

South Africa: *Transforming the Legal Framework for Telecommunications Cooperatives*

By National Telecommunications Cooperative Association (NTCA)

Project Summary

As regulated businesses, telecommunications cooperatives are impacted by general cooperative laws, as well as by the sector-specific telecommunications regulatory framework. Both of these legal frameworks have been transformed in South Africa with the downfall of apartheid. The very different processes and interests affected in each law reform effort has led to disparate impacts on the potential development of telecommunications cooperatives in South Africa.

The Need for Change

For the duration of apartheid rule, South Africa's telecommunications sector was the exclusive domain of Telkom, a state-owned sector monopoly. Service was predominately confined to urban, wealthy, and white communities. Many rural communities, especially in the formerly autonomous "bantustan" regions created by apartheid, remained with little or no access to telecommunications services.

While South Africa has a long history of cooperative activity dating to the late 19th century, the bulk of activity, and institutional support, has centered on cooperatives designed to protect the ownership and economic status of the white minority. The Cooperatives Act of 1981, which governed this sector until late 2004, contained provisions only for agricultural cooperatives, special farmers cooperatives, and trading cooperatives. The registrar, located within the Department of Agriculture, had limited powers and was unable to accommodate or support a multi-sector approach. Social fragmentation and economic distress during the apartheid era prevented uniform application of

the law, which reduced the effectiveness of the sector. Public support and funding for cooperatives was provided exclusively to white minority patrons.

Reform Process

After South Africa's political transformation, a consultative telecommunications sector reform process identified universal service to poor, underserved, and rural areas as a major policy goal. At the same time, "managed liberalization" of the telecommunication sector was adopted as a primary objective. Both of these policy goals were included in the Telecommunications Act of 1996.

Although the 1996 Act stated an intention to prioritize the delivery of service to rural and underserved areas, specific provisions in this

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regard were not enacted until 2001. During the deliberative process leading to the 2001 amendments, National Telecommunications Cooperative Association (NTCA) engaged the Department of Communications and the Universal Service Agency in a program of advocacy and education. NTCA made explicit recommendations regarding interconnection policy, ratemaking, establishment and application of universal service mechanisms, and financial

and institutional support for telecommunications cooperatives.

To facilitate market entry, NTCA recommended that cooperatives be given exclusive rights to operate in defined geographic areas. To simplify and facilitate access to the telecommunications cooperative model, NTCA recommended that the Department of Communications serve as the lead agency in developing and assisting telecommunications cooperatives, and that regulatory burdens on telecommunications cooperatives be kept to an absolute minimum.

Parallel to the process of revising the nation's telecommunications laws, South Africa considered reforms to its general cooperative law. Impetus for reform in the cooperative sector came from the highest levels of the South African government and was singled out as a key element of a development strategy designed to strengthen small, medium, and micro-enterprises. This commitment resulted in an inclusive process of consultation and cooperative strategy development which included a number of prominent civil society and business groups.

Outcome

NTCA and local cooperative advocates made a strong case for the empowerment of a "bottom-up" telecommunications national strategy. Ultimately, however, policymakers chose to address the issue of rural and underserved areas by adopting a weakened version of NTCA's recommendations and model. Rather than targeting, empowering, and licensing cooperative systems in underserved areas, policymakers established Underserved Area Licenses (USALs), which directed operating subsidies to areas selected by the national government.

USAL selection criteria contained incentives that encouraged community groups and historically disadvantaged individuals to participate; but a dedicated telecommunications

license for cooperatives was not created. Nor did the new legislation contain specific provisions designed to financially or institutionally support telecommunications cooperatives. Many issues regarding the right of cooperatives to access infrastructure, such as setting interconnection rates and unbundling local loops, were left to be interpreted and enforced by an independent regulator with limited resources. As a result, many of these crucial questions remain unanswered, creating regulatory uncertainty for cooperatives and other new market entrants.

The USAL mechanism has been largely ineffective in encouraging rural and underserved sector development. While 27 areas were originally identified for licenses, only a handful of operators have been licensed. Less than half of current license recipients have initiated even the most elemental business operations, such as re-selling mobile minutes of existing carriers. There is growing speculation that the window of opportunity might be closing on the USAL approach, and sector managers have privately questioned the government's continued commitment to this policy.

In August 2005, the deliberative process around the country's general cooperative law led to the passage of a new cooperative act. The new law makes allowances for a wider variety of cooperatives and conforms to accepted international cooperative practice, including the protection of cooperatives from undue interference from the state. Registration and support functions have been moved from the Department of Agriculture to the Department of Trade and Industry (DTI). At the time of this writing, a Cooperative Development Unit is being formed within the DTI.

Lessons Learned

The experiences of cooperatives in obtaining beneficial legislative concessions has been very different in the telecommunications re-

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form process than in the process to reform the general cooperative law.

In the telecommunications sector, the legislative process was driven by well-resourced companies, including the privatizing legacy monopoly. Cooperative interests, though well

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organized, were not able to fully overcome this competing vision. The result was a top-down, technology-push subsidy program for rural and underserved areas that limited community-level engagement. This model has done little

to stimulate investment and service delivery in disadvantaged areas.

For the general cooperative law reform process, integration of cooperative development into a high-level economic strategy allowed the reform process to succeed with a minimal amount of controversy, delay, or resistance. Support and commitment from key political leaders, along with major civil society institutions, such as the Congress of South African Trade Unions, assisted greatly in efforts to implement reforms. While pockets of resistance to the reforms continue to exist in segments of the business community, they have no natural constituency in government – in contrast to the telecommunications reforms case in which the government continues to be a major shareholder in the legacy telecommunications monopoly. ■

For more information, please contact Forrest Wilhoit and Maria Kendro, NTCA, at (703) 351-2000.