

**Ministry of Communications, Science and
Technology**

Lesotho Communications Policy 2008

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1 Preface

The Government of Lesotho hereby adopts this Communications Policy, which establishes the framework for regulation of the telecommunications, broadcasting, and postal sectors. The Policy will provide the foundation for the adoption of new legislation, the Communications Act of 2008, which will replace the Lesotho Telecommunications Authority Act No. 5 2000, as amended (LTA Act), and the Post Office Act of 1979.

The Policy builds on the foundation established by the Lesotho Telecommunications Policy of 1999 and the ICT Policy for Lesotho, adopted in 2005. The Policy recognises that the telecommunications, broadcasting, and postal sectors are at different stages of development and reform. For instance, while the 1999 Telecommunications Policy began the process of restructuring the Lesotho Telecommunications Corporation, the state broadcaster and post office have not been restructured.

While the Policy draws on International best practice, it is designed to reflect Lesotho's unique conditions. Lesotho is a developing country with a small population and limited resources. Outside of Maseru, population density is low. The country's mountainous terrain, and the fact that it is surrounded on all sides by another country, present additional challenges. Recognizing these conditions, the Policy seeks to adopt a concrete and achievable regulatory framework for the sector.

2 Background

Telecommunications

The Lesotho Telecommunications Policy of 1999 was adopted to facilitate the process of liberalization of the telecommunications sector in Lesotho. The Telecommunications Policy provided for the establishment of the Lesotho Telecommunications Authority (LTA), subsequently renamed the Lesotho Communications Authority (LCA), and defined the powers of the LTA in the regulation of telecommunications. This policy was implemented in the LTA Act. Many of the objectives of the Lesotho Telecommunications Policy have been met, with the establishment of the LTA, the privatization of the Lesotho Telecommunications Corporation, and the liberalization of all telecommunications markets. During this time period, the percentage of Basotho with access to telecommunications services has grown significantly. Nonetheless, challenges remain. The level of access to fixed, wireless, and Internet services remain too low, particularly in areas of the country where population density is low. Moreover, despite the liberalization of the telecommunications sector, little competition has emerged in network services, even in Maseru.

In addition, the growth of convergence has brought both regulatory challenges and opportunities. For example, the increasing availability of Voice over IP (VoIP) services has raised difficult regulatory questions for LCA, but has doubtlessly increased the ability of consumers to make affordable international calls.

Broadcasting

In recent years, the broadcasting sector has been growing. However, full development of this sector has been hampered both by limited availability of transmission infrastructure – especially outside of the lowlands areas – as well as by the lack of a clear and appropriate regulatory regime.

Postal

In contrast to the telecommunications and broadcasting sectors, the postal sector has not developed. Indeed, in recent years, mail volumes and revenues of the Lesotho Post Office (LPO) have been decreasing, both as a result of competition and a perceived lack in service quality. This decline is likely to continue in future, especially as telephone service and email become more accessible. To remedy this problem, the postal sector must be fundamentally restructured.

3 The Communications Policy

The Communications Policy addresses the institutional framework for the regulation of the communications sector, and establishes the policies that the Government will use to guide the development of the sector.¹ The new policy provides the basis for the Communications Act, which will replace the LTA Act and the Post Office Act.

The Communications Policy adopts an integrated regulatory regime governing the telecommunications, broadcasting, and postal sector (collectively, the Communications sector). The policy aims to achieve the following four goals.

- *Regulatory reform.* The policy will strengthen the regulatory capacity of the Lesotho Communications Authority (LCA).
- *Convergence.* The Policy will reflect and promote the convergence of services and networks based on the Internet.
- *Universal Service.* The Policy will foster universal access to a diverse range of high-quality communications services at affordable prices, including advanced networks, in order to enable Lesotho to participate in the global information society.
- *Competition.* The Policy will promote a competitive communications market. In particular, the policy will facilitate the cooperative deployment and sharing of infrastructure, thereby avoiding duplicative deployment of infrastructure while promoting service-based competition.

Southern Africa Development Community Protocol on Transport, Communications, and Meteorology.

The Communications Policy is consistent with the Southern African Development Community's Protocol on Transport, Communications, and Meteorology, to which Lesotho is a signatory. In particular, as required by the Protocol, the Government will:

- establish a universal service policy that identifies specific services, establishes priorities, and measures progress;
- promote a coordinated approach to the regulation of the telecommunications and broadcasting sector;
- encourage private sector investment in network infrastructure;

¹ In this Policy Statement, the term “communications” is used to refer collectively to telecommunications, broadcasting, and postal services.

- ensure the existence of an independent regulator with responsibility for establishing universal service obligations, licensing providers, managing radiofrequency, setting interconnection guidelines, and establishing technical standards;
- commercialize the post office and subject it to the authority of an independent regulator;
- promote availability of affordable, good quality universal postal services;
- identify those “reserved” postal services that will not be subject to competition; and
- establish a framework for the provision of non-reserved postal services, in a competitive environment, by private sector participants.

WTO Reference Paper

Although Lesotho has not signed the WTO Telecom Reference Paper, the converged regulatory regime is also consistent with the standards established in that document. Specifically, as provided for in the Reference Paper, the Government will:

- adopt safeguards to prevent anti-competitive practices by entities with significant market power;
- adopt transparent procedures to facilitate the adoption of agreements that allow for non-discriminatory interconnection, at cost-oriented prices, to the transport facilities of entities that have significant market power;
- adopt a transparent, non-discriminatory, and competitively neutral universal service regime;
- make licensing criteria, and the terms of individual licenses, publicly available;
- ensure regulatory independence; and
- establish objective, timely, and transparent procedures governing the allocation of scarce resources.

The WTO Reference Paper was intended to be adopted as standard practice for the telecommunications sector. However, these principles are applicable, to a significant extent, to all three communications sectors.

3.1 Institutional Framework

The Communications Act will integrate the regulation of the telecommunications, broadcasting, and postal sectors. The Lesotho Communications Authority (LCA) will be restructured, and will be given authority to regulate all three sectors.

Adoption of a converged regulatory regime will achieve multiple goals.

- A converged regulatory regime will reflect the development of technology and changing industry structure. Historically, telecommunications, broadcasting, and postal were distinct sectors, provided by different operators, over different infrastructures. As a result of the growth of IP technology, the boundaries among services involving the distribution of information are eroding. For example, voice communications, video content, and electronic mail can all be carried over a single network. These trends will accelerate in the years to come. The converged regulatory regime will reflect this significant development.
- Adoption of a converged regulatory regime will result in significant administrative efficiencies. There are a number of regulatory functions that are relevant in all three communications sectors. These include: granting of authorizations (licensing), competition management, consumer protection (including rate regulation), regulating inter-operator relations (including interconnection and access to infrastructure), promoting universal service, and enforcement. After the adoption of the Communications Act of 2008, LCA will be re-organized by function. For example, one office will deal with licensing issues applicable to all three sectors, thereby allowing efficient utilization of personnel.
- Adoption of a converged regulatory regime will facilitate a consistent regulatory regime that can harness the resources of all sectors. For example, LCA will facilitate the sharing of infrastructure by telecommunications providers and broadcasters. Similarly, LCA will promote the use of post offices as telephone and Internet access points.

After the adoption of the new Communications Act, LCA will perform all of the functions typically performed by a sectoral regulator. At present, there is no national competition authority. As a result, the Authority will also assume full responsibility for the enforcement of prohibitions against anti-competitive conduct (whether unilateral or concerted) in the telecommunications, broadcasting, and postal sectors, as well as the review of mergers involving licensees – at least until such time as a national competition authority has been established.

3.1.1 The Role of the Government and the Regulator

The Act will clearly define the respective roles of the Ministry and the LCA.

The Minister will be responsible, consistent with the requirements of the Act, for establishing basic policy for the telecommunications, broadcasting, and postal sectors, and for representing Lesotho on international matters relevant to these sectors. The Minister will also have ultimate responsibility for ensuring that the Authority acts consistently with law and established policy. However, the Minister will not participate in, or seek to influence, the initial decisions of the Authority regarding operational or technical matters – such as whether to grant a license to a particular applicant, approve an interconnection agreement, or adopt a particular technical standard.

The LCA will serve as an independent regulator. In making its decisions, LCA will act in a manner free from political interference, influence, or considerations. In addition, LCA will show no favouritism to any licensee, including any entity in which the Government continues to have an ownership interest. Such regulatory independence is mandated by Lesotho's international obligations, and is consistent with international best practice.² Moreover, maintaining regulatory independence is essential to ensure the confidence of both foreign donors and private sector investors, who must play a critical role in the development of Lesotho's communications sector.

At the same time, LCA will act in a manner that is consistent with the provision of the Communications Act, and any other applicable legislation, as well as the policies established by the Minister. The Act will establish measures that ensure that the Authority is held accountable for its actions.

3.1.2 Measures to Balance Regulatory Independence and Accountability

The Act will embody provisions designed to strike the proper balance between regulatory independence and accountability.

Board Selection

The powers of the Authority will continue to be exercised by the Chief Executive and the Board of Directors. The Chief Executive, following the recommendation by the Board of Directors, will be appointed by the Minister on a contract of not more than three-years duration. The Minister may remove the CEO, for cause. The CEO will be eligible for a contract extension.

The Minister will nominate the six members to serve on the Board, including the Chairman. The Minister will be required to solicit recommendations and to nominate qualified persons with a broad range of views and technical skills. The Minister's nominations must be approved by a simple majority vote of the National Assembly. Once approved, the Chairman and the other members of the Board will serve for a three-year term, and may only be removed, for cause, by a two-thirds vote of the National Assembly. The Chairman and the other members of the Board will be eligible for re-nomination to additional three-year terms.

² The principle of regulatory independence is embodied in the Southern Africa Development Community Protocol on Transport, Communications, and Meteorology, to which Lesotho is a signatory ("Member States shall . . . establish autonomous, independent national regulatory bodies . . ."), to which Lesotho is a signatory, as well as in the World Trade Organization's Telecommunications Reference Paper (telecommunications regulatory bodies must be "separate from, and not accountable to any supplier of basic telecommunications services").

Review of Decisions

Any party that is not satisfied with a decision made by the Authority will have the right to request a review of that decision.

- First, the party may seek reconsideration from the Authority. If, following reconsideration, LCA determines that it will not alter its decision, it will be required to explain, in writing, why it did not find the arguments of the party to be persuasive.
- If the party is not satisfied with the reconsideration decision, the party may request review by the Minister. The Minister's review will be narrow. The Minister may only vacate the Authority's decision if he concludes, based on the record, that the decision is: (1) inconsistent with law or established policy; (2) procedurally improper; (3) not supported by substantial evidence or (4) arbitrary and capricious. In such cases, the Minister will issue a written decision explaining the basis for his determination, and will remand the decision to the Authority. The Authority will then be required to respond in a manner that is consistent with the Minister's determination. If necessary, the Minister will appoint a qualified individual (or individuals) to assist with any or all aspects of this oversight function.
- Finally, any party may seek judicial review of the Minister's decision to uphold or vacate the Authority's decision.

The Act will specify deadlines for each stage of the review process to ensure a timely response for the party that has sought review.

3.1.3 Regulatory Principles

In performing its functions, the LCA will be guided by the following regulatory principles:

Protection of consumers

In carrying out its functions, LCA's primary obligation will be to protect the interests of consumers. The need for consumer protection is greatest in non-competitive markets. However, where appropriate, LCA will adopt rules applicable to all market participants.

Promotion and Preservation of Competition

LCA will seek to promote competition, wherever feasible. This will include removing legal barriers to market entry and service provision, as well as taking affirmative actions to reduce the cost of entry. Where competition exists, LCA will take necessary actions to preserve and, where feasible, enhance that competition.

Transparent and Reasoned Decision-making

LCA will be a transparent regulator. LCA will solicit input from industry and end-users prior to making significant decisions. LCA will also make all decisions based on the record before it, and will provide a reasoned explanation for its actions. Except where confidential information is involved, LCA will publish its decisions in a means that is readily accessible to the public, including publication on its website.

Avoidance of Unnecessary Delay

LCA will seek to make all decisions promptly. In particular, LCA will make decisions within timeframes to be specified in the Communications Act.

Technological Neutrality

LCA will make its decisions on a technology-neutral basis. To the extent feasible, Licensees seeking to provide comparable services will be subject to comparable regulations, regardless of the technology that they propose to use. LCA will not restrict the use of specific technologies without a compelling justification.

While recognizing the benefits of technology-neutral regulation, the LCA will not automatically impose legacy regulations on new technologies or operators. Rather, before extending legacy regulation, LCA will consider whether new participants have market power, or whether compelling policy considerations justify imposition of regulation. LCA will also consider the extent to which application of such regulations would have an adverse effect on service deployment and, ultimately, consumers.

Minimizing regulatory burdens.

LCA will seek to ensure that regulations are no more burdensome than necessary. Where feasible, regulations will focus on those licensees with significant market power, while reducing the regulatory burden on smaller operators that are subject to competitive market forces. In addition, as competition develops, LCA will take actions to eliminate regulations that are no longer necessary. To do so, LCA will conduct a periodic review of regulations. LCA will also be given authority to “forbear” from enforcing statutory provisions that are no longer necessary as a result of the growth of competition.

Effective Enforcement

LCA will take effective action to enforce its regulations. LCA will adopt investigation and enforcement procedures that are proportionate, transparent, non-discriminatory, and consistent in

their application. Where appropriate, LCA will request regular reports from select operators, and will request additional information in case of an investigation. LCA will impose penalties that are severe enough to act as an effective deterrent, while being proportionate and non-discriminatory. In serious cases that warrant imposition of criminal sanctions – such as fraudulent or destructive conduct – LCA will refer matters to the courts for judicial enforcement.

3.1.4 Functions of the LCA

As a converged regulator, LCA will perform the following principal functions, which are applicable to all three communications sectors. LCA will be reorganized along these functional lines.

Authorisation

LCA will perform several functions relating to the granting of authority to provide services or use equipment.

- *Licensing.* LCA will publish licensing criteria designed to facilitate new entry, and will award licenses in a technology-neutral fashion in order to facilitate the deployment of new technologies and reap the benefits of convergence. License fees will be published in advance, and will be set at a reasonable level.
- *Allocation and assignment of scarce resources.* LCA will be responsible for allocating scarce resources, such as radio spectrum and telephone numbers.³ LCA will ensure efficient usage of these resources, while promoting entry and innovation in new advanced wireless networks. As long as spectrum supply remains available, fees will remain low. As demand increases, however, fees will be raised in order to ensure that resources are made available for efficient use. LCA will not use auctions to allocate scarce resources.
- *Technical standards.* LCA will adopt and enforce technical standards governing both services and equipment. These standards will be imposed, where needed, to ensure compatibility between networks and customer premise equipment, prevent interference, and adopt international standards to benefit from lower prices resulting from scale economies.

³ The Policy recognizes the importance of another scarce resource, Internet Domain Names, whose assignments are critical to the formation of a well-functioning information society. In order to ensure the involvement of all relevant stakeholders, the Government will facilitate the creation of an independent body for both assigning this resource and also interacting with ICANN and other relevant international bodies involved in Internet resource allocation.

Competition Management

LCA will seek to facilitate competition. To do so, LCA will identify licensees that have significant market power, and will subject those licensees to heightened regulatory obligations. LCA will also adopt general competitive safeguards, rules governing anti-competitive conduct, and guidelines to review mergers involving Licensees. Finally, LCA will identify any markets, such as basic letter service, in which competition should be prohibited or restricted.

Consumer Protection

LCA will perform several functions designed to protect retail end-users. As noted above, the need for consumer protection is greatest in markets that are not yet subject to effective competition. Therefore, in such markets, LCA will review rates for communications services and will adopt and enforce appropriate Quality of Service (QoS) standards. In markets that are subject to effective competition, LCA will adopt measure to protect consumers from coercive or misleading conduct, and to protect privacy. LCA will also assist in the resolution of disputes between Licensees and consumers.

Inter-operator Relations

LCA will regulate the relationship between service providers. This will include overseeing agreements between operators that involve interconnection of their distribution networks, access by one operator to the network of another operator, or the sharing of facilities by multiple operators. LCA will also oversee the wholesale market. This will include regulating wholesale rates and, where necessary, requiring the provision of wholesale services at appropriate rates.

Universal Service

LCA will serve as a treasurer in the implementation of Universal Service Strategy to promote access to communication services in remote areas of the country. This will involve the establishment of a Universal Service Fund (USF) that will be administered by a Universal Service Fund Committee (USFC) of which LCA will be a member. The USFC will develop universal service goals and annual plans to meet those goals by collecting contributions to the USF and allocating them towards the deployment of infrastructure.

Enforcement

LCA will conduct investigations and take enforcement action in any case in which a party has contravened its rules. This will include enforcement of prohibitions against anti-competitive conduct and content regulations.

3.2 Strategies relating to the specific communications sectors

Although the Communications Policy applies to all three communications sectors, the Government will carry out a number of actions specific to each sector.

3.2.1 Telecommunications Sector

The telecommunications sector has grown significantly in Lesotho. However, penetration rates remain low. Only three percent of Basotho subscribe to a wireline telephone service, and there is no competition in the wireline market. Over twenty percent of Basotho subscribe to a wireless service, which has limited competition between two operators. There have been no other entrants into the wireless or wireline market. Finally, Internet access is still nascent, with only two percent of residents subscribing to Internet services, with additional access at Internet cafes, primarily in Maseru.

At the same time, infrastructure deployment remains inadequate. Indeed, more than half of the geographic area of the country is not covered by any wireline or wireless network. International connectivity is limited because of Lesotho's reliance on South Africa for terrestrial access.

The fundamental goals of the Communications Policy in the telecommunications sector are:

- to facilitate the deployment of infrastructure to currently unserved portions of the country;
- to provide additional means for non-subscribers to access telecommunications services; and
- to foster advanced communications networks and increased competition in the sector.

To achieve these goals, the Government will take a number of actions. First, the Government will seek to facilitate cooperative efforts to deploy infrastructure in currently unserved areas. Second, the Government will seek to promote telecommunications and Internet access points throughout the Country. Third, Government will remove technology-based and other regulatory restrictions that may impede new market entry, particularly of advanced networks and services.

Access gaps

The Government will take significant actions to close the “access gap” in the telecommunications sector. First, the Communications Act will establish a Universal Service Fund Committee. Second, LCA will use its licensing authority to promote service roll-out. Finally, Government will take other measures to promote universal access.

- *Universal service.* The Government seeks to ensure that all Basotho have access to basic domestic and international telephony services and Internet access. This will be applied in a technology-neutral fashion, covering both fixed and mobile networks, and both traditional or

VoIP telephony. The Government is also committed to nationwide availability of broadcast and basic postal services. There will be a number of elements of the universal service strategy.

- *Universal Service Fund Committee.* The Communications Act will establish a Universal Service Fund Committee, in which the Ministry, LCA, and other relevant government agencies will participate. The USFC will establish an annual universal service plan, with specific and quantifiable performance measures. The USFC will also monitor the program, and report annually regarding the achievement of the goals that it has established.
- *Contributions.* All licensed telecommunications operators will be required to make a contribution to the Universal Service Fund (USF) of no more than two percent of their net operating income from the provision of telecommunications services in Lesotho. The Government will also explore the feasibility of having other licensed communications operators in the broadcasting and postal sectors contribute to the Fund in return for qualifying to receive funds to help to promote access. Contributions may also come from the LCA, the Government, and development partners.
- *Expenditure.* Revenue from the USF will be used to subsidize the deployment of infrastructure to remote, currently unserved areas of the country, which may be used by licensed operators from all sectors, including both fixed and mobile networks, broadcasters, and postal carriers. For example, funds may be used for construction of: towers and backhaul facilities in remote areas of the countries; tele-centres in under-served areas, using both public facilities (such as post offices) and private facilities; and an Internet Exchange Point (IXP) in order to promote the efficient use of infrastructure for Internet peering.
- *Access requirements.* Once infrastructure has been deployed, USFC will ensure non-discriminatory access to that infrastructure.
- *Licensing.* LCA will use licensing conditions to promote deployment. For instance:
 - LCA will include coverage requirement in spectrum licenses, such as those for fixed wireless or WiMAX, that extend beyond currently served customers.
 - LCA will include wholesale or sharing requirements that would provide sufficient reimbursement to the investing operator while fostering retail competition.
- *Other Government action.* The Government may assist the USFC in meeting universal service goals in several ways. As noted above, the Government may provide funding to the Universal Service Fund. Second, the Government may make its own infrastructure available to operators, including existing communications infrastructure as well as other relevant infrastructure such as that used for the distribution of electricity.

Convergence.

The Government encourages deployment of converged technologies. The policy applies to both networks and services. Networks can include advanced communications networks such as WiMAX and next generation networks (NGN), which are optimized to provide Internet services and may be less expensive to implement than traditional technologies. Services can include offerings such as voice over IP (VoIP) and IP television (IPTV) that provide substitutes for existing services over the Internet, and often include features unavailable with existing technologies.

The Government will promote access to convergent services by eliminating non-technology neutral regulations. Specifically, operators will not be required to deploy, or prohibited from deploying, any specific technology to provide the network or service. For example, providers of fixed telecommunications services would be free to use fixed wireless links, as well as copper wire or fibre, to provide “last mile” connectivity. LCA will also adopt a clear policy allowing the provision of VoIP services.

Competition

The Government will take the following actions to promote competition. Given Lesotho’s small population, level of development, and geographic characteristics, deployment of competitive infrastructure seems unlikely in the short to intermediate term. Therefore, the Government will seek to promote service-based competition. In addition, LCA will adopt competitive safeguards to restrain the ability of operators with significant market power to act anti-competitively, while easing regulatory burdens on entrants and operators in competitive markets. This will be accomplished as follows.

- *Interconnection.* LCA will facilitate interconnection between operators, particularly where one of the operators has significant market power. Interconnection agreements will be timely, non-discriminatory, cost-oriented, unbundled, and transparent.
 - LCA will identify operators that have significant market power.
 - Any operator with significant market power will be required to allow physical interconnection, at any technically feasible location, at forward-looking, cost-based prices. The LCA will determine both the methodology for setting interconnection rates and also determine the cost-based rates, after which a price cap will be imposed to keep the rates at or below those rates over time.
 - LCA may also specify certain Interconnection Related Services and Mandatory Wholesale Services that the SMP operator must provide upon request, at cost-based prices.

- The LCA will review interconnection agreements between operators with SMP and other operators, and will approve them, unless they do not meet certain basic requirements. For example, LCA may also reject agreements that set termination rates at levels that could facilitate retail price fixing.
 - LCA will also have the authority to require operators with significant market power to adopt a Reference Interconnection Offer (RIO), which would contain a standardized set of prices, terms, and conditions on which the operator will interconnect, exchange traffic, and provide access to facilities.
 - In the case of interconnection agreements that do not involve an operator with significant market power, the agreement will become effective once filed at LCA, subject to review where necessary.
- *Rate regulation.* Retail rate regulation will be imposed on operators with SMP in a market, where retail tariffs will be subject to a price cap. As a rule, SMP operators will be required to file tariffs to ensure that the prices are cost-oriented, but LCA will have the authority to forbear from this requirement, for instance, allowing price decreases without notification.
 - *Quality of service.* Operators will be required to meet quality of service parameters and must file regular reports on their QoS, based on parameters to be determined by the LCA.
 - *Facilities access.* LCA will require that operators that have deployed infrastructure that cannot economically be duplicated provide competitive access at cost-based prices (including a reasonable return on investment).
 - *New entry.* LCA will seek to promote entry of new operators to provide wireless and wireline services, both in competition with existing operators for voice services and also offering new services such as WiMAX.
 - *International services.* LCA has previously liberalised the provision of international gateway service, and will encourage operators to share existing facilities, and jointly deploy new facilities, where appropriate. In addition, LCA will establish a carrier pre-selection regime, which will enable users to access the international provider of their choice by dialing a standard international code. Finally, as discussed above, LCA will clearly authorize the provision of VoIP services.

3.2.2 Broadcast

The broadcast sector is growing, particularly with a number of new commercial and private radio stations operating. However, competition with the state broadcaster is limited, particularly in areas outside of Maseru, by the lack of widespread transmission infrastructure. In addition, there is uncertainty over broadcasting regulations relating to content.

In order to foster the development of the broadcasting sector, the Government will take the following actions.

- The Government will establish a clear legal framework for the sector in the Communications Act.
- The Government will corporatize the Lesotho National Broadcasting Service.
- The Government will facilitate deployment of transmission infrastructure throughout the country.
- The Government will adopt a transparent, non-discriminatory regime for the regulation of content.
- The Government will promote the provision of Internet-based “New Media” services. .

Regulatory Reforms

The Government will take several actions to reform the existing regulatory regime.

- *Broadcast Classifications.* While convergence is erasing distinctions between services, there is a fundamental difference between broadcasting and telecommunications that will be accounted for in the Communications Act. Telecommunications involves the carriage of the user’s choice of content between two points specified by the user, while broadcasting involves the carriage of content, provided by the broadcaster, to multiple points. While many regulatory requirements are appropriate for all three ICT sectors, certain policies are not. For example, rules governing rate regulation have no applicability to free over-the-air broadcast services

Within broadcasting, the Communication Act will establish four categories of broadcasters: public service broadcasting, community broadcasting, private broadcasting, and commercial broadcasting. Each category will differ by ownership, purpose, and coverage requirements.

- *Public Service Broadcaster.* The Lesotho National Broadcasting Service (LNBS) will be transformed from a state broadcaster into a public service broadcaster. This will entail corporatizing the LNBS and making it accountable to an independent board with the goal of serving the public interest. The public service broadcaster will have editorial independence and any content restrictions or requirements will be contained in its charter, along with a clear source of funding for operations and expansion.
- *Content Regulation.* The new law will seek to strike a careful balance. The law will seek to promote freedom of expression, diversity, and the free flow of information and ideas. At the same time, however, the law will recognize that – in certain, narrow, clearly defined circumstances – the Government will have authority to impose content restrictions. The law will make clear the specific circumstances in which content restrictions are justified, and will

establish a transparent non-discriminatory procedure that will be followed before any sanction is imposed on an offending broadcaster. In addition, the law will establish a procedure for notifying a licensee of any complaints, and for adjudicating the matter. Finally, a Broadcast Dispute Resolution Panel, which will consist of industry representatives, will be empowered to resolve content disputes and make recommendations to the LCA for enforcement of the Communications Act and all relevant license conditions.

- *Digital Migration.* The government will initiate the planning for the digital migration that the ITU has recommended take place before 2015. In order to minimize the cost of the migration to both broadcasters and consumers, the Government will begin to plan this transition in 2008. The first issue will be to commission a cost study in order to determine when broadcasters should begin to purchase digital broadcasting equipment by weighing any falling costs of such equipment against the need to encourage consumers to begin to purchase digital receivers when they buy new or replacement televisions or radios. This will also be a function of the falling cost of such equipment and the analog to digital converters that will allow them to receive programming that has not yet gone digital. At that time, the LCA will assign digital spectrum to the broadcasters, with provisions for when the analog services will be terminated and the analog spectrum returned to the Government.

Access Gaps

The Government will take two actions to reduce the access gap in the broadcasting sector. First, the Government will promote the efficient sharing of existing infrastructure. Second, the Government will foster shared deployment of new infrastructure in unserved or underserved areas.

- *Transmission Infrastructure.* LNBS will be required to provide all licensed broadcasters with access to its transmission infrastructure under reasonable and non-discriminatory terms. After corporitization, the LNBS Board will propose rates and terms and conditions for access that must be approved by the LCA and made public. LNBS will be required to adopt QoS standards and rules governing suspension of access to its infrastructure. In general, LNBS will only be able to suspend or discontinue service to a competing operator where: (1) service provision is not technically possible or is likely to cause technical harm to the network; (2) the user has failed to pay for service provided or otherwise materially breached its service agreement and, after being notified, failed to remedy the breach; or (3) LNBS receives a written direction from LCA or a court of competent jurisdiction directing it to suspend service.
- *Deployment.* LNBS will participate in infrastructure deployment and sharing arrangements with other providers, including telecommunications operators, in order to reduce the cost of deployment and increase coverage. In particular, LNBS (along with other broadcasting licensees), will contribute, as appropriate, in the USF, and will then be able to have cost-based access to any facilities funded by the USF.

Competition

The Government will seek to increase competition in the sector. To the extent that spectrum is available, LCA will license additional market participants. The regulatory changes proposed above should facilitate new entry, by reducing both transmission cost and regulatory uncertainty. LCA will also consider the role of satellite-based services in promoting competition. This may include fostering a Lesotho-based satellite consortium, or cooperation with a satellite-based multi-channel video service provider in a neighboring country.

Convergence

The Government will seek to promote the deployment of IP-based content services, such as Internet radio and IP television (IPTV). These IP-based services are a relatively low-cost means for broadcasters to increase their audience, both domestically and internationally, and enable subscribers to access content, both domestic and international. In particular, the Government will encourage broadcasters to make their content available over the Internet, including coverage of public events of national significance, and will also encourage consumers to access that content over the Internet. Because of the international nature of Internet content, the Government will not impose content regulations on content transmitted over the Internet. However, over-the-air content that is simultaneously broadcast over the Internet will remain subject to the over-the-air content regulations.

3.2.3 Postal

The postal sector has not developed adequately in recent years. The Lesotho Post Office (LPO) is run as a part of the Ministry of Communications, Science and Technology pursuant to the Post Office Act of 1979. The LPO has recently experienced declining volumes and service revenues. Few new services have been introduced, and service quality remains inadequate.

In order to facilitate the development of the postal sector, the Government will reform the sector in a manner that is consistent with the recommendations contained in the Integrated Postal Reform and Development Plan proposed by the Universal Postal Union (UPU) in June 2006.

Regulatory Reform

The regulatory reform will involve corporatization of the Lesotho Post Office and provide for its regulation.

- *Corporatization of the Lesotho Post Office.* The Government will transform the LPO from a state agency into an independent corporation. While the corporation will be fully owned by the government, the LPO will be required to operate like a commercial entity. Prior to corporatization, the LPO will be required to develop, and obtain Government approval of, a

long-term plan to ensure that the corporatized entity will meet specified universal service commitments, while having sufficient financial and human resources to operate as a viable business. This will include an assessment of the extent, if any, to which the Government will be required to provide an ongoing subsidy in order to meet universal service commitments. The plan will include transfer of government assets and the conversion of government civil servants into corporate employees.

- *Regulation of the LPO.* The LCA will have authority to regulate the LPO. For those services over which the LPO has exclusive rights, the LCA will adopt regulations to protect consumers. These regulations will include:
 - *Rate regulation.* The LCA will regulate the postage rates charged on those letters and packages over which the LPO has exclusive rights, in order to sure that the rates are cost-based and affordable for all citizens.
 - *Minimum Service requirements.* The LCA will also regulate minimum service requirements that the LPO must fulfill in terms of average delivery time, percentage of successful deliveries, and other relevant service parameters.

Competition

The Government will seek to promote competition, and the provision of new services, in the postal sector, such as express mail, bulk mail, and larger package shipping. The new legislation will provide for competitive service in several ways.

- *Licensing.* The LCA will grant licenses to competitive operators currently operating under general business licenses issued by the Ministry responsible for Trade. These licenses will enable the operators to provide those services for which the LPO has not been given exclusive rights.
- *Network access.* The LPO will be required to provide access to its delivery network and post offices, at reasonable rates and conditions to be regulated by the LCA. This will increase the choices available to consumers, as well as ensure access to global express mail networks.

Access Gaps

Recognizing the socio-economic benefits of postal service, the Communications Act of 2008 will establish that all citizens have the right to receive certain fundamental services at affordable prices. The legislation will set forth the criteria for what is fundamental, while allowing the LCA to make the determination of what services qualify for universal service, so that this can change as the sector evolves over time.

LCA will also seek to coordinate universal service efforts in the postal and telecommunications sectors. For example, LCA will have authority to direct the LPO to act as a public telecenter and/or public Internet access point in underserved areas, at rates and terms to be overseen by the LCA.

Convergence

The Government will also seek to promote the availability of convergent services that are substitutes for, or adjuncts to, conventional postal services. Increasing Internet access will enable the growth of e-mail and instant messaging, which is often a faster, less-costly means of written communications. The Government recognises that such services may lower postal revenues. The Government will encourage the postal service to compensate for the decrease in revenue by introducing new services, including “hybrid” postal services, which combine the transmission of information over the Internet and the creation of a physical document.

4. Conclusion

The adoption of the Communications Policy represents a significant step forward for Lesotho's communications sector. The Policy will result in the creation of a converged regulatory authority, the restructuring of the broadcasting and postal sectors, the establishment of a Universal Service Fund, increased competition, and the greater availability of the converged services that will help Lesotho to become a part of the global information society.

Annex A: Glossary

- **Advanced Communications Networks.** Networks that have migrated from traditional circuit-switched technology to packet-switched networks. These include IP networks, Asynchronous Transfer Mode (ATM) Networks, and Next Generation Networks (NGN).
- **Advanced Communications Services.** Services delivered over advanced communications networks.
- **ATM: Asynchronous Transfer Mode.**
- **Broadband.** High-speed data transfer connections. For residential users, broadband connections are characterized by higher speeds than dial-up Internet access and are “always on.” They can be offered over a variety of fixed networks such as copper networks or fibre optic networks, or over wireless networks such as WiMAX. For enterprise customers, in addition to high-speed Internet connections, broadband can include Asynchronous Transfer Mode or Frame Relay data connections that enable secure managed data services.
- **Broadcasting.** Broadcasting is a process that sends voice, data, or video signals simultaneously to a group in a specific geographic area or to those connected to a broadcast network system such as a satellite or cable television system. Broadcasting is typically associated with radio and television.
- **Carrier Pre-Selection.** Carrier pre-selection allows telephone subscribers to use a long distance and international operator different from the provider of their telephone access, thereby facilitating competition in those services. The long distance provider may bill the subscriber directly or the incumbent may be required to bill the client for a fee.
- **CEO: Chief Executive Officer**
- **Circuit Switched Network.** A type of network in which a physical path is obtained for, and dedicated to, a single connection between two end points in the network for the duration of the connection. This connection is typically used for two-way transmissions such as telephone calls or dial-up Internet access.
- **Commercial Broadcaster.** A broadcaster that is funded solely from private means such as sales and marketing, sponsorships, donations, and merchandising, but not from Government means. Commercial broadcasters are autonomous from Government and have historically operated with complete editorial freedom.
- **Communications Sector.** This refers collectively to the telecommunications, broadcasting, and postal sectors.

- **Community Broadcaster.** A public broadcaster that provides programming of interest on the local level or for particular communities such as a religious community. Community broadcasters can be funded by Government, non-profit organisations, viewers through donations, and advertising.
- **Convergence.** The migration of traditional communications services such as telephony and television to the Internet, as well as the development of new advanced communications networks based on the Internet Protocol.
- **CPE: Customer Premise Equipment.** Any equipment in a subscriber's premises and connected to a communication network. This can include telephones, fax machines, and broadband modems. They can be purchased directly by the subscriber or rented from the service provider.
- **ICANN: Internet Corporation for Assigned Names and Numbers**
- **ICT: Information and Communication Technology**
- **Information Society.** A society in which the creation, distribution, and manipulation of information has become the most significant economic and cultural activity.
- **Interconnection Related Services.** Network facilities or services that a regulator may require an operator with significant market power to offer, including physical interconnection, collocation, or access to unbundled network elements.
- **Internet.** The collection of interconnected networks that use the Internet Protocol.
- **Internet Peering.** Bilateral agreements negotiated between ISPs allowing them to exchange traffic destined for each other's customers. Typically traffic is exchanged without the originating ISP paying the terminating ISP, which in turn agrees to terminate the traffic on a "best efforts" basis.
- **IP: Internet Protocol.** The protocol used for routing and carriage of messages across the Internet.
- **IPTV: Internet Protocol Television.** The transmission of video signals over Internet networks that are connected to analogue televisions (via a analogue converter) or to digital televisions. IP Video is a form of IPTV that involves the transmission of video to personal computers through broadband connections.
- **ITU: International Telecommunication Union**
- **IXP: Internet Exchange Point.** A facility in which Internet Service Providers (ISPs) can locate equipment to exchange traffic, typically using peering connections. An IXP can allow ISPs to save a significant amount of money by avoiding the need to directly connect to one

another using leased circuits, or using international circuits to connect to an IXP abroad where domestic traffic can be exchanged.

- **LCA: Lesotho Communications Authority**
- **LNBS: Lesotho National Broadcasting Service**
- **LPO: Lesotho Post Office**
- **LTA: Lesotho Telecommunications Authority**
- **Mandated Wholesale Services.** Services that a regulator may require an operator with significant market power to offer at regulated wholesale rates, such as leased line services or the resale of broadband services.
- **NGN: Next Generation Networks.** A network that converges three separate networks – the PSTN voice network, the wireless network, and the data network (the Internet) – into a common packet infrastructure. This intelligent, highly efficient infrastructure delivers a host of new technologies, applications, and services that are more flexible, scalable and cost-efficient than services that have been offered in the past.
- **Private Broadcaster.** A broadcaster owned and controlled by individuals or organizations that operates on a non-profit basis.
- **Public Broadcaster.** A broadcaster that has traditionally been subsidised by Government or supported directly by viewers. In many cases, public broadcasters exercise complete editorial freedom. Increasingly, public broadcasters are taking on a mixed commercial model, sourcing funds through a mix of advertising and public monies.
- **QoS: Quality of Service**
- **RIO: Reference Interconnection Offer.** An offer that a regulator may require an operator with significant market power to make to competing operators, which contains a standardized set of prices, terms, and conditions on which the operator will interconnect, exchange traffic, and provide access to facilities.
- **SMP: Significant Market Power.** The ability of a market participant to operate independently of competitors and consumers. The existence of SMP is often a pre-requisite for government imposition of *ex ante* regulations of rates and services, which is necessary to protect consumers in the absence of competition.
- **Tele-centre.** A public place where anyone can pay to use telecommunications services. These services include, but are not limited to, the Internet, email, fax, telephone service, and other electronic information services.

- **Telecommunication.** Any domestic or international transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user's choosing.
- **Telecommunication service.** Any service provided by means of a telecommunication system
- **Telecommunication system.** Any system or series of telecommunication facilities or radio, optical or other electromagnetic apparatus or any similar technical system used for the purpose of telecommunications, whether or not such telecommunication is subject to rearrangement, composition or other processes by any means in the course of their transmission, emission or reception.
- **Universal Access.** The level of deployment at which everyone in the country can gain access to a publicly available telecommunications service at reasonable distances, although not necessarily in their home.
- **Universal Service.** The level of deployment at which every household in the country has basic telecommunications service.
- **UPU: Universal Postal Union**
- **USF: Universal Service Fund, also USFC: Universal Service Fund Committee**
- **VoIP: Voice over Internet Protocol .** The process of sending packetised voice content over the Internet. The voice content can originate or terminate on a personal computer using VoIP software, or on a traditional telephone handset attached to a broadband connection using an adaptor that converts the voice signal to the Internet Protocol.
- **WiMAX.** A telecommunications technology based on the IEEE 802.16 standard. The name WiMAX was created by the WiMAX Forum, which was formed in June 2001 to promote conformance and interoperability of the standard. The forum describes WiMAX as "a standards-based technology enabling the delivery of last mile wireless broadband access as an alternative to cable and DSL."
- **WTO:** World Trade Organization

