



Presentation by Telkom to the Parliamentary Portfolio
Committee on Economic Development: Annexure

Infrastructure Development Bill

Cape Town, 15 January 2015

Submission by: Telkom SA SOC Limited



Introduction

1. Telkom SA SOC Limited, herein “**Telkom**”, welcomes the opportunity to make its oral submissions in regard to the Infrastructure Development Bill (Bill 49-2013, “the **Bill**”) to the Portfolio Committee on Economic Development. This Annexure to our Presentation to the Committee on 15 January 2014 sets out proposed re-phrasing of the Bill to address the issues raised during our presentation.
2. Telkom is committed to contributing to the transformation of the economy and society. Over the past decade, Telkom invested R 5 billion annually in capital infrastructure and we are in the midst of a rapid roll out of New Generation Network, funded on balance sheet. In addition to our premier fixed network, we have made major public contributions such as e-rating of schools, roll out to public services, the maintenance of networks in low income areas, amongst others. We look forward to partnering with Government in a more substantial programme to improve connectivity and the quality of telecommunications, the delivery in public services and in ensuring universal access.
3. Infrastructure development for communications similar to the other infrastructure development, such as transport, water or electricity, involves extensive coordination between multiple levels of government and organs of state to secure statutory rights of way, acquire access to underground facilities, and so on.
4. However, the delivery of telecommunications infrastructure also differs substantially from other sectors and therefore communications infrastructure development requires a special approach.

Telkom’s unique SOC characteristics need reflection in the Bill

5. Telkom as a State Owned Company (“**SOC**”) should be distinguished from other organs of state:
 - a. As a public listed company in a highly competitive sector, we must be responsive to rapidly changing conditions in terms of technology, coverage, customer evolution, and market structure.
 - b. Our shareholding comprises both private and public interests and unlike other sectors, such as roads, water and electricity, we must recover costs through competitive market forces.
 - c. Our investments are large in scale investments and shareholders require pay-back periods before technological obsolescence in our industry.



- d. We must roll-out our investments rapidly and continuously invest in innovative solutions while still upgrading installed facilities.

Role of Public Investment

6. The Government seeks to achieve 100% broadband coverage to all households by 2020 by establishing core Points of Presence (“**POP’s**”) in district municipalities, extending new fibre networks across provinces to link districts, and establishing POP’s and fibre connectivity at local level, and further penetrate the network into deep rural areas. The plans recognise that private sector involvement is a crucial part of this goal, particularly in urban centres. However, there may be duplication of work between private and public sector initiatives and this should be avoided to the greatest extent possible.
7. There is evidence of public investment in the communications sector operating outside the ambit of the regulatory framework that is currently imposed on private sector Licensees.
8. Public investment in telecom infrastructure is highly fragmented, with considerable duplication within the state and between the state and private entities. Public telecoms projects are rarely designed at scale, or with a policy outcomes orientation. Consequently, public investment to date has had limited impact on improving broadband penetration or the adoption of government e-services.
9. The Bill should specify the requirement for effective management processes that ensure SIP 15 projects do not duplicate private or public sector investment unless there is a specific public interest to do so.
10. The Bill should clearly state that Strategic Integrated Projects refer to state funded projects only. The majority of investment in telecommunications is currently implemented by the private companies that operate in a highly competitive environment and where there is rapid technology change. Telkom competes directly with these companies, and should not be subject to different rules in respect of its commercial investments. We recommend the following insertion in Section 7 Requirements for strategic integrated projects and designations of SIP Chairpersons –



“(1)(iii) it is above a certain **[state funded]** monetary value determined by the commission;...”

Functions of the SIP Steering Committee

11. Telkom proposes insertion of clear definitions on the functions and obligations of various organs of state either in the designated charter of each particular SIP.
12. There is a heightened need for clear roles and responsibilities along with robust, transparent mechanisms to resolve conflicts between public and private sectors -- particularly in view of potential conflicts that might arise regarding rights of way and statutory easements. These aspects may be incorporated in the detailed Charters established in each particular SIP.

Harmonisation across Government and other Organs of State

13. The Bill needs to be more specific about harmonisation and coordination across spheres of government and organs of state, especially regulators, in the implementation of infrastructure projects. In telecommunications specifically, in the context of SIP-15, one must take cognisance of the following statutory bodies:
 - a. ICASA, as established by the ICASA Act, giving effect to the Electronic Communications Act
 - b. Competition Commission, giving effect to the Competition Act
 - c. The Council for the Built Environment, as established by the CBE Act
 - d. The South Africa Bureau of Standards, as established by the Standards Act

The Bill should compel each SIP to identify the relevant sector specific laws and regulators within that SIP's domain, as well as the requirements that such laws pose upon any planning to be undertaken within the SIP.

14. Specific legislation that impacts on SIP-15 includes, but is not limited to:
 - a. Chapter 4 of the EC Act bestows upon ECNS licensees the rights (and obligations) *“to enter upon any land, including any street, road, footpath or land reserved for public purpose, any railway and any waterway of the Republic”* for the construction and maintenance of electronic



- communications facilities and networks. There are around 500 to 700 licensees in South Africa with this right.
- b. Section 21, within Chapter 4 of the EC Act enjoins the Minister of Communications, in consultation with several other listed Ministers, and ICASA – to prescribe guidelines for the “*rapid deployment and provisioning of electronic communications facilities*”. Industry cooperation has resulted in two best practice guidelines having been proposed to ICASA.
 - c. Chapter 6 of the EC Act empowers ICASA to prescribe technical standards for equipment and electronic communications equipment. ICASA is further enjoined by the EC Act to consider which SABS standards are applicable. Note that work has already commenced between the industry, ICASA and the SABS to define the standards for Broadband quality and coverage.
 - d. The construction of infrastructure such as masts, ducts, manholes etc. which required trenching and associated rights-of-way & servitudes; falls under the domain of Council for the Built Environment (CBE) with respect to safety, health and applicable environmental standards.
15. Notwithstanding the specific highlighted text, all relevant laws and regulations should be complied with. For example, electronic communications services should not be tendered for without the tendering party(s) having the requisite license(s) from ICASA. The Bill should specially include a line stating that all such other laws and regulations will be complied with.
16. Other relevant organs of state pertinent to the construction for telecommunications networks include: SANRAL and municipalities. Telkom has experience difficulties in obtaining way-leaves timeously and with minimal cost, in many case due to competing interests between the aforementioned parties and ourselves.
17. Lastly, it is presumed that any work undertaken by SIP-15 will be consistent with the recently cabinet approved National Broadband Policy of South Africa. Generally this Bill is silent on matters of congruence between sector specific policy, and planning within the SIP’s.
18. To ensure that the PICC operates within the existing statutory and regulatory frameworks currently in existence
- a. We recommend the following insertion in Section 2, Objects of the Act

“[(h) the facilitation of the promulgation of regulations that are in line with the existing legislative framework.]



19. To prioritize the reliance on organs of state in implementing strategic integrated projects.

- a. We recommend the following insertion to Section 8 Designation of strategic integrated projects and conflicts in infrastructure or planning thereof

“(2) If the Commission designates a strategic integrated project which must be implemented, it must **[first]** determine whether the state or **[an]** organ of state has the capacity to implement the project **[before deciding]** whether the project must be put out to tender.”

Conclusions and Recommendations

20. In conclusion, we thank you for receiving the opportunity to make our submission.

Our recommendations are as follows:

- a. The Bill should clearly state that Strategic Integrated Projects refer to state funded projects
- b. Strengthen commitment to improving the complementarity of public sector investment, and reducing duplication. This refers to duplication within the public sector, and between the public and private sectors. In the telecoms sector, given the ubiquity and complexity of private investment, the onus should be on the SIP 15 Committee to demonstrate that the SIPs are not duplicative.
- c. Align the Bill to the existing legislative and regulatory framework within the various sectors for example in telecommunications – the Electronic Communications Act, and other Telecommunications Policy. More specifically:
- i. Specify that the SIP 15 charter accommodate the regulatory framework for the telecommunications sector.
- ii. Coordination of SIP 15 activities should align with the Broadband Policy.
- d. Prioritise the activation of state organs in implementing SIPs

21. Apart from the Bill, we believe greater attention is required to coordinate public telecoms infrastructure investment. The sector is quite different from the others in respect of budgeting, the assignment of responsibility, in the private and public mix



and the shape and design of interventions. The National Broadband Policy offers an important first step in addressing the coordination challenges. Much needs to be done. Telkom is committed to playing a positive and substantial role in transforming the economy and society through improved connectivity, strengthening public service delivery, and eliminating the digital divide.