

The implementation date of LRIC has been delayed to allow Telkom, the incumbent operator, to make the transition from its present accounting system to LRIC.

Carrier Pre-Selection and Carrier Selection

Carrier Pre-Selection is a consumer-orientated concept, which allows telephone subscribers to choose their national long distance and join international carriers. The Carrier Pre-Selection Regulations have been promulgated under Section 89C of the Telecoms Act. Pursuant to these Regulations a Telkom subscriber, for example, has a right to choose the SNO as the national long distance carrier and/or international carrier while remaining a Telkom subscriber for the local service. Conversely, an SNO subscriber may choose Telkom for long distance and/or international connection. Such a preset choice can be over-ridden manually by entering a code before the call. Similarly, carrier selection can be done manually, without a preset choice, by entering a code.

Carrier Pre-Selection has been successfully implemented in numerous countries and proven beneficial to consumers by facilitating competition between service providers in the national long distance and international segments of the telephony markets. Generally, the end result is that consumers pay lower prices for long distance and international calls because of competition for "customers" by licensed operators. As called for in the Telecoms Act, the Regulations provide for a transition period and therefore carrier pre-selection will only be operational as of 31 December 2003.

Facilities Leasing

The Facilities Leasing Regulations, promulgated pursuant to section 44 of the Telecoms Act, govern the commercial relationship between telecom carriers when seeking to lease facilities (lines, cables, equipment, etc.) from Telkom and eventually from the SNO. They also govern the commercial relationship between Telkom and the SNO when either carrier leases facilities from the other.

The Telecommunications Programme of ICASA, lead by a General Manager, is composed of two departments, namely; Policy Analysis and Development; and Licensing, Enforcement and Numbering Administration. The responsibility of this programme, *inter alia*, is to: review the inter-corporate activities of the telephone operators and their accounting practices; assess the rates, terms and conditions of tariffed services offered by regulated telecommunications operators; oversee the evolution of competition in the various telecommunication, markets; and licence telecommunications carriers and ensure compliance with licence conditions.

Policy Analysis and Development

The Policy Analysis and Development Department is responsible for all telecommunications regulatory policy initiatives. During the year under review, this department developed a number of regulatory policy instruments to foster competition as the incumbent telecommunications operator's monopoly drew to a close. These policies were critical not just in terms of the liberalisation of the fixed line telecommunications market, but also for Telkom's Initial Public Offering ("IPO") process. The regulatory policies introduced for this purpose included: Chart of Accounts/Cost Allocation Manual ("COA/CAM"); Carrier Pre-selection; Supplementary Facilities Leasing; Supplementary Interconnection Guidelines and Universal Service Fund ("USF") Contributions.

COA/CAM

The COA/CAM regulatory rules set out a detailed system of accounting and the maintenance of records - as required by section 46 of the Telecoms Act - for Public Switched Telecommunications Service ("PSTN") Providers with market power. These rules are based on the internationally accepted pricing methodology, known as Long Run Incremental Costing ("LRIC"), in terms of which prices are cost-orientated towards the efficient operations of a telecommunications operator.

COA/CAM sets out a detailed system of accounts for operators with market power so that uniform accounting methods are employed. This makes it easy for ICASA to undertake audits and to effectively monitor the operator's compliance with applicable regulations and licence conditions. Therefore, under a COA/CAM account regime, ICASA will be equipped to determine, *inter-alia*, proper benchmarks for cost-based pricing of services as well as provide sufficient separation of accounts to allow detection of discriminatory behaviour and unlawful cross-subsidisation of services.

These Regulations set out: certain minimum requirements that must be addressed in the lease agreements; pricing guidelines; rules to ensure that telecommunications carriers, including private telecommunications network operators, value added network service operators, and mobile operators can lease the facilities needed on fair and non-discriminatory terms and conditions.

The supplementary regulations also address those provisions of the Telecoms Act relating to the SNO's right to lease facilities from Telkom during the first two years of its operation. In this respect the Telecoms Act has reserved certain rights for the SNO to help facilitate its "start-up" soon after it is licensed. The Facilities Leasing Regulations attempt to provide adequate protection, as prescribed by the Telecoms Act, to give the SNO a viable start in keeping with the Government's policy of managed liberalisation.

Interconnection

Towards the end of the period under review, ICASA held a public hearing and received written comments on its draft Supplementary Interconnection Regulations. The Supplementary Interconnection Regulations, *inter alia*, set out a transition pricing methodology to be used by major operators (PSTS operators with significant market power) until the implementation of the LRIC methodology under COA/CAM.

Interconnection is key to ensuring that South Africa has a fully integrated and ubiquitous telecommunications infrastructure. Through interconnection, the various networks of mobile operators, PSTS operators, private networks and the like, communicate with one another. Interconnection does not only make it possible for consumers to make and receive calls originating from different carrier's networks (e.g. a mobile call to a Telkom subscriber); but also facilitates Internet access from multiple networks giving consumers a variety of choices.

USF Contributions

In line with the requirement of the Ministerial Policy direction, issued in August 2001, which requires all telecommunications licensees, including Value Added Network Service, to contribute to the USF on the basis of a percentage of turnover from April 2003, ICASA embarked on a process of revising the existing regulations which limits the USF levy that may be

imposed on an operator to 0.16% of turnover. ICASA has recommended that the USF levy on operators be increased to 0.2% of turnover, which is within the 0.5% ceiling determined by the Minister. As at the time of writing this report, the Minister was still considering this recommendation.

The Universal Service Agency ("USA") is mandated to utilise these funds to subsidise projects whose objectives are to promote the universal and affordable provision of telecommunications services. Another aim of this fund is to ensure that the needs of disabled persons are catered for in the provision of telecommunications services.

The Policy Analysis and Development Department, while prioritising the pro-competition regulations, has also produced regulations relating to Application Fees; Fees and Charges for PSTS Services; and Ownership and Control.

Application Fees

Radio Communications Licences have historically been issued by ICASA and its predecessors at no cost to the Licensees. The Application Fees Regulations have changed the legal position and ICASA can now recover any direct cost incurred when a licence is issued to a Radio Communications Licensee.

Fees and Charges for PSTS Services ("Rate Regime")

These regulations are designed to provide a basis for the level of charges and fees for services offered by PSTS operators, including monthly rental and local, national and international call charges. These regulations are necessary to ensure that consumers are not unduly over-burdened in markets where there is little or no competition.

Ownership and Control

ICASA, after holding a public enquiry in terms of Section 27 of the Telecoms Act, published ownership and control regulations in Government Gazette 23190 of 27 February 2002 to promote competition in the telecommunications market. The objective of these regulations is to promote competition in restricted (markets with less than 5 telephone operators) telecommunications markets. What this means is that an investor who owns and controls one operator cannot have a controlling and ownership interest in another operator. The interest in such other or second operator would, in terms of these regulations, be limited to 1.5% shareholding.

Licensing, Enforcement and Numbering Administration

The primary function of the Licensing, Enforcement and Numbering Administration department is to: analyse and process applications for telecommunications service licences; check compliance of licensees against applicable regulations, legislation and their respective telecommunications service licence conditions, i.e. payment of licence fees and delivery of universal and community service obligations; and administer the number plan to ensure fair and efficient use of numbers for present and future generations. During the period under review the department participated in a number of licensing activities, including the following:



Third Mobile Licence

On 5 June 2000, Nextcom (Pty) Ltd ("Nextcom"), one of the bidders for the third mobile licence, sought an interdict from the High Court of the Transvaal Provincial Division, preventing: the Minister of Communications from acting upon the then SATRA's recommendation that the third cellular licence be awarded to Cell C (Pty) Ltd ("Cell C"); and SATRA from issuing a third cellular licence to Cell C.

After a year-long legal battle, Nextcom and Cell C reached an out of court settlement. The nature of the settlement has never been made public. On the basis of this, the Minister made an announcement that the third mobile licence would be awarded to Cell C. ICASA issued the licence on 25 June 2002. This licence authorises Cell C to construct, operate and maintain licensed lines within South Africa to:

- (i) Provide the Service by means of mobile cellular telecommunications, operating within the frequency bands allocated to it, in terms of a frequency spectrum licence issued by ICASA;
- (ii) Connect fixed Terminal Equipment and mobile Terminal Equipment according to the Technical Standards, using GSM cellular radio telephony technology for the provision of the Service; and
- (iii) Interconnect with any PSTS licensee and with the network of other persons licensed to provide telecommunications services.

Re-issue of the Mobile Cellular Telecommunications Service Licences for MTN and Vodacom

During the course of the year under review, the existing cellular licences of MTN and Vodacom, which were originally issued on 30 September 1993, were aligned with the Telecoms Act. Council approved the licences and copies were forwarded to both cellular operators and the Minister. The Minister has since approved these licences.

Sentech Licences

Section 32C(1)(a) and (b) of the Telecoms Act bestows onto Sentech Limited an international telecommunications gateway service licence and a multimedia service licence, respectively. ICASA is enjoined by the Telecoms Act to issue these two licences on or before 7 May 2002. The draft licences were published on 20 December 2001 and public hearings were held on 20 and 21 February 2002. These licences were finalised and published in Government Gazette Notice No.: 23405 on 8 May 2002.

SNO

Section 32A of the Telecoms Act states that from 7 May 2002 until 7 May 2005, Telkom and the SNO shall be the holders of PSTS licences. The effect of s32A is to end Telkom's monopoly and introduce competition, in the form of a duopoly, in the PSTS market.

The Minister, empowered by section 34(2) of the Telecoms Act to issue Invitations to Apply ("ITA's") for certain categories of licences, including PSTS, took a policy decision that the SNO Licensing process would be managed in three separate phases. The first phase would involve the determination of the winning bid for the 19% equity stake set aside by the Minister for the empowerment of historically disadvantaged persons. The second phase would focus on the award of the 51% stake to the Strategic Equity Partner and the third phase would involve the integration of Eskom-Transnet, joint holders of a 30%, stake into the SNO.

On 21 December 2001, the Minister issued the Black Economic Empowerment ("BEE") ITA, inviting people from historically disadvantaged backgrounds to apply for the 19% equity stake in the SNO. This ITA set the stage for the SNO licensing process. The closing date for these applications was originally 14 March 2002 and was later extended to 15 April 2002. At the time of writing this report, ICASA had recommended that the 19% BEE stake be awarded to Nexus. The SNO licence, as an integrated licence, will be issued in the first quarter of 2002.

Anticipating the issuing of the SNO licence in the first quarter of 2002, ICASA prepared a draft licence, authorising the provision of local, national and international telecommunications services. The draft licence also authorises the SNO to provide all of the services that are currently offered by Telkom (public pay telephones, private network services, multi-media, Internet, etc.) to facilitate competition in the market. In keeping with the government's policy of fostering 'facilities-based competition', the licence will require the SNO to meet certain 'build-out' and 'quality of service' obligations. The licence allows the SNO to provide the authorised services throughout the Republic, including sending and receiving international traffic. It is expected that certain of the terms and conditions set out in the draft licence will be negotiated with potential SNO licensees.

VANS and PTNS

An enquiry was held into whether a Virtual Private Network ("VPN") constitutes a Managed Data Network Service ("MDNS"). The finding made by ICASA on 1 June 2001 was that a VPN is not a Managed Data Network Service, but a technology used to provide various services.



On 1 June 2001 the findings and conclusions of the VPN enquiry were published and an industry briefing held. At the same time draft VANS and PTN licences were published and the closing day for comments was 29 June 2001. The public hearings of the proposed VANS and PTN licences were held on 11 July 2001. Furthermore, ICASA proposed definitions for VANS and PTNs to the Department of Communications for incorporation into the Telecommunications Amendment Bill. These were subsequently incorporated and are now part of the Telecoms Act.

The final section 34(1) regulation on the manner and form in which to apply for VANS and PTN licences, together with the section 88 regulation on application fees for VANS and PTNs, was forwarded to the Minister for promulgation.

For the period under review ICASA issued a total of 45 VANS and five PTN licences. (See Appendix A, page 44).

New Numbering Plan

A new numbering plan and regulation was developed by the Telecommunications Licensing Department during the year under review. The Numbering Plan will see the introduction, six months after the promulgation of the numbering plan, of mandatory 10-digit dialling across South Africa and a national short code strategy for all telecommunications operators. A national public emergency number '112' and an international direct code '00' will also be introduced within several days of the promulgation of the numbering plan. The numbering plan regulation will be finalised during August 2002.