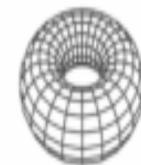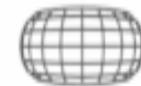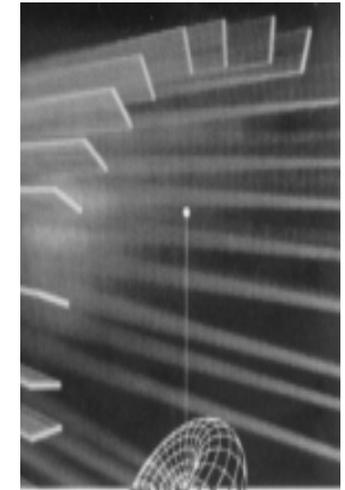# Policy and regulatory implications for wider diffusion of services and innovations

Prof Alison Gillwald

FIFM Workshop Tshwane

October 2007

Policy Framework

Objectives: Affordable retails and wholesales access to range of diverse services

- Managed liberalisation (1996 - 2005)
  - Privatisation
  - Liberalisation
  - NRA
  - Universal service

Strategies: Regulated competition
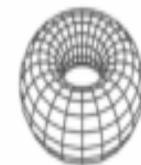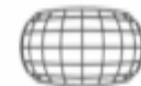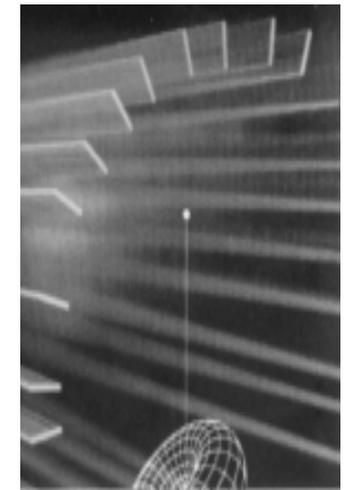
USA/USF

Outcomes:
- Conflict of interests in institutional arrangements
- Maximisation of state assets

- Developmental state (2001-2007)
 - State ownership
  - State delivery

Strategy: Deployment of state infrastructure fro economic growth
- State conflict of interests (DPE)
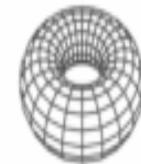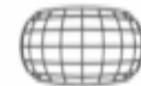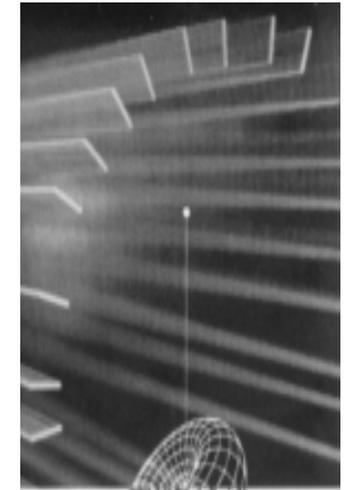- Contradictions dealt with by exceptions/subsidies (e-rate/BPO rate)

Regulatory Independence

- Minister
  - Retains policy-making function (policy directions)
  - ICASA bound only to **consider** policy directions of the Minister – significant improvement
  - Determines "Electronic Communications Network Services" market structure by issuing ITAs
  - But some policy interventions areas allowed into matters of regulation
    - Control (by veto) over radio spectrum planning
    - allocation of spectrum for security services
- ICASA
  - grants licences (removes co-jurisdiction with Minister)
  - Prescribes regulations (ministerial veto removed)
  - Strengthened role on competition issues
  - Will this be enough to deal with problems of vertical integration?
- Structural conflicts of interest remain (eg Electronic Communications Network Services licences)
- Some broadcasting changes may be unconstitutional
- Control shifted from veto of regulations to appointment of Council in ICASA Amendment Act.
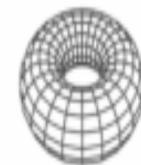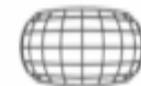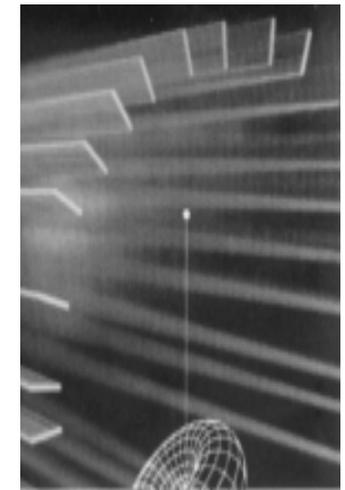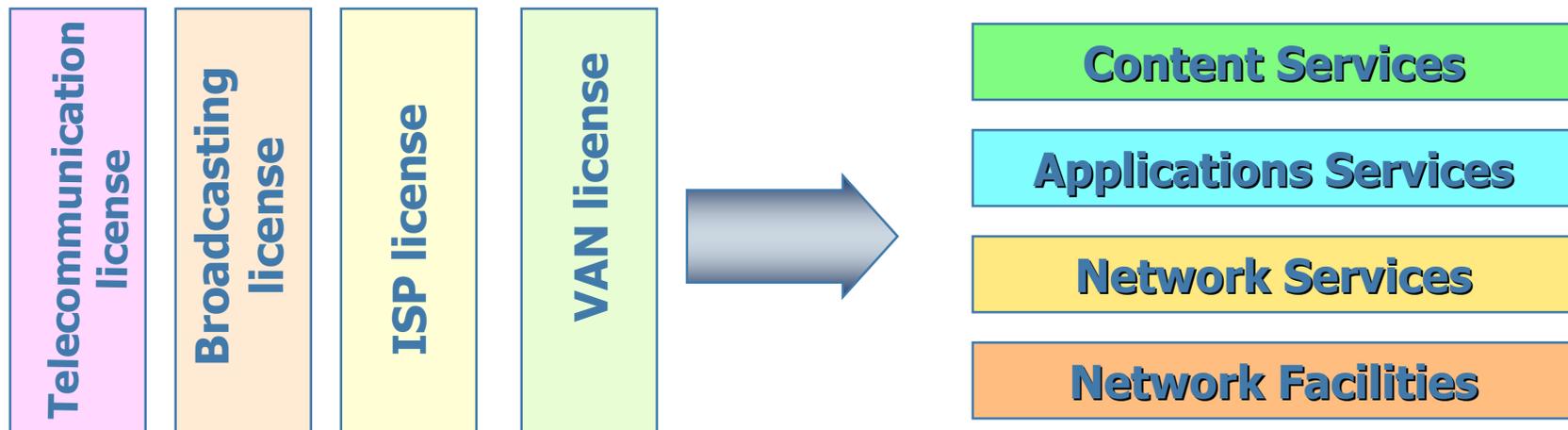
Position of ICASA – ECA and ICASA Amendment Act

- ICASA Councillors
  - Appointments by Minister on recommendation of National Assembly (possibly with technical experts involvement)
  - Removals by Minister on finding by the National Assembly
  - Performance Management System:
    - established by the Minister in consultation with the National Assembly
    - Evaluation of Chairperson/Councillors by a panel appointed by the Minister in consultation with the National Assembly
- Institutional Position of ICASA
  - Exercises functions / performs duties imposed by ICASA Act, ECA, Postal Services Act & Broadcasting Act
  - Ministerial Policy Directions: ICASA to consider these but need not act in accordance with them
  - Regulations: ICASA makes these on its own - ie do not require Ministerial approval but ICASA is required to give notice of regulations to the Minister
  - Licensing: ICASA controls this process except in one NB respect ie cannot issue ITAs for individual ECNS licences unless this is done ito a Ministerial policy direction

Source: Justine White

Licensing for convergence

Telecommunication license

Broadcasting license

ISP license

VAN license

Content Services

Applications Services

Network Services

Network Facilities

Under the old licensing framework all activities related to the provision of a particular service are vertically integrated for the provision of that service

The new licensing framework promotes vertical separation between facilities, network, applications, and content

Source: Malaysian Communications & Multimedia Commission

Licensing under the ECA

Generic provisions of the legislation apply to all relevant activities

Standard licence conditions common to individual and class licensees
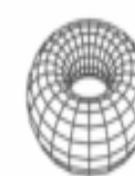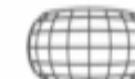
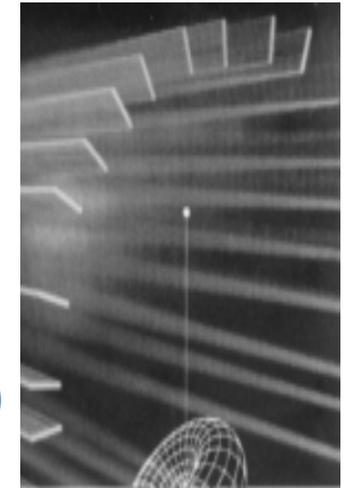**Additional licence conditions common to SMP licensees**

Special conditions

**Undertakings**

Individual
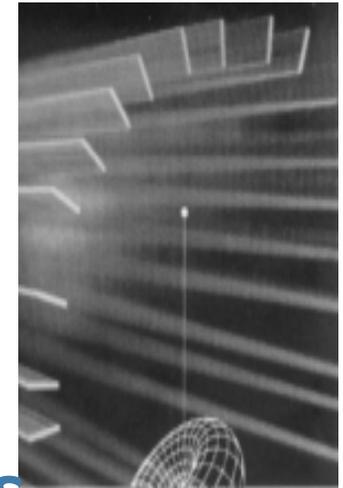
Class

Exempt

EC Act licences in SA

- **Individual licences**
 - **electronic communications network services** (infrastructure)
    - of provincial or national scope & operated for commercial purposes
    - *or* with >25% state ownership
    - licences require a Ministerial policy direction
  - **broadcasting services**
    - commercial & public broadcasting
    - national and regional scope
    - both free-to-air and subscription
    - or offered by any state with 25%+ state ownership
  - **electronic communications services**
    - voice telephony services using national numbering plan numbers
    - or with >25% state ownership
    - with significant socio-economic impact
  - **to be prescribed by ICASA with significant socio-economic impact**
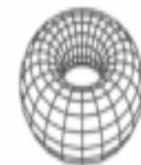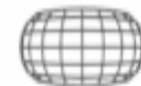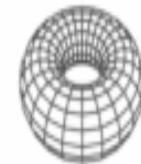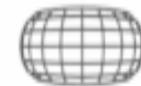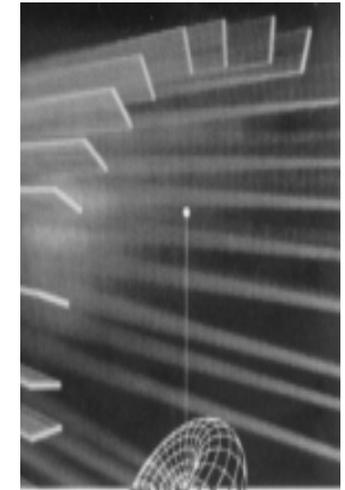
EC Act licences in SA

- **Class licences**
  - **electronic communications network services** (infrastructure)
    - of municipal or local scope & operated for commercial purposes
  - **broadcasting services**
    - community broadcasting or low power services
  - **electronic communications services**
    - Not specified
  - **to be prescribed by ICASA without significant socio-economic impact**

- Also: Radio frequency spectrum licences
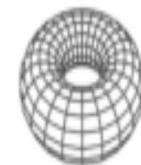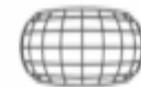
Licensing under ECA

- Key change - licensing process in the hands of ICASA
- ICASA in charge of the entire process
  - issues invitations to apply (ITAs)
  - considers applications
  - grants all licences
  - **EXCEPT** cannot issue an ITA for an individual ECNS
  - unless the Minister has issued a policy direction in this regard (s5(6))
- Individual Licences: (eg Broadcasting, Spectrum, ECNS)
  - terms to be determined by ICASA
  - Period = 20 years max
- Class licences (Broadcasting, ECS, ECNS)
  - terms to be determined by ICASA
 - Period = 10 years max

ECA: Licensing Matrix

| Types / Categories	Broadcasting	ECNS (infrastructure)	ECS (services)	Frequency Spectrum
Individual	Public / Commercial with national / regional scope Voice telephony using numbers State ownership – 25% Prescribed with significant social / economic impact	Commercial with national /provincial scope State – 25% Prescribed with significant social / economic impact Only by policy directive of Ministry	Voice telephony using nos on the national numbering plan State – 25% Prescribed with significant social / economic impact	All unless exempt
Class	Community / Low Power To be prescribed having no significant social / economic impact	Commercial with municipal/district scope	Not specified To be prescribed having no significant social / economic impact	
Exempt	Not specified	As prescribed eg PTN LAN	As prescribed Not-for-profit Resellers	As prescribed eg amateur radio astronomy and science uses, v low power, prior licence

EC Act licence conversion

- PSTS ➜ Individual ECNS + Individual ECS
- MCTS ➜ Individual ECNS + Individual ECS
- VANS ➜ Individual / Class ECNS + Individual (if national numbers) / Class ECS
- USAL ➜ Class ECNS + Individual (if national numbers) ECS
- PTNs (interconnected) ➜ Individual (>25% state) / class (reselling) ECNS
- Public / Commercial TV / Sound Broadcasting ➜ Individual ECNS + Individual ECS
- Community TV / Sound Broadcasting ➜ Class ECNS + Class ECS
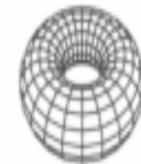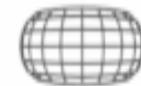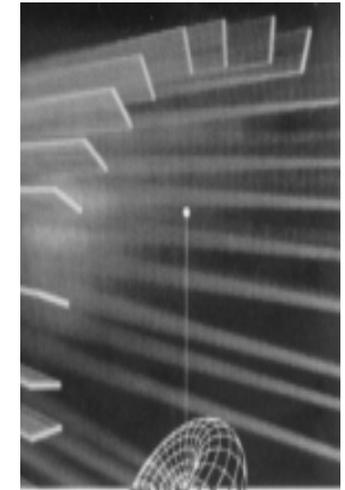
ECA: Transitional Provisions

- Existing licences remain valid
- ICASA to convert existing licences within 24 (+6) months
- Problem: "on no less favourable terms"
- ICASA to publish schedule of conversion process within 30 days
- ICASA to convert existing licences into one or more new licences eg ECS, ECNS
- NB any monopoly/exclusive rights are null and void (s93)
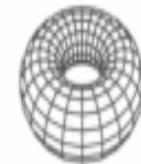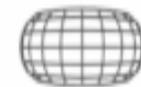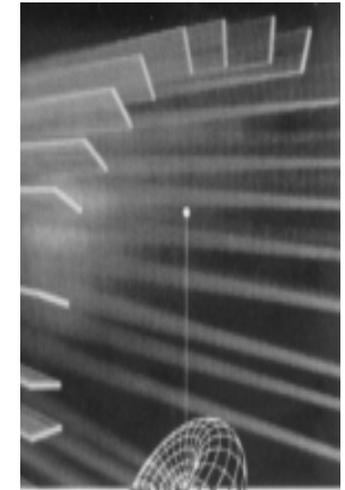
Metropolitan networks

- PTN

- Service licence acquire and provide third party facilities

- Chapter 3 Section 5 (5) a - ECN of district municipality or local municipal scope operated for commercial purposes require class licence
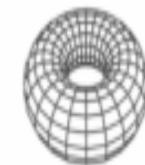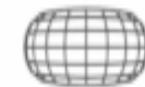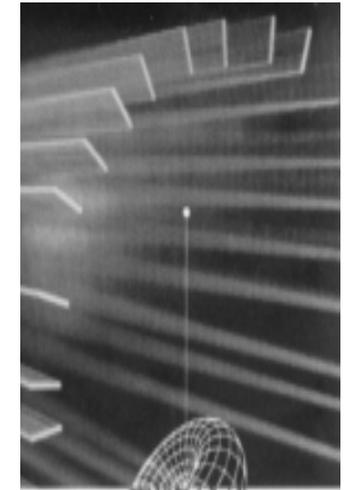
Spectrum

- Traditionally command and control model - technological neutrality?
- Exclusive usage approach (property rights)
- Commons - rights held in common
  - Short-range technologies
- Mixed collective approach
  - balance investment
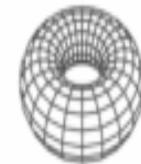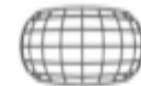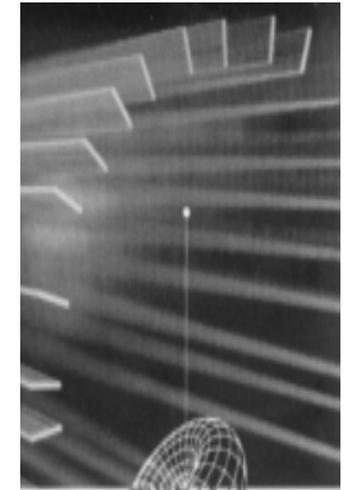 - and access
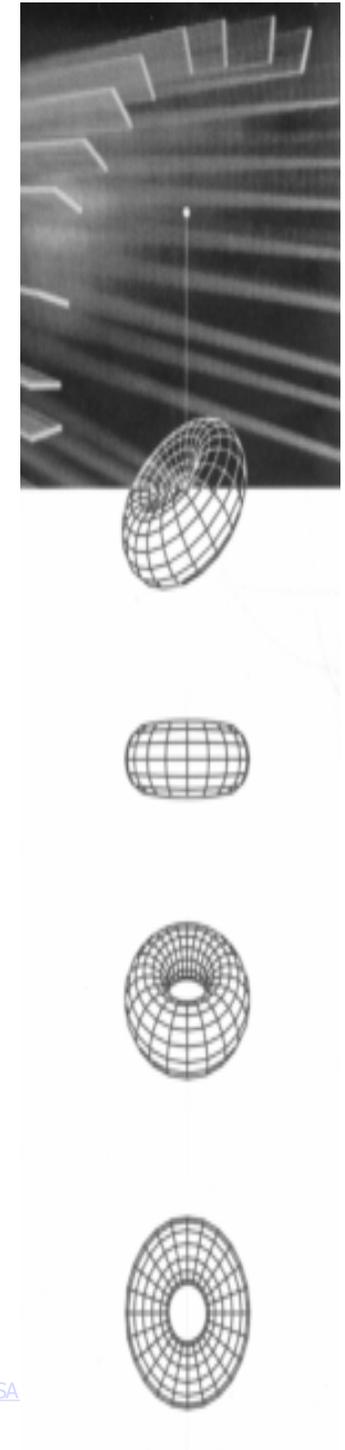
Frequency & Power

- ISM 2.4 - 2.5 & GHz 5.4-5.7

- No licensing requirements to use frequencies for wireless LAN using fixed apparatus

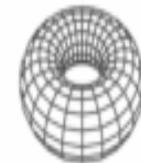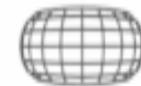- Restrictions on maximum allowable levels of EIRP - 100mW &1000mW
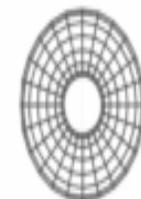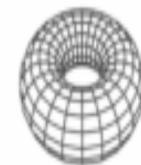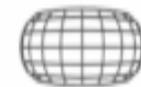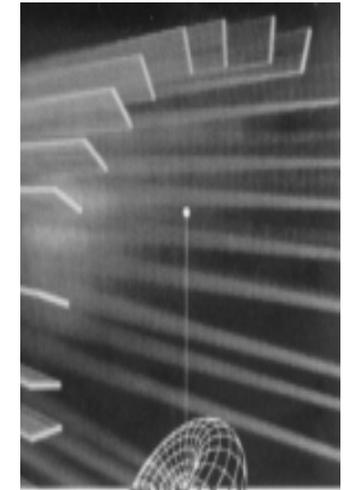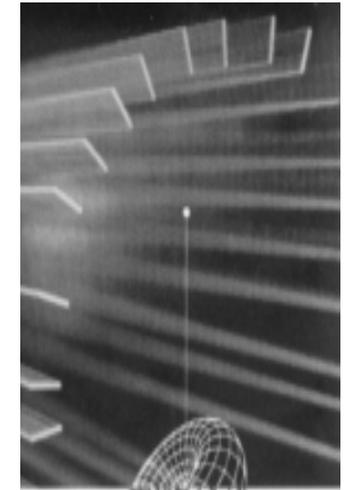
Essential facility regulation

- Bottlenecks at LL and international cable landing stations

- LL lengthy process and success dependent on perceptions of regulatory capacity and regulatory certainty

- Regulation of access to landing station

Ministerial Policy Directions
issued May 2007

- SAT-3 / WASC / SAFE
  - SAT-3 exclusivity to be declared null & void
  - To be declared essential facilities
  - ICASA to regulate access & pricing
- DVB-H
  - ICASA to develop enabling standards
  - Single network operator to be licensed (with spectrum)
  - Open & non-discriminatory access to be regulated
- VANS
  - ICASA encouraged to award ECNS licences to VANS
- Emergency services - Staggered disconnection
- USALS ➔ PUSANOs
- Local Loop Unbundling by 2011
- WorldSpace protected

Learning Information
Networking Knowledge Centre
P&DM LINK CENTRE
Wits University Graduate School of Public and Development Management

Infraco

- National broadband backbone linking metropolitan areas & undersea cable
- Rationale: markets not working
- Meet national needs and international commitments
- Low interest access to other players
- Relationship with regulated environment
- Conflict of interests - competition
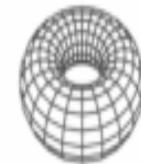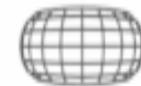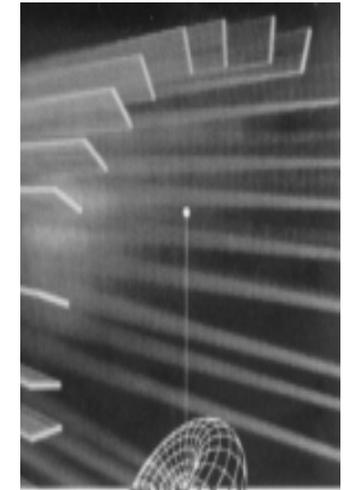
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