

## ISOC-ZA Response to Electronic Communications Amendment Bill [B38-2007]

Mr I Vadi, MP  
Chairperson  
Portfolio Committee on Communications  
c/o Committee Secretariat  
PO Box 1  
Cape Town  
8000

Facsimile: (021) 403-2808/3845

Telephone: (021) 403-3742/3713

e-mail: [rschaafsma@parliament.gov.za](mailto:rschaafsma@parliament.gov.za)

### **PERSONAL/ORGANISATION:**

*Name:* Glen Thompson

*Organisation:* Internet Society of South Africa (ISOC-ZA)

*Contact number (mobile):* 082 412 6834

*Email:* [glen@isoc.org.za](mailto:glen@isoc.org.za)

*Available to make an oral representation:* Yes

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## 1. Introduction

ISOC-ZA welcomes the opportunity to make a submission to the Portfolio Committee on Communications on the draft Electronic Communications Amendment Bill [B38-2007], hereafter “the ECA Bill”.

The ISOC-ZA is a civil society organisation that enables telecommunications users in South Africa to participate in public debate around policy and regulatory issues pertaining to the new economy. Our goal is to represent the interests of telecommunications users and consumers, particularly individuals, small businesses and academic institutions.

During the past years the Internet Society has made submissions on a number of regulatory and legislative proposals, as well as providing an ongoing email-based discussion forum open to all interested parties (see [www.isoc.org.za](http://www.isoc.org.za) for further details).

## 2. ISOC-ZA’s understanding of the Electronic Communications Amendment Bill

The ECA Bill aims to amend the Electronic Communications Act (Act 36 of 2005) by introducing three provisions, namely:

- i) To enable the Minister of Communications to effect policy interventions in the telecommunications sector;
- ii) To support the intention by Government to broaden access to ICT infrastructure and services; and
- iii) To enable Government to facilitate the licensing of state owned entities (SOEs).

ISOC-ZA will respond to each of these provisions in turn.

## 3. Response A: Policy interventions in the telecommunications sector

The proposed amendment (that is, the Amendment of section 5 of Act 36 of 2005, clause 13(a)) will allow the Minister of Communications to issue policy direction, after obtaining Cabinet approval, for the "facilitation of strategic interventions by Government in the telecommunications sector" (see Preamble to the ECA Bill).

From a user perspective, this provision gives the Minister of Communications the means to short-circuit the established regulatory framework for telecommunications policy in South Africa, and empowers the Ministry of Communications to take a more interventionist stance on matters affecting the telecommunications industry and ICT infrastructure and services.

In ISOC-ZA’s view this proposed amendment is not conducive to fostering a competitive and open market for ICTs that encourages foreign investment in the sector, which would lower the

cost of access to ICTs for consumers. Rather, it provides the Minister of Communications with a policy instrument to increasingly consolidate Government interests in the ICT sector, and especially in the emerging broadband infrastructure and services market. In this regard, ISOC-ZA wishes to point to the Department of Communications delaying landing rights for the Eassy undersea cabling infrastructure as well as that same Department's championing of Infraco and the Nepad Broadband Infrastructure Network. We believe the ECA Bill will ultimately raise costs for ICT adopters across the board, hindering much needed adoption at a grassroots level.

Furthermore, this amendment is reminiscent of how, during the years of the Telkom monopoly, preceding and following the Telecommunications Amendment Act of 2001 (Act 64 of 2001), the Ministry of Communications was not been seen as fully supporting consumer choice in terms of telecommunication provider, stalling the lowering of costs for end-users, and maintaining a shareholder interest in key private sector companies within the South African communications industry.

#### **4. Response B: Broaden access to ICT infrastructure and services**

ISOC-ZA is supportive of the proposed amendment to "provide the much needed bandwidth for strategic projects and consumers in general" and "reducing the cost to communicate by providing infrastructure at wholesale rate to other operators" (see section on Objects of the Bill, ECA Bill).

ISOC-ZA is of the view that broadening access to ICT infrastructure and services is beneficial to consumers (inclusive of businesses, especially small businesses), and will stimulate economic development and job creation. The proviso is that the cost of access must still be significantly reduced and the availability and speed of broadband connectivity be comparable to international standards. Developments of this nature, for example, will offer rural and disadvantaged communities with access to information services, resulting in employment opportunities.

Nevertheless, this provision is little different from pronouncements and existing legislation that aim to provide universal services in the country and bridge the digital divide. ISOC-ZA is therefore not convinced that the focus on, and provision of wholesale services, for access to bandwidth (*read: broadband*) as a priority for economic development should rest with Government determined "strategic projects" alone but be open to private sector investment and provision. In this way, broadening access to ICT infrastructure and services for the majority of South African (either in terms of stimulating broad-based black economic empowerment or providing benefits to end users) will cut through the rhetoric of "expanding the availability" to ICT but reducing the regulatory barriers for entry into this market.

#### **5. Response C: Licensing of state owned entities**

As per the section on Objects of the Bill, ECA Bill and the Amendment of section 5 of Act 36 of 2005, clause 13(b), this provision to license SOEs aims at "improving on Government service delivery and support ASGISA" (Accelerated and Shared Growth Initiative for South Africa). This

clause also refers to the Amendment of section 1 of Act 36 of 2005 by means of enabling the inclusion of a “public entity” within the provisions of the Electronic Communications Act (Act 36 of 2005) as a telecommunications provider.

ISOC-ZA is aware that there are several initiatives at the municipal level in South Africa to facilitate, or provide, broadband access to reduce telecommunications costs for the municipality and benefit local government service delivery to consumers. In addition, the deregulation of telecommunications at the local level is also seen to stimulate socio-economic development of a city and hence the goals of ASGISA (which sees electronic communications as key commercial and social infrastructure). In this regard, ISOC-ZA is supportive of the licensing of SEOs provided that SEOs follow the same licensing procedures as anyone else wishing to enter the market.

ISOC-ZA feels that the ECA Bill will allow Government to apply for the necessary licenses needed for projects such as Infraco or existing public entities. However, if this provision is limited to Infraco (and not SOEs more broadly) then this amendment should be spelling out what the Infraco license will be and the implications for South African taxpayers and consumers in footing the bill for Infraco. ISOC-ZA is of the view that legislation should protect the private sector from an overtly interventionist state, limit the creation of a second Telkom-modelled entity controlled by Government that blocks competitors from entering the market, and to foster choice amongst consumers.

## 6. Conclusion

ISOC-ZA would like to see positive moves by Government in fostering a deregulated environment for the development of ICT infrastructure and services within South Africa. ISOC-ZA is not convinced that the ECA Bill will support such an enabling environment for the ICT sector – one that ultimately should materially benefit consumers.

ISOC-ZA does not support the provisions of the ECA Bill. Rather, ISOC-ZA expresses the following reservations:

- i) The proposed powers to be conferred on the Minister of Communications via the ECA Bill will limit competition in the market, limit consumer opportunity to enjoy reduced broadband costs, and lead to a monopolization of broadband infrastructure due to the investment of significant state interests.
- ii) The amendment is too open ended and once Government becomes accustomed to changing a law then it may be tempted to push it even further in securing state and not consumer interests in the ICT sector.

ISOC-ZA feels that giving Government any special treatment, as the ECA Bill does, would not be fair to South African consumers or businesses. ISOC-ZA calls for a careful review of this proposed legislation whereby special rights are extended to Government in regards it intervention in the telecommunications and ICT infrastructure and services sectors.

ISOC-ZA thanks the Portfolio Committee on Communications for its consideration of this submission.