



## **DRAFT DECISION DOCUMENT**

**OF ICT / TELECOMMUNICATIONS MINISTERS IN EASTERN AND  
SOUTHERN AFRICA**

**ON THE STRUCTURE OF THE SPECIAL PURPOSE VEHICLES  
(SPVs)**

**TO OWN AND OPERATE THE NEPAD ICT BROADBAND  
INFRASTRUCTURE NETWORK, INCLUDING THE EASSy CABLE.**

**Prepared by**

**NEPAD e-Africa Commission**

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## **PREAMBLE**

### **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 e-Africa Commission was tasked with initiating a dialogue with ICT Policy Makers 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. As tasked by the meeting of July, 2004, the Commission has been coordinating the harmonization of policy and regulatory frameworks whilst promoting the development of the broadband ICT infrastructure on an "open access" basis so that the capacity of the infrastructure is available to current and future licensed or authorised operators, without discrimination. The policy framework was therefore aimed at removing bottlenecks, encouraging investment, levelling the playing field between competing service providers and reducing costs to end customers.
4. In February 2006, the Commission obtained the services of the Industrial Development Corporation ("IDC") to structure Special Purpose Vehicles (SPVs) that would own, develop, operate, and maintain the ICT Broadband Infrastructure Network, including the EASSy cable.
5. Between January and May 2006, the Commission convened a number of meetings between ICT Policy Advisors (Permanent Secretaries / Secretaries General / Directors General), Regulators and Executives of Telecommunications Companies to articulate the policy principles, and develop consensus on the above-stated.
6. The IDC study referred to above looked at alternative structures for the ownership of the submarine (EASSy) cable and Terrestrial Network and concluded that Special Purpose Vehicles (SPVs) with clearly defined ownership objectives in line with an agreed policy framework were the best suited structures of ownership for this regional infrastructure. The study recommended two SPVs; one for the submarine cable, and the other for the terrestrial network.

### **AND WHEREAS:**

7. The Inter-Governmental Working Committee (IGWC) from the region considered the conclusions of the IDC study and consequent thereto briefed the Ministers responsible for ICTs and / or telecommunications in Eastern and Southern Africa as per the Preamble with respect to the

Special Purpose Vehicles (SPVs) which would own and operate the NEPAD ICT Broadband Infrastructure Network including the formation of one SPV for the Submarine (EASSy) Cable, and the other SPV for the Terrestrial segment of the network .

**AND NOW THEREFORE THE AFORESAID MINISTERS RESOLVE AS FOLLOWS:**

**A: Objectives of the SPVs are to:**

1. Achieve open and affordable access to international communications for citizens of the region and continent.
2. Achieve non-discriminatory access through separation of infrastructure ownership from use of the infrastructure.
3. Embody cooperation between African countries.
4. Facilitate economic integration of the region and continent through ICT broadband interconnection between countries.
5. Create the opportunity for equal ownership and participation by entities of the region.
6. Achieve cooperation in technology transfer and skills development among countries of the region.
7. Empower locally-owned, small to medium enterprises through the provision of goods and services to the SPVs.

**B: The objectives of ownership of the SPVs should be to:**

1. Ensure that the SPVs are predominantly African owned and led.
2. Ensure that ownership reflects collaboration between African countries.
3. Ensure equal shareholding by eligible entities from all countries of the region that are signatories to the Protocol.

**C: Categories of Shareholding should be:**

1. All Licensed International Gateway Operators and other Providers of International Communication Services recognised by governments that are signatory to the Protocol should be given the opportunity to participate as shareholders in the SPVs and that this group should constitute the predominant category of shareholders.

2. Non-Operator entities that the Governments of the region may nominate, subject to approval by an Inter-Governmental Assembly (IGA).
3. International Telecommunications Operators subject to approval by the IGA.

#### **D: Return on Investment**

Return on Investment should be regulated to keep the price of communication capacity as low as possible.

#### **E: Functions of the SPVs** should include the following:

1. Design
2. Development/Financing
3. Ownership
4. Promotion
5. Marketing
6. Operation
7. Maintenance

#### **D: Governance and Oversight**

1. The governance structure of the SPVs shall be made of:
  - a) A professional and Competent Board of Directors.
  - b) An Inter-Governmental Assembly (IGA), to ensure the achievement of the developmental objectives of the governments of the region.
  - c) A Professional Management Team appointed by the Board of Directors.
2. **The Board of Directors** shall be comprised of eleven (11) professional and competent Directors appointed as follows:
  - a) Ten (10) Directors appointed by the shareholders of the SPV, bearing in mind geographical and gender representation.
  - b) One (1) Director appointed by the IGA.
3. **The Inter-Governmental Assembly (IGA)** shall be composed of one accredited representative (at level of Permanent Secretary / Secretary General / Director General) from each country that is a signatory to the Protocol on the establishment of the NEPAD ICT Broadband Infrastructure Network. There shall be a single IGA overseeing the developmental aspects of the SPVs of this network.

**The functions of the IGA shall be as follows:**

- a) Facilitate and assist in promoting the NEPAD ICT Broadband Infrastructure Network, including the EASSy Cable.
- b) Appoint one Director to each of the Boards of Directors of the SPVs.
- c) Approve non-ICT operator entities nominated to be shareholders of the SPVs.
- d) Ensure the highest level of African ownership in the SPVs.
- e) Ensure that the SPVs uphold the NEPAD principles as well as Policies of the Governments of the region.
- f) Determine and enforce Regulated Return on Investment for each SPV.

**G: The Shareholders' Agreements**

Shareholders' Agreements of the SPVs will embody the following principles, inter-alia:

- 1. SPV to run on commercial principles, but take into account developmental objectives.
- 2. Developmental Objectives to be overseen by the IGA, and where necessary, upheld through exercising a veto right.
- 3. The Shareholders' Return on Investment to be regulated.
- 4. The appointment of ten (10) Members of the Board of Directors by shareholders and one (1) by the IGA.

**H: Funding**

**The objectives of funding of the SPVs shall be:**

- 1. Optimise capital structure using mainly Equity, Debt and Quasi-Equity in order to ensure affordable communication service to the citizens of the region.
- 2. Ensure affordability of equity by prospective shareholders.
- 3. Achieve an appropriate return on equity.