

The Telecommunications Division consists of two departments, namely: Policy Analysis and Development, as well as Licensing, Enforcement and Numbering Administration. The responsibility of this division, *inter alia*, is to: review the inter-corporate activities of the telecommunications service licensees and their regulatory accounting practices; assess the rates, terms and conditions of licensed telecommunications services; oversee the evolution of competition within the regulated telecommunication services; issue licences to telecommunication service providers and monitor and ensure compliance with the Telecommunications Act, Regulations and licence conditions by telecommunications service providers.

## Rule Making

### *Policy Analysis and Development*

The Policy Analysis and Development Department is responsible for all regulatory policy initiatives undertaken by the Telecommunications Division of ICASA. During the year under review this department was primarily responsible for reviewing and updating the following:

- Chart of Accounts and Cost Allocation Manual (COA/CAM) for Mobile Communications Services licensees;
- Interconnection Guidelines;
- Facilities Leasing Guidelines;
- Review of Fees and Charges for Public Switched Telecommunication Services (PSTs) (Rate Regime);
- Number Portability Regulations;
- Telecommunications Tariffs;
- Universal Service Fund and Licence fees; and
- Interconnection Agreements.

### *COA/CAM for Mobile Operators Volume 2*



*Chairperson Mashile addresses the Closing of the Numbering Plan press conference*

The Authority undertook a review of COA/CAM for mobile operators, as promulgated by the Minister in July 2004.

COA/CAM is a reporting framework by telecommunications operators that provides the underlying costs of providing a particular service, such as a local or national long-distance call. Such costs can then be compared to the charges for the service levied by the operator and a determination made as to the reasonableness of the charges, taking into account the relevant costs. In this way, the Authority ensures that customers are not overcharged for services.

In March 2005, the Authority started the process of engaging the mobile operators to comply with COA/CAM Volume 2 regulations. The reporting requirements on COA/CAM Volume 2 are currently only applicable to MTN and Vodacom. Cell C, as a late entrant, has been granted an extension of two years for submitting its COA/CAM. Consultation with Cell C will resume in September 2006 as the two year waiver comes to an end at that time. Mobile operators (MTN and Vodacom) have submitted draft versions of their procedures manual which the Authority has approved. MTN and Vodacom are expected to file with the Authority Current Cost Accounting (CCA) Audited Regulatory Financial Statements in September 2006.

### *(COA/CAM) for Public Switched Telecommunication Service (PSTs) Operators Volume 3*

COA/CAM for PSTS operators was finalised in July 2002, and Telkom submitted its first set of audited Regulatory financial statements in September 2004. The said financial statements were prepared on the historic cost basis. In terms of the existing regulations, Telkom is expected to submit to the Authority, six months after its financial year end, the audited Regulatory financial statements which are prepared on the Current Cost Accounting (CCA) and the Long Run Incremental Cost (LRIC) methodologies.

Telkom is therefore expected to submit LRIC regulatory financial statements by 30 September 2006.

With the application of COA/CAM regulations, ICASA will be equipped to determine the following:

- Ensure that operators do not exploit market power to earn excess monopoly profits;
- Ensure that operators do not engage in predatory pricing;
- Ensure that operators do not engage in anti-competitive cross-subsidisation;
- Ensure that operators do not price on an unduly discriminatory basis;
- Ensure that prices are cost orientated and sufficiently unbundled;
- Protect consumers by monitoring and approving tariffs and pricing regimes; and
- Monitor the financial status of operators.

## Fees and Charges for PSTS Services ('Rate Regime')

The Fees and Charges Regulations<sup>1</sup> provide the basis for the level of charges and fees; including monthly rental; local, national, long-distance and international call charges for services offered by Telkom. The Rate Regime Regulations allow for restrictions on price adjustment proposals by Telkom<sup>2</sup> and are necessary to ensure that consumers are not unduly burdened in markets where there is minimal or no competition.

Rate Regime utilises a price cap methodology, where the overall increase in a basket of services is restricted to inflation minus a productivity factor set at 3.5% for the period 2005-2008. The maximum single price movement allowed for any item in the basket is CPI + 5%. The Rate Regime Regulation is effective for a period of three years. The first review commenced in September 2005 and the next review will commence in September 2007. The current regulations have set the level of tariffs in respect of services offered by Telkom at an efficiency factor of 3.5% over a period of three years. Telkom will file its annual tariffs 30 business days before 1 August each year.

## Number Portability



Vodacom making a presentation during the Number Portability hearings

Number Portability affords telecommunications users the right to choose operators and to change location without losing their number. Ultimately this leads to the operator satisfying the telecommunications user's needs and an improved provision of cost effective services to the public by providers of telecommunications services. The Number Portability Regulation and Mobile Functional Specification Regulation have been finalised through the regulation-making process and were promulgated by the Minister in September 2005. The Authority is currently finalising the Mobile Order System Specification and Consumer Code of Practice in consultation with the Mobile Cellular Telecommunications Services (MCTS) licensees.

1. Government Gazette 22870, Notice 1248, of 26 November 2001 (Rate Regime Regulations)
2. The methodology used to restrict the increases is the price cap mechanism where the overall increase in a basket of services is restricted to inflation minus a productivity factor set at 3.5% for the period 2005-2008. The maximum single price movement allowed for any item in the basket is CPI + 5%.

The Number Portability Regulations require the introduction of mobile number portability by July 2006. At the request of mobile network operators, the implementation date for mobile number portability has been extended to 18 September 2006.

The licensing of the SNO to provide PSTS services has necessitated the commencement of the Fixed Line Block-Number Portability regulation-making process. The Authority published the draft functional specifications for PSTS in March 2006 to ensure implementation of fixed line number portability.

## Mobile Pricing



Mobile Pricing hearings chaired by Councillor Cohen

In July 2005, the Authority published a Discussion Document in respect of the appropriateness of prices generally levied by Mobile Cellular Telecommunications Service Providers on consumers. The objective of the Discussion Document was amongst others to assess whether Mobile Cellular Telecommunications Services prices are excessive and whether there is a need for ICASA to intervene. A Findings and Conclusions Document will be published by the end of September 2006.

## Enquiry into Handset Subsidies

In May 2005, the Authority published a Discussion Document on handset subsidies and the effect they have in the growth of the mobile market. The basis of the Discussion Document was to establish if handset subsidies were a potential barrier to consumers changing mobile operators. The Authority published the Findings and Conclusions Document in March 2006, the outcome of which was to develop draft regulations.

## Interconnection and Facilities Leasing Guidelines

The Authority undertook a process of consolidating the Interconnection and Facilities Leasing Guidelines. Consolidated guidelines were published for comment and hearings were held in March 2006. Due to the awaited proclamation of the Electronic Communications Act, these projects need to have a market study

completed before regulations may be formulated. During the year under review, the following interconnection agreements were filed and approved:

- **MTN and Vodacom Interconnection Amendment Agreement No. 4**

On 6 March 2006, MTN lodged Amendment No. 4 with the Authority in terms of section 43(2) of the Telecommunications Act (Act 103 of 1996) as amended. Amendment No. 4 deals with two issues, namely an insertion of Video Telephony Call in the definition section of the agreement and an interconnection rate for Video Telephony Calls. Video Telephony Calls constitute a new service. Interconnection rates will be applicable as of 1 May 2006 or any date that the parties to the agreement may agree to.

### Broad Based Black Economic Empowerment (BBBEE) Analysis of Telkom, Vodacom and MTN

ICASA is analysing the contribution of Telkom, Vodacom and MTN to black economic empowerment. The aim is to assess their compliance with the applicable BBBEE legislation.

### Market Intelligence and Market Study

ICASA intends to conduct market intelligence and market studies by gathering information on the telecommunications industry. The study will inform regulatory intervention in order to determine the Significant Market Power (SMP) status and subsequently impose applicable conditions.

## Tariff Evaluations

### Tariff Filing for Fixed and Mobile Operators

Nature of Filing	Operator				Filing and Approval	
	Telkom	Cell C	MTN	Vodacom	Filing Date	Approval Date
*Annual Tariff Filing						
Vol. 1: No 38	✓				21 Jul 2005	19 Aug 2005
Vol. 2: No 32	✓				21 Jul 2005	19 Aug 2005
Vol. 1: No 39	✓				30 Sep 2005	20 Oct 2005
Vol. 1: No 40	✓				08 Dec 2005	02 Jan 2006
Vol. 2: No 33	✓				17 Mar 2005	10 Apr 2005
GPRS Data & SMS Services Tariff Plan Version 7.6				✓	07 Jul 2005	15 Jul 2005
Data Messenger				✓	17 Jul 2005	25 Jul 2005
Data Messenger and Yebo 5 Tariff Plan Amendment				✓	03 Aug 2005	11 Aug 2005
Corporate Direct				✓	04 Aug 2005	12 Aug 2005
Vodacom Annual Tariff Plan				✓	01 Sep 2005	09 Sep 2005
New Tariff Plans: 3G Two, 3G Three, 3G Five and 3G Ten				✓	13 Sep 2005	21 Sep 2005
3G One and GPRS Bolt-on Tariff Plan Amendment				✓	13 Sep 2005	21 Sep 2005
Top-up Bundle				✓	05 Oct 2005	13 Oct 2005
Amendment to SMS out of Bundle Rates				✓	05 Oct 2005	13 Oct 2005
Corporate 50 000				✓	04 Oct 2005	12 Oct 2005
Amendment of GPRS Bolt-on				✓	04 Oct 2005	12 Oct 2005
International Call Zoning Schedule for Prepaid and Top-up Packages				✓	17 Oct 2005	25 Oct 2005
Introduction of International Terminating MMS Tariff				✓	17 Oct 2005	25 Oct 2005
On-net Video Call Tariffs				✓	17 Oct 2005	25 Oct 2005
Introduction of Happy-Hours to 3G 300 MB				✓	17 Oct 2005	25 Oct 2005
Data-Roaming-Vodafone Live: Mobile TV Tariff Plan				✓	24 Nov 2005	01 Dec 2005
Off-Net Video Calls Tariff				✓	17 Mar 2006	25 Mar 2006

<b>Tariff Filing for Fixed and Mobile Operators</b>						
<b>Nature of Filing</b>	<b>Operator</b>				<b>Filing and Approval</b>	
*Annual Tariff Filing	Telkom	Cell C	MTN	Vodacom	Filing Date	Approval Date
3G HSDPA Bolt-on and Combi				✓	28 Mar 2005	04 Apr 2006
Youth Pack Wow Wow Prepaid Tariff Plan			✓		04-Aug 2005	11 Aug 2005
MTN Annual Tariff Plans			✓		13 Sep 2005	20 Sep 2005
MTN Tariff Video Calling between MTN and Vodacom			✓		27 Sep 2005	05 Oct 2005
New Plans: My Choice 150 Top-up, My Choice 300 Top-up and ProData Tariff Plan			✓		19 Dec 2005	03 Jan 2006
Cell C Amendment to Post-paid and Prepaid Plans		✓			28 Feb 2006	07 Mar 2006

<b>Tariff Filing for Under-Serviced Area Licences (USALs) and Data Telecommunications Licensees</b>		
<b>Nature of Filing</b>	<b>Filing Date</b>	<b>Approval Date</b>
Karabotel Prepaid Tariff Plan	02 May 2005	09 May 2005
Ilizwi Prepaid and Post Paid Tariff Plan	01 Jun 2005	08 Jun 2005
Kingdom Communications Prepaid Tariff Plan	22 Jun 2005	29 Jun 2005
Thinta Thinta Telecoms Prepaid Tariff Plan	04 Jul 2005	12 Jul 2005
Swiftnet Tariff Plan	31 Aug 2005	07 Sep 2005
Btel Walk the Talk Per Second Billing Prepaid Tariff Plans	27 Sep 2005	03 Oct 2005
Amatole New National Roaming Rate	21 Oct 2005	29 Oct 2005
WBS Igo and O-Go Exec	27 Oct 2005	03 Nov 2005
Kingdom Communications Prepaid Tariff Plans	20 Feb 2006	27 Feb 2006

## Licensing, Enforcement and Numbering Administration

The primary function of the Licensing, Enforcement and Numbering Administration (LENA) Department is to analyse and process applications for telecommunications service licences; monitor compliance of licensees and non-licensees against applicable regulations, legislation and their respective telecommunications service licence conditions, namely payment of licence fees and delivery on universal service obligations and administer the numbering plan to ensure fair and efficient use of telecommunications numbers for present and future generations.

During the period under review, ICASA managed a number of licensing, enforcement and numbering administration activities. (See Appendix A) Highlights included the following:

### *Second National Operator (SNO)*

The Telecommunications Act makes provision for the granting and issuing of a licence to the SNO to provide PSTS.

The Minister of Communications granted the SNO a PSTS licence in September 2004. The integration of the SNO entity was, however completed in August 2005, comprising of Communitel, Two Consortiums, Eskom Enterprises, Transtel, Nexus Connection and TATA Communications. It was only in August 2005 that ICASA was required to proceed with the issuing of the PSTS licence to the SNO. The terms and conditions of the SNO licence were negotiated between ICASA and the SNO. On 9 December 2005, the SNO was issued with a PSTS licence.

The SNO continues to interact with the Authority on, amongst others, issues relating to the Frequency Spectrum Bands and application for numbering. The SNO has also been in consultation with ICASA with regard to the commencement date of its operations.



Second National Operator Licence hand over

### Telkom Licence Amendments

The Authority embarked on a licence amendment process in terms of the Telecommunications Act, in relation to the PSTS licence held by Telkom. Telkom also applied for access to the 1800 MHz Frequency Spectrum Bands. It is envisaged that these amendment processes will be undertaken simultaneously.

### Value Added Network Services (VANS)

In September 2004, the Minister of Communications promulgated Ministerial Determinations that changed the regulatory framework for VANS licensees. In line therewith, ICASA proposed a new regulatory framework for VANS and conducted public hearings in this regard. As a result of the Ministerial Determination, VANS are able to provide voice services, interconnect with other telecommunications services licensees, assign or sub-let telecommunications facilities and they also have a choice regarding whom they may obtain such facilities from. The Authority has, to date, issued 331 VANS licences.

### Private Telecommunications Network (PTN)

The authority has, to date, issued 41 PTN licences.

### Under-Served Area Licences (USALs)



USALs Applications Submissions

It is the aim of the government of South Africa to improve the lives of people living in under-served areas by enhancing their access to telecommunications services and creating job opportunities in these areas. This objective was enacted in section 40A of the Telecommunications Amendment Act of 2001. This section provided for a new category of telecommunications licence called Under-Served Area Licences (USALs).

The Minister of Communications declared 27 areas as under-served in a government gazette published on 18 December 2001. These are areas defined in the legislation as having teledensities of less than 5%. The licences are aimed at providing services in accordance with the provisions of the Telecommunications Act which requires that the USAL shall provide telecommunications services, including Voice over Internet Protocol (VoIP), fixed mobile services, public pay telephones and long distance calls to be transported through the trunk networks of any operators licensed to carry international traffic.



Councillors Mohlala and Zokwe during a USAL hearing

In the first phase of licensing, the following seven entities were awarded licences to service these under-served areas:

1. Bokone Telecomms (Pty) Ltd – Capricorn District – Limpopo Province;
2. Kingdom Communications (Pty) Ltd – Zululand District – KwaZulu-Natal Province;
3. Thinta Thinta Telecommunications (Pty) Ltd – Ugu District – KwaZulu-Natal Province;
4. Ilizwi Telecommunications (Pty) Ltd- OR Tambo District – Eastern Cape Province;
5. Karabotel (Pty) Ltd – Central District – Northwest Province;
6. Bokamoso Consortium (Pty) Ltd – Lejweleputswa District – Free State Province; and
7. Amatole Telecommunications (Pty) Ltd – Amatole District – Eastern Cape.

In the second phase, the Minister of Communications published an Invitation to Apply (ITA), in January 2005. The ITA listed 14 districts where applications were invited. In April 2005 the Authority

received a total of 42 applications, and public hearings were conducted in the 14 areas. These hearings were conducted until the end of March 2006.

In February 2006, the Minister published another ITA for the third phase of the USAL licensing process as per the determinations made in 2001. The closing date for submissions of applications was 28 April 2006.

### New Numbering Plan

In terms of section 89 of the Telecommunications Act, the Authority developed a Numbering Plan Regulation which was promulgated by the Minister on 15 May 2006. The draft Numbering Plan was revised in order to reflect both the existing and future South African Numbering Framework. A further consideration was the licensing of the SNO, USALs, and VANS for providing VolP. The Authority also noted the need for number relief mechanisms, and therefore the Numbering Plan will be geared to meet these numbering requirements.



Chairperson Mashile during the Numbering Plan press conference

The key benefits of the Numbering Plan are that it is neutral, non discriminatory and clearly structured. It assists in identifying various number ranges for specific telecommunication services. The benefit of the implementation of this Numbering Plan is that the Authority will be able to reserve the number ranges not in use for future growth and thereby accommodate new service demands. A proper allocation and numbering procedure, commonly referred to as the Numbering Convention is included to allow for the efficient use of numbers and the effective management of numbering capacity for the South African telecommunications industry.

### Central Number Database (CNDB)

The Authority has installed a CNDB. This database houses all the numbering data applicable to the South African telecommunications industry. The objectives of the database are to:

- Manage and administer the numbering spectrum;

- Allow and enable the telecommunications industry to interact with ICASA on number related matters more effectively;
- Create a transparent numbering environment by publishing it on the ICASA website; and
- Produce Number Allocation certificates and Number Withdrawal certificates.

### Access to the 1800 MHz/3G Frequency Spectrum Bands by the Mobile Cellular Telecommunication Service (MCTS) Licensees

In terms of sections 30A and 30B of the Telecommunications Act, the Authority is authorised to issue radio Frequency Spectrum licences to MCTS licensees in the 1800 MHz and 3G Frequency Spectrum bands, subject to the fulfilment of certain procedures, fees and conditions in terms thereof.

The Authority issued radio Frequency Spectrum licences in the 1800 MHz Frequency Spectrum band to Vodacom and MTN subject to them providing 5 000 000 Subscriber Identity Module (SIM) Card Connection Packages and 250 000 sets of Terminal Equipment. Both licence conditions are to be satisfied according to an implementation time-table approved by the Authority.

Vodacom and MTN also made applications for access to the 3G Frequency Spectrum bands. ICASA issued the two operators with 3G licences, subject to the condition that they each provide:

- Internet access to 5 000 public schools;
- Internet access to 140 institutions for people with disabilities; and
- Terminal equipment to 1 400 institutions for people with disabilities.

The Authority is currently considering an application by Cell C for access to the 3G Frequency Spectrum band.

### Collection of the Universal Service Fund (USF)



MTN making a Presentation to ICASA

The Telecommunications Act requires all licensees to pay an annual contribution of 0.2% of their annual turnover to the USF.

## Enforcement

The Enforcement Department is responsible for enforcing telecommunications licence conditions.

### *S v CAPETEL*

This matter emanated from Cape Town as a result of the alleged provision of illegal telecommunication services by Capetel. A case had been opened with the South African Police Services (SAPS) and the matter was subsequently set down for trial wherein the defence requested to make representations to the Director of Public Prosecutions (DPP), outlining reasons why charges should be withdrawn against Capetel. A decision on whether or not to prosecute is being awaited from the DPP.

### *S v Avion*

This matter was lodged with the Bloemfontein SAPS after allegations of illegal provision of telecommunication services by Avion. Avion has since closed its operations after becoming aware of the investigations.

### *S v T-SOL*

This matter was lodged with the Durban Central Police Station pursuant to information of alleged illegal provision of telecommunication services by T-SOL. After the investigations had ensued, the equipment used for providing illegal telecommunication services was seized in terms of the Telecommunications Act. The police have referred the docket to the Public Prosecutor for a decision as to whether or not to prosecute.

### *Internet Solutions v Telkom*

Internet Solutions lodged a complaint against Telkom about a refusal to enter into interconnection negotiations. Prior to the adjudication of the complaint, the parties reached an agreement on the matter without the Authority having to intercede.