

Two communications ministries will paralyse Icasa

By [Thabiso Mochiko](#)

5 Jun 2014

Caught in the middle and paralysed - that is what the information and communications technology (ICT) sector fears the industry regulator will be, now that two departments have been created for the sector.



New Communications Minister Faith Muthambi. Image: GQIS

Critics say having two centres of power will create confusion for the Independent Communications Authority of SA (Icasa). Further, many see the convergence of broadcasting and telecommunications, guided by the Electronic Communications Act, as set to be undone. Icasa has been spearheading the programme for several years.

The communications sector, which includes the broadcasting and mobile and fixed-line segments, was put under the Department of Communications headed by Faith Muthambi when President Jacob Zuma announced his new Cabinet. Siyabonga Cwele was appointed the Minister of Telecommunications and Postal Services.

The lines between communications and broadcasting are gradually blurring all over the world. Telecommunications operators and mobile companies are streaming content via their networks. Internationally, telecommunications companies are partnering and buying broadcasting entities. Locally, Telkom and mobile operators are actively looking at adding video-on-demand to their portfolio of products. In the US, AT&T has made an offer for Direct TV.

Separation causes confusion

Livia Dyer, Director at law firm Bowen Gilfillan, says the separation into two departments is "confusing given the extent of overlap" between broadcasting and telecommunications, particularly since the distinction between the two types of end-user services is being eroded.

"There is a clear need for coordination of the different types of end-user services that may be provided (broadcasting and telecommunications), given their competing needs for access to scarce resources such as radio frequency spectrum," she says.

SOS Support Public Broadcasting Co-ordinator Sekoetlane Phamodi says it is alarming that, in an age of technological convergence, telecommunications and postal services are separated from communications services as a whole.

"This fragmentation can only be read as irrational, particularly in light of the necessary international move to bring ICTs, which include broadcasting services, in line with and under converged legislation, policy and regulation," Phamodi says.

He says this also fundamentally undermines the ICT policy review process and treats its recommendations with contempt. The then Communications Ministry embarked on a review of all policies governing the ICT sector to, among other things, align it with the fast-changing technologies and international best standards.

Two ministries for communications

"Now the creation of two ministries spells out an impending disaster of confusion and conflict," says Phamodi



Bowman Gilfillan Director Livia Dyer says the two Acts as amended will cause confusion in the telecommunications sector.

Lawyer Avhasei Mukoma says the creation of two departments could signal a major policy shift and the two bodies will have to implement an integrated strategy detailing how they plan to cooperate.



SOS Coordinator Sekoetlane Phamodi says the two ministries are alarming for the ICT sector. Image: [Mr Phamodi](#)

"The challenge is the one regulator and two ministries that it needs to account to," he says.

However, in the long run the separation could be a good thing as the broadcasting and telecommunication sectors will receive the same attention.

The announcement of two departments came less than a week after former minister Yunus Carrim published a notice announcing the Electronic Communications Amendment Act would now come into effect. Zuma published the notice of the commencement of the Icasa Act.

The acts were amended to provide clarity on and strengthen Icasa. For example, the amended Icasa Act states that in exercising its powers and performing its duties, the regulator "is expressly required" to consider policy made, and policy directions issued, by the Minister of Communications in terms of the Act, the underlying statutes and other applicable laws.

Dyer says the Electronic Communications Amendment Act does not distinguish between two different departments or ministers. All the ministerial policy-making powers and functions and other powers in terms of this Act and the Icasa Act are conferred on the "minister responsible for communications", and this has not changed with the publication of the two amendment acts.

Some commentators are speculating there could be even more amendments. "At this stage, it seems that a further legislative amendment may be required to indicate which minister is responsible for which powers and functions in terms of the Electronic Communications Amendment Act and Icasa Act," says Dyer.

Mukoma too did not rule out further amendments to clarify roles and enable Icasa to carry out on its mandate.

Source: Business Day via I-Net Bridge

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