

**Subject:** Fwd: proclamtion new 18 July 2014 (clean).docx  
**Date:** Friday, 25 July 2014 at 9:24:26 AM South Africa Standard Time  
**From:** Ashu  
**To:** duduzani.zuma@gmail.com

Sent from my Samsung Galaxy smartphone.

----- Original message -----

**From:** Faith Muthambi  
**Date:** 25/07/2014 08:39 (GMT+02:00)  
**To:** Ashu  
**Subject:** proclamtion new 18 July 2014 (clean).docx

These sections must be transferred to the Minister of Communications.

Sent from my iPad

**Subject:** Fwd: Responsibility for InfraCo and Sentech.docx  
**Date:** Friday, 25 July 2014 at 9:24:58 AM South Africa Standard Time  
**From:** Ashu  
**To:** duduzani.zuma@gmail.com

Sent from my Samsung Galaxy smartphone.

----- Original message -----

**From:** Faith Muthambi  
**Date:** 25/07/2014 08:40 (GMT+02:00)  
**To:** Ashu  
**Subject:** Responsibility for InfraCo and Sentech.docx

Sentech's signal distribution must rest with the Ministry of Communications

Sent from my iPad

**Subject:** Fwd: Effect of presidential proclamation.docx  
**Date:** Friday, 18 July 2014 at 10:51:13 AM South Africa Standard Time  
**From:** Ashu  
**To:** Tony Gupta

Sent from my Samsung Galaxy smartphone.

----- Original message -----

**From:** Faith Muthambi  
**Date:** 18/07/2014 06:47 (GMT+02:00)  
**To:** Ashu  
**Subject:** Effect of presidential proclamation.docx

Sent from my iPad

**Subject:** FW: final proclamation 01 August 2014.docx  
**Date:** Friday, 01 August 2014 at 11:42:18 AM South Africa Standard Time  
**From:** Ashu  
**To:** Tony Gupta

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**From:** Faith Muthambi [mailto:faith.muthambi@gmail.com]  
**Sent:** 01 August 2014 11:40 AM  
**To:** Ashu  
**Subject:** final proclamation 01 August 2014.docx

See attached Proclamation that President must sign

Sent from my iPad

**Subject:** Fwd: proclamtion new 18 July 2014 (clean).docx  
**Date:** Friday, 25 July 2014 at 8:41:41 AM South Africa Standard Time  
**From:** Ashu  
**To:** Tony Gupta

Sent from my Samsung Galaxy smartphone.

----- Original message -----

**From:** Faith Muthambi  
**Date:** 25/07/2014 08:39 (GMT+02:00)  
**To:** Ashu  
**Subject:** proclamtion new 18 July 2014 (clean).docx

These sections must be transferred to the Minister of Communications.

Sent from my iPad

## **Presidential Proclamation: Gazette No. 37839 dated 15 July 2014 Transfer of powers**

### **Introduction**

On 25 May 2014, the President announced the creation of two new Ministries: a Ministry of Telecommunications and Postal Services and a Ministry of Communications with responsibility for ICASA and the SABC amongst others. The assumption was then made that broadcasting including digital migration would report to the Minister of Communications. The proclamation published on 15 July 2014 did not give effect to this division.

### **Powers of the Minister of Communication as set out in the proclamation**

The Minister of Communication was given the powers set out in the ICASA Act, 2000 (Act No. 13 of 2000) and the Broadcasting Act, 1999 (Act No. 4 of 1999). These two Acts establish and deal with *administrative and governance* matters relating to ICASA and the SABC such as the appointment, removal, performance management, staffing, etc. of the two institutions. They do not include substantive matters relating to regulation of broadcasting. Broadcasting is regulated by the Electronic Communications Act, 2005 (Act No 36 of 2005). The ability to make broadcasting policy and issue broadcasting policy directions are set out in section 3 of this Act. These powers have been transferred from the Minister of Communications to the Minister of Telecommunications and Postal Services. It is therefore the Minister of Telecommunications and Postal Service who will make policy and issue policy directives to ICASA for broadcasting, including public service broadcasting.

### **Uncertainty still exists**

Uncertainty remains as to how the division will practically function especially in respect to ICASA. While the Minister of Communications appoints, removes and performance manages ICASA, she has no input into the substantive work to be done by ICASA. It's like having an employer being able to hire, fire and performance manage an employee but having no ability to set, direct, make input or give guidance on the work of that employee.

### **What should happen?**

If it is the intention of the President that broadcasting and matters related to broadcasting should sit with the Minister of Communications, then the powers and functions of the Minister as set out in the Electronic Communications Act needs to be split between the Minister of Telecommunications and Postal Services and the Minister of Communications. T

The President has transferred the powers in the Films and Publication Act, 1996 (Act 65 of 1996) to the Minister of Communication. The Minister of Communications in this instance has substantive (not just administrative) powers in respect of content which is not regulated as traditional broadcasting content. This regulation is currently applicable to video on demand services which will become more prevalent as convergence becomes a reality. These content services pose a real threat to traditional broadcasters and will predominantly come from international operators who are not regulated in South Africa. One would have expected that all content, whether regulated as broadcasting by the Electronic Communications Act or film by the Films and Publication Act should be housed in one Ministry.

**PROCLAMATION**  
*by the*  
*President of the Republic of South Africa*

**No. XX , 2014**

**TRANSFER OF ADMINISTRATION AND POWER AND FUNCTIONS ENTRUSTED BY  
LEGISLATION TO CERTAIN CABINET MEMBERS IN TERMS OF SECTION 97 OF THE  
CONSTITUTION**

In terms of section 97 of the Constitution of the Republic of South Africa, 1996, I hereby transfer the powers, functions and duties entrusted by the specified legislation, and all amendments thereto, to the specified Cabinet member as set out in the Schedule in English and ..... with effect from the date of publication of this Proclamation in the Gazette.

Given under my Hand and the Seal of the Republic of South Africa at ..... this ..... day of ....., Two Thousand and Fourteen.

**President**

By Order of the President-in-Cabinet:

Minister of the Cabinet

## SCHEDULE

1. To the extent stated below, the administration, and the powers and functions entrusted by the legislation, mentioned in column 1 of the tables below, to a Cabinet member as executive authority of that department mentioned in column 2 of the tables, are transferred to the Cabinet member mentioned in column 3 of the tables.

### 1.1 Communications Related Legislation:

Column 1	Column 2	Column 3
Legislation	Previous Cabinet Minister	New Cabinet Minister
<p>Electronic Communications Act, 2005 (Act No. 36 of 2005):</p> <p>(a) The power assigned to the Minister in section 3 to the extent that it deals in any way with a broadcasting service or an electronic communications facility, electronic communications service or electronic communications network service used for or in the provision of a broadcasting service.</p> <p>(b) The reference to the Minister in section 4(5) to the extent that ICASA intends to make regulations which in any way deal with a broadcasting service or an electronic communications facility, electronic communications service or electronic communications network service used for or in the provision of a broadcasting service.</p> <p>(c) The power assigned to the Minister in section 5(6) to the extent that it is intended that the electronic communications network service is to be used for the provision of a broadcasting service.</p> <p>(d) The power assigned to the Minister in section 34(2) must be exercised and performed to the extent that any part of the</p>	<p>Minister of Telecommunications and Postal Services</p>	<p>Minister of Communications</p>



<p>national radio frequency plan deals with broadcasting radio frequency bands.</p> <p>(e) The reference to the Minister in section 34(7)(c)(iii) to the extent that ICASA's preparation of the national radio frequency plan relates to any part of the national radio frequency plan which deals with the broadcasting radio frequency bands or with the migration of any broadcasting services.</p> <p>(f) The reference to the Minister in section 60(1).</p> <p>(h) The reference to the Minister in section 65(7) and (8) and in section 66(7) and (8).</p> <p>(i) The powers assigned to the Minister in section 79B to the extent that it deals with a broadcasting service or an electronic communications service or an electronic communications network service used for or in the provision of a broadcasting service.</p>		
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Sentech Act, 1996 (Act No. 63 of 1996)	Minister of Telecommunications and Postal Services	Minister of Communications
Broadband Infracore Act, 2007 (Act No. 33 of 2007)	Minister of Public Enterprises	Minister of Telecommunications and Postal Services

**Subject:** Effect of presidential proclamation.docx

**Date:** Friday, 18 July 2014 at 6:45:21 AM South Africa Standard Time

**From:** Faith Muthambi

**To:** Ashu

Sent from my iPad

**Subject:** 37839\_15-7\_ProcPSA ProofOut.pdf

**Date:** Friday, 18 July 2014 at 6:42:42 AM South Africa Standard Time

**From:** Faith Muthambi

**To:** Ashu

Sent from my iPad

**Subject:** Responsibility for InfraCo and Sentech.docx

**Date:** Friday, 25 July 2014 at 8:35:35 AM South Africa Standard Time

**From:** Faith Muthambi

**To:** Ashu

Sentech's signal distribution must rest with the Ministry of Communications

Sent from my iPad

**Subject:** proclamtion new 18 July 2014 (clean).docx

**Date:** Friday, 25 July 2014 at 8:31:58 AM South Africa Standard Time

**From:** Faith Muthambi

**To:** Ashu

These sections must be transferred to the Minister of Communications.

Sent from my iPad

**Subject:** final proclamation 01 August 2014.docx

**Date:** Friday, 01 August 2014 at 11:39:33 AM South Africa Standard Time

**From:** Faith Muthambi

**To:** Ashu

See attached Proclamation that President must sign

Sent from my iPad

**The following powers, functions and duties in the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“ECA”) should be transferred to the Minister of Communications to give effect to the separation of broadcasting from telecommunications and postal services**

**s3 Deals with the power of the Minister to make policies and to issue policy directions to ICASA. This power must be exercised by the Minister of Communications to the extent that it deals in any way with a broadcasting service or matters related to broadcasting (e.g. broadcasting signal distribution, broadcasting infrastructure)**

*The power assigned to the Minister in section 3 must be exercised by the Minister of Communications to the extent that it deals in any way with a broadcasting service or an electronic communications facility, electronic communications service or electronic communications network service used for or in the provision of a broadcasting service.*

**s4(5) Deals with the duty imposed on ICASA to inform the Minister of its intention to make regulations and to provide the Minister with a copy of those regulations. To the extent that any such regulations deal in any way with a broadcasting service or matters related to broadcasting, ICASA must inform the Minister of Communications of its intention to make such regulations and must provide the Minister of Communications with a copy of those regulations.**

*The reference to the Minister in section 4(5) must be construed as a reference to the Minister of Communications to the extent that ICASA intends to make regulations which in any way deal with a broadcasting service or an electronic communications facility, electronic communications service or electronic communications network service used for or in the provision of a broadcasting service.*

**s5(6) Deals with the power of the Minister to issue a policy direction to ICASA in respect of applications for individual electronic communications network service licences. To the extent that it is intended that the electronic communications network service is to be used for the provision of broadcasting services, the Minister of Communications must exercise this power.**

*The power assigned to the Minister in section 5(6) must be exercised by the Minister of Communications to the extent that it is intended that the electronic communications network service is to be used for the provision of a broadcasting service.*



**s34(2) Deals with the power, function and duty of the Minister to approve the national radio frequency plan. To the extent that any part of the national radio frequency plan deals with broadcasting radio frequency bands, the Minister of Communications must approve that part of the plan.**

*The power, and function and duty assigned to the Minister in section 34(2) must be exercised and performed by the Minister of Communications to the extent that any part of the national radio frequency plan deals with broadcasting radio frequency bands.*

**s34(7)(c)(iii) Deals with the duty imposed on ICASA to consult with the Minister to co-ordinate a plan for the migration of existing users to make available radio frequency spectrum. To the extent that this relates to any part of the national radio frequency plan which deals with the broadcasting radio frequency bands or with the migration of any broadcasting services, ICASA must consult with the Minister of Communications.**

*The reference to the Minister in section 34(7)(c)(iii) must be construed as a reference to the Minister of Communications to the extent that ICASA's preparation of the national radio frequency plan relates to any part of the national radio frequency plan which deals with the broadcasting radio frequency bands or with the migration of any broadcasting services*

**s60(1) Deals with the duty imposed on ICASA to consult the Minister on sporting events of national interest. ICASA must consult with the Minister of Communications and the Minister of Sport.**

*The reference to the Minister in section 60(1) must be construed as a reference to the Minister of Communications.*

**s65 and s66 Deals with limitations on control of commercial broadcasting services. This reference in s65(7) and (8) and in s66(7) and (8) must be construed as a reference to the Minister of Communications.**

*The reference to the Minister in section 65(7) and (8) and in section 66(7) and (8) must be construed as a reference to the Minister of Communications.*

**s79B**

**Deals with the power of the Minister to request data, information and documents from ICASA or any person. The Minister of Communications must exercise this power to the extent that it deals with broadcasting and broadcasting related matters.**

*The powers assigned to the Minister in section 79B must be exercised by the Minister of Communications to the extent that it deals with a broadcasting service or an electronic communications service or an electronic communications network service used for or in the provision of a broadcasting service.*

## **Responsibility for InfraCo and Sentech**

### **Transferring the powers, functions and duties assigned to the Minister of Public Enterprises in the Broadband InfraCo Act, 2007 (Act No. 33 of 2007) to the Minister of Telecommunications and Postal Services**

*Broadband InfraCo was set up as a state owned enterprise to lower the cost of access to telecommunication network and facilities in order to lower the cost to communicate and specifically broadband access for South African consumers. If we are to reap the synergies from state owned enterprises who operate in the telecommunications space then responsibility for Broadband InfraCo should reside with the Minister of Telecommunications and Postal Services.*

### **Transferring the powers, functions and duties assigned to the Minister of Telecommunications and Postal Services in the Sentech Act, 1996 (Act No. 63 of 1996) to the Minister of Communications.**

*Sentech's primary function is broadcasting signal distribution which it provides to the SABC and commercial broadcasters. Sentech's activities should be limited to this function and hence should report to the Minister of Communications.*

*Sentech did attempt to enter the telecommunications space but its commercial broadband services were a failure and the service ultimately had to close down. Treasury has also consistently refused to provide funding for Sentech to operate in the broadband retail market.*

*Sentech has valuable broadband spectrum. Again if we are to reap the synergies from state owned enterprises who operate in the telecommunications space then this spectrum should be transferred to InfraCo which should report directly to the Minister of Telecommunications and Postal Services. By doing this government will be in a better position to achieve its objectives for broadband in this country.*

*The transfer of spectrum from Sentech to InfraCo cannot be done in a proclamation but by application to ICASA for a transfer of spectrum.*