STRUCTURE OF PRESENTATION

- Process, Objectives and Key Principles – Mr Joe Mjwara
- Infrastructure & Services – Mr Lucky Masilela
- The Digital Society – Mr Sizwe Snail Ka Mtuze
- Audio and Audio-Visual Content Services – Ms Libby Lloyd
- ICT Industry Growth – Professor Shaun Pather
- Institutional Frameworks – Ms Nadia Bulbulia
ICT Policy Review Panel

Who

- Includes members nominated by public in 2012 – plus stakeholder representatives
- Appointed January 2013

Mandate

- Review all ICT related policies – incl White Papers on Telecommunications, Broadcasting, Postal Services & e-commerce policies
- Develop recommendations for a new White Paper
Process

- Framing Paper (April 2013)
- Green Paper (January 2014)
- Discussion Paper (November 2014)
- Recommendations (March 2015)
Participation

140 written submissions

Many consultations with organisations, govt depts & entities

Nine provincial workshops
Overview and structure

- Institutions
- Audio and audiovisual content
- Networks and services
- Industry growth and innovation
- Digital society
Why ICT Policy Review?

• Existing White Papers adopted in 1990s
• Changing environment  Convergence, digitisation, new technologies

“A new policy framework will be needed to realise the vision of a fully connected society”

NDP 2012
Core approach

ICTs are a means to realise Constitutional rights, socio-economic development and NDP goals

Reliant on partnerships and coordination across government, public, private and community sectors

Recommendations to government therefore wide-ranging and encompass proposed policies for range of Departments and entities (including Justice, Safety & Security, Arts & Culture, Communications etc)
<table>
<thead>
<tr>
<th>Objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom of expression</td>
</tr>
<tr>
<td>Access to diverse content, services, applications</td>
</tr>
<tr>
<td>Universal access and service</td>
</tr>
<tr>
<td>Enable economic growth, employment, etc</td>
</tr>
<tr>
<td>Facilitate ICTs for social development to improve quality of life</td>
</tr>
<tr>
<td>Promote innovation, creativity and SA content in all languages on all platforms</td>
</tr>
<tr>
<td>Stimulate investment</td>
</tr>
<tr>
<td>Ensure accessibility to all – incl persons with disabilities</td>
</tr>
<tr>
<td>Uphold constitutional standards and values</td>
</tr>
<tr>
<td>Protect privacy and a safe communications environment</td>
</tr>
<tr>
<td>Maximise public benefit from public resources</td>
</tr>
<tr>
<td>Fair competition</td>
</tr>
<tr>
<td>Transparency and accountability</td>
</tr>
<tr>
<td>Environmental protection</td>
</tr>
</tbody>
</table>
Regulatory principles

- There must be distinct responsibilities for Parliament, govt, regulators etc
- Transparent and accountable policy and regulatory formulation
- End-user protection
- Technology neutrality
- Open access to be maximised
Approach

Interventions must:

• Be **necessary** to meet defined public interest objectives

• **Proportionate, consistent and evidence-based** and determined via public consultation

• Consider the **least intrusive mechanism** to achieve goals based on assessment of regulatory impact analysis

• Be **fair** and ensure **regulatory parity**
Open Internet

Regulator to define interventions to ensure all Internet traffic is treated equally without discrimination restriction or interference.

Must be transparency in network management practices, performance and commercial terms to enable informed choice by end-users.

Lawful content must not be blocked – reasonable network management allowed.

Broadband infrastructure must be regarded as essential facility.
Green ICTs

Green ICT policy must be developed with Ministry of Environmental Affairs and others

- Must be sustainable and encourage healthy competition within e-waste recycling sector
- Mix of voluntary, self- and formal regulation
- Clarify roles for ICASA and other agencies
- Require regulator to set regulations/licence conditions to address emissions including in type approval
- Recognise and support role of ICTs in combating environmental concerns in other sectors
Infrastructure and Services

Mr Lucky Masilela
Background Layers

E-Content

Services

ICT Infrastructure

Enables Delivery

Benefits

Enables delivery

Internet economy
e-Services
Postal Services
Background

This chapter makes policy recommendations regarding ICT Infrastructure and Services within the context of an integrated policy framework.

Cognisant of the changes that convergence brings to the sector the panel feels that the broader issues for consideration should inform the drafting:

- facilitation of social growth
- citizen and community centricity
- postal services
- flexibility of policy to adapt
Chapters Covered

- Postal Services
- Regulating for Convergence
- Market Structure and Competition
- Infrastructure Sharing and Open Access
- Universal Access and Service
- Spectrum Management
- Emerging Technologies
Key Considerations
Postal Services

- Future of Postal Services
- Postal Market Structure and Competition
- National Address System
- Universal Service and Access
- Banking Services
- SAPO Network Infrastructure
Key Considerations
Regulating for Convergence

- Policy Objectives Underpinning Convergence:

  - Promotion of technology and service neutrality
  - Ensure same treatment of content
  - Allow for expansion of the market
Key Considerations
Market Structure and Competition

- Annual Sector Performance
- Market Reviews
- Indicators to Assess Market Gap
- Ex-Ante and Ex-Post Regulation
- Mergers and Acquisitions
- Facilities Based and Service Based Competition
Key Considerations
Infrastructure Sharing and Open Access

- Open Access System
- Infrastructure Sharing
Key Considerations
Universal Access & Service

- Universal Service and Access Definitions
- Needy persons and persons with disabilities
- Universal Service Obligation
- ICT Development Fund and Institutional Arrangement
- e-Rate
- Consumer Protection
- Type Approvals
Key Considerations
Spectrum Management

- Objectives of Spectrum Policy
- Principles of Spectrum Management
- Spectrum Allocation
- Spectrum Pricing for Government Services
- Spectrum Trading
- Spectrum Sharing
Key Considerations

Emerging Issues

- IP Based Technologies
- Over the Top Services
Future Heads-up

- Cycle of policy consideration
- Numbering plan
- Licensing framework for electronics communications
- Signal distribution
The Digital Society

Mr Sizwe Snail Ka Mtuze
Overview of Chapter

Introduction
National Policy Context
Overall policy approach
Government approach
E-Government
The digital economy and e-commerce
Cloud computing
Internet Governance
Ensuring trust and confidence in the Internet
Introduction

This Chapter is premised on an understanding that ICTs are tools which facilitate social and economic development.

The policy recommendations in this Chapter hone in on issues which impact on the use of ICTs. The importance of this Chapter thus is that the policy issues herein target issues which are closest to the citizen.

The Chapter thus underscores that importance of ICTs, especially when used on broadband Internet platforms, for the development of a dynamic information society.
The recommendations in the Chapter must be viewed in the context of relevant National policies. These include:

- The National Cyber Security Framework which was approved by Cabinet March 2012, the oversight of which is being undertaken by the Cabinet Justice, Crime Prevention and Security Cluster.

- The Digital Future: A Public Service IT Policy Framework, which is an e-government policy developed by the Department of Public Service and Administration (DPSA) in 2001. It is currently being reviewed.

- The King III and Companies Act, with a focus in particular on the chapter on information

- Other policies relevant to building a digital society, including the Minimum Information

- Security Standards and the Minimum Operability Standards. Both of these need to be updated but are in place.
Overall policy approach

PRINCIPLES FOR DEVELOPING DIGITAL SOCIETY POLICY

a) Inclusive development
b) User-centred design of e-Services
c) Accessibility by persons with disabilities
d) Open access
The Panel supports the various calls for urgent improved coordination and strongly supports the use of multi-departmental mechanisms.

The need for greater coordination of strategies and implementation of digital policies across government and develop a national e-government policy and strategy.

The national whole-of-government policy and strategies should be coordinated from the Presidency.

Government must assess and take steps towards ensuring the best mechanisms are in place to ensure improved coordination of all of the relevant cross-cutting issues so as to realise a dynamic and vibrant information society and digital economy.
A Single National e-Government Strategy and Policy

Role of government and state-owned entities

Government e-segments and e-services

Promoting access to information and open government data

E-Government standards for protecting information

Access to government e-services by persons with disabilities
The digital economy and e-Commerce

Legislative duplications and contradictions

Electronic Transaction Framework: Electronic signatures

Banking and mobile and online payment systems

Taxation issues

Cross-border flows of information

SMME Development
Cloud computing

The Panel therefore recommends that a South African cloud computing policy be developed, and that:

a) Internationally accepted guides (such as OECD guidelines) be considered in finalising such a policy.

b) The policy includes rules and guidelines on government use of cloud services, including the need to ensure interoperability when selecting providers. Other issues it is recommended be included include provisions on ownership of stored data, transmission of data and requirements on the protection of data. Government should consider if there is a need to develop specific rules relating to any of these provisions to ensure they are enforceable.

c) Policy should further put in place enforceable minimum standards to ensure security of databases and big data, so as to minimise cybercrime.
ICANN

.ZA Domain Name Authority (zaDNA)

Domain names and mandate of zaDNA

Domain name security

Domain name Dispute resolution
Ensuring trust and confidence in the Internet

Cybersecurity
Cybersecurity hub
Critical information infrastructure
Cybercrime
Cyber Inspectors
Data protection and privacy
Online gambling
Internet intermediary liability
Intellectual Property Protection and copyright
Consumer Protection
Audio and Audiovisual Content

Ms Libby Lloyd
What covered

Audio and audio-visual content includes content across all platforms and devices – including traditional broadcasting content, broadcasting-like content (e.g. video-on-demand) and other music, video etc.

Content is what will drive uptake of broadband and new technologies

With convergence will be increasingly difficult to distinguish between content based on platform (e.g. content will be delivered by telecommunications operators over traditional telecoms platforms)
Discussion Paper identified core issues facing audio and audiovisual sector

It outlined different approaches to facilitate vision of compelling content that tells all our stories, inspires us to dream and engage robustly with our reality – in all languages and voices across all platforms.
NAB, SABC & some commercial broadcasters (e.tv and MultiChoice/M-Net/Orbicom) said would not respond to all questions as Minister of Communications conducting a review on broadcasting.

Issues identified in Discussion Paper and options put forward though captured their inputs on key issues and proposed approaches.

Did comment on many issues (e.g. definitions, SA content, some on public broadcasting, competition issues, public interest programming)

Many others did comment though on all sections

Panel agreed need to make recommendations to govt on all issues
Defining content

New definition needed:

- To cover traditional broadcasting, broadcasting-like content and other content on Internet and other platforms
- Broadcasting should focus on services *under the editorial control* of an operator *providing programming to the public* regardless of platform
The greater the influence (SA audiences, advertising),

If linear vs on demand

The greater responsibilities (e.g. SA content)
New value chain might necessitate new licensing categories

Retain current pending inquiry on which aspects of value chain might need licences (e.g. multiplexing, electronic programme guide etc)
Public audio and audio-visual content

Much consultation already taken place

Research conducted into issues

Recommend: Specific public broadcasting policy review process to take forward – like IBA Triple Inquiry process (1995)
Community content

- Address shortcomings in current class licensing system (insufficient oversight by ICASA)
- Introduce open access television to allow all communities to produce and air programmes
- Extend to non-profit national community of interest services
- Licence commercial local and provincial services
- Funding

Community content
Policy must require ICASA to urgently hold inquiries together with CompCom by set date:

- Competition between FTA and pay services (incl limitations on advertising on subscription services)
- Competition within FTA sector (e.g., between SABC and others and opportunities for new services)
- Competition between existing and new services
- Ease of switching between services
- Premium content – incl length of rights
- Vertical and horizontal integration
- Discoverability of content and EPG/catalogue access
ICASA proposals on changes to ownership rules (foreign, radio and TV, cross-media) be submitted to Parliament for debate

Review if extend limitations to on demand services/service providers and if extend or reduce cross-media rules
Diversity: content

Public broadcaster specifically charged with reaching all audiences (including geographic and different segments etc)

Must have explicit definitions of audience diversity, and diversity of news, information and analysis

Must emphasise local news and regulatory framework developed

Must develop regulatory framework to ensure language diversity and diversity on all platforms
SA Content

- Extend to explicitly include pay or play provisions
- Regulate specific genres
- Ensure SA content is available on all platforms
- Address supply – through incentives and funding
- Creative incentives – e.g. limiting funding/tax breaks/incentives to those that opt in
Must carry

- Policy should continue but should consider if extend to all FTA and options of opt in/opt out
- If FTA services should be compensated for value add and how determine
- If status quo remains (minority view)

Prominence

- Regulator to develop framework for services with influence to ensure prominence of certain content (e.g. SA content)
Events (incl sports) of national interest

Current provisions must be strengthened (minority view – status quo remains)

• Should be broadened from sports to events
• Rights holders should first offer these to FTA services
• Clear timelines
• Address cost
### Universal access and inclusion

<table>
<thead>
<tr>
<th>Activity</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure consultation with persons with disabilities</td>
<td></td>
</tr>
<tr>
<td>Self-regulation first to ensure access to terminal equipment</td>
<td></td>
</tr>
<tr>
<td>Regulator to ensure universal design principles incorporated into type approval</td>
<td></td>
</tr>
<tr>
<td>Ensure EPGs/catalogues/interfaces indicate programming accessibility</td>
<td></td>
</tr>
<tr>
<td>Regulator to ensure increasing percentage of programming accessible</td>
<td></td>
</tr>
<tr>
<td>Self-regulation together with orgs representing persons with disabilities on quality standards for audio description and sign language</td>
<td></td>
</tr>
</tbody>
</table>
Protection of children, classification, standards

- Ensure easy awareness of standards and complaints procedures by audiences
- Ensure standard approaches across all content regulators on standards
- Complaints procedures must be streamlined – common portal/complaints office?
- Who regulates on-demand providers?
- Common approaches to labelling and classification on all platforms
- Consumer education critical
- ICASA role in media literacy?
Policy must emphasise need for editorial integrity and responsibility

All paid for content must be clearly identified as such (incl advertiser funded programming)
ICT Industry Growth

Professor Shaun Pather
OVERVIEW OF INDUSTRY GROWTH STRATEGY
Policy aims to address current challenges

- Pockets of excellence in the ICT industry, but weaknesses mitigate against growth.
- SA is a net importer of ICT products
- Low supply of relevant ICT skills
- Non-representative demographics amongst industry role-players
- Low levels of opportunities for job creation across micro, small, and medium enterprises
- Lack of a coordinated frame of support and incentives for entrepreneurs
- Support for entrepreneurial startups - especially in the online services, apps and electronic manufacturing sub-sector.
Key Elements of the Strategy

- The importance of stimulating ICT demand.
- Programmatic interventions to address ICT skills to exponentially increase the levels of uptake and effective use of technology.
- Stimulate the national, regional and local systems of research and innovation, so that locally produced knowledge and IP begins to make a dent in the local economy.
- The development of innovative funding instruments which recognize the unique nature of the different sub-sectors, and which will facilitate ease of entry into the market for especially micro-businesses and entrepreneurs.
- The stimulation of greater investment in the sector.
Overview of the ICT Industry Growth Strategy

ICT INDUSTRY GROWTH
Centralised Coordination and Facilitation
*Infrastructure, Local content, e-Services*

- Electronics & Hardware Manufacturing
- Software development
- ICT services industry

ENABLING ENVIRONMENT FOR INDUSTRY GROWTH

Skills Development
- Trans-Formation & BBBEE
- Incentives
- Enterprise Development
- Research, Development and Innovation
- Policy & Regulation
ICT Services: An example of an intended Industry Growth Value Chain

- Awareness & marketing of incentives and support
- Social Innovation Entrepreneur birth
- Enterprise Start-up
- Enterprise Incubation & Innovation support
- Incentives to get to market
- Market Access Assistance
- Economic participation

- Government incentives
- Community ICT access
- Regional ICT Innovation Hubs
- Angel investors
SELECTED HIGHLIGHTS: INDUSTRY GROWTH
POLICY RECOMMENDATIONS
Delineation of the ICT Sector (R116)

- Delineation is relevant
  - to identify qualifying candidates for special funding incentives and other programmes to support growth of the industry.
  - Assist in the application of policy.
- A classification system based on Stats SA satellite account to be adopted, viz.
  - Sector classification
  - Product classification
Transformation of the sector
(R117 to R120)

- Broad-Based Black Economic Empowerment (B-BBEE)
- Applying the Charter in the Government procurement system
- Scope of the ICT Charter
- Sector code to remain.
  - Finalise the establishment and resourcing of the Council.
  - Council to be mandated to undertake monitoring to ensure that the Charter is being consistently enforced.
Funding Model: ICT Infrastructure and Demand Stimulation Projects (R121)

- A new funding model for ICT infrastructure and demand stimulation projects: ICT-Development Fund (ICT-DF)
- Provide for the aggregation of new incremental state funding with private sector funding and donor funding
- The USAF to be evolved into the ICT-DF and the current institutional arrangements for the USAF be revised.
Funding ICT Entrepreneurs and Start-ups (R125)

- Development of an **angels investment programme** for the ICT sector
- Investigate the **feasibility of tax breaks** for new ICT SMMEs
- Establish **ICT financing guarantee schemes**
- **Government to be key client** for start-up ICT initiatives
- Expand the extent of **Government ICT and related services procurement from SMMES**
Coordinated R&D agenda: ICT RDI Investment and Planning Advisory Council \( (R126) \)

Priority Areas for ICT RDI Intervention \( (R127) \)

Enabling critical mass for RDI in prioritised areas \( (R128) \)

RDI Innovation Funding \( (R129) \)

Infrastructure to catalyse innovation: Digital Technology Hubs \( (R132) \)

Grassroots and community-based innovation \( (R133) \)
Towards sustained economic growth

Research: theoretical conception
The conception of new ideas

Invention
Conversion of an idea into a relevant object, process or system

Commercialization or user uptake
Successful uptake of the invention by users
Strengthening the ecosystem: Coordinated R&D agenda based on ICT ROADMAP

ICT RDI INVESTMENT AND PLANNING ADVISORY COUNCIL (R126)

Govt: DTPS, DTI, DST

Industry

Academe

OFFICE FOR DIGITAL ADVANTAGE

PRIORITY AREAS (R127)

☑ Broadband Infrastructure and Services e.g. Future Wireless Technologies

☑ Development: e.g. E-inclusion

☑ Sustainability and the Environment: e.g. Green ICTs

☑ Industry Applications e.g. Future Internet Applications

☑ Service Economy: e.g. E-services

☑ Grand Science: e.g. Astronomy
Catalysing Grassroots and Community-based Innovation (R133)

- At least one technology hub in each major city
  - Zones for ICT entrepreneurs incubation
  - Focus on the priority market areas identified in the ICT RDI Roadmap.
  - Hub and spoke model with community ICT access centres

- Community ICT centres - grassroots

- Provide for more flexible Intellectual Property protection arrangements

- Funding instruments and greater awareness of funding opportunities
iNeSI continue with current focus viz. Research, e-astuteness multi-stakeholder collaboration, monitoring and evaluation (R134).

Continued and renewed focus on audio and audio-visual content (R134).

The DTPS via iNeSI coordinate a national e-literacy programme with allocation of some responsibilities to other government departments (R137).
The electronics industry be given recognition in the Industrial Policy Action Plan (IPAP) and the New Growth Path (R141).

Interventions to improve skills to support electronics manufacturing (R143).

Development of national strategy to become a net exporter (R145)

The Manufacturing Competitiveness Enhancement Programme (MCEP) to provide enhanced manufacturing support for the electronics manufacturing sector (R146).
Domestic innovation should be better protected by introducing a creative commons licensing framework (R147).

Utility model system (R148) be incorporated within the Intellectual Property Policy Review process

- to promote and protect domestic innovators.
- awareness campaign to familiarise grassroots innovators with the utility model.
Institutional Arrangements

Ms Nadia Bulbulia
Context For Institutional Reform

Recommendations informed by:

- National Development Plan (Vision for 2030)
- SA’s National Broadband Policy – SA Connect
- SA Constitution
- Legislation
- International Agreements
SA Connect:

- 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
- State owned companies should be rationalised to contribute to national objectives more efficiently and effectively

NDP:

- a “capable state” is a prerequisite for development – that this has to be built, sustained and rejuvenated – it requires leadership, sound policies, skilled managers, clear lines of accountability, appropriate systems and consistent and fair application of rules
SA Constitution

- The state, including public institutions, must respect, protect, promote and fulfil the Bill of Rights.
- These include: the right to just administrative action that is lawful and procedurally fair (S33).
- Parliament and the legislative Authority must provide “a national forum for public consideration of issues”.
- All organs of state are accountable to Parliament.
- National legislation must set up an independent authority to regulate broadcasting in the public interest (S192).
Values & Principles
Governing Public Administration

- Make efficient & effective & economic use of resources
- Ensure development-oriented public administration
- Respond to people’s needs
- Promote public participation in policy making
- Foster transparency & accountability in public administration (S195)
Legislation & International Agreements
Considered

LEGISLATION

• Public Finance Management Act (PFMA)
• Promotion of Administrative Justice Act (PAJA)
• Promotion of Access to Information Act (PAIA)

INTERNATIONAL AGREEMENTS

• WTO Reference Paper on Regulatory Principles
• African Commission on Human Rights: Declaration on Principles of Freedom of Expression
• SADC Protocol on Transport, Communications and Meteorology
• SADC Declaration on ICT
Principles for Institutional Arrangements

Public Concerns:
- Lack of effectiveness of the different entities
- Lack of coordination between institutions
- Duplication of resources
- Ineffective oversight and accountability

NDP diagnostic:
- Blurred and inconsistent overlap
- Parliament’s oversight role to be enhanced
- A more pragmatic approach to the intergovernmental system is required – recognising uneven capacity
- SOE’s overly complex objectives and govt structures
- Coordination between different spheres of govt – local govt must be allowed to focus on core functions, not burdened with extra responsibilities
Principles for Institutional Review  [R150]

- Any public resource must be focused on delivering public value
- Public entities should be established, structured & managed in order to fulfil objectives set & ensure value for public funds
- Governance & institutional structures must facilitate delivery & mechanisms must be in place to ensure accountability & sanction non-delivery in line with PFMA
- Parliament oversight must be strengthened – formal frameworks established for performance objectives & indicators – enables ability to assess effectiveness of Dept / institutions
- Accounting officers / bodies must be held accountable & sanctioned in line with PFMA
Questions to Guide Reform [R149]

Informed by existing laws- including treasury regulations:

- Does the public entity have a distinct mandate focused on meeting public goals set by policy / legislation?

- Are there overlaps or conflicts between mandates set for the entity & any other public institution?

- Has there been an assessment to ensure that the mandate cannot be fulfilled by either the executive / private sector / NGO / community org?

- Would co-regulation or self-regulation be a better alternative? Or partnerships with NGO’s / Private sector?

- Is the establishment of an entity the most feasible solution?
Reconfiguration of Ministry: DTPS & DoC [R151]

- Ensure a consistent approach for co-responsibilities
- Consistent approach on convergence across government
- MoUs must be carefully crafted to address inter-linked decisions made by SOEs and govt departments within a framework of cooperative government
- Unclear what further reconfiguration will occur

**Minority view:**

- Recognise convergence & ICT as a complex, interlocking ecosystem & difficulties for DTPS and DoC to develop coherent, consistent policy and governance.
- Need for a co-ordinating structure to ensure proper governance & clear policy mandate (eg w.r.t. ICASA)
State Aid Rules [R152]

- EU best practice
- State Aid should not inhibit fair competition
- State Aid principles apply to fiscal allocation, additional spectrum allocations & reserved markets
- State Aid to a company / sector not permitted - unless as a legitimate response to market failure or to address equity / social objectives
- Recipient must have clearly defined public service obligations
- Parameters for state aid to be objective, transparent & established in advance
- Level of compensation determined on the basis of a typical well-run company
- Entities that receive State Aid must have separate accounts open for scrutiny
The Role of Government

- National policy is the prerogative of national government
- The executive bears overall responsibility in relation to implementation of legislation
- ECA empowers the Minister to make policies on matters of national policy applicable to the ICT sector - consistent with the objects of the ECA & related legislation – in relation to a number of strategic areas
- Presidential Infrastructure Coordinating Commission project focuses on ICT infrastructure development & is chaired by the Minister of Telecomms and Postal Services – this includes roll-out of national broadband infrastructure and digital terrestrial television transmission
- At local government there are capacity challenges in meeting infrastructure roll-out
Strengthen Government’s Role  [R153]

- Ensure mechanisms for synergies & co-operation between institutions & to involve all stakeholders
- Clarify roles & responsibilities between national & local govt

- Establish mechanisms to consult local & provincial govt is consulted when developing laws, policies and implementation plans (incl NBC)
- All entities to be bound by rapid deployment policies

- SIP 15 must continue with infrastructure co-ordination, but wider co-ordination across govt is necessary
Balancing Shareholder & Policy-making Functions [R154]

- SOEs are serve to deliver on policy objectives, rather than profitability
- Strengthen oversight mechanisms (state aid rules, regulation) to ensure SOEs do not adversely affect competition
- Undertake review of SOEs to assess whether current institutions are fulfilling public objectives
- Regular reviews to assess ongoing relevance of SOEs
- SOEs to report annually to Parliament on fulfilment of mandates

Minority view:

✓ Shareholding & policy-making functions to be in separate Ministries
Oversight and Accountability  [R155]

- Parliament has overall responsibility to hold Executive & public institutions to account (supported by PFMA & Treasury regulations)

The Panel recommends:

- Develop clear mandates & clarity on specific functions of the different entities
- Govt / Parliament to review regularly ongoing relevance of specific institutions / policy plans against clear criteria
- Include peer reviews & stakeholder / beneficiary assessment into review of institutions / policy plans
- Build specific powers / functions built into policy and legislation to ensure Parliament’s oversight & accountability is evidenced-based
Perceptions of non-compliance by ICASA [R156]

- Balance principle of regulatory independence with appropriate mechanisms to ensure accountability
- Strengthen Parliamentary oversight to ensure independence from political & stakeholder influence
- Revise policy / law to require ICASA to account to Parliament on its regulatory impact and achievement of policy goals
- ICASA must report to Parliament on implementation of policy objectives / policy directions & provide reasons for any deviation
- ICASA to ensure transparency by publishing reasons for decisions
- Stakeholders to be involved in Parliament’s reviews of ICASA’s performance
- Require ICASA to conduct & publish regular research to ascertain public needs & views and align its plans accordingly
Independence and Accountability of ICASA [R157, R158, R159, R160]

- Reinforce independence of ICASA in accordance policy & law
- ICASA to retain discretion to deviate from policy - but must report / explain / justify deviations to Parliament (apply or justify)
- General duties of the regulator must be legislated. Incl:
  - *Promoting competition across networks and services, technology neutrality, reviewing regulatory burden, regulatory impact assessments, ease of doing business, timeliness, relevant international benchmarking etc*
- Enhance public involvement in ICASA via Parliamentary review, research, surveys, publication of ICASA minutes
- ICASA Act includes provisions to “monitor and evaluate performance of the Council” (collectively and individually) – to date not implemented
A performance management system for ICASA via Parliament must be developed urgently.

Consider the PFMA and other guidelines:
- Robust performance management system does not impede on independence

Parliament to manage performance at the level of the entity:
- Individual performance management via performance agreement to be dealt with internally via organisational policy
- Recommendations from internal performance management to be included in Parliamentary reporting
ICASA to be required to publish regular reports on a range of issues to inform the public of its activities and the state of the sectors it regulates

Regulatory Impact Assessments to be conducted where necessary - Only significant regulatory interventions require full RIA

ICASA to develop a RIA framework, incl principles, thresholds, criteria

ICASA to be required to publish a discussion documents & position papers as part of regulatory process
Spectrum Management Agency [R163]

- The Panel considered the range of viewpoints.
  - Status quo with strengthened ICASA capacity
  - Dedicated spectrum entity within ICASA
  - Separate spectrum management agency

- We recommend a full policy review on spectrum (cf on infrastructure and services) to inform a decision
- Needs collaborative approach between DTPS & DoC to develop a feasible way forward
ICASA – CCC & ADR [R164 & R165]

- Status quo to remain, with ICASA’s enforcement capacity strengthened
- Review ICASA-CCC relationship to give CCC greater decision-making powers
- Only courts can review ICASA decisions (status quo)
- Better alternate dispute resolution mechanisms are needed
- Policy-maker to review international best practice (consider Competition Commission / Tribunal model)
Structure of ICASA Council [R166]

- An integrated Board – to include executive and non-executive members (full-time & part-time)
- Board must be structured to deal with all aspects of its mandate equally
- Standing Committees to be provided for in law to ensure oversight for all regulated sectors (telecomms, broadcasting, postal, e-Commerce)
- Each regulated sector be led by a vice-chairperson
- Undertake benchmark study to determine the ideal number of members, both full time and part time
- Specify roles & responsibilities of full-time & part-time members, appropriately differentiated
- Establish clear guidelines as per King III for oversight / governance / delegation from Board to management of ICASA
ICASA Appointment Process [R167]

The current appointment process to prevail with the following improvements:

- Descriptors of required expertise must be explicit taking into account ICASA's mandate
- Appointments made strictly in accordance with published descriptors
- Parliamentary appoint panel of experts to assist with short-listing process to be made mandatory
- Independent verification of qualifications & background checks essential prior to appointment
  - screening to include conflict of interests investigations, credit checks, past work experience etc
A hybrid model is proposed

ICASA to retain some fees collected on a cost-recovery basis so that the regulated sectors cover the costs of regulation

Certain mandates must be funded by govt (eg key public interest objectives such as enquiries into fair competition)

Legislative amendments required to enable regulator to charge administrative fees – which must be cost based

Phased-in implementation subject to assessment of govt-funded vs self-funded activities
Self Regulation /Co-Regulation [R169]

- Encourage co-regulation and self-regulation
- Institute co-regulation where necessary to promote and enforce public interest objectives
- Co-regulation via consensus-based, Codes of Conduct with proportionate enforcement mechanisms
- Subject to approval by ICASA
- Non-signatories subject to CCC jurisdiction
- Only where co-regulation fails should formal regulation be adopted
- Clear common framework for the accreditation of co-regulatory mechanisms
- Provide for cross-sector co-regulation
USAASA & the USAF [R170]

- USAASA should be dissolved
  - existing regulatory functions → ICASA
  - existing policy functions → DTPS

- All Fund management functions should be transferred to proposed ICT-Development Fund

- DTPS to undertake detailed institutional review & ensure adequate capacity & management for the new ICT-Development Fund
The Panel notes that the DTPS is conducting a study on areas of duplication and possibilities for rationalisation and has established a committee to focus on this;

The Panel therefore submits that all recommendations concerning institutional arrangements be considered by the DTPS committee undertaking the review of institutions.
Thank you…

Making South Africa a Global Leader in Harnessing ICTs for Socio-economic Development