



# RIGHT2KNOW

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Mr NN Munzhelele  
Chief Director  
ICT Research & Development  
Department of Communications

Per E-mail: [ndivhuho@doc.gov.za](mailto:ndivhuho@doc.gov.za)

Dear Mr Munzhelele,

**Right2Know Campaign written submission to the Department of Communications (DoC)  
on the Draft National Broadband Policy**

## **Introduction**

1. The Right2Know Campaign is a coalition of organisations and activists across South Africa seeking a country and a world where we all have the right to know – that is to be free to access and to share information.
2. This right is fundamental to any democracy that is open, accountable, participatory and responsive. One that is able to deliver the social, economic and environmental justice we need.
3. Our campaign towards the right to know will be inadequate if we limit our involvement to access to information. It is central to our mission and struggle for access to information that we also strive for the right to communicate.
4. This includes securing access to telecommunications, and the internet as essential in the struggle for the right to know.
5. In the past 18 years South Africa has enjoyed a blossoming of the Internet - including on-line publishing and participation in social networks. Increasingly accessible broadband and an impressive levels of access to mobile phones means that many people the internet has the potential to be an important environment for the production and distribution of media.
6. However, there are a number of limitations and threats to the free flow of information carried on the Internet. Threats to privacy and profiteering of telecommunications companies makes extensive use of cell phones to access the Internet prohibitively expensive for the majority of people.
7. We welcome the opportunity to submit this written comment on the Department of Communications Draft Broadband Policy.

## Right2Know's principles regarding telecommunications

8. In March 2012 the Right2Know Campaign adopted a Position Paper on Media Freedom, Diversity and the Right2Know<sup>1</sup>. In this positions paper we identify 10 indicators that should define a free and just telecommunications system:
1. Communications must be universal. Everyone has a right to communications that are available, affordable and accessible. While great strides have been made in ensuring the availability of communications, especially mobile communications, many users cannot afford to access the network to the extent that they need to, leading to an illusion of universality being created. Universality will be realized only once people can access the network whenever they want to.
  2. Communication must be ubiquitous: that is, users should be able to access information anytime, anywhere, anyhow, depending on the choice of the user. Currently, users are restricted in their choice of how to access information they need, either at home or on the move.
  3. Communications must also be dialogic: that is, users should have the ability both to receive and impart information. They should not simply reproduce old methods of communication where a few talk, and the majority listen.
  4. Everyone has the right to privacy and anonymous communications, which includes the right to encrypt their communications.
  5. We must protect and advance net neutrality, to ensure that the internet does not fragment into different components run by competing public or private interests. The internet must remain open and interoperable.
  6. We must protect and advance internet freedom from governmental and corporate control.
  7. We must promote access to internet by ensuring affordable broadband access – including on cell phone networks.
  8. A free basic service for communications, cross-subsidised by the network operators, must be available to poor users. Pre-paid communications users, who are overwhelmingly from the poor and working class, should not cross subsidise post-paid users. We oppose a communications system where the poor cross-subsidises the rich.
  9. Free Facebook (Facebook Zero) should be made available in South Africa.
  10. Intellectual property arrangements in communications tend to favour the wealthy. Information as a rule should be free, and not treated as a commodity and subject to proprietary control, and should be part of a commons that everyone has access to by right.
9. While we note that the Draft Broadband Policy is limited in its scope, and that the Department is undertaking a compressive ICT Policy Review, we assert that all telecommunications policy must be measured against the degree to which it advances or detracts from the realisation of these principles.

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<sup>1</sup> See the Right2Know Position Paper on Media Freedom, Diversity and the Right to Know: [http://www.r2k.org.za/wp-content/uploads/2012/12/R2K\\_MedFreeDiv\\_DisDoc2011.pdf](http://www.r2k.org.za/wp-content/uploads/2012/12/R2K_MedFreeDiv_DisDoc2011.pdf)

# Comments on the draft National Broadband Policy

## On universal service and the cost of communication

10. We welcome the vision of the draft policy to “ensure universal service and access to reliable, affordable and secure broadband infrastructure and services by 2020 and stimulate sustainable uptake and usage” by all citizens, in particular those living in rural and under-serviced area.
11. The draft policy correctly notes that broadband should be seen as a basic utility like water, roads, electricity and sanitation that must be made available to all on a non-discriminatory basis. It is for this reason that the Right2Know believed that every citizen should be entitled to a free basic package of telecommunication services – as is currently the case with water and electricity. The National Broadband Policy must make a specific commitment to this provision.
12. While the draft policy is unable to give a precise definition of Broadband, it estimates that only 2% of households currently have access to broadband and only 64,8% have no access to the internet. The majority of internet users secure access through their cellphone networks. While prices range dramatically, the average cost per Gigabyte (GB) is R141 per month.
13. As we have argued in our memorandum to the Parliamentary Portfolio Committee on Communication when held hearings on the cost of communication in November 2012 (see Appendix 1) affordability is the most significant barrier to extending the reach of mobile services. Government must put in place a policies aimed at reducing the cost of communications as a matter of urgency.
14. The draft Policy proposes a number of measures to achieve universal access to broadband. The Right2Know welcomes a number of these measure including releasing more spectrum, easing access to rights of way and the provision of fibre optic network connections (to rural areas in particular). However, the policy provides no indication of when these measures will be taken or how they will effect the cost of communication.

## On the role of various government entities and the private sector

15. The draft Policy envisages a central role for the State in ensuring the provision of universal access to Broadband (in particular in the provision of backbone infrastructure and addressing 'market failures') it also however envisages the private sector playing a critical role in service provision. While the draft Policy pays considerable attention to clarifying the roles of various State institutions, it fails to adequately delineate the role of the private sector.
16. Given the extent and impact of 'market failure' identified in the draft Policy – from the failure to pass savings on the cost of international bandwidth to users to the vast areas of South Africa it defines as “non-economically viable” - we believe the role of the private sector needs to be critically examined.
17. We concur with the draft Policy's assertion that despite the extensive penetration of mobile networks, the delivery of fixed line services to households still remains critical in delivering true broadband speeds. In this regard Telkom, as a State owned entity, has a critical role to play. The current limits of fix line penetration are a direct result of the commercialisation of Telkom which

lead the parastatal to focus cost recovery, profit maximisation, and thus a focus on servicing 'economically viable' sections of the population.

18. The Universal Services Agency of South Africa (USAASA) is another State institution with a mandate critical to the realisation of universal broadband access. USAASA holds considerable funding that it has failed to deploy and had proven largely ineffective in meeting its mandate. An assessment of the weaknesses of USAASA must inform any policy or plan to ensure universal access to broadband.
19. The strategic orientation and structure of Telkom, USAASA and other state owned entities will have to be revisited significantly if the noble objectives presented in the draft Policy are to be met.
20. Further, given the long distance we must travel to achieve universal broadband access, the Policy should not rule out the important contribution that can be made by local municipalities in providing internet access.
21. While the draft Policy's proposals for better coordination of various efforts are welcomed, these should not become obstacles for those seeking to provide access to broadband.

### **On the critical role of independent regulation**

22. As stated above, the draft policy points to numerous 'market failures' which not only point to policy failures, but to the failure of the Independent Communications Authority of South Africa (ICASA) and the Competition Commission to effectively regulate the provision of broadband.
23. ICASA in particular has a critical role to play if the objectives of the draft policy are to be realised. However numerous assessments of the performance of ICASA generally find that it lacks the capacity and independence required to understand and regulate the telecommunications sector as a Chapter 9 body of the constitution.
24. The draft Policy fails to acknowledge ICASA's current limitations or propose the necessary remedies. Past proposals from the Department of Communications (contained in the ICASA Amendment Bill) fail to address ICASA's resource constraints and in fact further undermine the independence of the Regulator.
25. Without a strong and independent regulator we will not realise the vision of universal broadband access by 2020.

### **On network quality**

26. The draft Policy implies that for the foreseeable future most people (in particular those outside of wealthy urban centres) will access broadband by means of a wireless network. Already most people living in South Africa experience unrelaxable networks for voice and SMS services. Network operators consistently fail to meet quality of service targets.
27. The draft Policy is largely silent on the issue of the quality of the broadband networks. While the draft Policy makes reference to increased speeds, it does not specify any specific targets and does not address any other quality of service issues as they will impact on the end user.
28. The Broadband Policy should include specific network quality and speed targets.

## **Access to Broadband Information, participation & transparency**

29. The Department of Communications has acknowledged that available statistics on internet penetration are limited yet these are critical to the development of a strategic broadband plan and to assessing progress in realising the Policy's 2020 vision. To rectify this the Policy should mandate ICASA and to StatsSA to collect the necessary statistics and ensure they have the necessary funding in this regard.
30. The findings of the broadband mapping process envisaged in the Policy must be made public and regularly updated. ICASA should publish detailed annual reports which include market development and market shares based on revenues and traffic volume.
31. The outcomes of broadband mapping exercise proposed in the draft Policy aimed at identifying gaps in all nine provinces should be regularly updated and its results made public.

While the draft Policy mentions black economic empowerment it appears that there are currently no data available on the ownership composition of telecommunication operators and service providers. Transparency in the ownership is essential. Likewise it is also necessary to track the flows of profits in the industry. ICASA should be mandated to publish information on the ownership composition and profitability of the various operators.

32. A massive public investment in infrastructure of the type envisaged in the draft Policy runs the risk of failing to reach its desired outcome as a result of corruption. All calls for tenders must be published electronically with clearly stated criteria and a transparent adjudication process must be ensured.
33. We welcome the draft Policy's acknowledgement of the government's important role in promoting the take up of broadband – inclusion proposed investments in the development of applications and promotion of content in different languages. We note however that the draft Policy lacks measures that identify the means to increase demand.
34. We also welcome the draft Policy's commitment to ensure a popular campaign to promote the use of broadband. The Right2Know Campaign is committed to playing our part in this regard.
35. Finally, the draft Policy proposes the establishment of a Joint Government/Private Sector Liaison committee to coordinate broadband activities. Civil society organisation including communication rights groups, trade unions and consumer organisations should be included in this ongoing consultation initiative as well as the broader process to develop the National Broadband Strategy envisaged in the draft Policy.

## **In Conclusion**

36. Technology is changing how information is produced and received. These changes are exciting as they have the potential to make an unprecedented diversity of information and opinion much more accessible, to democratise communication and make it more interactive, given that they encourage more horizontal forms of communication. Potentially, they can blur the distinction between information producers and information consumers; they can also make the right to know easier to realize as these media can make information more accessible.

37. Yet at the same time, new media are being deployed in ways that are increasing rather than decreasing social and information inequalities. Conditional access threatens to reduce accessibility of media. Proprietary control of information through trademarks, patents and copyright is eroding the information commons. Indigenous knowledge and language diversity is under threat. Curtailment of rights through surveillance and censorship is prevalent. All these trends threaten to make it more difficult for the right to know to be realised.

38. We look forward to the opportunity to engage further with the Department on these issues.

Mark Weinberg  
National Coordinator  
For the Right2Know Campaign.

# APPENDIX 1: Memorandum on the Cost of Communications.

## *Presented to the Parliamentary Portfolio Committee on Communication at the hearings on the cost of communication in November 2012*

Our right to know will remain incomplete if our struggle is limited to securing access to information alone. We must struggle to ensure that information flows across society and that information forms the basis of a social dialogue that deepens our democracy and advances social, economic, and environmental justice. Our right to communicate - to receive and impart information and opinions - is central to our right to know.

Noting the lack of media diversity - especially outside of our cities - we are encouraged by the estimation that 82.9% of people living in South Africa already have access to cell phones and that this number is growing. This high level of cell phone access represents a great opportunity for South Africa to advance the right to communicate. The cell phone potentially brings with it all democratising possibility of the internet, including the ability to draw on vast amounts of knowledge as well as the ability to produce and upload content that can give a voice to those marginalized in society.

However in South Africa today the exorbitant cost of communication and other barriers mean that we are not realising that potential. It is estimated that only 28% of the population access the internet. The exorbitant price of cell phone usage - and profiteering by mobile phone companies - means that few people can afford to use these tools to exercise their rights. Poor people are more likely to have pre-paid contracts, per minute billing, and rely on SMS for text messaging. Because government only regulates the "interconnection rates" (or bulk airtime prices the companies charge each other) the prices companies charge users inevitably means that poor people pay more for the right to communicate than those with post-paid contracts or access to the internet and data messaging services other than SMS.

SMS messaging is a particularly stark example of this unfair pricing scheme. It is estimated that an SMS costs the service provider anything from 2.6 cents to 5 cents. The public are charged anything from 50 cents to 80 cents, which means up to a 3,000 percent profit for the cellphone companies. The super profiteering on SMS places a disproportionate burden on poor users who do not have access to new generation messaging services available on smartphones.

The cost of data is also prohibitively high for poor people, and bundles are structured to advantage the rich as they offer discounts for high usage and to high-income earners, who can afford contracts or large upfront payments.

Any regulatory process to make communication more affordable will take over a year - assuming there are no delays. We believe that the people of South Africa are entitled to more immediate relief. To get the ball rolling, we believe mobile phone operators should protectively offer SMS free to everyone, across all networks, all of the time without the need for an exhaustive regulatory process.

The Right2Know Campaign applaud the efforts by Parliament's Communication Portfolio Committee to hold industry players, the Independent Communications Authority of South Africa (ICASA), and the Department of Communications (DoC) to account for the high costs of communication, which have not been brought down significantly by the reduction in mobile termination rates. We are committed to working with you to ensure everyone enjoys more affordable communication services. This would cost operators very close to nothing and would be a show of good faith bringing much needed relief to those of us who need it most.

Of course, the struggle for the right to communicate will be long and complex. Right2Know's consultations have exposed the need address a host of other issues including:

- Further reduction in the interconnection rates and the regulation of retail rates to ensure that interconnection reductions are not simply passed down to the user further down the line;
- A free basic service for communications, to enable poor users to receive and impart information that is essential to them;
- Improve access to land lines and the ADSL network;
- Issues of quality of service (and current unmet operator targets);
- Simplification of - and transparency in - pricing structures to enable proper comparison of offerings;

- Issues of privacy and anonymity (including concerns that legislation such as the General Intelligence Laws Amendment Bill currently before Parliament may lead to further abuse of monitoring and interception of communications)
- Increasing the range of phone numbers that are free to call (for instance, numbers like our children's schools).
- The use of Universal Services Fund to subsidise needy people, as it was meant to;
- Access to operator information (including basic data that has not been reported to the United Nations' International Telecommunication Union)
- Consumer education (knowledge of existing rights when contracting with an operator);
- A proper and well funded regulator;
- A government department that places the public interest above the interests of its portfolio organisations and their share prices.

There is no doubt that as our campaign unfolds this list will grow longer and our proposals will grow more detailed.

Government has an obligation to enable our right to communicate. Section 16.1B of the constitution says that everyone should enjoy the "freedom to receive or impart information or ideas". We assert that our right to communicate is not unlike our rights to water and energy. As with water and electricity we believe there is a legal and ethical basis for increased intervention by the State to ensure greater access to the means of communication for all. As is the case with water and electricity, we believe that it would not be unreasonable to explore the provision of free basic airtime and data to enable those most marginalized in our society to have their right to communicate. Indeed the right to communicate is an enabling right that is a prerequisite for the realization of other socio-economic rights.

We thank you for your time and consideration. As the Right2Know Campaign begins our fight for the right to communicate we are encouraged by the work begun by your committee. We believe that by mobilising citizens - the users of communication services - we will bring a voice that has been too silent in discussions on the state and future of our telecommunication landscape.

Together we will strive to make the right to communicate real for everyone in South Africa.

### ENDS ###