



*LEGAL, CONSUMER  
PROTECTION AND  
INTERNATIONAL  
RELATIONS*

## LEGAL

### **Islamic Unity Convention vs. ICASA & S.A Jewish Board of Deputies ('Constitutionality')**

In June 1998, the South African Jewish Board of Deputies (SAJBOD) lodged a complaint against the Islamic Unity Convention, broadcasting as Radio 786. It was alleged that a certain broadcast contravened the Code of Conduct for broadcasters in that, amongst other things, it denied the occurrence of the holocaust of Jewish people by the German Third Reich.

Radio 786 then instituted various proceedings that ultimately led to the Constitutional Court ruling in 2001 that the provision of the Code of Conduct for broadcasters under which the complaint was lodged was unconstitutional in that it offended the provisions of Section 16 of the Constitution, which deals with the right to freedom of expression. The Constitutional Court held that in adjudicating the complaint the BMCC had to use the text contained in Section 16(2) of the Constitution, which deals with unprotected speech.

The Broadcasting Monitoring and Complaints Committee (BMCC) subsequently made the necessary arrangements for the adjudication of the complaint, which was scheduled to be heard from 13 to 17 March 2006. However, Radio 786 instituted a constitutional attack against various provisions of the IBA Act, the ICASA Act and the BMCC Processes and Procedures in the Witwatersrand Local Division of the High Court. On 5 February 2007, the matter came before Van Oosten J for argument and it was held that the provisions referred to above were indeed inconsistent with the Constitution. The matter was referred to the Constitutional Court to confirm the said order. The Authority has now filed a notice of appeal, as well as an application for leave to appeal.

### **Islamic Unity Convention v ICASA and South African Jewish Board of deputies ('Urgent Application')**

Subsequent to the BMCC arranging the hearing into the complaint lodged by the SAJBOD in June 1998, which was scheduled to be heard from 13-17 March 2006, Radio 786 launched an urgent application at the Witwatersrand Local Division to have the hearing postponed, primarily

because there was a pending constitutional attack on the provisions of the IBA Act under which the complaint was to be adjudicated upon, which meant that Radio 786 was not in a position to defend itself against the complaint as it did not have the 'charge sheet' or allegation of contravention.

On 9 March 2006, the court dismissed the urgent application with costs and directed that the BMCC hearing should proceed as previously scheduled. The Convention has applied for leave to appeal against the decision. The BMCC proceeded with the hearing as scheduled, but the Convention 'walked out' of the proceedings and the complaint was adjudicated in absentia. The BMCC found the Islamic Unity Convention guilty and recommended that Radio 786 desist from any further non-compliance with the relevant Act, and that it further publish the ruling and judgment of the BMCC in the manner detailed in the order. Radio 786 has instituted review proceedings against both the conviction and the sentence and the Authority has filed its opposing papers.

### **Goodnews Community Radio vs. ICASA and Izwi Lomzantsi**

Goodnews Community Radio's review application against ICASA's decision not to grant it a four-year community sound broadcasting licence at the Durban Local and Coastal Division of the High Court was dismissed with costs. Goodnews Radio then applied for and was granted leave to appeal to the full bench of the Natal Provincial Division held at Pietermaritzburg. The appeal was also dismissed with costs. Goodnews filed a notice for condonation with the Supreme Court of Appeal (SCA), which was dismissed with costs.

### **Radio Rippel vs. ICASA**

Radio Rippel instituted review proceedings against ICASA's decision to refuse the granting of a four-year community sound broadcasting licence at the Transvaal Provincial Division. Radio Rippel is yet to file its replying affidavits, whereafter the matter will be set down for hearing.

### **Radio Pretoria vs. ICASA**

Radio Pretoria instituted review proceedings against the

Authority's decision to refuse the granting of a four-year community sound broadcasting licence. The High Court dismissed the Radio Pretoria application in favour of the Authority. Radio Pretoria then lodged an application for an appeal, which is pending before the SCA.

### **BAY FM vs. ICASA**

Bay FM instituted review proceedings at the Witwatersrand Local Division against ICASA's decision not to grant it a four-year community sound broadcasting licence and also applied for interim relief to allow it to continue with its broadcasting activities pending the hearing of the review application. The parties reached an out-of-court settlement with Bay FM tendering the Authority's legal costs.

### **MTN vs. ICASA and CELL C**

MTN launched review proceedings in the Witwatersrand Local Division against the Authority's decisions in respect of Cell C's roll-out plans for its community service telephones in areas that it deemed not to be under-serviced as they were situated mainly in urban areas. The Authority indicated that it would abide by the court's decision and filed the record of the proceedings sought to be reviewed. The court set aside the Authority's decision in this regard and referred the matter back for the Authority's reconsideration.

### **Vodacom (PTY) Limited vs. ICASA and Another**

Vodacom instituted proceedings to request that the regulations that, amongst other things, declared it to be a major operator, be set aside as being invalid. The Authority took a decision to oppose the application on the basis that it had been brought prematurely as the Authority had not yet taken any decision about declaring the applicant a major operator. Vodacom proposed that the review be withdrawn in view of the pending promulgation of the Electronic Communications Act, which would render the review academic. The parties are exploring the possibility of an out-of-court settlement.

### **E K Moyo vs. Karabo Telecoms and six Others**

This application was launched by Mr Moyo, who is challenging the validity of his removal as a director of Karabo Telecoms, a USAL licensee. The Authority is cited as an interested party and no relief is sought against it.

### **Imar Trader 25 cc t/a Siza Security vs. ICASA and another**

The applicant approached the Natal Provincial Division with an urgent request for an order authorizing the Authority to adhere to the inspection warrant issued to it by the Magistrate, Pietermaritzburg, on 10 March 2006. The parties entered into out-of-court settlement negotiations. By agreement the applicant was to provide access to equipment and documents to the Authority.

### **Len Marshall vs. ICASA**

Mr Marshall instituted action for the recovery of a purported amount of R95 982,00 by which the Authority had allegedly been overpaid for licence fees. ICASA is defending the matter. The matter was set down for trial on 5 December 2005, but was postponed at the request of Mr Marshall. Owing to the length of time that has elapsed without plaintiff taking any further steps regarding the matter, we have proposed that he withdraw the action with each party paying its own costs.

### **S vs. AEROSAT cc**

The Port Elizabeth regional office laid criminal charges against Aerosat (the accused) immediately after the finalization of the civil court action that was instituted by Aerosat against the Authority. The main charge is that of operating without a valid licence, and the secondary charge relates to possession of radio apparatus without permission from the Authority. On 29 August 2006, the case was removed from the roll of the Port Elizabeth Regional Court to allow the State to work on its charge sheet and to secure a Section 212 affidavit from the CIPRO office. The Authority is assisting the prosecuting authorities in this regard.

## Nothnagel v RAF and ICASA

ICASA was served with a third party notice by the Road Accident Fund, in accordance with the Uniform Rules of the Free State High Court, wherein the spouse of a late ICASA employee sought to join ICASA in an action to seek compensation for loss of support as a result of a motor vehicle accident in which her husband died. The matter has been deferred to ICASA's insurers at the time of the accident, who are opposing the matter. A trial date has not yet been allocated.

## ICASA v Imvo Technologies

The Authority launched an application in the High Court (DCLD) to have its decision of awarding a PABX tender to Imvo Technologies set aside on the basis of non-compliance with several procedural aspects. The two parties reached an out-of-court settlement concerning the installation of the PABX system at ICASA.

## ICASA v Roswika Digital Solution

ICASA instituted court proceedings to set aside a contract it entered into for multifunction photocopying devices. The matter is awaiting the allocation of a hearing date by the Registrar of the Witwatersrand Local Division.

## CONSUMER PROTECTION

The Consumer Protection department is responsible for addressing issues affecting the consumers of communication services. The department consists of two units, namely Public Awareness and Education, and Complaints Handling.

### Public Awareness and Education Unit

The Public Awareness and Education Unit conducts a range of community-awareness programmes on a continuous basis. The consumer-awareness programmes focus on, inter alia, universal service and access, consumer rights, current developments in the industry, services available to people with disabilities, competition and choice.

The Unit collaborates with other related agencies to address consumer affairs issues.

In the year under review, the department embarked on the following public awareness campaigns:

### Mobile Number Portability

Following the launch of Mobile Number Portability, the Consumer Protection department embarked on a public awareness drive to educate consumers about the new regulation. Road shows were conducted, and pamphlets and posters - printed in all the eleven official languages - were distributed in public places such as post offices and libraries across the country.

### E-rate

The department also embarked on a road-show to assess the implementation of the e-rate in public schools in Limpopo Province, the Eastern Cape and the Northern Cape. The e-rate project involves the charging of lower rates to public schools for Internet access. The e-rate project arose from the imposition of universal service obligations on telecommunications operators.

### Other consumer-related challenges

Other road shows were organised as part of the campaign to increase public awareness and educate consumers to determine the quality of service that consumers receive in respect of:

- Inferior equipment
- Unfair or deceiving advertising
- Unfavourable contract terms (guarantees and warranties)
- Poor customer service
- Billing statements
- Installation
- Lack of understanding on tariffs
- Infringement of privacy.

## Complaints Handling Unit

The Complaints Handling Unit receives complaints from consumers regarding the quality of service they receive from service providers. Some complaints are resolved internally, while others require escalation to service providers to arrive at solutions.

The statistics and tables below provide a breakdown of complaints received, and the various categories into which they fall.

The total number of complaints received during this period was 924, of which 679 were closed and 245 are pending.

## Distribution of Complaints Across Categories:

TABLE 1.A:	
<i>Telkom Complaints:</i>	
1. Installation	48
2. Line transfer	13
3. Line suspension	06
4. Fault reporting (POTS)	112
5. Faulty customer premises equipment	00
6. Telkom Internet	04
7. Terms and Conditions of Service Provision	01
8. Directory services	02
<b>TOTAL =</b>	<b>186</b>

TABLE 1.B:	
<i>Compliance to ADSL Regulations:</i>	
1. ADSL Installation	70
2. ADSL Fault reporting & clearance rates	40
3. ADSL Tariffs	14
4. ADSL Market competition	03
5. ADSL Local bandwidth capping	00
6. ADSL Broadband speed	02
7. ADSL Port prioritization	00
8. ADSL Contention ratios	00
9. ADSL Service Level Agreement	00
10. Enquiries	05
<b>TOTAL =</b>	<b>168</b>

TABLE 1.C:	
<i>Terms &amp; Conditions of Service Provision (Contract):</i>	
	<b>14</b>
1. Entry clauses and upgrade	13
2. Exit clauses/terms	21
3. Warranties/Guarantees	00
4. Cooling-off period	00
5. Call limit/Barring facility	05
6. Non-compliance to number portability	44
7. Number retention	02
8. Blacklisting	15
9. Unsolicited merchandise	09
10. Unsolicited messages (SMS)	04
11. Customer confidentiality	06
12. Loss of airtime purchased (window period)	00
13. Faulty handset	35
14. Network locking	01
<b>TOTAL =</b>	<b>169</b>

TABLE 1.E:	
<i>All Mobile Operators:</i>	
1. Network coverage (service availability)	23
2. Call quality	00
3. Drop call	01
4. Community Service Telephones (CSTs)	13
5. Mobile Internet access (3G)	08
6. Type approval	02
<b>TOTAL =</b>	<b>47</b>

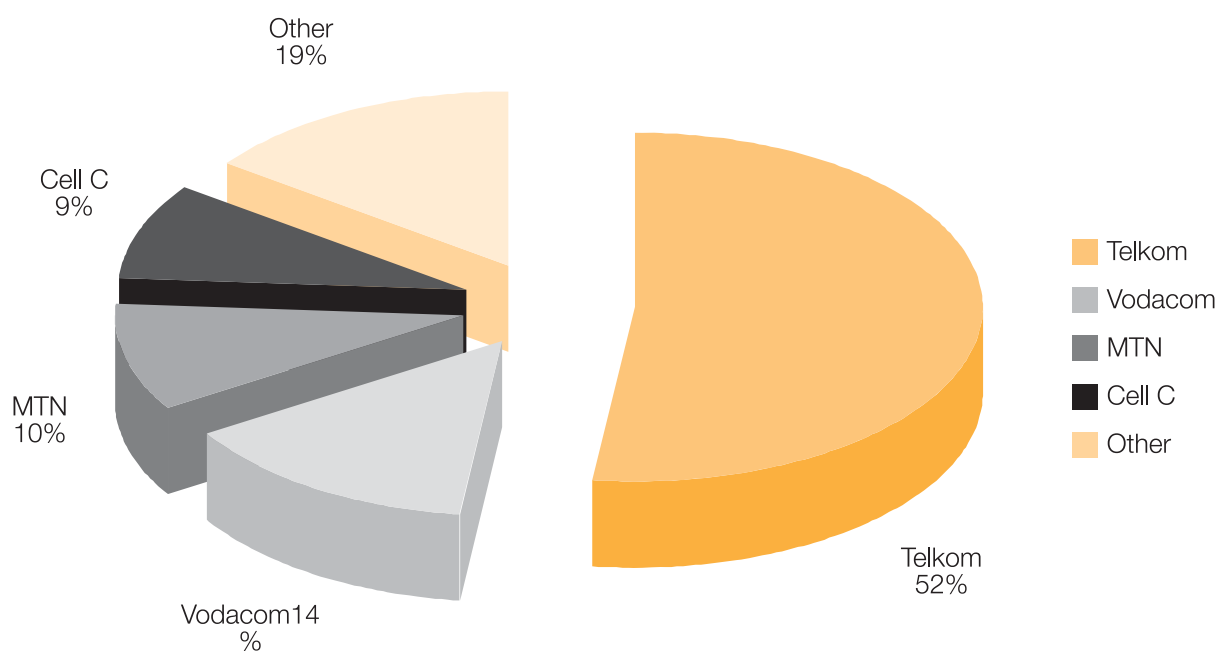
TABLE 1.D:	
<i>Categories applicable to all:</i>	
1. Billing	161
2. Operator response time to operator-assisted calls (ORT to OAC)	02
3. Service to people with disabilities	02
4. Misleading advertisements	06
5. General customer treatment (Complaints handling and resolution mechanisms)	19
6. Tariffs	19
7. Competition	04
<b>TOTAL =</b>	<b>213</b>

TABLE 1.F:	46
<i>Other:</i>	
1. Mobile public pay phones	06
2. Enquiry/Comment	55
3. Comment/Enquiry, SIM swap, beyond jurisdiction, insurance, fraud, grey imports, software failures, etc.	34
<b>TOTAL</b>	<b>141</b>

TABLE 2:

**Abridged Tabular Representation of Main Complaints Categories:**

No.	Complaints categories (consolidation of a long list)	No.	%
1.	Telkom service provision	186	20%
2.	Telkom ADSL	168	18%
3.	Mobile operators' Terms and Conditions of Service Provision	169	19%
5.	Complaints against all mobiles combined (e.g. Network coverage, call quality, drop call and 3G)	47	5%
6.	Billing	161	17%
7.	OTHER (141+ Table 1.D – Billing)	193	21%
8.	<b>TOTAL</b>	<b>924</b>	<b>100%</b>



## Other Complaints Categories:

No.	Complaints categories (consolidation of a long list)	No.	%
1.	Telkom line installation	48	5%
2.	Telkom fault reports	112	12%
3.	ADSL installation	70	8%
4.	ADSL fault reports	40	4%
5.	Network coverage	23	3%
6.	Mobile Operators' Terms & Conditions of Service Provision	169	19%
7.	Compliance to MNP	44	5%
8.	Tariffs	19	2%
9.	General customer treatment	19	2%
5.	Complaints against all mobiles combined (e.g. Network coverage, call quality, drop call and 3G)	47	5%
6.	Billing	161	17%

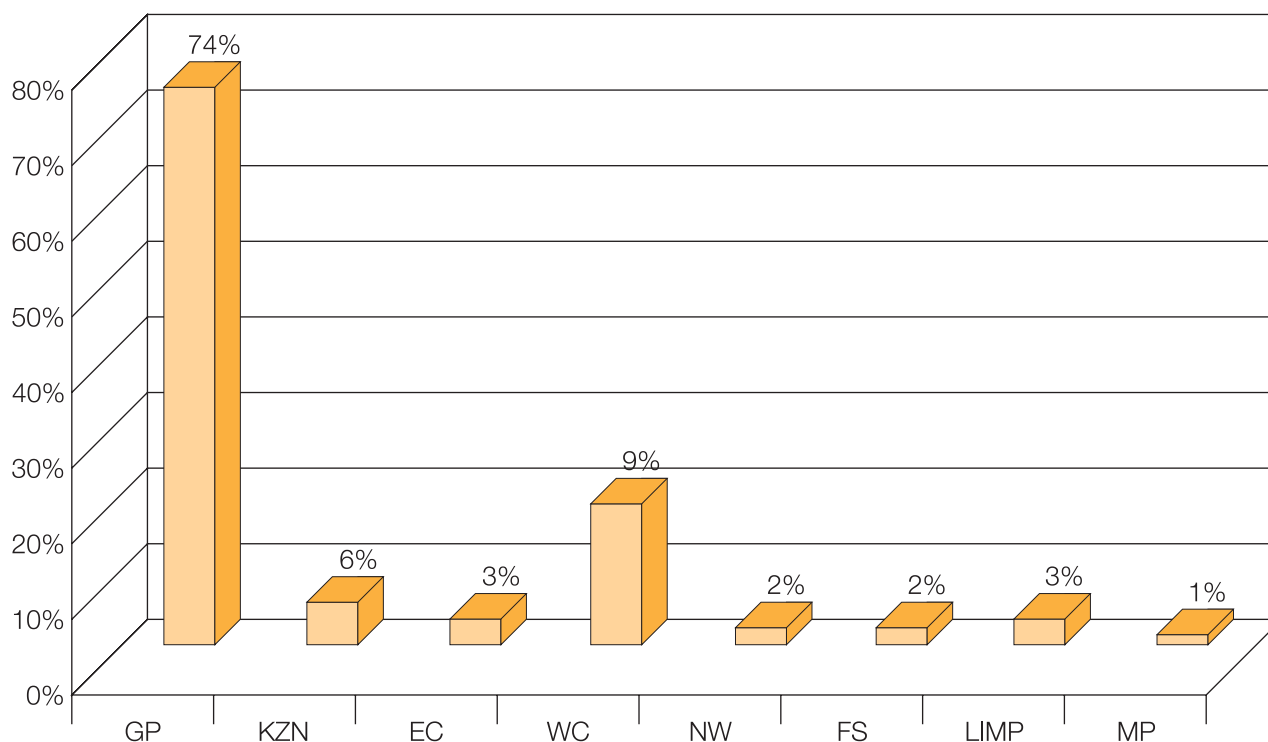




TABLE 3:

**Distribution of Complaints Amongst Different Licensees:**

Telkom	Vodacom	MTN	Cell C	Other
480	131	96	79	138
52%	14%	10%	9%	15%

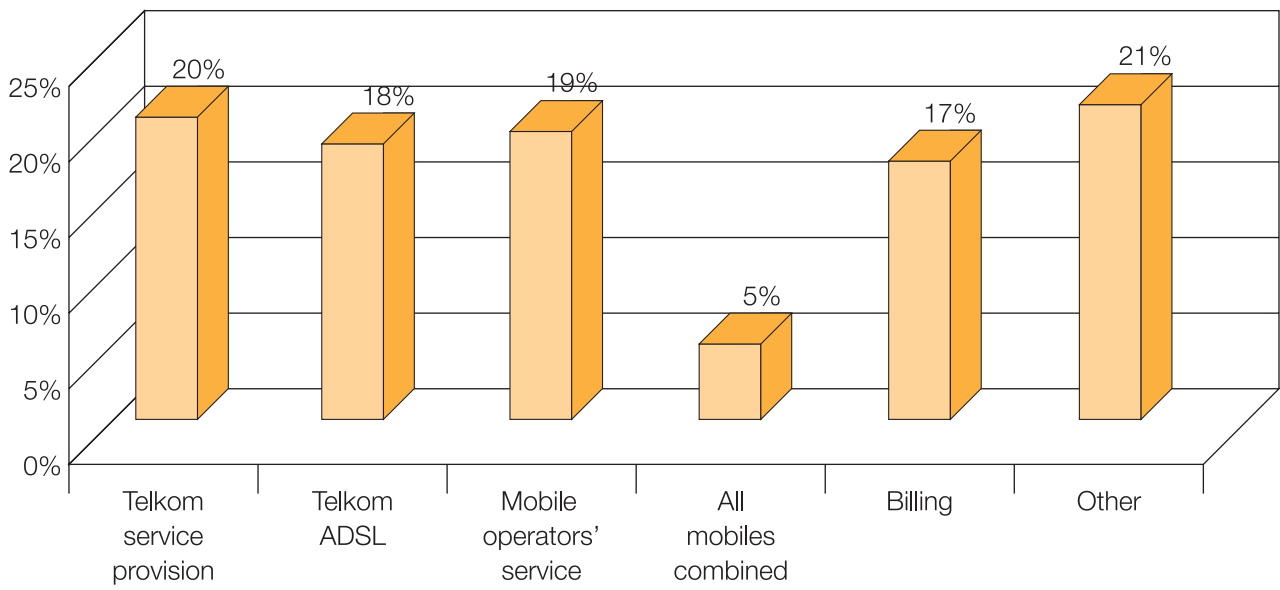
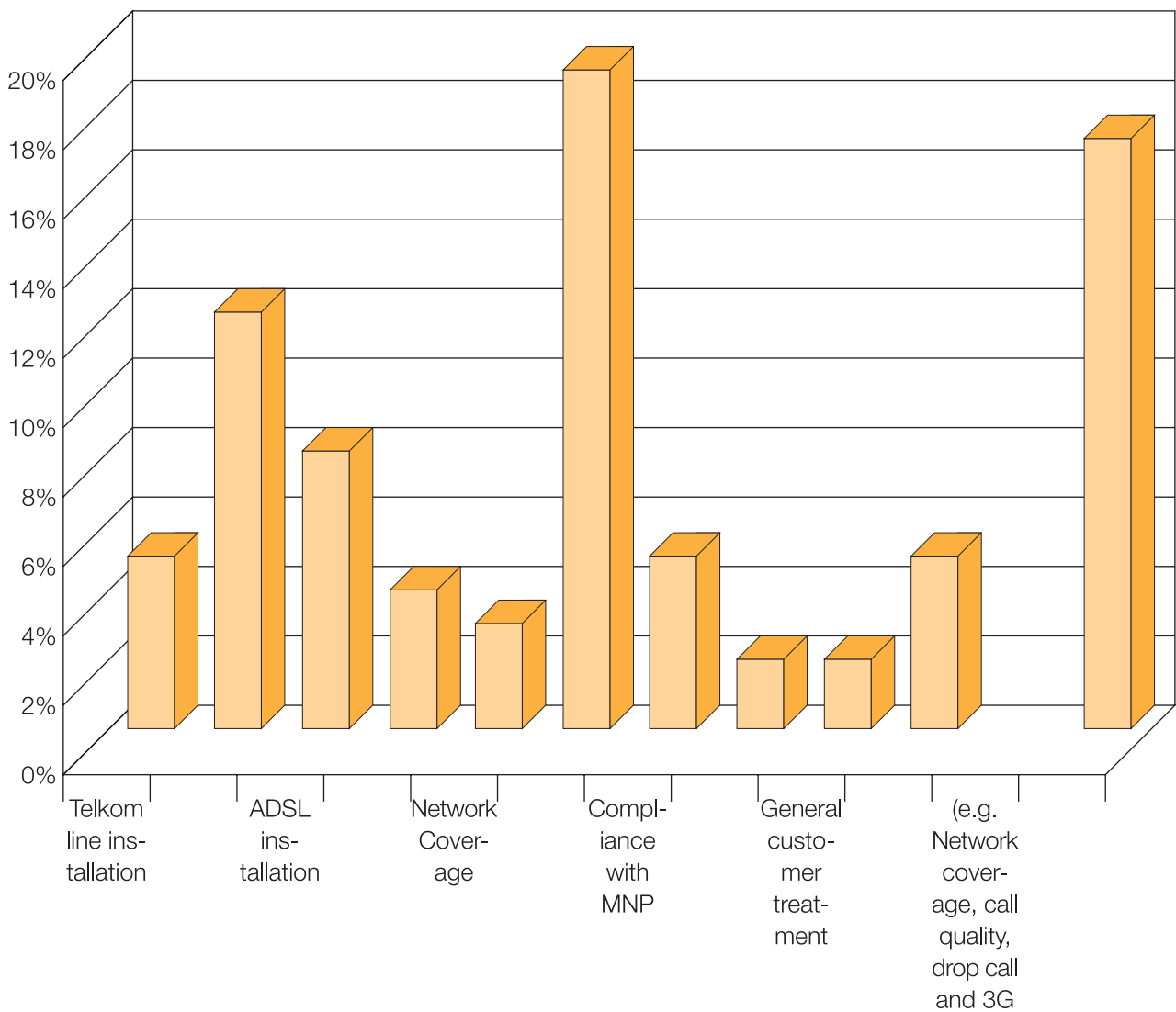


TABLE 4:

Distribution of Complaints Across Provinces:

GP	KZN	EC	WC	NW	FS	Limp	MP
681	53	26	87	23	15	28	11
74%	6%	3%	9%	2%	2%	3%	1%



## INTERNATIONAL RELATIONS

The International Relations Unit coordinates the participation and representation of ICASA in international forums that relate to the regulation of the communications industry. At the core of this responsibility is the hosting of international study visits, and the provision of logistical support for ICASA's councillors and management members attending international conferences and undertaking study visits.

ICASA's international participation in industry events takes place at three levels, namely the Southern African (CRASA), continental (RIARC), and world-wide (e.g. the International Telecommunications Union) levels.

During the reporting year, the Authority participated in the following international/regional activities:

### Communications Regulatory Authority of Southern Africa (CRASA)

Following the restructuring and renaming of the Telecommunications Regulatory Authority of Southern Africa, now known as the Communications Regulatory Authority of South Africa, ICASA continues to play an important role in the activities of the regional coordinating body of regulators of Southern Africa.

The Authority took part in processes to develop the strategic goals of the new body, such as the formulating of the vision and mission, and the alignment of its activities to incorporate the regulation of converging technologies and services in the communications sector.

The Authority participated in the following CRASA activities:

- CRASA's Strategic Business Plan Meeting in South Africa, 12–14 June 2006
- Frequency Plan Committee meeting in Malawi, 25–27 September 2006
- Legal and Policy Committee in Mauritius, 02–05 October 2006

- Numbering and Standards Committee, 11–12 December 2006. This Committee
  - deliberated on the establishment of the Numbering Operational Group (NOG);
  - reviewed the progress of the harmonisation process of Numbering plans in the SADC region;
  - discussed the appointment of an external consultant to conduct a research study on E-numbering for the region (E-NUM);
  - discussed the receipt and analysis of the research findings on the CRASA Harmonization Approach for Standards and Type Approval; and
  - reviewed licensing guidelines.

### International Telecommunications Union (ITU)

The following meetings were attended:

- ITU Council 2006, Geneva, 18–29 April 2006
- 2<sup>nd</sup> session of the Regional Radio-communications Conference (RRC 06): Geneva
- ITU Plenipotentiary Conference (PP – 06), Turkey: 06–24 November 2006
- ITU Telecom World 2006, Hong Kong, 2–8 December 2006.

### African Communication Regulatory Authority Network (RIARC/ACRAN)

- ACRAN Board meeting, Tanzania: 07–10 May 06
- African Children and African Media conference: 15–17 June Ohio.

### International Institute of Communications (IIC)

- IIC Forum, London, 10–14 April 2006
- International Regulators Forum, Malaysian, 16–17 September 2006;
- International Institute of Communications 37<sup>th</sup> Annual Conference Malaysia, 18–19 September 2006

## Southern African Broadcasting Association (SABA)

- Attended SABA Conference on Broadcasting Reforms, Mozambique, 13–16 August 2006.

## Bilaterals

### Mozambique

ICASA's technical team assisted the Communications Regulator of Mozambique (INCM) in tracing illegal operators/interference signals that were emanating from the Maputo area, causing interference with the Transtel CDMA system in the Komatipoort and Nelspruit areas. The technical tests were conducted from 29 January–2 February 2007.

### ICASA hosted the following delegations on fact-finding missions:

- The Gambia Public Utilities Regulatory Authority (PURA), 2–5 May 2006
- Institutional capacity-building project for Sudan, 10–14 July 2006
- Angolan delegation, 18–21 July 2006
- Chinese delegation on 27 May–03 June 2006, and again on 13 October 2006.

### Other Meetings

- Telecommunications Equipment Standards meetings: 11–20 September 2006. Sweden
- Number Portability 2006 Conference, 25–28 September
- Eastern Africa Submarine Cable (EASSy) meeting, Kenya, 4–6 July 2006
- Signing of Protocol by ICT Ministers of Eastern and Southern Africa, Rwanda. 27–29 August 2006;
- Telecommunications Policy and Research Conference (TPRC) 29 September – 1 October 2006;
- Asia Media Summit, 26 May–2 June 2006, Kuala Lumpur, Malaysia

- ICASA hosted the CTO digital broadcasting switch-over conference, 30 Jan - 01 Feb 2007, in Sandton
- ICASA co-hosted the 5<sup>th</sup> World Summit on Media for Children, 23 -28 March 2007
- Global System for Mobile Communications Seminar for Regulators and ICT e-Africa conference and tutorial, Kenya, 15– 21 May 2006
- 9<sup>th</sup> Mobile Regulation & Competition Law 2006, Belgium, 13–14 June 2006.

### Capacity building

ICASA Councillors, managers/staff attended following courses:

- Regulatory Master class, UK, 23– 29 April 2006
- 19<sup>th</sup> International training programme in utility regulation and strategy, US, 19–30 June 2006
- 3G Broadband Wireless Access, 27 July – 6 August 2006, USA
- WiMAX /WiFi technologies training program, Canada, 31 July–4 August 2006
- Corporate Planning in Telecommunications, Canada, 14–18 August 2006
- 21<sup>st</sup> International Training Program in Utility Regulation and Strategy, US, 8– 19 January 2007
- Telecom Regulation Course: Strategies to achieve connectivity and convergence, 25 February–3 March 2007.

## COMMUNICATIONS

The Corporate Communications Department is responsible for the internal and external communication environment of the Authority. These responsibilities include media and stakeholder liaison, industry exhibitions and internal events, as well as responding to general enquiries from operators and the public.

## Media Liaison

For the year under review, the Communications Department was involved in the following activities:

- Responding to media enquiries and arranging interviews with mainstream and industry-based media and publications for Councillors and Project Managers
- Issuing Press Releases about the Authority's regulatory activities
- Conducting media briefings to selected journalist on pertinent regulatory projects
- Placing advertorials in select industry and business publications about ICASA's regulatory activities:
  - o BMI-Technology 2006 Communications Handbook
  - o 2007 Commonwealth Yearbook
  - o Leadership, September 2006
  - o Enterprise, October 2006
- Placing corporate advertisements in the mainstream newspapers about
  - o the World Telecommunications and Information Society Day
  - o the enactment of the Electronic Communications Act and the timeframes for its implementation by the Authority
  - o the incorporation of the of the postal division (the former Postal Regulator) into ICASA.

## Stakeholder Relations

The Communications Department manages stakeholder relations by providing all affected parties and operators with information about the activities of the regulator, and maintains a database of contact details for this purpose.

The Department participated in the following stakeholder events and activities:

- Hosted a Stakeholder's Meeting / Brief to the Industry that coincided with the farewell function of Councillors Lumko Mtimde, Mamodupi Mohlala and Nadia Bulbulia
- Made presentation to international delegation visiting ICASA on fact-finding missions
- Received and re-routed general enquiries from operators and the public to ICASA's line functions for response and clarifications
- Up-dated the website about the Authority's regulatory developments, and created a dedicated webpage for the Electronic Communications Act regulations and related documents
- Created a web-page for the postal division
- Branded ICASA's public hearings and distributed promotional material and other information material
- Co-ordinated the photographing of all ICASA's internal and external events for purpose of developing a Photographic Gallery
- Co-ordinated the production and distribution of the 2006 Annual Report
- Profiled ICASA's new Council in mainstream newspapers.

## Industry Exhibitions

The Communications Department represented ICASA in the following industry exhibitions and events, where promotional and information material was distributed:

- Satcom Africa 2007
- Futorex
- Provincial Workshops for Children and Media Summit
- Children and Media Summit
- Science and Technology Week

## Internal Events

The Communications department hosted the following internal events:

- Take Girl Child to Work
- Youth Day
- Womens Day
- Casual Day
- Heritage Day
- Family Day
- 16 Days of Activism Against Child and Woman Abuse
- Year-end Function
- Welcoming Postal Division staff
- Printed and distributed corporate calendars
- Printed and distributed pocket editions of the Electronic Communications Act
- Produced and distributed on-line internal newsletters
- Facilitated internal staff meetings and maintained Suggestion Boxes