



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

Briefing to Portfolio Committee on Communications

4th September 2020

*State of Transformation of the ICT sector
and related regulatory measures*

Transformation in the ICT Sector

- ❑ The Authority is enjoined by the ICASA Act and the ECA to promote the economic empowerment of Black people in general, and women, youth and the disabled in particular; through ownership and control as well as the development of human resources, training and capacity building of Historically Disadvantaged Individuals
- ❑ During 2014/15FY, the Authority noted an alarming trend of transfer of control and/or ownership applications that sought to diminish levels of equity ownership by Historically Disadvantaged Groups (HDGs) and responded with the publication of a Government Gazette Notice dated 10 October 2014 advising that the Authority will no longer approve licence transfer applications which result in less than 30% equity ownership by HDGs in licensees
- ❑ This notwithstanding, the Authority noted in its 2017 Discussion Document on Equity Ownership by HDG's that approximately 53% of Individual Electronic Communications Service (I-ECS) and Individual Electronic Communications Network Service (I-ECNS) licensees have less than 30% HDG equity ownership. The picture is different for Individual Broadcasting Service (I-BS) licensees, where approximately eight (8)% of licensees are noncompliant with the legislated targets. This may in part be attributed to the fact that the majority of I-Broadcasting Service licences were issued post promulgation of the ECA

ICASAs 2019 Position Paper

- ❑ In the 2016/17FY, the Authority commenced an inquiry into empowerment in the ICT sector with particular attention to the needs of women, opportunities for youth and persons with disabilities
- ❑ This culminated in the publication of a Position Paper in February 2019, the key tenets of which include:
 - i. Maintenance of the 30% equity ownership requirement for all applicants for new licences, as well as transfer, renewal and amendment of licences at the time of application
 - ii. The equity ownership level for any licensee will not be permitted to fall below 30% and penalties should be imposed in the event that a licensee's equity ownership falls below 30% as a deterrent to non-compliance
 - iii. That the Revised ICT Sector Code can be applied in conjunction with the mandatory minimum equity ownership requirement. To this end, the Authority is of the opinion that a mandatory minimum B-BBEE Status Level Six will be compulsory for all licensees which status level must be maintained for the duration of the licence. Verification to be done through the Annual Reporting

Draft Regulations on equity ownership

In the 2019/2020FY the Authority published draft Regulations on equity ownership by historically disadvantaged groups and the application of the ICT sector code in the ICT sector. In summary, the draft Regulations seek to impose the following conditions – amongst others:

- i. A requirement for all existing licensees to comply with the mandatory equity ownership requirements (30% equity ownership by black people and Level 4 BBEEE status) within 24 months of the promulgation of the Regulations
- ii. Penalties of up to R5 million or 10% of the licensees annual turnover where a licensee fails to maintain the mandatory minimum requirement
- iii. A requirement for annual compliance reporting on the state of equity ownership by black people in the licensee

The final regulations are scheduled to be published in the 2020/21 financial year

Additional considerations for empowerment

The Authority also seeks to promote transformation in the ICT sector in the execution of its mandate. In this regard, empowerment will be a key factor in the following regulatory processes:

1. The licensing of Community Sound and Digital Television Broadcasting Services in the 2020/21 and 2021/22 financial years respectively
2. The licensing of IMT spectrum in the current financial year (2020/21)
3. The licensing of the Wireless Open Access Network Service Provider (which will commence in the 2021/21 but conclude in 2021/22FY)