

Chairperson's Overview



It is an honour to present the first Annual Report of the Independent Communications Authority of South Africa (ICASA).

On 30 June 2000, President Thabo Mbeki, on the recommendation of the National Assembly, appointed the first seven ICASA Councillors as follows: Mandla Langa (Chairperson), Yasmin Carrim, William Currie, Julia Hope, Libby Lloyd, Langa Mbulelo Ncetezo and Neël Smuts.

ICASA was established on 1 July 2000 in terms of the Independent Communications Authority of South Africa Act, No.13 of 2000 (the ICASA Act). This had the effect of dissolving the Independent Broadcasting Authority (IBA) and the South African Telecommunications Regulatory Authority (SATRA).

The ICASA Council held its first meeting on 5 July 2000. In terms of section 18(2)(a) of the ICASA Act, the IBA and SATRA Councillors remained in office until immediately before the first meeting of the ICASA Council.

In one of its first decisions, the ICASA Council decided that - as an interim measure - ICASA would operate with two divisions. The former IBA would constitute the Broadcasting Division, while former SATRA departments would constitute the Telecommunications Division.

Predictably, the merger had a disruptive impact on the work of the new Authority. Mooted since 1997, the merger gave rise to staff and management anxiety and low morale. Some of the key senior personnel resigned and there was a slightly higher than normal staff turnover. The Council called several general staff meetings in an attempt to deal with the uncertainty and insecurity felt by many ICASA employees.

The Council began addressing the growing backlog from the former authorities by appointing special committees. The committees were aimed at ensuring comprehensive planning and oversight over several key areas, which included regulatory policy, technical, licensing and others. These transitional arrangements, which were also informed by Council's understanding of the complexities of mergers and convergence, were seen to form the backbone of the restructuring envisaged in the future.

Given the understanding that there had been no organic merging of the two regulatory bodies - and the merger had happened only with regard to Council - the defects that had plagued the dissolved regulators were analysed, to ensure that they were not repeated. Analysed, too, was the relationship of ICASA with itself and other external agencies, especially government, which has an impact on the Authority's capacity and self-image.

Council also appointed a Standing Committee on Complaints, chaired by Councillor Ncetezo to address the backlog of complaints and to determine the procedures for the adjudication of telecommunications disputes and complaints.

The appointment of ICASA's Chief Executive Officer, Mr. Nkateko Nyoka, on 1 January 2001, was the new organisation's first significant milestone and signalled the beginning of a process expected to lead to a comprehensive restructuring of the organisation. We expect this process to be completed before 1 January 2002.

The total budget for the nine months under review, a combination of the total budget allocations to the broadcasting and telecommunications divisions, was R94 357 124. The CEO's report deals more specifically with financial reporting requirements, budget-related issues and the challenges of management in this transitional environment.

During the period under review, the work in both divisions continued to be constrained by legislative, budgetary and institutional factors.

On the broadcasting side, the merger delayed the licensing process for four-year community sound broadcasting licences in KwaZulu Natal, Gauteng and the Western Cape. The Council was unable to adjudicate upon any applications

for four-year community sound broadcasting licences in these three provinces. In addition to the disruptive institutional environment, legislative constraints made it impossible for the Council to delegate licensing decisions to Council committees or to a councillor. The Authority expects the IBA Act to be amended in this regard.

As was also reported in the IBA's final Annual Report, the inquiry into satellite broadcasting was further delayed, pending amendments to the Broadcasting Act, no. 4 of 1999 (the Broadcasting Act).

Although there were some delays on the broadcasting side, there were also important regulatory activities and events during the period under review:

These included:

- > The publication of a Discussion Paper on the Review of South African Content Quotas;
- > The monitoring of broadcaster's coverage of the 2000 Local Government Elections and adjudicating related complaints;
- > The publication of a draft frequency plan for broadcasting services;
- > The issuing of a further 33 temporary community sound broadcasting licences;
- > The amending of two commercial sound broadcasting licences;
- > The gazetting of an application by the SABC to renew its sound broadcasting licences;
- > Granting permission to Sentech, Orbicom and M-Net to test DTT and DAB transmissions;
- > The ongoing monitoring of broadcasting services for compliance with licence conditions, regulations and the various statutes; and
- > The continued resourcing of our 'broadcasting library' with telecommunications material, including copies of telecommunications licence applications, supporting documentation, telecommunications licences, as well as local and international books, journals and other publications on telecommunications. This has been a resource widely used internally and by the industry, which depends on it.

As with any administrative body, our execution of our regulatory tasks has sometimes exposed us to real or potential judicial reviews. In major instances, the courts have upheld our decisions, such as the ruling by the High Court affirming the Authority's decision not to award the Capital Radio broadcasting licence to Kingdom Radio (Pty) Ltd. This was followed, on a separate issue, by the ruling by the Broadcasting Monitoring and Complaints Committee (BMCC) that Midi TV (Pty) Ltd (trading as e-tv) had contravened its licence conditions for not seeking regulatory

approval for a transaction that led to a change in the control of that company.

On the telecommunications side, ongoing litigation, particularly between Nextcom (Pty) Ltd vs Funde, N.O., SATRA (now ICASA), the Minister and five others continued to drain the Authority's resources. The matter involves SATRA's recommendation to the Minister to award the third mobile cellular licence to Cell C.

Sometimes masked by the delay in issuing the third mobile licence, there were other significant activities on the telecommunications side, which included:

- > Conducting hearings on the proposed regulatory framework for VANS and PTNs and an inquiry into Virtual Private Networks;
- > The High Court's upholding of ICASA's Interconnection Guidelines after finding that the Minister had acted *ultra vires* by unilaterally withdrawing regulations on these Guidelines;
- > The Authority's decision to delay allocation of the 1800 MHz spectrum to Vodacom and MTN, pending the settling of litigation over the third mobile licence and the issuing of that licence;
- > Publishing a Notice in respect of a Review of Fees and Charges in the PSTN sector and inviting public comment on a Consultation Document;
- > Issuing 204 equipment licences and granting 355 equipment licence renewals;
- > Granting 20 interim VANS licences and nine interim PTN licences;
- > Making over 1200 frequency assignments and handling 2050 general radio frequency cancellations;
- > Completing a feasibility exercise and conducting public hearings into the licensing of a third party operator to provide radio trunking services to emergency and municipal services;
- > Closing 5205 radio monitoring files, conducting 213 radio dealer's inspections and resolving 827 cases of interference;
- > Carrying out 627 ship surveys;
- > Conducting various monitoring tasks on the GSM bands, particularly the 1800 MHz bands; and
- > Prescribing various radio regulations.

Despite the delays and difficulties faced by both divisions during the period under review, ICASA continued its service to the public and to the converging communications industries.

Parliament has entrusted the Authority with jurisdiction over the full spectrum of telecommunication and broadcasting services. As the guardians of 'the public trust' in broadcasting

and telecommunications, this Council is strongly committed to building an institution that will protect the public interest.

ICASA has a vital role to play in facilitating economic growth through, amongst other things:

- > The promotion of universal access to telecommunications and the creation of competitive telecommunications markets; and
- > The promotion and development of the South African radio, television and music industries.

Only a properly resourced regulator can achieve these goals. In this way, we see effective communications regulation and economic growth as inextricably bound.

Challenges Ahead

In the forthcoming year, ICASA faces the challenge of implementing far-reaching changes to the telecommunications policy framework - changes that will lead to greater competition, more consumer choice and hopefully lower prices for residential and business users. ICASA intends to play an oversight role over the massive task of restructuring the SABC in terms of the Broadcasting Act, 1999.

But the greatest challenge facing our organisation is the goal of building a credible, effective, independent and well-resourced regulator that is able to re-establish the integrity in our processes and procedures. We also aim to ensure that we have depth of expertise and experience to deal with the complicated challenges of regulating competition in the PSTN sector.

Relationships with other organisations

In November 2000, ICASA held its first stakeholders meeting. We launched our new ICASA logo and introduced the Council to representatives of the broadcasting and telecommunications industries.

We have a new partner in the regulation of competition in the broadcasting and telecommunications sectors. Amendments to the Competition Act (No.89 of 1998) have provided for the Competition Commission to exercise concurrent jurisdiction with the Authority over competition matters in the broadcasting and telecommunication industries. The Authority and the Commission are currently negotiating a memorandum of agreement to govern the exercise of concurrent jurisdiction. This is a requirement of sections 21(1)(h) and 82(1) of the Competition Act.


On 11 December 2000, the Authority signed a Memorandum of Understanding with the South African Bureau of Standards (SABS); and established a Technical Committee

to promote the regulation of standards in telecommunications and broadcasting, and to align these standards with international practice.

ICASA continues to play an important regional role through the Telecommunications Regulator's Association of Southern Africa (TRASA).

ICASA currently chairs the Regulator's Forum of the International Institute of Communication (IIC).

A full list of conferences attended by Councillors is included as an appendix to the Annual Report.



Mandla Langa
(Chairperson)