ability. The definitions must further include provision for persons with disabilities and the categories of fund beneficiaries.

ii. The responsibilities for developing all UAS related definitions must be consolidated and government as the policy maker (currently DTPS) take responsibility for this. These definitions should be regularly reviewed by Government and policy should determine the periods between such reviews.
Minority view: UAS definitions need to be developed by the entity that will be responsible for enforcing them, viz. ICASA, in order to ensure regulatory consistency. This would need to be done via a consultative process that will include the policymaker along with all other stakeholders.

iii. The regulator will be responsible for implementing policy in line with the definitions and will conduct regular reviews to determine which areas/communities continue to be underserved. Policy and law should determine how often such reviews should take place.

iv. The maximum period between review of definitions and the maximum period between the publishing of under-served areas must be defined in policy.

b) Universal Service Obligations (USOs)

i. An improved USO framework must be developed so that obligations are clearly defined, robust, proportionate to market share, capable of satisfaction and enforceable.

ii. A revised policy would include provisions, specific to the alignment with determinations on universal access, universal service, underserviced areas and other relevant definitions to be kept relevant through periodic review.

iii. A revised USO framework shall incorporate provisions for making broadband Internet access available at public venues through the use of wireless technologies such as WiFi, with a focus on under-served and rural areas. The obligations in this regard shall be aligned to the policy provisions in the SA Connect national broadband policy.

c) Transforming the Universal Service and Access Fund (USAF) into the ICT Development Fund (ICT-DF)

i. A newer, more innovative approach is required in relation to both the mandate and the sources of revenue for a national universal service and access fund (USAF).

ii. The USAF must evolve into an ICT Development Fund (ICT-DF) providing support for both infrastructure and demand stimulation projects in line with proposed extended definitions for UAS. It should be funded through private sector levies, donor funding and new incremental state funding.

iii. USAASA should be dissolved and its current responsibilities reallocated as relevant to the new ICT DF, ICASA (regulatory functions) and to the DTPS (policy-making functions).

iv. The establishment of the fund will be subject to further investigation, research and due diligence, so that explicit terms of reference are developed encompassing clear guidelines for the governance, disbursement and utilisation of the fund. The following provisions should however be adopted:

   a. In terms of state aid, funding and support should conform to the proposed State Aid Rules (see the Institutional Framework section) and generally accepted norms and principles as espoused in international treaties.

   b. Where the fund is used for infrastructure development, an open access regime must be made compulsory, so that new infrastructure can be used by all service providers on fair and equal terms.

   c. Regarding contributions to the fund from licensees (as per Section 89 of the EC Act), the regulator should continue to set contributions to the Fund, in consultation with the Governance structures of the new entity. The regulator must be directed to commence on an immediate review of fund contributions from Licensees, with a view to ascertain
why the current contributions should not be increased to one per cent of turnover (the current cap provided for in the EC Act (Section 89 (a))).

d. The new entity will develop, publish, and maintain guidelines on the use and disbursements of the ICT-DF.

e. There shall be increased discretion in the disbursement of funding.

f. The newly created independent fund management body should directly collect monies

d) e-Rate

i. The current e-rate provisions should remain subject to an immediate review of such requirements against objectives set, including benchmarking in terms of best practice.

ii. The review must include an assessment of the funding arrangement for the e-Rate and the necessity of introducing stronger provisions to address the loopholes which have hampered implementation of the e-rate to date.

iii. The review must also consider the feasibility of expanding the scope of the e-rate to include rural clinics, and a range of other public institutions.

e) Consumer Protection and Quality of Service

i. A review must be undertaken to ascertain how to strengthen ICASA’s powers and competence to regulate, monitor, enforce and publicise consumer protection and quality of service codes and standards.

ii. The regulator must take steps to establish a Consumer Protection Advisory panel, which must include representation from the National Consumer Commission (NCC) and from organisations representing persons with disability.

iii. A Memorandum of Understanding is to be developed between ICASA and the NCC requiring collaboration on matters relating to consumer protection in the ICT sector.

iv. ICASA must take steps to improve public awareness of both user rights and mechanisms for complaints. This must include clarification of the mandates of both ICASA and the NCC and their respective roles in dealing with consumer complaints.

v. The requirements on the regulator to publish annually information on the state of consumer satisfaction and complaints handling in South Africa, should be strengthened.

vi. Policy and legislation must be strengthened in relation to type approvals to ensure the process is handled efficiently and effectively. This should include provisions recognising type approvals in other jurisdictions to eliminate barriers to entry into markets through international and regional harmonisation.

1.8.5 Spectrum management

a) Spectrum Policy Objectives

i. The principle that spectrum is a valuable national public resource, and as such must be focused on delivering public value, must be upheld within the broad framework of spectrum management.

ii. The current spectrum management policy must be reviewed to develop a more concise set of policy objectives and clear rules aligned with ITU guidelines. The new policy should focus on ensuring effective and efficient management of spectrum to ensure agility, flexibility and adaptability in spectrum administration.
iii. Policy objectives should be aligned with the SA Connect national broadband policy, especially with regards to universal access and service in rural areas.

iv. The review must take into account convergence, technology trends, and access issues. It must further ascertain which objectives are to be incorporated into legislation.

b) Principles for spectrum management

i. The foregoing review must take into account the following principles:
   - Recognition that allocation and management of spectrum takes place on a global platform;
   - Managing unused licensed spectrum;
   - Priority of access to spectrum related to safety of life;
   - Allocation of spectrum for research, development and innovation;
   - Spectrum for wireless technologies;
   - Contiguous frequency assignment
   - Holistic approach to spectrum planning to accommodate additional multiplexes; and
   - Regular spectrum audits.

b) Spectrum allocation

i. Policy regarding spectrum allocation must be reviewed to ensure alignment with the following:
   - There should be spectrum provision for an open access network;
   - Must-carry obligations must be enforced for high demand spectrum recipients;
   - Spectrum band harmonisation;
   - Competitive bidding;
   - The need for more multiplexes to accommodate future terrestrial broadcasting services;
   - Licence exempt spectrum bands.

ii. The role and functions of the Minister with regards to spectrum allocation must be included in the scope of the proposed spectrum policy review.

c) Spectrum Assignment, Licensing and Pricing

i. Given that spectrum auctions can give government the best revenue for this public resource but could favour stakeholders with substantial resources and therefore not necessarily result in the greatest value, auctions should be considered with caution.

ii. A hybrid assignment model which combines elements of the current regime and market-based and spectrum commons approaches must be pursued.

iii. The fees to be paid for the usage of the radio frequency spectrum should continue to be based on factors that take into account the inherent properties of the radio frequency spectrum, such as the frequency band, congestion in the particular band, and other factors such as bandwidth, coverage, degree of loading, spectrum efficiency of the equipment used, economic factors and geographical area of operation.

iv. The spectrum pricing model however must be reviewed so as to give consideration to non-commercial and not for profit use of spectrum, within the administered incentive pricing (AIP) model.
v. *All* spectrum holders (regardless of commercial, non-commercial, or non-profit status) and regardless of use, must be audited to ensure efficient utilisation and the “use it or lose it” principle must be applied without discretion.

vi. The spectrum pricing model must be adjusted to ensure that there are no fees payable for spectrum which is used for necessary and essential service government public services (distinct from public entities), and Government users in this category will have to file regular reports on utilisation and be subject to the “use it or lose it” principle.

vii. With regards to compensation for the cost of migration it is recommended that the following principles guide application on a case by case basis:
- Incoming licensee compensates the outgoing licensee for the cost of migrating;
- The licensee that is required to migrate covers its own costs;
- Migration preferably occurs at the end-of-life of equipment when costs are minimal; and/or
- A portion of proceeds from the sale of spectrum (e.g. the digital dividend) would be used to fund migration.

e) **Spectrum trading and sharing**

i. It is noted that although the EC Act currently provides for the regulator to introduce spectrum trading related rules, it is unclear how this practice will result in public value.

ii. A review must therefore be undertaken of the current provisions for trading taking into account this concern.

*Minority view: The current provisions allowing for spectrum trading subject to regulation by ICASA should prevail.*

iii. A policy must be developed to govern spectrum sharing, such that each instance of spectrum sharing shall require rigorous oversight from the regulator, and the principle of fair competition is maintained in the market.

iv. Spectrum sharing should be pursued on the basis of a Hybrid Hierarchical Access Model comprising a Dynamic Exclusive Use Model, and an Open Sharing Model (spectrum commons).

**1.8.6 Emerging issues**

i. With regards to IP based technologies, there should be no differentiation between technologies and thus regulation must apply equally i.e. a technology neutral position must prevail.

ii. With regard to Over-the-top (OTT) services, impact on the market must be continually monitored and regulatory intervention sought if it is deemed necessary.

**1.9 The Digital Society**

The recommendations regarding the development of the South African Digital Society are premised on an understanding that ICTs are tools which facilitate social and economic development. They build on existing strategies, including South Africa’s national broadband policy adopted in 2013.

---

13 Refer to Recommendations 55 to 82 (Chapter 4) in the detailed report.
a) A coordinated approach to developing the digital society, including e-government should be adopted including:
   i. The use of multi-departmental mechanisms to deal with cross-cutting issues.
   ii. A central structure to be put in place to ensure greater coordination.
   iii. National e-services and related strategies should be coordinated from the Presidency.
   iv. A multi-stakeholder forum must be considered to ensure awareness and joint action.

b) E-Government
   i. A single holistic citizen focused national e-government strategy and policy is required, which provides an overarching framework to delivering e-services to all South Africans including persons with disabilities. Such a policy and strategy should focus on facilitating internal efficiencies and open governance.
   ii. The roles and mandates of GITOC and SITA should be reviewed to facilitate effective e-Government delivery.
   iii. Other e-Government priorities in addition to education and health must be identified to focus on frontline citizen services for prioritising in the e-Government implementation framework.
   iv. An open data policy must be developed based on recognised open data principles.
   v. A government-wide IT governance framework is required and should be put in place following an urgent review of all policies, norms and standards to protect digital information and data.

c) Digital economy and e-commerce
   i. The ECT Act must be amended to address identified challenges and bring it in line with international best practice.
   ii. DTPS must remain the Accreditation Authority for electronic signature, but provisions in the law would be reviewed to ensure an efficient and effective system is put in place, and that the provisions relating to electronic signatures are brought in line with international best practice.
   iii. The DTPS and ICASA should liaise with banking regulators to ensure their standards are reflected in ICT-related policy and rules and that policy should require coordination and consultation where appropriate.
   iv. The DTPS must facilitate consultation with the Ministry of Finance to examine how e-commerce may be promoted through, for example, exploring proposals on zero-rating tax on e-services, and reviewing practices related to custom duties on certain goods.
   v. South Africa must champion the free flow of information and data within SADC and Africa to promote e-commerce within the region.
   vi. The DTPS together with other Ministries and agencies including the Department of Small Business Development must support the growth of SMMEs in the e-commerce sector, within a coordinated response framework.

d) Cloud computing
   i. A South African cloud computing policy must be developed, which takes into account OECD guidelines, and includes, as one of its foci, government use of cloud services, including the need to ensure interoperability.
ii. Regulations must be developed to provide for minimum standards to ensure security of databases and big data, so as to minimise cybercrime.

iii. South Africa should consider the possibility of positioning itself as a destination for preferred hosting of cloud services.

e) Internet Governance

i. A clear policy on Internet Governance is required, which will provide a basis for South Africa to defend its interests, its constitutional values and more actively influence global governance outcomes.

ii. There must be continued engagement on international Internet Governance forums to ensure the transformation of the ICANN multi-stakeholder model such that it enjoys meaningful participation; that multi-stakeholders are globally distributed; that robust accountability mechanisms for the ICANN Board are instituted; and that there is adequate representation by developing countries and civic society.

iii. ZADNA must accredit registries and registrars instead of licensing; and government should consider its proposals that its mandate be expanded. ZaDNA’s powers regarding dispute resolution must be strengthened.

f) Ensuring trust and confidence in the Internet

i. The current cybersecurity framework must be strengthened to include a multi-sectoral forum including the private sector; and awareness of cybersecurity by non-technical audiences must be improved as a consequence.

ii. The Cybersecurity Hub’s mandate must be upheld, and collaborative programmes should be implemented to ensure the vision of the Hub is realised and strengthened.

iii. The cybersecurity framework must be made public to facilitate public response.

iv. The national CSIRT must be established with cross-industry role players.

v. The ECT Act must be amended to ensure alignment and elimination of duplications once the Cybercrime Policy is finalised.

vi. Provisions to strengthen data protection and privacy in the online environment must include: aligning the ECT Act and POPI Act if necessary; provisions for the right to be forgotten; and improved data protection regulation to protect Internet users from clandestine tracking and unauthorised personal data storage.

vii. The DTPS must forward submissions and suggestions related to online gambling to the relevant Ministry and the Gambling Board for their consideration.

viii. With regards to Internet intermediary liability, current provisions should remain in place but be extended to ensure they cover all technologies and platforms and that the process of accrediting self-regulatory entities is strengthened.

ix. With regards to Intellectual Property Protection and copyright, that the DTPS must refer all concerns noted in the policy review to the Minister of Trade and Industry.

x. Given that the current framework for consumer protection is disjointed resulting in consumer confusion, Government should focus on measures to address the resourcing of regulatory bodies such as the National Consumer Commission to effectively address matters affecting consumers in the e-commerce environment.
1.10 Audio and Audio-visual Content Services

Recommendations in this regard are informed by convergence, the move to digital terrestrial television, the Internet and the introduction of more devices such as connected TVs. The terms “audio” and “audio-visual” content recognise the changes associated with increased access to high-speed broadband and the introduction of digital terrestrial television and new digital radio to both audiences and content providers.

a) Definition of “broadcasting/content services”
   i. The current definitions should be amended to cover both linear (traditional broadcasting) and non-linear (on-demand) broadcast-like content, regardless of the distribution platform used. The revised definitions should exclude data or text services and those where the provision of audio-visual or audio material is incidental to the provision of that service. The ambit of the revised definitions should focus on services under the editorial control of an operator providing programming content to the public.
   ii. With regards to the approach to linear and non-linear providers, both the nature of the service (linear versus non-linear) and the influence of services should determine the extent of regulation of audio and audio-visual content, with non-linear services having lighter touch requirements (a graduated approach).
   iii. External content providers, using the Internet as a medium, must be subject to South African regulations if they have significant influence in the South African market; and that regulation of such providers must be guided by UN protocol.

b) Audio-visual and content regulation focus
   i. The approach in current policy and law that all broadcasters, to varying degrees, contribute towards meeting public interest goals must be upheld, and all broadcasters (both linear and non-linear) must thus continue to contribute towards the broad objectives set for the content sector.

c) Licensing
   i. In the emerging converged environment, broadcasters should not be required to hold individual spectrum licences but the policy and legislation must address concerns raised regarding the need ensure security of access to spectrum by licensees and the needs of audiences. The relationship with spectrum frequencies must be through MUX operators/ECNS licences rather than individual assignment.
   ii. The current class and individual licensing approach should be retained in the short-term, but adapted to accommodate new categories after an inquiry by the regulator including an assessment of whether or not a separate multiplex operator licence will be necessary.
   iii. A review of the different licence categories is needed and must include an assessment of and recommendations to government on the evolving audio and audio-visual environment.
   iv. ICASA should be directed to develop a framework to amend the current broadcasting licensing approach to accommodate multi-channel terrestrial broadcasters and ensure public interest needs are met.

14 Refer to Recommendations 84 to 110 (pp. 87-122, Chapter 5) in the detailed report.
d) Three tier system
   i. The current three tier system is to be retained but with a requirement that as the number of
      services increases, there must be a corresponding increase in the public content across all
      platforms.
   ii. ICASA should be requested to if necessary amend the regulatory framework to ensure that
       each of the three tiers are distinct in line with policy objectives.

e) Public broadcasting
   i. A policy review process, with a tight timeframe must be urgently instituted given the
      critical role that the SABC and public interest content play in South Africa. The review
      should be a participatory process overseen by an entity that is independent from the SABC,
      such as the regulator, and must include in its purview the mandate of the SABC, its funding,
      oversight and accountability and governance.

f) Digital radio
   The ICASA decision not to make a determination on the switch off of AM and/or FM signals must
   be endorsed, and that the licensing of DRM and DAB services must be facilitated in parallel.

g) Community broadcasting
   i. The licensing framework for community broadcasting must be amended to ensure ICASA can
      effectively oversee the licensing and monitoring of such services.
   ii. Individual community television licences must be phased out and instead a framework for
      open access television should be developed.
   iii. An investigation in respect of the reach of community broadcasters should be conducted to
       identify ways to extend the reach of such services to accommodate national non-profit niche
       services (such as education).
   iv. ICASA must be capacitated and empowered to monitor compliance with and enforce licence
       conditions and regulatory requirements.
   v. Measures for the improvement of funding and sustainability to improve community
      broadcasting should be considered. This must include royalty payments, NPO tax status, and
      a review of MDDA funding, among others.

h) Competition
   ICASA must be required to conduct inquiries into the following competition related issues identified
   through the review process. Where necessary it should draw on the expertise of the Competition
   Commission:

   i. Competition between FTA and pay TV
   ii. Competition within the free to air market
   iii. Ease of switching/technical access
   iv. Premium Content
   v. Vertical integration
   vi. Discoverability of content
i) Diversity
i. ICASA’s recommendations in respect of amendment to existing ownership limitations must be urgently submitted for Parliamentary decision including proposals on limitations on the number of radio licensees; limitations on the number of television licences; cross-media controls; foreign ownership limitations; and exemptions.

Minority view: ICASA recommendations should be reviewed in light of convergence and, for example, the ongoing relevance of cross-media limitations should be assessed.

ii. The public broadcaster should be specifically charged with ensuring content diversity, language diversity, and reach to different audiences across all platforms and ICASA should be required to regularly review the extent of content diversity in the audio and audio-visual content sectors

j) South African music and television content
i. Policy is to be strengthened to ensure that South African content is promoted across all platforms and across all tiers.

ii. Such policy must cater for: pay or play options and regulation of content in specific genres;

iii. Independent producer quotas should be extended to independent channels in television bouquets.

k) Access to public interest programming
i. Must carry rules must continue and be extended to all FTA broadcasters and consideration to be given as to whether this should be on a voluntary basis or not.

Minority View - Some panel members recommended that the current provisions on must carry should remain in place.

ii. Citizens must be able to access public interest content such that the design principle of ease-of-use is upheld, and the regulator must be required to assess the need for regulation to ensure prominence of certain content/channels/services and develop rules as necessary.

iii. There must be further strengthening of current provisions regarding events of national interest which should be extend to cover events of major public importance. Existing policies and legislative provisions should be reviewed to assess whether or not these need to be strengthened and, for example, if requirements should specify that rights holders should first offer these to FTA services.

Minority view: Current provisions on sports of national interest are adequate and should remain in place

l) Universal Access: Accessibility and inclusion
i. Current policy provisions must be revised to address the possibilities as well as the challenges of new technologies and the introduction of new services such as on-demand content and broadcasting-like services broadcast over the internet to facilitate access to content by persons with disabilities.

m) Protection of children, classification and content standards
i. Future policy must continue to ensure protection of children from harmful or age inappropriate content, taking into account convergence and digitisation.
n) Commercial communications and editorial integrity
   i. Given that convergence is likely to have an effect on the future of commercial communications; policy guidelines are required regarding the way the regulator ensures editorial integrity.

1.11 ICT Industry Growth

South Africa has set a growth target of five percent by 2019, and has identified various measures and interventions to jump-start the economy. Recommendations in respect of ICT Industry Growth focus on the key challenges in respect of growing the broad ICT industry, and support government’s plan to “jump-start” the economy. The overall strategy for ICT Industry growth distinguishes between three key sub-sectors, each with unique properties and needs viz. the electronics and hardware manufacturing sector; the software, local content and applications development sector; and the ICT services sector. The strategy, in taking into account economic growth theory, factors in the bringing together of resources, capital, and enterprises which jointly contribute to jobs and net economic output.

The following recommendations focus on establishing proper investment policy, building research and development capacity, addressing the skills gap, and stimulating South African innovation and local intellectual property.

a) Coordination of ICT Industry Growth strategy
   i. An ICT Industry Growth coordinating mechanism must be established, which serves to advise government; and which will facilitate synergies and ensure bottlenecks that are experienced by the ICT industry are mitigated.

b) Delineation of the ICT Sector
   i. A classification system based on Stats SA satellite account is to be adopted which provides for both sector classification and product classification.

c) Transformation of the sector
   i. The ICT Sector Codes must remain in place given that the broad objectives for which they have been devised have yet to be realised.
   ii. The DTPS must urgently finalise the establishment of the Council, and ensure that the necessary collaborative frameworks are put in place so that those components of the ICT sector under the newly established DOC remain under the purview of the Council.
   iii. The ICT Charter Council must be mandated to provide oversight of Government’s adherence to the provisions in legislation in terms of its overall mandate to ensure compliance.
   iv. The current provisions requiring the DTI to consult with the DTPS prior to giving approval to any ICT Equity Equivalent Programmes (EEP) transactions should be maintained and the DTPS capacity to add value to this process be strengthened.

---

15 Refer to Recommendations 111 to 144 (pp. 113-145, Chapter 6) in the detailed report.
v. The definitions in the ICT Charter are to be updated once the broad sector classification is agreed upon between Statistics South Africa and the DTPS.

d) Investment in the ICT sector
   i. A new funding model for ICT infrastructure and demand stimulation projects shall be in the form of the ICT-Development Fund (ICT-DF), and it should provide for the aggregation of new incremental state funding with private sector funding and donor funding.17
   ii. Active, rather than passive policies must be developed to facilitate FDI in the ICT Sector; and a holistic FDI policy for the ICT sector should be jointly developed by the DTPS and the DTI.
   iii. Strategies are to be put in place to ensure local benefit is attained from foreign investment, and which consider the FDI’s ability to create local IP and technology transfer; directs OEMs to use SA owned companies within the manufacturing value chain; and provides for the active marketing of the EEP internationally.
   iv. The DTPS to entrench a closer working relationship with the DTI, IDC and other bodies to ensure that funds within current programmes are ring-fenced for the further development of the ICT sector.
   v. DTPS should be required to pursue strategies in collaboration with the DTI to ensure support for ICT entrepreneur and SMME start-up including: the development of an angels investment programme; investigating the feasibility of tax breaks for new ICT SMMEs; establishment of ICT financing guarantee schemes; and the expansion of Government ICT and related services procurement from SMMES.

e) ICT Research, Development and Innovation (RDI)
   i. An ICT RDI Investment and Planning Advisory Council including senior officials from DST, the DTI and DTPS, as well as industry and research institutions (Universities and Science Councils) and civil society representatives, must be established to support the Office of Digital Advantage provided for in the ICT RDI Roadmap.
   ii. The Council must be tasked with identifying specific foci within the priority market areas identified in the Roadmap.
   iii. A critical mass of human capital for RDI in prioritised areas must be facilitated through National Research Foundation’s (NRF) instruments.
   iv. A more sustainable flow of RDI funding must be created by requiring companies in the private sector to contribute a set percentage of annual revenue into RDI activity.
   v. Consideration has to be given to enforcing a preferential procurement policy that encourages enterprises to use locally developed ICT products.
   vi. The DHET must, together with the DTI and the DST, develop an incentive scheme to encourage university researchers to go beyond the R&D phase so as to realise a higher net innovation output from the higher education sector.
   vii. A demand-driven approach to innovation should be pursued and within a period of five years at least one technology hub should be developed in each of the country’s major cities which must operate as a hub and spoke model with community ICT access centres.
   viii. Provision must be made to catalyse grassroots and community-based innovation through: the continued deployment of Community ICT centres; more flexible Intellectual Property

---

17 Refer to section 1.8.4 of the Executive Summary.
protection arrangements; and a vigorous marketing campaign to foster greater awareness of funding opportunities at grassroots level.

f) Skills Development
i. The iKamva National e-Skills Institute (iNeSI) must continue to focus on its current five components, viz. Research, e-astuteness, multi-stakeholder collaboration, monitoring and evaluation.
ii. The DTPS and the iNeSI must investigate the feasibility of a separate institute with a focus on implementation of training programmes together with DHET.
iii. iNeSI must foster a working relationship with the SETA’s, in particular the MICT Seta, to ensure synergies in their respective mandates.
iv. iNeSI must proactively research and develop programmes which focus specifically on e-skills for rural women.
v. With regards to the specific focus of the iNeSI which were previously in the purview of NEMISA, it is noted that there is a need for a continued and renewed focus on audio and audio-visual content development training. The DTPS should coordinate with the Department of Communications in this regard.
vi. A National e-skills Coordinating Council under the auspices of the iNeSI, Broadband Council, DTPS, DHET, DBE, DOC must be established to ensure elimination of duplication, and requisite synergies in driving e-skills programme implementation.

vii. The MICT SETA in partnership with iNesi and relevant government departments are required to develop and maintain an Information and Knowledge Management System (IKMS) in respect of labour market data.

viii. The proposal in the SA Connect broadband policy that the DTPS via iNesi coordinate a national e-literacy programme must be fast-tracked.
ix. The scope of internship programmes and industry exposure or workplace learning programmes should be increased, and realistic incentives must be provided to make it attractive for industry partners to become involved in these programmes.
x. Certification of industry specific courses must be put in place, and the MICT SETA is to be directed to develop related unit standards.


g) Electronics Manufacturing
i. Priority areas of growth in the electronics manufacturing sector must be informed via a proper market analysis which must be jointly coordinated by the DTPS and DTI.
ii. DTPS should work with DTI to ensure that the Industrial Policy Action Plan (IPAP) addresses the decline in this sector. It is proposed that the electronics industry is identified in the IPAP and the New Growth Path as one of the areas for employment creation.
iii. A revision in tariffs for the electronics industry is to be explored to attract both FDI and local investment in electronics manufacturing and diversification.
iv. The DTPS must be directed to recommend to the DTI the specification of electronics goods in the revised preferential procurement framework. Additionally, sectors in the electronics manufacturing industry are to be investigated with a view to designate them within the ambit of the PPPFA.
v. Consideration must be given to how parastatals could enhance the development and contribution of the electronic industry to the South African economy, by sourcing a certain portion of their inputs locally.

vi. Strategies are to be incorporated within the broad National e-Skills framework to promote careers in electronics, with special funds being procured via both industry and the MICT Seta.

vii. The creation of SEZs which incorporate electronics manufacturing must strengthen the SMME sector, rather than disadvantage it.

viii. A national strategy for improving our net global exports in the electronics manufacturing sector must be developed by the DTI in collaboration with the DTPS.

ix. The Manufacturing Competitiveness Enhancement Programme (MCEP) must be harnessed to provide enhanced manufacturing support for the electronics manufacturing sector. Further both the Production Incentive (PI) and the Industrial Financing Loan Facilities, which are managed by the DTI and the Industrial Development Corporation (IDC) respectively, must be used to create incentives.

h) Intellectual Property Regime in South Africa

i. Given that IP issues are important to the growth of the ICT industry, the DTPS in liaison with DTI must be directed to encourage domestic innovation and associated IP, but in ways that are even-handed and which promote competition broadly, via tax incentives, investments in scientific research, and the like.

ii. A creative commons licensing framework must be introduced to improve protection of domestic innovation.

iii. The DTPS must propose to the DTI that the utility model system be incorporated within its Intellectual Property Policy Review process such that domestic innovation is promoted, and domestic innovators afforded greater protection of their IP.

iv. An awareness campaign is required, to familiarise grassroots innovators IP protection in general and the utility model in particular.

1.12 Institutional Frameworks

A key consideration for the panel, in respect of institutional arrangements, was the overarching principle of deriving maximum public value from public resources. This is considered essential in determining the relevance of existing entities and how policy reformations may support the strengthening of them. The panel further supports the positions in South Africa’s National Broadband Policy, “South Africa Connect”, which states that

- “It is vital that the institutional constraints on effective regulation are addressed as a matter of urgency”;
- “Requisite institutional capacity needs to be built, strengthened and, where necessary, streamlined” in the Department, as well as in portfolio organisations and other complementary agencies; and

---

18 Refer to Recommendations 145 to 168 (pp. 146-168, Chapter 7) in the detailed report.
• “State-owned companies should be rationalised to contribute to national objectives more efficiently and effectively.”

The following recommendations are proposed in respect of the institutional framework required to support the policy recommendations.

a) Principles for reviewing Institutional arrangements

i. The Panel proposes seven key questions (See Recommendation 143 in the main report) to be used as a lens in the ICT institutional reform. Application of these questions will provide clarity on the mandate of an institution which is being subjected to a review.

ii. In addition, the following principles must be applied in determining whether the governance and institutional structures in place are sufficiently flexible to allow the institution to adapt to meet future requirements:

- Any public resource (including, for example, public funding, preferential access to other resources such as spectrum) must be focused on delivering public value and funding mechanisms which are put in place must facilitate this.
- Public entities should be established, structured and managed in order to fulfil objectives set and ensure value for public money.
- The governance and institutional structures established must facilitate delivery and effective mechanisms must be put in place to ensure accountability and sanction for non-delivery in line with the PFMA.
- Parliament’s oversight must be strengthened by putting in place a formal framework and mechanisms (including clear performance objectives and indicators) which would enable it to assess whether or not the Department and/or institution is fulfilling its goals and having the intended impact. Accounting officers and/or accounting bodies should be held accountable and, if relevant, sanctioned in line with the PFMA.

iii. State-Aid must be consistently applied in undertaking institutional reform and state aid rules endorsed in policy.

b) Consistency of approach across Government

i. There must be a consistent approach across Government, in light of the recent re-configuration of Government departments which includes the establishment of the Department of Telecommunications and Postal Services and Department of Communications.

ii. Mechanisms such as MoUs are to be implemented, MoUs should be carefully crafted to address in very specific terms how inter-linked decisions are made by SOEs and government departments within a framework of cooperative government.

Minority view: Government needs to recognise the difficulties for DTPS and DoC in developing coherent, consistent policy and governance. Thus a co-ordinating structure to manage governance of entities whose scope embraces areas of responsibility falling under both departments (ICASA principally) should be put in place to ensure that a clear policy mandate is developed and conveyed.

c) Role of Government

---

19 Department of Telecommunications & Postal Services, “South Africa Connect – Creating Opportunities, Ensuring Inclusion: South Africa’s Broadband Policy”, page 32
i. The current review of SOE’s must consider whether current institutions are fulfilling policy objectives. Government should shed its responsibility and ownership of SOEs which are found not to be fulfilling their objectives as provided for in legislation and policy.

ii. Regular reviews by Government and/or Parliament of the ongoing relevance of specific institutions and/or policy plans should be conducted against clear criteria and questions.

iii. Specific powers or functions must be built into policy and legislation to ensure that Parliament’s activities in relation to oversight and accountability are evidence based.

d) Licensing and regulation of ICT sector

i. Urgent steps must be taken to address perceptions of non-compliance by the regulator, which must include balancing of the principle of independence with appropriate mechanisms to ensure accountability. Parliamentary oversight of the regulator, as an essential mechanism of accountability, must be strengthened to ensure independence from political and other powerful stakeholder influence.

ii. The formal and *de facto* independence of ICASA must be reinforced and any deviation from policy must be reported by the regulator.

iii. Further policy and law must clearly distinguish between policies and policy directions, and the requisite actions of the regulator with regards to the latter. The principle of “apply or justify” must be clearly specified to ensure that in instances where the regulator does not implement policy or policy directions, it justifies its decisions in this regard to Parliament.

iv. Mechanisms must be established to enhance public involvement in the regulator and to ensure public needs are considered.

v. Revisions to policy and law are required such that provisions requiring the regulator to ensure that regulations are consistent with national policy.

vi. A performance management system for the regulator must be implemented as a matter of priority.

vii. ICASA must be required to publish regular reports on a range of issues, based on research and information it collects from the sectors it regulates. Such reporting should be meaningful and must be targeted at informing the public of its activities and of the state of the sectors it regulates.

viii. The recommended policy review on spectrum must be expanded to also consider the need for a spectrum management agency (SMA). It is noted that this requires a collaborative approach between the DTPS and DoC.

ix. Given the backlog of complaints before the Complaints and Compliance Committee (CCC) an amendment of current provisions to strengthen ICASA’s enforcement capacity must be considered; further sectoral organisations should be encouraged to create their own Codes, with the approval of the regulator.

x. The status quo in respect of ICASA decisions and the role of alternate dispute resolution mechanisms must remain, but that an investigation be pursued on the limited and narrow ADR mechanisms currently in place.

xi. The structure of the ICASA council must be reviewed, such that an integrated board be put in place which comprises executive and non-executive members (full-time and part-time); There must be a clear directive on how the board is structured to deal with all aspects of its mandate equally and clear guidelines which provides for the oversight of management by
non-executive members of the board as per King III and associated principles of good corporate governance must be put in place.

xii. The status quo in respect of the appointments process of ICASA councillors must prevail, but recommendations made by the ICT panel to strengthen the current dispensation must be urgently considered.

xiii. A hybrid model for the funding of ICASA must be considered, in which ICASA would retain some of the fees collected on a cost-recovery basis so that the sectors regulated cover the costs of regulation. In addition certain of ICASA’s mandates would be funded by government where there is no matching revenue stream.

e) Self-regulation and co-regulation

i. A model should be developed and applied to support, where appropriate, co-regulation, and to encourage self-regulation.

ii. Co-regulation must be instituted where necessary, to promote and enforce public interest objectives. Only when co-regulation fails, should formal regulation be adopted.

f) Universal service

i. Given the need to establish a more comprehensive ICT-Development fund, USAASA as it currently exists must be dissolved and existing functions transferred to ICASA (regulatory functions) or to the DTPS (policy-making functions).

ii. All USAASA non-policy and non-regulatory functions relating to Fund management shall be retained by the new entity which will manage the ICT-Development Fund.

iii. The remaining components of the Agency must evolve into an independent ICT-DF management entity.

g) Privacy

i. Policy and law in the ICT sector to be subject to a review to ensure alignment with the POPI Act and cooperation with new information regulator.

ii. Policy amendments are required such that ICASA’s responsibilities are reviewed to ensure alignment with POPI.

h) Protection of children, content standards and classification

i. There must be a closer working relationship between the Film and Publications Board, ICASA and other content related regulators to ensure an easier process for audiences and users to complain.

ii. The DTPS together with the DOC must facilitate cooperation between regulatory authorities (including ASA, FPB and the Press Ombudsman) to ensure coordination and to address protection issues in an era of convergence.

iii. Consideration must be given to the development and formalisation of co-regulation structures, which has worked well to date in the broadcasting sector.

i) State-owned entities and companies

i. It is noted that the DTPS is conducting a micro study on areas of duplication and possibilities for rationalisation and has established a committee to specifically focus on this. It is
recommended that this study must be informed by the macro study of the Presidential Review Committee on State-owned Entities.

ii. Therefore all the recommendations outlined above, including the questions and principles for institutional review must be considered by the relevant committees, which are currently undertaking the review of institutions.

Minority view: Shareholding and policy making functions should be maintained in separate Ministries.

1.13 Conclusion

It is with great honour that the ICT Policy Review panel presents these policy recommendations for the consideration of the Minister, towards the development of a new, and forward looking Integrated ICT Policy for South Africa. There are 168 recommendations in the detailed report, which focus on

- Regulatory Principles and Approaches
- Infrastructure and Services
- The Digital Society
- Audio and Audio-visual Content Services
- Industry Growth
- Institutional Frameworks

This represents just over two years of intensive research, discussion, debate, and public consultations. The Panel has worked tirelessly to ensure that it has provided an integrated approach for future policy, such that the long term 2030 vision, as espoused in our NDP will indeed be achieved.