



## **DECISION DOCUMENT**

**OF THE MINISTERS RESPONSIBLE FOR ICTS AND / OR  
TELECOMMUNICATIONS  
ON THE POLICY, LEGAL AND REGULATORY ASPECTS**

**OF THE NEPAD ICT BROADBAND INFRASTRUCTURE NETWORK  
FOR EASTERN AND SOUTHERN AFRICA**

**Prepared by**

**NEPAD e-Africa Commission**

**June 6, 2006**

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## **WHEREAS:**

1. A basic ICT broadband network for Eastern and Southern Africa, which incorporates the EASSy cable, was agreed by stakeholders during a workshop held in Johannesburg in July 2004.
2. The NEPAD e-Africa Commission was tasked with initiating a dialogue with ICT Policy Advisors in the region with a view to resolving such policy and regulatory issues as may impede or prevent the realisation of the rationalised regional network. It was noted that a transparent policy and regulatory environment needed to be promoted and regulatory barriers removed in order to encourage and increase private sector investment in the development of the agreed network.
3. The Commission, with the assistance of Government Experts and Regulators, has since been coordinating the harmonization of policy and regulatory frameworks based on, amongst others, "open access" principles; Public-Private Partnerships; appropriate ownership structures; and the urgent need to reduce costs of communications services to customers.
4. A meeting of **SADC ICT Ministers, held on 7<sup>th</sup> October 2005**, resolved that a policy and regulatory framework be developed as soon as possible, within which the broadband network infrastructure for Eastern and Southern Africa, including the EASSy cable, should be constructed and operated.
5. The NEPAD e-Africa Commission was tasked with facilitating the necessary meetings which would of necessity involve all countries of the region.
6. The Commission convened a meeting of officials of ICT Policy Makers and / or advisors (Permanent Secretaries / Secretaries General / Directors General) and Regulators on 7<sup>th</sup> November 2005 that agreed on a set of 5 policy principles that Governments of the region should adopt to provide a framework for, and facilitate the rapid implementation of the broadband network infrastructure in Eastern and Southern Africa.

### **The 5 Principles referred to in paragraph 5 of this Preamble were:**

- 6.1 The urgent need to build broadband ICT infrastructure for terrestrial and submarine cable networks for Eastern and Southern Africa.
- 6.2 The application of open, non-discriminatory and affordable access to these networks.
- 6.3 Acceptance that cross-border terrestrial and submarine cable segments of these networks can be developed, owned, and maintained, as appropriate, by special purpose vehicles.
- 6.4 Agreement on the application of the principle of public private partnerships to these networks.

- 6.5 Governments should create regulatory and policy frameworks conducive to the development of these networks.
7. The Commonwealth Telecommunications Organisation (CTO) was contracted to study the policy, legal and regulatory conditions that would facilitate and promote the development of the network, on the basis of these principles, taking into account the decisions of the ICT Policy Makers, and the provisions in existing treaties between the governments of the region.

#### **AND WHEREAS:**

8. **The following recommendations**, taken together, provide a framework within which the establishment of a jointly owned Open Access ICT Broadband Network may be established for the region. Such a network comprises of a submarine (EASSy) cable, and a terrestrial network. The Special Purpose Vehicles (SPVs) which will develop, operate and maintain these network segments will offer wholesale capacity to licensed service providers in a way that is fair to all current and future operators. The SPVs will also meet developmental objectives of the region, and provide affordable communication services to the peoples of the region.

#### **8.1 Open Access**

The principle of Open Access should be applied on terms that are transparent and affordable, and in a manner that does not inhibit the participation of Authorized Service Providers from the region on the basis of exclusivity agreements, prohibitive costs or other restrictions.

#### **8.2 Non-Discrimination**

The principle of non-discrimination should be applied to ensure that there is no preferential treatment with respect to the terms and conditions, including those that apply to charges for use of the network by any authorized Service Provider from the region, regardless of whether a shareholder or not.

#### **8.3 Harmonization of Policy, Legal and Regulatory Frameworks**

Governments of the region are urged, individually within their territories and collectively within the region, to facilitate the licensing of the SPVs that will own, operate and maintain the NEPAD ICT Broadband Infrastructure Network for Eastern and Southern Africa. Governments of the region are therefore urged to harmonize their policy, legal and regulatory frameworks to facilitate the establishment of this network.

#### **8.4 Harmonization Timeframe**

In order to facilitate the rapid establishment of the network, the Governments of the region are urged to amend, where necessary, their existing legal, policy and regulatory frameworks and or promulgate new

ones within a period of 12 months from the coming into effect of a signed agreement.

### **8.5 Licensing**

Recognising the objectives of the network, and in particular the objective of minimizing costs to end-users, Governments of the region are urged to consider for the licensing of the SPVs, fees that will cover only the administration costs incurred by regulators in the region in preparing the appropriate renewable licences of 15 years duration. Such fees could be one-time licence fees, which in any event, would not be higher than an amount to be agreed. In addition, Governments of the region are urged to consider exempting the SPVs from paying any annual licence fees, including turnover related fees.

### **8.6 Bandwidth Charges**

The charges for wholesale bandwidth and (packet and/or circuit) switched services offered by the SPVs should be independent of distance and, in all applicable cases, be based on capacity provided in order to ensure equitable access to all authorized service providers in the participating countries in the region.

### **8.7 Currency**

The charges for services offered by the SPVs should be uniform, and denominated in an international currency.

### **8.8 Participation**

Governments of the region are encouraged to license the SPVs in their countries in accordance with the agreed principles to ensure that the SPVs have direct access to existing or planned fibre optic cable systems, even if neither the country nor any operator from the country is an investor in the SPV(s).

## **NOW THEREFORE:**

9. The Ministers responsible for Information Communications Technologies and / or telecommunications in Eastern and Southern Africa having considered the background work that had been undertaken to resolve such policy and regulatory issues as may impede or prevent the realisation of the rationalised regional network, hereby adopt the recommendations contained in paragraph 8 above.