GOODBYE ICASA

SOUTH AFRICA WILL BE SAYING GOODBYE TO ITS INDEPENDENT COMMUNICATIONS REGULATOR IF THE ICASA AMENDMENT BILL GOES THROUGH IN ITS CURRENT FORM.

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South Africa's post, telecommunications and broadcast sectors are governed by an independent regulator – the Independent Communications Authority of South Africa (Icasa). Created out of the old South African Telecommunications Regulatory Authority (Satra) and the Independent Broadcasting Authority, Icasa came into being in 2000, per the Icasa Act.

Regulators exist to manage scarce resources (frequency spectrum in this case), to ensure that the interests of the public are served where commercial interests would otherwise dominate, and to ensure, in sectors where monopolies traditionally dominated (so-called natural monopoly sectors) that liberalisation happens, and that everyone plays fair while it's happening, among other reasons.

Internationally, the trend towards regulating to control sectors has now reversed and deregulation is becoming the norm, with regulators like Ofcom in the UK taking an increasingly hands-off approach.

In South Africa, the regulator has been under-resourced, subject to capture by either political or commercial interests and overall ineffectual, since its creation.

The Icasa Amendment Bill, or as the Department of Communications prefers to call it, the 'proposed' Icasa Amendment Bill, was gazetted on 25 June. Respondents were given 30 days to comment on a Bill that has far-reaching implications for the broadcasting and telecommunications sectors. The department intends to take the bill to Parliament this year still.

Says Save our SABC (SOS) campaign coordinator Kate Skinner: "No one knew it existed for the first five days; Icasa didn't advertise it. We picked it up from the Government Gazette via lawyers we know who scrutinise it. As such, we didn't have 30 days to consider it, we didn't have prior notice, we had no information on why the department was introducing it. Reading it, it became obvious the DOC is trying to deal with Icasa's inefficiencies and slow turnaround times."

Unfortunately, the DOC is trying to deal with this by putting more responsibility on the Minister and less on the Authority.

The bill amends the existing legislation to do the following things, Skinner says:

- change the position of CEO to chief operations officer (COO)
- clearly differentiate between the functions of the Council and the COO
- improve turnaround times
- establish a Tariff Advisory Council
- improve the functioning of the Complaints and Compliance Committee
- remove Icasa's frequency spectrum management role
- enable the Minister to assign functions and roles to the chair and councillors
- enable the Minister to directly evaluate councillors
- enable the Minister to appoint members of the Complaints and Compliance Committee
- enable Icasa to continue working even when there are legal challenges on the table.

Some of the above amendments, at least two of which would be welcomed by the sector, are problematic for several reasons.

Undue interference

First problem, says Skinner, is that changing the CEO into a COO will remove the accounting officer from the agency, in direct contravention of the Public Finance Management Act.

Second, by being able to assign roles and functions to the councillors and chairperson, the Minister would be able to directly interfere with, for example, licensing, and influence which licences are granted, or not.

"This is directly at odds with international standards and principles," Skinner comments.

Says Dominic Cull, founder of Ellipsis Regulatory Solutions: "The amendment gives the Minister the right to assign fields of competency that each councillor oversees. I can't see how that sits with the notion of independence on the part of the regulator. I appreciate that independence is a relative concept in this context, but in terms of South Africa's World Trade Organisation obligations, we are obliged to have a regulator independent of government and this proposal infringes that. As far as broadcasting is concerned, it