

# Will we or WOANt we

PRESENTATION TO STAKEHOLDER CONSULTATION WORKSHOP: ECA  
AMENDMENT BILL

# What we are here for

- ▶ Officially this is a workshop at which a particular piece of legislation prepared by the DTSP for revision before submission to cabinet and ultimately tabled before Parliament.
- ▶ Legislation is a consequence of the White Paper
- ▶ Unofficially this is an opportunity for engagements to occur where issues which are contentious or where several years of industry stagnation are being felt
- ▶ Implied question of whether legislative measures are best means of achieving the goals arising in the White Paper

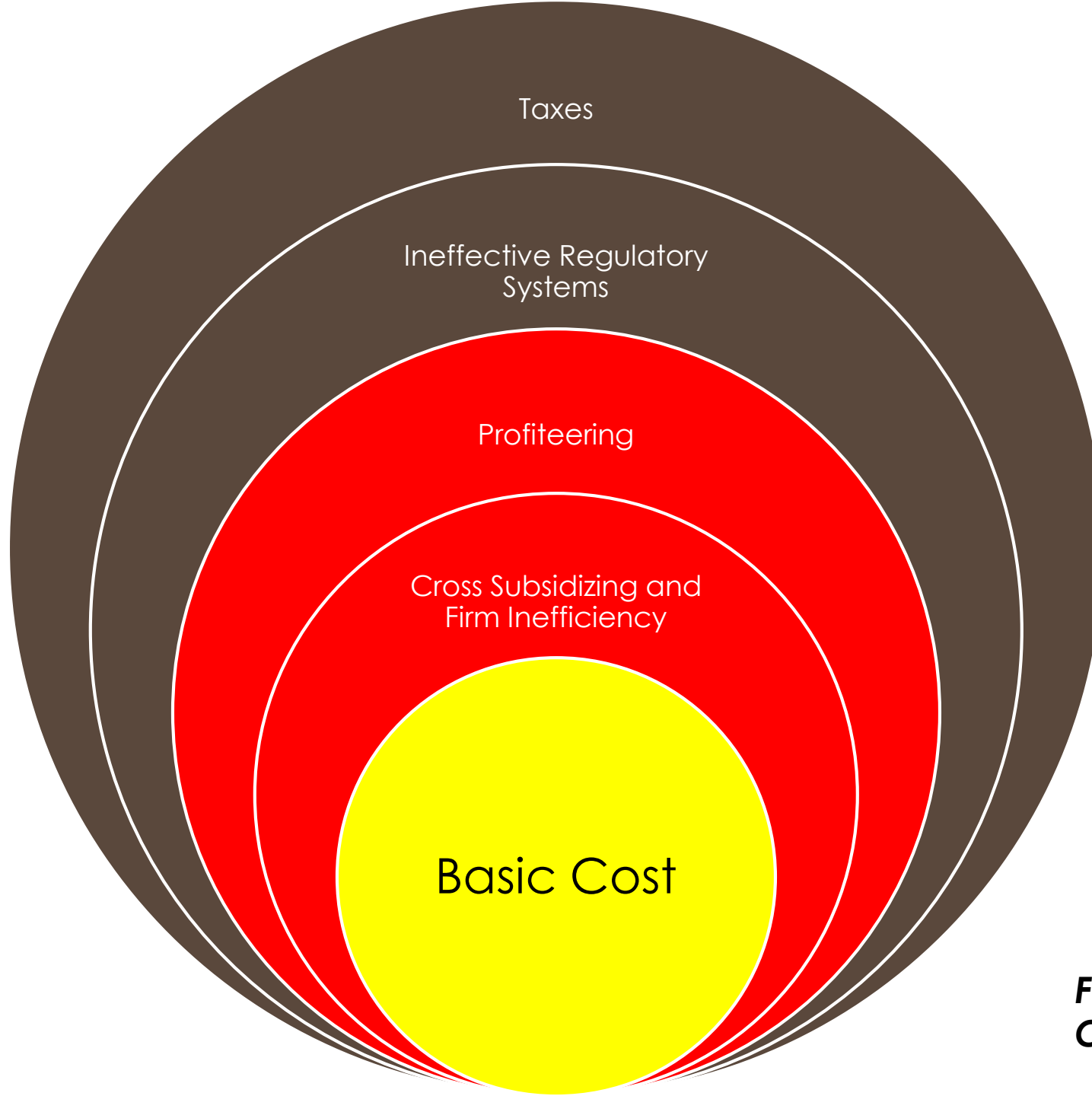
Define  
Problem

Consider  
Presented  
Solutions

Focus on  
the correct  
solution

# Costs to Communicate and Industry Stagnation

IDENTIFYING THE PROBLEM



Taxes and death are outside of our realm.

Resource sharing will generally – but not universally lower the basic cost.

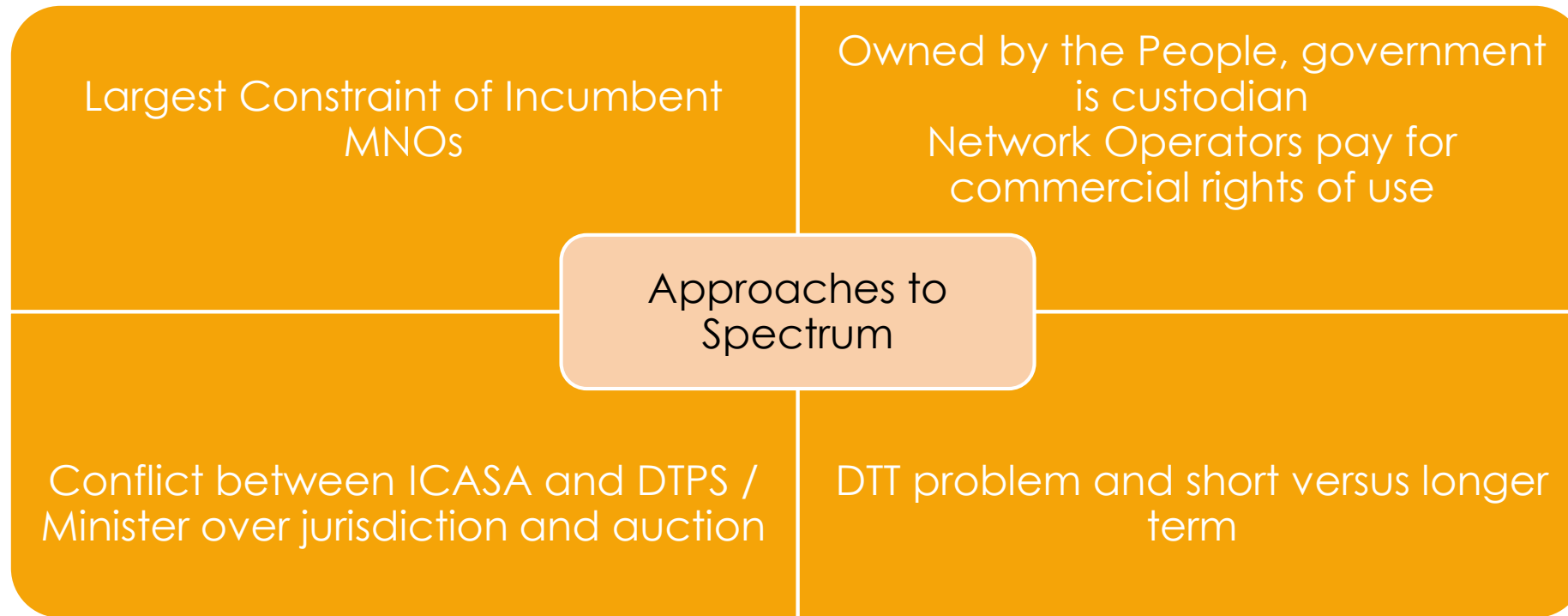
Incumbents simply not as efficient as they wish to pretend to be.

Lack of competition in many respects has effect of making profiteering possible – and this can in turn become greater firm inefficiency

**FOCUS IS ON EFFECTIVENESS OF REGULATORY SYSTEMS**

# It's all about spectrum

and not the Pentiums

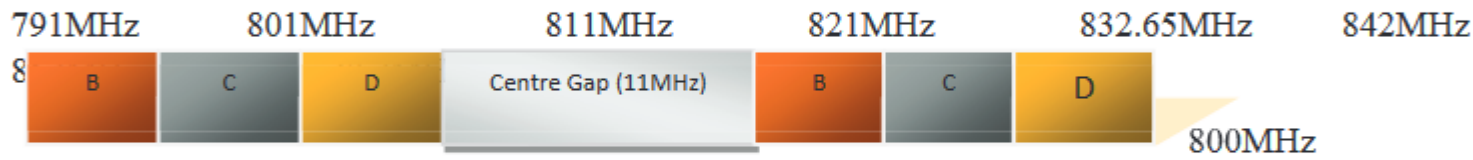
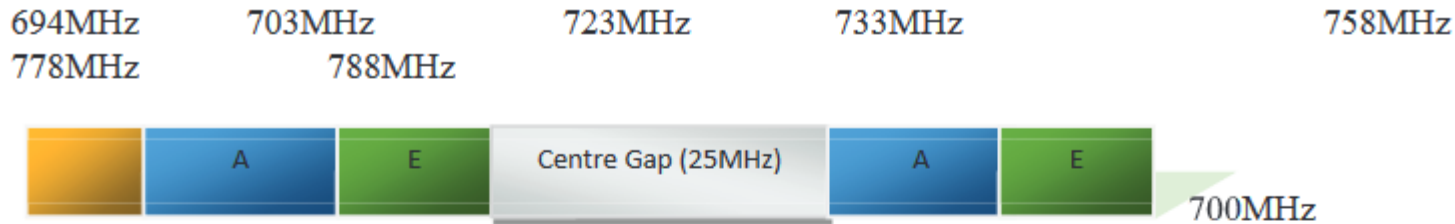


# Radio Frequency Spectrum Regs 2011



- **HDI Shareholding**

- The Radio Frequency Spectrum Regulations, 2011, re-introduced a 30% HDI shareholding requirement
- Large JSE quoted companies – like the incumbents – may not qualify under this requirement
- Likely to lead to significant resistance to any proposed spectrum assignment process
- Solution: Exempt certain packages from HDI requirements
- e.g. all the Universal Service and Open Access packages



ICASA envisages six lots of spectrum for assignment after a competitive auction. Split between lot A for “wholesale” (WOAN) and other five lots.

Proposal is for Lot A and Lot E to be assigned to WOAN. Remaining lots (B,C,D are identical, F is a different case)

# High Demand Spectrum still Available

Band	Total Spectrum	Available Spectrum
700 MHz	96 MHz	2 x 30 MHz FDD
800 MHz	72 MHz	2 x 30 MHz FDD
2.1 GHz	2 x 60 MHz FDD	5 MHz TDD
2.3 GHz	100 MHz	20 MHz
2.6 GHz	2 x 70 MHz FDD	2 x 70 MHz FDD
2.6 GHz	1 x 50 MHz TDD	1 x 40 MHz TDD
3.5 GHz	2 x 14 MHz National, and 2 x 14 MHz Regional	2 x 14 MHz National, plus 2 x 14 MHz x 51 District Municipalities

With special thanks to William Stucke. Source: *The Choices for High Demand Spectrum 2013*



# Types of ICT Firms

## Dying Incumbent

Presents the proposition of being too big to fail

Monopolistic (or Duopolistic) mindset

Prizes investments already made and may overvalue its own assets

Often established by State

## Niche Entity

Serves a specific function

Dependent on an interconnected ecosystem

Lower risk of failure

May be spun out from another concern

May form part of a corporate group

## Vibrant Innovator

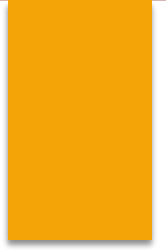
Disruptive not destructive

May be new entrant or a reformed incumbent (Telkom)

Risk of becoming a dying incumbent or simply failing

Belief in competition and acts as an incubator proportionate to its size and scope

Solutions  
Presented



# Models Available

## Give it to the incumbents

- Proportionate to market share
- To support smaller two
- Equally
- Subject to political conditions
- By auction

## Commercially viable WOAN

- Telkom Proposal
- Vodacom Proposal

?

## Socialist WOAN

## New Entrant Spectrum Holding Players

# Thinking about spectrum and open access over time

The big and ugly two

Motivated by "fear" not "greed"

Old telcos approach

Today

Spectrum doesn't matter

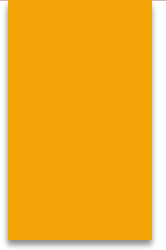
Bill and white paper seems to be

Telkom and CellC  
(at least concerning mobile)  
Motivated by rational self interest

# Most Used Spectrum. Fibre makes spectrum rights more valuable

- ▶ High Demand Spectrum is not the most utilized spectrum for data transfer. That title belongs to IMT band
- ▶ Demand is a **commercial** issue
- ▶ End user device costs are serious factor
- ▶ Coverage vs Bandwidth
  
- ▶ “Broadcasters” are given a free ride. This needs to end. DVB-S2 ...
- ▶ Locked and commercially useful spectrum available for temporary or permanent assignment
  
- ▶ Not an object of **ownership**. Legal rights relate to use (exclusive or otherwise) in a commercial sense.

Solving the  
problem



# My approach

- ▶ Implement the law as it stands – don't constantly shift the goal posts
- ▶ All legislative amendments must be drafted proactively and with an objective of mitigating mischief (and preventing mayhem)
- ▶ Innovation triumphs over stagnation
- ▶ Use existing ground work where applicable
- ▶ Think creatively
- ▶ Respect peoples rights – including property rights BUT
- ▶ There are no holy cows
- ▶ More than one way to skin a cat

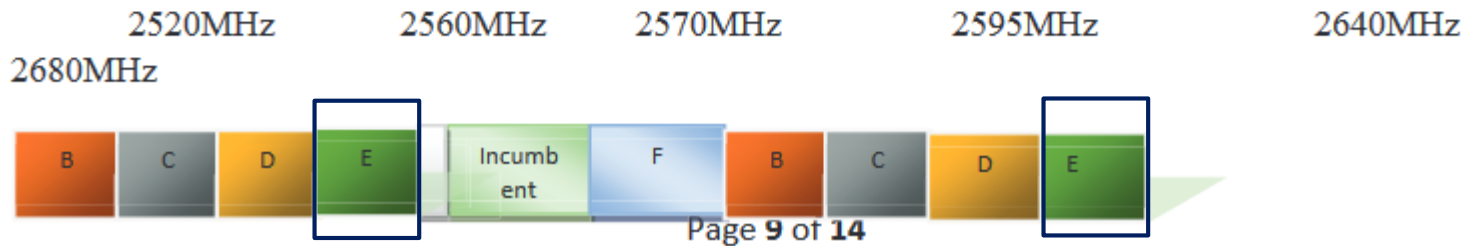
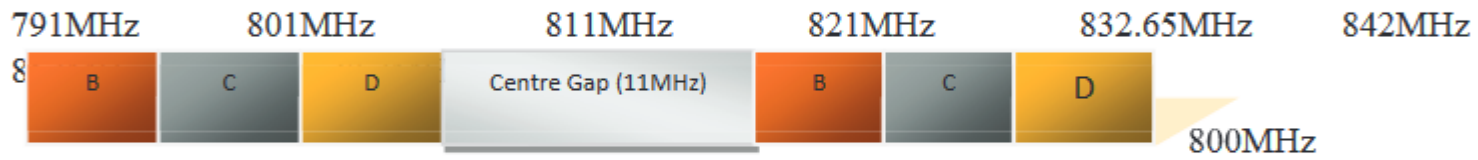
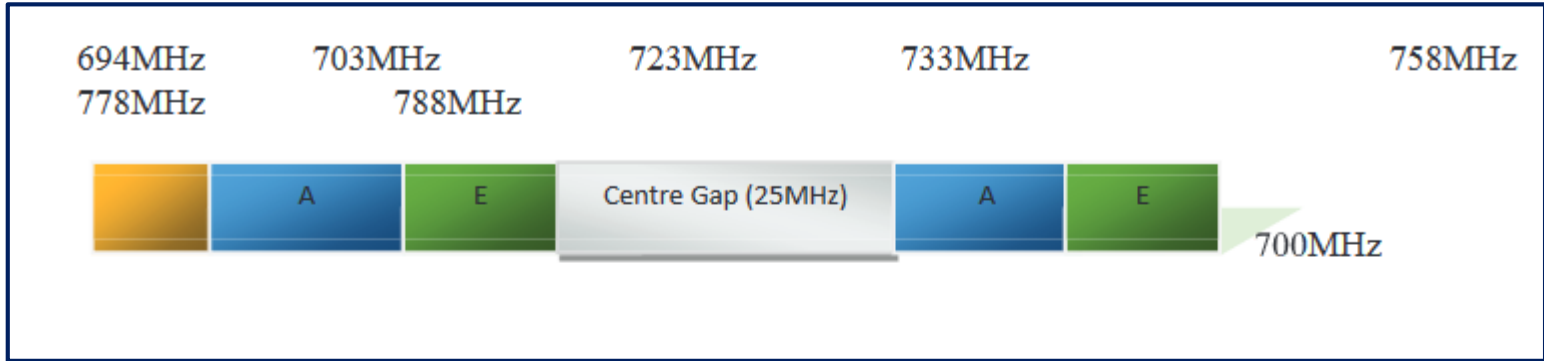
# Our position

- ▶ There is validity and need to organize a commercially salient but publicly orientated wholesale player that holds the spectrum in “Lot A” and “Lot E”.
  - ▶ “Lot A” is insufficient for a viable WOAN envisaged by Telkom and CellC all of the High Demand Spectrum would render the WOAN a sluggish hephalump.
- ▶ No incumbent meets the extant regulatory requirements to be issued High Demand Spectrum. It is therefore fallacious for the BAUT to argue that they are the only entities that can utilize spectrum in a commercially successful manner.
- ▶ USAF process was a failure (in its design). There remains persons with legitimate interests that have been infringed as a result and attending to this is beneficial.
- ▶ The 2014 ECA amendments were poorly conceived and badly executed.
- ▶ “Broadcasting” in the Constitution concerns itself with content and access to the means to deliver content



# Outcomes which are possible

- ▶ A true rurally supporting operator lead WOAN
- ▶ Infrastructure and Use of Spectrum Competition
- ▶ New entrants that by their core incubatory:
  - ▶ Three entrants holding similar quantities of spectrum rights to incumbent LTE operations with a promotion of infrastructure competition
  - ▶ One entrant holding only 25Mhz which is likely to be utilized by smaller entity focusing
- ▶ Entrants will each either form deep relationship with one of the incumbents or will lease infrastructure across the field – both approaches drive infrastructure competition and addresses a great deal of the risk currently arising in infrastructure investment.



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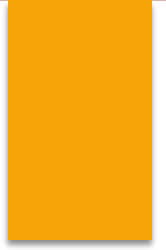
# Proposal Phase 1

- ▶ Temporary assignment of available High Demand Spectrum to incumbents on a basis of unlocking current stagnation and promoting experimentation. **Subject to wholesale access to equivalent data production**
- ▶ Minister issues direction for licensing of new entrant Spectrum Holding Ventures by ICASA
  - ▶ HDI of 70% (not 30%)
  - ▶ Cooperatives with a membership base of ICT SMMEs
  - ▶ Skills development objective in constitution
- ▶ Avoid an “*ultra vires*” mis-expropriation of spectrum and a commitment to treating renewal dates in line with the ECA (and not as an opportunity to be a horrible landlord)
- ▶ Not consider organization of WOAN in the ECA.
- ▶ Repeal of silliness arising in 2014 ECA Amendment

# Proposal Phase 2

- ▶ Get Local Loop Unbundling finalized (using extant law with mindfulness of new provisions).
- ▶ Auction of spectrum blocks by ICASA for **eligible bidders** (new spectrum entrants) in terms of extant regulations and lots.
- ▶ Licensing and issuance of spectrum (lot A and E) to WOAN as organized without “government” or “regulator” interference. DTPS can serve as a good office but there are limits.
- ▶ Undertaking process on assignment of other available spectrum – continue with discussions from 2013
- ▶ Hold other workshops on other bills mentioned in more sensible places than Pretoria. Jeffrey’s Bay is nicer and while water is restricted we have more than Cape Town.

Conclusion



# Why Vodacom and MTN are simply wrong

- ▶ Conceptualize the risk to their investors as one of not being able to monetise their asset.
- ▶ Believe that ownership of all factors of monetization necessary to reduce this risk.
- ▶ Fail to appreciate changes in technology – small nodes, open access ...
- ▶ **REAL RISK: Behaving like an incumbent monopolistic player – duopoly differs from a monopoly only in the presence of two entities waiting to fail**

# Points of Disagreement (or perceived disagreement) with DTSPS

- ▶ Inclusion of enabling provisions for an entity (“the WOAN”) that must be voluntarily forged for it to work;
- ▶ Discussions with BAUT creating expectations by same
- ▶ (Unstated in this bill, but arising nonetheless) Threat of expropriation or deprivation of property rights;
- ▶ Compulsory supply by WOAN to private entities (30% procurement provisions);
- ▶ “Cost based” vs non-discriminatory pricing
- ▶ Propensity towards changing the laws of the game versus enforcing extant regulation
  - ▶ Spectrum Auction Issue. Agree with Minister in legal dispute with ICASA, disagree with failure to conduct auction
- ▶ Failure to reverse errors in the 2014 amendments
  
- ▶ DTSPS requires me to travel to Gauteng and are too polite to the BAUT (meerkat and MTN jingles are original sin)

# Way forward

- ▶ Further engagements:
  - ▶ Build consortium for the formation of a WOAN
  - ▶ Identification of new entrants that drives economic empowerment
  - ▶ Objective of building clearer consensus and nation building in the fourth industrial revolution. **But the National ICT Forum exists.**
- ▶ Need for appropriate interventions in the functioning of ICASA
- ▶ Reversal of the challenges created by the 2014 Amendment Act
- ▶ Polishing amendment bill for gradual introduction
  - ▶ A “pendlex” compendium is probably needed
  - ▶ Roadmap for regulatory adjustment; certainty etc ...