



THE ICT CHARTER

FINAL DOCUMENT

NOVEMBER 2004

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Preface

Dear ICT Sector Stakeholder

Re: ICT Charter: The Big Picture

This preface should be read in conjunction with the prefaces to the last four Working Drafts of the ICT Charter released over the previous period. Our intention in this section is always to situate each draft in its proper context.

In this case this serves as an appeal I express on behalf of the Task Team and the Working Group to enlist your support and that of your organization for our proposal to end a series of working drafts in this process.

It is our considered view that the document is now ready to be handed over to the rightful drivers of transformation in our country, the South African Government. We must never lose sight of the fact that when all is said and done this is a Government project. This is not to take anything away from the countless heroic sacrifices made by the volunteers who contributed one way or the other to the making of this document. This includes everyone who contributed to the debates on any side of any issue.

As previously announced the commencement date of the Charter is intended to be 01 March 2005. By that date we are confident that the overall consensus will have been achieved on all major issues. To achieve that, we have to map out a clear strategy to manage what we have termed the "Interim Phase" i.e. (01 November 2004 – 28 February 2005.) Between today and the end of October every member of the Task Team is banished to their home and banned from uttering the word "transformation"). Take a well deserved break!

We believe that the process followed up now, although admittedly not flawless, has satisfied our original intention of making this the most consultative charter process to date and one that is already being adopted as a model in other sectors of the economy. In the absence of the Codes of Good Practice envisaged in the Broad-based BEE Act (which are yet to be published) and with the generous guidance from the colleagues who negotiated earlier charters, we had to design a process from scratch and take a few bold steps. For example we took the unprecedented step of releasing a series of drafts to the public as opposed to conducting the entire process behind closed doors. A risky route but which has paid off handsome dividends in ensuring broad participation.

We too made our fair share of mistakes but we are with increasing frequency being called upon by other sectors, Government departments, etc, to share our experiences

and we hope that in a small way we have contributed to the transformation movement something beyond the confines of our own sector.

The crucial Interim Phase negotiations will take place under the auspices of NEDLAC. This document will be handed over to the Government with the representative signatures of Industry, Labour and Community. The interim is that the Government's views and concerns will then be brought to the table via the Department of Communications which is already a party to the NEDLAC ICT Sub Committee.

Key outstanding issues which will be at the core of the Interim Phase talks include:

- a) The ICT BEE Council (its constitution, composition, rules, powers, limitations, etc)
- b) The regulated subsectors (application of the Charter, avoidance of duplication of powers, definition of common jurisdiction with ICASA, etc)
- c) The "living document" philosophy (periodic reviews, ongoing social dialogue and research, adaptation to convergence, etc)
- d) Mass Communication (Charter simplification, translations, summarization, grassroots communication)

Once these issues are finalized then we can truly say that the country and the sector are ready for the next chapter which is implementation. This is not going to be easy but has to be done and approached in the same spirit and patriotism prevailed during the drafting phase.

We feel that it is important that industry associations, on whose behalf we undertook this task, should endorse the process so far, the document which is the result of that process and by and large represents the prevailing consensus. Failing this, we cannot say to the Government that what we are handing over carries the support of the majority of organized business in our sector.

In asking for your endorsement we cannot pretend that there is not still a lot of work to be done - not that everybody is happy with every aspect of what is contained in this Charter. I am prepared to bet my last penny that not a single constituency, association, company or person (including myself) got exactly what they wanted out of the process. And that is how it should be. Such is the South African world of consultation, debate and more importantly compromise. These are the foundational principles of this nation.

You will notice some vast improvements in the structuring of the document. We have sought to separate out the chatty parts dealing with the history and the process as well as challenges identified during the process. These have been put in the part B of the Charter. Part C is where the meat of the overall Sector agreements is to be found. Although we are currently far from this, the challenge is to translate every solution into a measurable format which can be translated into the scorecard. This must be one of the main long term objectives of the ICT BEE Council.

The rest of Part C is the scorecard.

Part D deals with governance and all the issues that will form part of the aforementioned Interim Phase talks.

Part E is the signed declaration by the stakeholders except for the Government, whose commitments will be received as described above.

The result is that for all intents and purposes the real hard core charter is contained in Parts A and C. The rest of the document is important in order to complete the picture but is effectively severable and capable of being read as optional. In the long term Part B should be progressively reduced to a few pages and Part C should be beefed up to incorporate the realities of the future.

In the past six weeks we have held dozens of one-on-one meetings with the stakeholders. It was our intention to send written responses to everyone who has made submissions to the Fourth Draft. We failed to do this due to the pressures of time. I can, however, state categorically that almost without exception, you will recognize the majority of your submissions in the Final Document. In each case more was included than not. To those stakeholders who sent inputs and with whom we failed to interact directly in that period please accept our apologies. We intend to continue these kinds of interactions well into the Interim Phase (also to be known as the pre-adoption phase).

Let us look at the big picture and cross the proverbial Rubicon!

Thanking you in anticipation of your support and endorsement.

HAMBA DIGITAL DIVIDE, WOZA TRANSFORMATION

Re a leboga, Baie dankie!

DALI MPOFU
CHAIRPERSON: ICT EMPOWERMENT WORKING GROUP
18 October 2004

GLOSSARY

AMTS	<i>Annual Minimum Total Score</i>
BBBEE	<i>Broad Based Black Economic Empowerment</i>
BEE	<i>Black Economic Empowerment</i>
BPO	<i>Business Process Outsourcing</i>
CSI	<i>Corporate and Social Investment</i>
CSIR	<i>Council for Scientific and Industrial Research</i>
DBSA	<i>Development Bank of Southern Africa</i>
DFI	<i>Direct Funding Institutions</i>
DoC	<i>Department of Communications</i>
DoE	<i>Department of Education</i>
DoL	<i>Department of Labour</i>
DST	<i>Department of Science and Technology</i>
DTI, dti	<i>Department of Trade and Industry</i>
EE Act	<i>Employment Equity Act</i>
ESOPS	<i>Employee Share Ownership Programmes</i>
GDP	<i>Gross Domestic Product</i>
GDS	<i>Growth and Development Summit</i>
GITOC	<i>Government Information Technology Officers Council</i>
HSRC	<i>Human Sciences Research Council</i>
ICASA	<i>Independent Communications Authority of SA</i>
ICT	<i>Information and Communication Technologies</i>
IDC	<i>Industrial Development Corporation</i>
IIP	<i>Investors in People</i>
ISETT	<i>Information Systems Electronics & Telecommunication Technologies</i>
IT	<i>Information Technology</i>
JSE	<i>JSE Securities Exchange</i>
KZN	<i>Kwa Zulu- Natal</i>
LT	<i>Long Term</i>
MAPPP	<i>Media Advertising Publishing Printing and Packaging</i>
MNC	<i>Multi-national Corporation</i>
MT	<i>Mid Term</i>
MTN	<i>Mobile Telecommunications Operator</i>
NEDLAC	<i>National Economic Development And Labour Council</i>
NEF	<i>National Empowerment Forum</i>
NGO	<i>Non-Governmental Organisation</i>
NHFC	<i>National Housing Finance Corporation</i>

NQF	<i>National Qualification Framework</i>
NSTF	<i>National Science and Technology Forum</i>
OECD	<i>Organisation for European Community Development</i>
OEM	<i>Original Equipment Manufacturer</i>
PAT	<i>Profit After Tax</i>
PBT	<i>Profit Before Tax</i>
PIC	<i>Public Investment Corporation</i>
PPP	<i>Public Private Partnership</i>
RDP	<i>Reconciliation and Development Programme</i>
SA	<i>South Africa</i>
SAITIS	<i>SA Investment Technology Industry</i>
SAQA	<i>SA Qualifications Authority</i>
SD	<i>Skills Development</i>
SAVANT	<i>South African Vanguard of Technology</i>
SETA	<i>Sector Education and Training Authority</i>
SITA	<i>State IT Agency</i>
SMME	<i>Small Medium and Micro Enterprises</i>
SOE	<i>State Owned Enterprise</i>
USA	<i>Universal Service Agency</i>
USF	<i>Universal Services Fund</i>
VANS	<i>Value Added Network Service</i>
WICT	<i>Women in ICT</i>
WSP	<i>Workplace Skills Plan</i>
WSPIR	<i>Workplace Skills Plan Implementation Report</i>

PART A

CHAPTER ONE

We, the parties to this Charter, do hereby seek to establish a self-regulatory framework for the promotion of transformation in the Information Communications Technology ("ICT") sector; to establish guidelines for Broad-based Black Economic Empowerment ("BBBEE") and a scorecard on empowerment for the ICT industry; to establish an ICT BEE Council ("the Council") as the body tasked with implementing, monitoring and enforcing the objectives of the Charter; and to provide for matters connected therewith.

PREAMBLE

WHEREAS under the previous system of Apartheid, a plethora of Acts was introduced with the sole objective of denying black people, including black women, access to and control of South Africa's productive resources and skills based purely on race and gender considerations;

AND WHEREAS a decade after the demise of the system of Apartheid, and in spite of a broad range of policy and legislative instruments introduced by the new democratic government aimed at redressing the imbalances of the past, the vast majority of South Africans are still excluded from ownership and control of productive assets and the possession of strategic skills to the detriment of economic development, employment creation and poverty eradication;

AND WHEREAS growth and prosperity in South Africa's economy is not being realised to its full potential due to the lack of meaningful participation by the vast majority of black South Africans, including black women, in the national economy, and particularly in the ICT sector;

AND WHEREAS unless corrective measures are taken to mitigate the inequities of Apartheid, sustained economic growth, social stability and prosperity in the economy as well as human development will be severely undermined to the detriment of all South Africans, both black and white; AND

IN ORDER TO –

- advance economic transformation in the ICT sector;
- provide an enabling environment for transparency, fairness and consistency when adjudicating on matters related to BEE in the ICT sector;
- promote and support the objectives of the Broad-based Black Economic Empowerment Act 53 of 2003;
- bridge the "digital divide" in our society by actively promoting access to ICTs and supporting skills development and training initiatives in the ICT sector;
- stimulate and support growth in the ICT sector and contribute towards the reduction in the high unemployment rate and the alleviation of poverty; and
- foster equity and address the legitimate economic expectations of all South Africans occasioned by the changed political landscape.

WHEREFORE, we the parties to this Charter, commit ourselves to actively promoting the objectives of Broad-based Black Economic Empowerment in the ICT sector and to ensure its effective implementation in the industries we represent.

CHAPTER TWO

DEFINITIONS

2. Definitions, Meanings & Interpretations

In this document, unless the context indicates otherwise, words purporting the singular shall also refer to the plural; words purporting one gender shall also refer to the other gender.

The following words used in this document shall have the following meaning:-

- 2.1 "Affirmative Procurement" or "Preferential Procurement" refers to specific procurement policies which are targeted procurement of commercial goods and services from black persons disadvantaged by unfair discrimination on the basis of race, gender or disability, among other things;
- 2.2 "BEE" as defined in **the dti's** Broad-based Strategy document refers to an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people that manage, own and control the country's economy, as well as significant decreases in economic inequalities;
- 2.3. "BEE accredited" means being validated in terms of this Charter as an empowered company, or being validated as having achieved a minimum standard of BEE contribution in terms of a recognised BEE charter scorecard or another objective standard recognised by the Council;
- 2.4. "Black Engendered Enterprise" means an enterprise that is at least 25,1% owned by black women and where there is at least commensurate management control by black women. In addition, such an enterprise must also be BEE accredited;
- 2.5. "Black people", "black persons" or "blacks" are generic terms which mean Africans, Coloureds and Indians who are citizens of South Africa and were, or would have been, legally denied the right to vote prior to the operation of the interim constitution of 1993 and the South African Constitutional Act of 1983;
- 2.6. "Black-owned enterprise" means one that is at least 50,1% owned by black persons and where there is at least commensurate management control by black persons. In addition, such an enterprise must also be BEE accredited;
- 2.7. "Black-empowered enterprise" means one that is at least 25,1% owned by black persons and where there is at least commensurate management control by black persons. In addition, such an enterprise must also be BEE accredited;
- 2.8. "Broad-based Black Economic Empowerment" means the economic empowerment of all black people, including black women, workers, youth, people with disabilities and

- people living in rural areas through diverse but integrated socio-economic strategies; that include, but are not limited to:-
- 2.8.1. increasing the number of black people that manage, own and control enterprises and productive assets;
 - 2.8.2. facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
 - 2.8.3. human resource and skills development;
 - 2.8.4. achieving equitable representation in all occupational categories and levels in the workforce;
 - 2.8.5. preferential procurement; and
 - 2.8.6. investment in enterprises that are owned or managed by black people;
- 2.9. “Community or broad-based enterprise” refers to an enterprise that has an empowerment shareholder who represents a broad base of members such as a local community or where the benefits support a target group, for example black women, people living with disabilities, the youth and workers. Shares are held via direct equity, non-profit organisations and trusts;
- 2.10. “Company” or “Enterprise” means a legal entity registered in accordance with the laws of the Republic of South Africa for the purposes of conducting business and shall include partnerships and sole proprietors;
- 2.11. “Control” means the right or the ability to direct or otherwise control the majority of the votes attaching to the shareholders’ issued shares, the right or ability to appoint or remove directors holding a majority of voting rights at meetings of the board of directors, as well as the right to control the management of the enterprise;
- 2.12. “Co-operatives” means an autonomous association of person united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles;
- 2.13. “the Council” or “the ICT BEE Council” means the ICT Black Economic Empowerment Council envisaged in Chapter 9 of this Charter;
- 2.14. “DFIs” refers to Development Finance Institutions and means finance entities created or funded by a tier of Government. These include, but are not limited to, the DBSA, IDC, Postbank, NEF, Land Bank, Khula, NHFC, the PIC, Umsobomvu Youth Fund, and the Provincial Development Corporations;
- 2.15. “Digital Divide” refers to the disparity between those who use and have access to ICTs and those who do not, and is characterised by a lack of meaningful access to ICTs primarily between racial groups, lack of basic literacy, and encompasses the provisioning of computers, internet connections and includes physical, digital, human and social resources and relationships;
- 2.16. “Direct ownership” or “Ownership” means ownership of an equity interest together with control over voting rights attaching to that equity interest. This excludes any share options not yet exercised;
For the purposes of this Charter the key elements or criteria for the equity ownership BEE indicator are:-

- Control which is directly related to voting rights attaching to the shares acquired;
 - Sharing of risk and reward directly related to capital growth and depreciation (loss);
 - and any other legal rights of a shareholder according to South African law;
- 2.17. “Disabled persons” or “people with disabilities” means black persons who have a long-term recurring mental or physical impairment which, *inter alia*, limits their ability to engage in economic activity;
- 2.18. “Discrimination” as defined in the Promotion of Equality and Prevention of Unfair Discrimination Act (2000) means any act or omission, including a policy, law, rule, practice, condition or situation which directly imposes burdens, obligations or disadvantages or withholds benefits, opportunities or advantages from, any person on one or more prohibited grounds;
- 2.19. “Effective black ownership” means the percentage shareholding legally held in an enterprise by black people, whether held directly or through a subsidiary or intermediary company. When assessing the black equity portion of any enterprise, the enterprise shall have recourse to the shareholding in respect of the immediate shareholder companies and/or individuals. For example, if enterprise Y is 50% owned by a black owned company X, X in turn is 60% owned by black shareholders and 40% white shareholding, then the effective black ownership in enterprise Y is 60% of 50%, which equals 30%. Whenever submitting its annual BEE report to the Council an enterprise shall attach a statement by its auditors confirming the effective black ownership set out in that report;
- 2.20. “Effective date” means the date on which the ICT Charter will become operational and binding on all sector stakeholders;
- 2.21. “Eligible Procurement” means all expenditure to acquire goods and/or services, including capital expenditure, but excluding procurement spending where there is a natural monopoly, where there is no local supplier or procurement of items where the supplier is imposed in terms of a global policy for technical (but specifically not commercial) reasons, or expenditure classes covered elsewhere in the charter e.g. salaries and wages;
- 2.22. “Employment Equity” as defined in the Employment Equity Act (1998) means to promote equal opportunity, and fair treatment in employment through the elimination of unfair discrimination; and implementation of affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce;
- 2.23. “Enterprise Development” means the voluntary establishment of and/or support through financial and/or other means for existing and/or new black SMMEs, black-owned and/or black-empowered enterprises as well as enterprises owned by marginalised groupings;
- 2.24. “ESOPs” refers to Employee Share Ownership Programmes;

- 2.25. "Executive management" means those managers who have a significant leadership role in the enterprises, have control over day to day operations, have decision making powers and report directly to the Chief Executive Officer, Managing Director and/or equivalent or the Board of Directors;
- 2.26. "Financial sector" means all classes of financial institutions including banks, long term insurers, short term insurers, re-insurers, managers of formal collective investment schemes in securities, investment managers and other entities that manage funds on behalf of the public and entities listed as part of the financial index of a licensed exchange and as envisaged by the Financial Sector Charter;
- 2.27. "Fronting" means the common practice whereby black people or women are placed in ownership or management positions or alternatively created structures that give the false impression of ownership and/or control by said black people;
- 2.28. "GDP" means Gross Domestic Product and refers to the market value of all final goods and services being produced within the borders of a country;
- 2.29. "ICASA" means the Independent Communications Authority of South Africa established in terms of the ICASA Act No.13 of 2000;
- 2.30. "ICT" means Information and Communication Technology and refers to a combination of manufacturing and services industries that capture, transmit and display data and information electronically (OECD 2002: 18; SAITIS 2000: 3);
- 2.31. "ICT Enterprise" means an enterprise that conducts business at any stage of the value chain of the sector;
- 2.32. "Indirect ownership" means ownership exercised by a legally recognised entity or investor which owns equity in an enterprise on behalf of clearly identifiable beneficiaries and where the exercise of the voting rights of those beneficiaries may be exercised indirectly and via the agency of the afore-said entity or investor. Common examples include Community Share Retail Schemes, such as Telkom's Khulisa Scheme, ESOPS and other types of employee share trust as approved by the Council. (Indirect Ownership is allowed in this Charter solely to allow broad-based ownership models and expressly excludes speculative institutional investors such as pension and provident funds, unit trust and the Public Investment Corporation irrespective of the race or gender profile of their membership);
- 2.33. "Long-term" means 28 February 2015;
- 2.34. "Marginalised groupings" include women, workers, youth, people with disabilities and those living in rural areas;
- 2.35. "Mid-term" means 28 February 2010;
- 2.36. "NGO" means an organisation which is independent from Government and its policies. Generally, although not always, this is a non-profit organisation that gains at least a significant proportion of its funding from private sources;

- 2.38. "Regulated sub-sectors" collectively refers to those ICT sub-sectors regulated by specific communications legislation, regulations issued in terms of that legislation and licences awarded by ICASA;
- 2.39. "Senior Management" means people who plan, direct and co-ordinate the activities of a business/organization and who have the authority to hire, discipline and dismiss employees;
- 2.40. "SETA" means a sector education and training authority established in terms of section 9 (1) of the Skills Development Act 97 of 1998;
- 2.41. "Skills Development", as defined in 2(1) (a) of the Skills Development Act (1998) means to develop the skills of the South African workforce, in order to:-
- 2.41.1 improve the quality of life of workers,
 - 2.41.2. enhance their prospects of work and labour mobility;
 - 2.41.3 improve productivity in the workplace and the competitiveness of employers;
 - 2.41.4 promote self-employment; and
 - 2.41.5 improve the delivery of social services.
- 2.42. "SMME" means a small, medium and micro enterprise as defined in the National Small Business Act 102 of 1996;
- 2.43. "SOE" or "state owned enterprise" is an enterprise, often a corporation, also referred to as a parastatal, wholly or partially owned by Government;
- 2.44. "USA" means the Universal Service Agency as established in terms of the Telecommunications Act (1996), as amended;
- 2.45. "Women" refers to any black person of the female gender;
- 2.46. "Youth" refers to any black person between the ages of 18 and 35;

CHAPTER 3

SCOPE AND APPLICATION OF THE CHARTER

3.1 Main Objectives

The main objectives of this Charter, in compliance with the Broad-based BEE Act, are to promote and facilitate economic empowerment in the ICT sector by doing one or more of the following:-

- 3.11.. enabling meaningful participation of blacks in the growth of the ICT sector and, by extension, in the national economy;
- 3.12.. achieving a substantial change in the racial and gender composition of ownership, management and control structures as well as in the skilled and specialist positions of new and existing enterprises;
- 3.13.. increasing the extent to which black women, communities, disabled persons, workers, co-operatives and the youth participate meaningfully in all areas of the sector;
- 3.14.. facilitating access to ICTs by black people, the rural and urban poor as well as other marginalised groupings, otherwise referred to as *“bridging the digital divide”*;
- 3.15.. providing skills development and training and thereby increasing access to and participation in the national economy of South Africa by black people; and
- 3.16.. providing an enabling environment for transparency, fairness and consistency when measuring and adjudicating on matters related to BEE in the ICT sector.

3.2. Key Principles of the Charter

This Charter is based on the following underlying principles:-

- 3.2.1. its provisions generally apply to all ICT sector enterprises active in the South African market. This shall also include specialised and sizeable ICT related business units outside of the ICT sector itself, in respect of which clearly defined lines of applicability will be

negotiated with the specific sectors to which those business units belong. For example, such applicability may be limited to information sharing, cross-cutting skills development issues and the like. Examples include larger IT departments of financial institutions, mining houses and others;

- 3.2.2. it is a voluntary and inclusive industry initiative;
- 3.2.3. it is a transformation Charter as contemplated in the Broad-based BEE Act 53 of 2003;
- 3.2.4. it constitutes a framework and establishes the principles upon which BEE will be implemented in the ICT sector;
- 3.2.5. it outlines processes and mechanisms used to implement economic transformation in the ICT sector; and
- 3.2.6. it is conceived on the philosophical basis that it is a “living document” meaning that it is dynamic and, for the duration of its life, will be subjected to periodic reviews which must be sensitive to inevitable evolution in the technological, economic, political and other arenas. The NEDLAC social partners have reached agreement that these periodic reviews should take place once every two-and-a-half years between 2005 and 2015.
- 3.2.7. Any future amendments, starting with this document, will be effected on the supreme principles of consultation, inclusivity, transparency and non-racialism as enshrined in and symbolised by the Constitution of the Republic of South Africa.

3.3. Interpretation of the Charter

Any person applying this Charter must interpret its provisions so as to:-

- 3.3.1. give effect to its objectives;
- 3.3.2. give effect to section 4 of the Growth and Development Summit (GDS) Agreement of 2003;
 - 3.3.3. comply with the provisions of the Broad-based BEE Act 53 of 2003, particularly Section 2 thereof;
 - 3.3.4. give effect to **the dti's** Broad-based Strategy on BEE; and
 - 3.3.5. comply with the Constitution of the Republic of South Africa.

3.4. Exemptions

Save as provided below, there shall be no blanket exemptions for any enterprise, company or entity from compliance with the provisions of this Charter.

The Council may, upon application, grant a Certificate of Permitted Non-Compliance (“the certificate”) to any enterprise which:-

3.4.1. complies with the conditions specified in clause 7F3.6 below;

or

3.4.2 is a wholly owned SOE; and /or

3.4.3 is an SMME.

Any enterprise, whose application in terms of this section is refused, shall be entitled to lodge an appeal with the Council, which appeal shall be referred to the BEE Advisory Council for adjudication within a reasonable time period.

In the case of SMMEs the Council shall from time to time publish the criteria which must be met before a specific category of enterprises is exempted as well as the actual extent of such exemptions. In every other case, the certificate shall be issued in relation to a specific ICT enterprise on a case by case basis.

PART B

CHAPTER FOUR

SITUATIONAL ANALYSIS

4.1 Overview

South Africa has the largest ICT sector in Africa based on indicators such as technological capacity, investment and turnover. The country has always been an early adopter of ICTs, beginning with the telegraph and telephone in the 19th century, and continuing with radio broadcasting and later Information Technology through the computer era of the 20th century.

The ICT sector is made up of the following main sub-sectors:- Information Technology, Telecommunications (including certain aspects of Postal Services), Electronics and Broadcasting (including certain aspects of the Advertising industry). The sector has been recognised by the Government as being of strategic importance to the future growth and prosperity of South Africa's economy. It is for this reason that most of the Government's socio-economic initiatives such as poverty alleviation and eradication, grant administration, education & training and national healthcare system, depend on the availability of a sound national ICT infrastructure.

Despite its infancy, the ICT sector is ranked amongst the top 5 sectors in terms of its contribution to the GDP of South Africa.

4.2. Historical & Political Perspective

The system of Apartheid confined the vast majority of black South Africans to the periphery of economic activity by structurally inhibiting their meaningful participation in the economy. A plethora of past colonial and Apartheid laws was systematically enacted from 1910 with the direct intention to disempower blacks of land and their right of ownership to other

economic resources of the country. Other subsequent laws also ensured that blacks were excluded from obtaining certain skills, especially technical and science-based skills. In fact, certain laws ensured that black education was generally inferior compared to white education. The Apartheid Government differentiated education spend based on race. The following table clearly illustrates the disparities in the racist Apartheid Government spending in education as recently as 1988:

RACE	PER CAPITAL SPEND PER CHILD	MATRIC PASS RATE	PUPIL TO TEACHER RATIO
White	R2,769	98%	16,0:1
Indian	R2,015	95%	22,5:1
Coloured	R1,508	68%	25,4:1
African	R595	57%	41,2:1

Source: Ministry of Education

Successive Apartheid Governments in the last century premised their electoral longevity on openly declared race-based economic policies that excluded blacks in general, and Africans in particular. This only served to prejudice the future economic prosperity of all South Africans.

Since democratization in 1994, economic transformation has been, and will for some time, remain the main challenge for the new democratic state. Much needed poverty alleviation and eradication, job creation and skills development cannot take place on the required scale without a vigorous programme of BBBEE.

Ten years after the demise of the Apartheid system, various efforts at advancing BEE have been fraught with unfortunate business practices such as fronting and unsustainable ownership models. The effects of current BEE programmes on the South African social and economic fabric have been relatively stunted by *ad-hoc* and inconsistent application resulting from non-uniform rules even by different Government departments and state owned enterprises. This situation begged for a serious effort to bring about harmony

and uniformity. This has now finally been brought about by the promulgation of the Broad-based BEE Act 53 of 2003.

4.3. Legislative Framework

In order to address the imbalances brought about by the economic legacy of Apartheid, it became imperative for the new democratic Government to embark on policies to deal with the systematic discrimination in the economic, social and political spheres of South Africa. To this end, Government has passed various pieces of legislation, including the:-

- **Employment Equity Act 55 of 1998**

The objective of this Act is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination as well as to implement affirmative action measures to redress the disadvantages in employment experienced by designated groups.

- **Skills Development Act 97 of 1998**

The objective of this Act is to provide for a coherent framework for workplace strategies that develop and improve the skills base of the country while being responsive to the needs of the particular workplace. The Act established SETAs and a National Skills Fund.

- **Competition Act 89 of 1998**

This Act mandates the Competition Commission to consider empowerment in various instances. Generally, the Commission is mandated to promote a greater spread of ownership, in particular to increase ownership by historically disadvantaged persons. Parties may apply for an exemption from an agreement or practice that would otherwise constitute a prohibited practice if it promotes the competitiveness of small business or firms controlled or owned by historically disadvantaged persons. Similarly, in a merger, the

commission must take into consideration any public interest issues which include the ability of small and black business to become competitive.

- **Skills Development Levies Act 9 of 1999**

This Act obliges employers to contribute 1% of payroll per annum to the National Skills Fund. The monies can be claimed back by employers who are able to demonstrate that they have developed skills and trained employees. Monies remaining are spent on strategic training and development projects which are identified as being in the national interest.

- **Preferential Procurement Policy Framework Act 5 of 2000**

Section 217 of the Constitution requires organs of state in the national, provincial or local sphere of Government, or any other institution identified in national legislation that contract for goods or services, to do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective. The section expressly allows for such organs of state to implement a procurement policy that provides for categories of preference in the allocation of contracts and the protection or advancement of persons or categories of persons, disadvantaged by unfair discrimination. The only requirement is that national legislation must prescribe a framework within which such a policy may be implemented. Government has given effect to the latter by enacting the Preferential Procurement Policy Framework Act.

- **Broad-based Black Economic Empowerment Act 53 of 2003**

The objectives of this Act are to facilitate broad-based black economic empowerment by, amongst others, promoting economic transformation in order to enable meaningful participation of black people in the economy.

4.4. Regulated Sub-sectors

Empowerment is one of the primary objects of legislation governing the regulated ICT sub-sectors. These usually take the form of encouraging ownership and control of licensed services by persons from historically disadvantaged groups, especially those promoting the empowerment and advancement of women, and encouraging the development of human resources and training. This legislation includes the Broadcasting Act 4 of 1999 as amended, the Independent Broadcasting Act 153 of 1993, the Telecommunications Act 103 of 1996, as amended, and the Electronic Communications and Transactions (ECT) Act 25 of 2002. ICASA has given effect to these objectives by specifying conditions relating to empowerment in licences issued under the new dispensation and published regulations specifically devoted to ownership. Empowerment has also been a critical component in the awarding of any new licences.

Section 35 (3) and (4) of Telecommunications Act, as amended, obliges ICASA to give due regard to applications received from historically disadvantaged groups and especially those that promote the empowerment and advancement of women in the telecommunications industry. ICASA must give preference in the award of any telecommunications licence to persons or an entity with equity ownership of up to thirty percent (30%) or such higher equity ownership percentage as may be prescribed.

On the 16 January 2003 ICASA published regulations concerning the limitation on ownership and control of telecommunications services. The regulations define black people and require telecommunications licensees to maintain records of ownership and control interests held by historically disadvantaged persons in a license (not applicable to licensees trading on the JSE or any other internationally recognised securities exchange). The requirement only applies to the first two years of the licence. In addition licensees must annually file by 31 January of each year, an ownership report for the preceding calendar year.

The regulations further provide that a licensee is required to obtain prior written approval from ICASA where there is a proposed decrease in

ownership interests held by black people in a licensee within the first two years of the initial grant of a licence where the licensee proposed such ownership interests to be held by black people in its application for a licence in response to an invitation to a tender issued by the Minister under s34 of the Act. This regulation does not apply to the issued share capital of a licensee trading in the JSE or other internationally recognised securities exchange where the trading of such issued share capital would not result in any change of a control interest in a licensee; the transfer of any ownership or control interest where the market is not a concentrated market; the transfer of any ownership interest held by the Government of the RSA (or any agency, instrumentality or political division thereof) acting in its capacity as a shareholder; or the transfer of ownership interests where the transfer does not result in a transfer of a control interest.

ICASA on the 01 October 2003 published regulations applicable to Value Added Network Services (VANS). The regulations provide that where a person applies for a VANS licence, the application must contain the employment strategies related to black people and have a minimum of 15% shareholding by black people. In the case of deemed VANS operators the minimum 15 % shareholding would only have to be met within 24 months of the promulgation of these regulations.

The Minister of Communications has also placed obligations on Government itself in legislation such as the ECT Act. Government must develop a national e-strategy and in doing so must provide for ways of maximising the benefits of electronic transactions to historically disadvantaged persons and communities.

CHAPTER FIVE

THE CHARTER PROCESS

5.1 Background

The ICT Sector Charter is preceded by other industry charters, including the Mining and Financial Sector Charters. In the case of the Mining Charter, the process was initiated and driven by the Department of Minerals & Energy. When it came to subsequent charters such as the Financial Sector Charter, the Government took the view that, where possible, the respective industry stakeholders should take the lead before any direct Government involvement or intervention.

This ICT Charter is a result of an extensive consultative process within the ICT sector, through industry associations, community, labour as well as with Government and numerous other relevant stakeholders. The process started when Government, in line with what is stated above, challenged the ICT sector to take the lead in the formulation of its own sectoral Charter.

5.2 The Process

The process itself was organic, starting with a handful of industry associations, later joined by additional organisations before and after the first National Indaba held at the Sandton Convention Centre on the 16th & 17th September 2003. This was as a result of a deliberate attempt to make the process as inclusive as possible and to ensure that all the organisations in the ICT sector would be represented and contribute to the development of an ICT Charter. On the 16th February 2004, a stakeholders' mini-summit on Corporate Social Investment was held in Midrand to address issues related to "*bridging the digital divide*".

On the 9th March 2004, the first working draft of the Charter was released to the stakeholders and the public. This was immediately followed by a series of workshops, mini-summits and “road-shows” were held in major cities and towns in all the nine provinces of South Africa.

On the 8th April 2004, the second working draft of the Charter was released incorporating, *inter alia*, the provincial inputs from the road-shows.

On the 10th May 2004, the third working draft of the Charter was released and followed shortly, on the 14th May, by a second national indaba.

On the 23rd August 2004, the fourth working draft of the Charter was released incorporating, *inter alia*, an agreement signed on behalf of U.S. based multinationals in the sector on the issue of equity.

The process was deliberately conceived to be protracted so as to allow the progressive inclusion of any possible stakeholders who may still have been outside or felt excluded.

5.3 Consultations at NEDLAC level

During this period several meetings were held between the Working Group and the NEDLAC ICT sub-committee. The ICT sector summit declaration of August 2002 was used as a basis for these consultations.

In September 2004, a workshop was held at NEDLAC where the labour and community constituencies submitted written submissions in respect of the fourth working draft.

These submissions have been incorporated in this final document.

5.4 Consultations with ICASA

Consultation between ICASA, the Dept of Communications and the ICT Empowerment Charter Working Group commenced in August 2004 and satisfactory progress has been achieved. The aim is to establish a standard mechanism for evaluating empowerment in the sector, with specific reference to the regulated sub-sectors. The parties have commenced a process of auditing and then aligning the definitions and other relevant provisions set out in the Charter with existing regulatory and legislative provisions.

This process will ensure that the lines between the regulatory mandate of ICASA and the monitoring role of the Council are clearly defined.

5.4.1. Transitional Mechanisms

The parties have agreed on the following transitional mechanisms:

- Recognising that certain ICASA regulations and licence conditions already address issues which are the direct focus of this Charter, the danger of duplication, double jeopardy and even contradiction must be addressed by the sector stakeholders, Government and ICASA.

Therefore, the parties have agreed on the basic principle that regulated enterprises will not face double jeopardy between the provisions of this Charter and either ICASA regulations (including licence provisions) or legislation.

- Recognising the potential disruptive effect on regulated sub-sector enterprises if the situation should arise where the effective date of the Charter (March 1, 2005) precedes the date referred to above, the parties agree to install a safety mechanism in this regard.

Therefore, the parties have agreed that in the unlikely event that the alignment process is not completed by the effective date, then the application of the Charter to specified sub-sector regulated enterprises will be postponed for a specified period. During this period, such enterprises will continue to be governed only by the relevant ICASA provisions.

- Due to the critical role and mandate of ICASA in relation to the regulated sectors in respect of empowerment, ICASA should have direct representation on the Council.

5.6 Bilaterals

The Working Group has, since the publication of the Fourth Working Draft, held separate bilateral discussions with organisations representing the following constituencies:-

- a) State Owned Enterprises;
- b) SMMEs;
- c) Multinational corporations in the ICT sector;
- d) Regulated sub-sector;
- e) Organised labour;
- f) NEDLAC Community constituency;
- g) South African Government;
- h) Some provincial Charter Working Groups;
- i) Some individual sector companies; and
- j) Some industry bodies outside the sector.

CHAPTER SIX

CHALLENGES

6.1 CHALLENGES FACING THE ICT SECTOR

During the process of consultation described above, stakeholders brought to the fore a number of challenges facing the sector generally and also related to specific core components of **the dti's** model scorecard.

The overall challenge facing the South African Government and the ICT sector involves a delicate balancing act of stimulating sustainable national economic growth, on the one hand, and fulfilling the national imperatives of economic transformation, on the other.

The main challenges facing the ICT sector have been identified, amongst others as:-

- participation by blacks, black women, the disabled and the youth in areas such as equity ownership, management and skills development which was limited due to their systematic exclusion through the policies of Apartheid;
- lack of co-ordination of initiatives aimed at addressing key issues such as skills shortages in certain areas;
- fragmentation of the industry with a multitude of associations each representing different parts of the ICT value chain but with considerable overlap and duplication. For this reason, many companies and professionals concurrently belong to more than one association;
- detailed and reliable research on various key aspects of the ICT sector does not yet exist or is not readily available. In many instances, NGO's and other state organs have duplicated research

with the unintended consequence that some important parts of the research are either incomplete or conflict with each other;

- the development of Open Source platforms and other measures aimed at enhancing local technology and intellectual property capacity thus lessening reliance on proprietary platforms in the long term, with special emphasis on transforming the country from being consumers of software to developers of software;
- the provision of affordable and universal access to ICTs using technologies such as fixed and mobile telecommunications;
- meeting the RDP goals, including poverty alleviation and eradication) sustainable job creation, job retention, regional development and developing human resources; and
- lack of policies regulating or discouraging the casualisation of labour.

With regard to formulating its Charter, the industry took cognisance of the interlink between itself and other processes outside the ICT sector. For example, proper implementation of the Financial Sector Charter is directly dependent on the finalisation of the ICT Charter. This owes to the fact that more than forty percent of the financial sector procurement is reportedly spent on the ICT sector. Clause 6.1 of the Financial Sector Charter reads:

“The financial institutions will implement a targeted procurement strategy to enhance BEE. Provided there are charters in the information and communication technology (“ICT”), the advertising and the automotive and building sectors, and that international suppliers are subject to those charters, the target will be 50% of the value of all procurement from BEE accredited companies by 2008 and 70% by 2014.”

To varying degrees, every other sector of the economy is directly and heavily dependent on goods and services procured from the ICT sector.

1.2 CORE COMPONENTS

the dti's model scorecard demarcates seven core components of broad-based black economic empowerment namely;

- 6.2.1 Residual (Access to ICTs and Corporate Social Investment);
- 6.2.2 Enterprise Development;
- 6.2.3 Preferential Procurement;
- 6.2.4 Skills Development;
- 6.2.5 Employment Equity;
- 6.2.6 Equity Ownership; and
- 6.2.7 Management and Control.

In this Charter, the sequence in which these core components are dealt with has been deliberately reversed in order to demonstrate the relative importance placed on the broadest based components affecting the lives of most South Africans.

It is important to emphasise that the divisions between the core components are largely artificial and that a certain amount of overlap is both inevitable and necessary. The sector has identified an in-exhaustive list of challenges in respect of each of the above components of the scorecard. The Council must continuously strive to identify new challenges and to facilitate inclusive processes to find solutions thereto.

6.3 CHALLENGES IN RESPECT OF THE CORE COMPONENTS

6.3.A. ACCESS TO ICTs AND CORPORATE SOCIAL INVESTMENT

6.3.A1. Overview

The Broad-based Strategy document makes provision for points to be set aside for what is referred to in **the dti's** scorecard as the "residual" category. This refers to that portion of a scorecard which allows each sector to tailor the scorecard to their individual circumstances. The ICT sector has identified the need for industry specific initiatives,

which will result in the formulation of co-ordinated and sustainable programmes to bridge the “digital divide” and to ensure that corporate social investment is implemented within a set of sustainable long term objectives and with maximum impact. It is therefore intended that enterprises appropriate more resources in an effort to drive and/or support these industry specific initiatives.

These industry specific projects have been translated into the scorecard as “*investment in sustainable ICT Council accredited projects aimed at accelerating access to ICT and training...*” This indicator will carry a higher weighting because it will concentrate on initiatives that contribute to bridging the digital divide.

However, recognising that enterprises have expressed the wish to retain autonomy over how contributions in respect of CSI are distributed, a second indicator has been incorporated into this component as “*general CSI*”. General CSI must be interpreted in the widest possible sense to incorporate philanthropy and altruism. It is however recommended that companies should invest in projects that are national priorities such as HIV/Aids, crime prevention, youth development etc.

The Charter will in addition recognise in kind contributions in respect of both indicators that are capable of being translated into a monetary value.

The following are some of the major challenges in respect of this core component:-

- 6.3.A .3.1 Absence of Supportive Infrastructure** – Projects aimed at bridging the digital divide can only be implemented in conjunction with the provision of infrastructure such as buildings, electricity, roads, etc.

- 6.3.A .3.2 Lack of Co-ordination** – Lack of co-ordination between organisations within and outside the ICT sector results in duplication of resources and clamouring for limited resources by NGOs.
- 6.3.A .3.3 Burden on SMMEs** – A key issue in respect of this indicator is that special dispensation needs to be granted to SMMEs so as to enable them to play a meaningful role in bringing about economic transformation whilst not being strangled by over-regulation. Due to their relative size and the lack of available resources, SMMEs often find it difficult to invest in sustainable programmes that will have the desired effects. Expecting SMMEs to comply with the indicator as a whole may place an undue burden on SMMEs.
- 6.3.A.3.4 Sustainability and Impact** – Projects are implemented with short-term objectives in mind. The results and impact of some of these projects are minimal and seldom monitored.
- 6.3.A .3.5 Relevance of existing projects to ICT** – Enterprises often invest in projects with limited relevance to the ICT sector. In many instances, enterprises treat corporate social investment as the equivalent of dumping old and obsolete equipment
- 6.3.A 3.6 Company Control** – Most companies would understandably wish to have direct control as to where and how their social investment funds are deployed. This needs to be balanced with the need to identify and align their programmes with key national and sectoral priorities.
- 6.3.A .3.7 CSI Measurement** – The standard of measurements i.e. whether targets should be set as % of profit after tax (“PAT”) or profit before tax (“PBT”) or even revenue has been a point of debate. It has been noted that, depending on the accounting method, PBT may have a different value or impact as between a locally or foreign controlled company. It has been further submitted that industry's ability to

make an impact in the area of CSI is directly proportional to the financial well-being of the organisation.

6.3.A .3.8 Requirements for accreditation - Criteria will have to be defined for both new and existing projects to be accredited.

6.3.A .3.9 Existing obligations in the regulated sub-sectors - Enterprises within the regulated sub sectors have access to ICT conditions in their licences and imposed in terms of existing regulations.

6.B ENTERPRISE DEVELOPMENT

6.B.1. Overview

Despite its potential, South Africa lags behind developing nations such as India, Taiwan and China in establishing a viable entrepreneurial base in the ICT sector. The ICT sector contributes less than ten percent to the GDP of South Africa, a far cry compared to the leading developing nations. This is largely due to the fact that South Africa is a consumer, rather than a developer or manufacturer, of ICT products and services. As a result, South Africa enjoys a relatively small share of the global opportunities in the sector.

A recent study done by Khula has shown that many of the black SMMEs in the ICT sector may not be able to sustain their operations in the long-term due to structural and other deficiencies.

An entrepreneurial focus is key to the success of any BEE strategy and it logically follows that all efforts must be made to foster and encourage the development of an entrepreneurial society. A new entrepreneurial class will ultimately create jobs for their families and communities that will further positively impact on socio-economic development and growth.

The creation of sustainable black SMME enterprises has succeeded in creating a new group of black business leaders. The model, where ownership and control are combined with entrepreneurial skills training, resulted in the creation of sustainable business enterprises. Although not at sufficient levels, this has, over the first 10 years of democracy in South Africa, resulted in job creation in some of the most under-served communities in South Africa.

A general point of departure for the good of the whole of the economy is the support of entrepreneurial education in schools and the establishment of focused entrepreneurial courses and undergraduate and post-graduate research at tertiary institutions. This entrepreneurial focus and support encompasses a joint partnership approach by all stakeholders, including

Government, civil society and industry. The acid test, however, is the extent to which industry is prepared and geared to assist entrepreneurs in new and existing businesses in a manner which takes account of the inherent obstacles encountered by black people in this area. This component seeks to address this issue.

Examples of some of the ways in which SMMEs can be supported are capital contributions (where larger private sector companies participate as possible minority stakeholders), directorships (contribution of time for mentorship and implementing governance structures), loan finance (possibly quicker, cheaper and with less security required), provision of office accommodation and services (reduced infrastructure and upfront costs).

It is submitted that voluntary agreements with Government institutions (such as the Media Development and Diversity Agency) regarding funding to assist in the achievement of their mandate (which includes the development of SMMEs in the Broadcasting sub-sector) should be considered as enterprise development indicator.

The following are some of the major challenges in respect of this core component:-

6.B.3.1 Prevalence of Low Value-Adding ICT Enterprises – Most black SMMEs in the sector are set up to perform less value-adding roles in the value supply chain of ICT goods and services.

6.B.3.2 Sustainability of Start-up ICT Enterprises – As a result of the lack of capital base, access to support infrastructure, as well as the shortage of management skills, black SMMEs are often unable to fund and/or sustain their operations in the long term.

6.B.3.3 Lack of Entrepreneurial Culture/Job seeking mentality – Black people were channelled by the Apartheid psyche to enter the job market over and above being encouraged to develop their own businesses.

6.B.3.4 Lack of management experience and/or training – Although the lack of skills has been dealt with as a challenge under the skills development indicator, lack of managerial skills at a different level of focus needs emphasis. However, it is acknowledged that management experience can only be gained over time.

6.B.3.5 Reluctance to partner with BEE companies and SMMEs – It has been submitted that some enterprises involved in the services environment (as opposed to product vendors) do not partner with BEE companies and SMMEs for fear of creating competition.

6.B.3.6 SMME Development Programme – There needs to be a co-ordinated industry effort at developing sustainable black SMMEs in the sector, especially in manufacturing. This initiative should augment and/or support other programmes currently implemented by **the dti**.

6.B.3.7 Lack of Commitment to Develop Sizeable Black Enterprises - It has been submitted that some larger white owned enterprises do not encourage the development of sizeable black owned enterprises as these are perceived as potential threats to their survival and continued dominance of the sector. This kind of thinking clearly fails to recognize that great sections of the South African market as well as the growing market on the continent and indeed the world market are available to those who are willing to take the chance to establish themselves as providers to these new markets. This argument is very short sighted and in the long term cripples growth and development.

6.B.3.8 Limited Knowledge of Available Enterprise Support Programmes – Most BEE enterprises have limited knowledge of Government policies and enterprise support measures that are currently in place. Consequently, access to available enterprise incentives such as through **the dti's** Black Business Supplier Development Programme is very low.

6.B.3.9 Insufficient support – Insufficient support is received from Government and quasi Governmental enterprises for local manufacturers and their products.

6.B.3.10.Measurement Criteria - It is not clear what standards should be used to measure performance for this indicator. Suggestions have been made that range from using a percentage of total assets, proportion of total eligible procurement spend, jobs created, to percentage of growth attributable to partnering.

6.B.3.11 Financial Management Education - It is submitted that financial management education and training directed at SMMEs and potential entrepreneurs is lacking. It is further submitted that people in rural communities, in particular, are intimidated by their lack of knowledge and understanding of financial structuring and the attendant operational complexity related to such structures.

6.C. PREFERENTIAL PROCUREMENT

6.C.1 Overview

This indicator is critical to the success or failure of the Government's strategy on BEE. Successfully implemented, it will ensure redistribution of incomes, skills development and transfer, as well as job creation. It is vital that procurement decisions are made on the overall performance of the supplier's BEE accreditation and not just on the ownership category.

Research conducted on listed entities reveals that of the R515 billion¹ that was targeted to reach BEE accredited companies, R500 billion¹ did not reach them. Of this misdirected R500 billion, an estimated R200 billion¹ could have reached the pockets of black persons, either in the forms of salaries, profits or procurement spend paid to black owners and stakeholders.

A similar study on the potential affirmative procurement gap of JSE-listed companies in the Information Technology and Electronic sub-sectors estimates the affirmative procurement gap to be between R27.3 billion and R45.6 billion². Delays in the implementation of affirmative procurement programmes across the sub-sectors resulted in an estimated R 8.3 billion to R13.8 billion² being lost to black owners and employees.

This is because most procurement opportunities in the private sector are traditionally directed to white suppliers. However, over the last ten years, SOEs have been instrumental in spearheading preferential procurement from black owned and empowered enterprises. Preferential procurement has resulted in the creation of opportunities for black entrepreneurship.

¹ Wu,C. Jack, V. Lorio, P. Naidoo, C. and Bodigelo,S. 2004 *The Affirmative Procurement Gap in the South African Economy*, Nedcor BEE Forum, 26 February 2004

² Wu,C. and Lorio, P. 2004. *An estimate of the affirmative procurement gap in the ICT Sector*, Unpublished Report, Empowerdex (The analysis is based on the procurement of all JSE listed companies in the IT Software, IT Hardware and Electronics Sectors of the JSE)

Genuine BEE procurement will only be possible when there are sufficient, competent BEE rated suppliers of goods and services.

The following are some of the major challenges in respect of this core component:-

6.C.3.1 Peripheral and Non-core Procurement – Black suppliers are often appointed to supply only peripheral products and services.

6.C.3.2 Abuse of Non-Discretionary Spend Principle - the principle that the percentage of affirmative procurement should be calculated from a total excluding goods and services not ordinarily available from black or local suppliers, is inherently open to abuse and requires serious attention and creativity.

6.C.3.3 Lack of Suitable Black Suppliers – due to the lack of supplier development, there is a shortage of suitable black suppliers. This has also contributed largely to the practice of “fronting”.

6.C.3.4 Quality of Product and Delivery – some large companies have expressed legitimate concerns over the quality of goods and services procured from some inexperienced and emerging black SMMEs.

6.C.3.5 Preferential Payment Cycles – black companies, particularly black SMMEs, are generally not offered preferential payment cycles resulting in adverse cash flow positions.

6.C.3.6 Improved Delivery Mechanisms – Government and SOEs are responsible for the procurement of the majority of ICT products and services in the country.

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6.C.3.7 Inter-sectoral Co-ordination – since no enterprise, especially a large one, will procure all of its input goods and services from a single sector of the

economy, there needs to be effective interaction between the different sectors to ensure consistent application of the BEE principles.

6.C.3.8 Abuse of black SMMEs for tendering purposes - Larger or established enterprises use black SMME names for compliance when submitting responses to tenders and most do not engage these SMMEs once the tender is awarded. Alternatively, these SMMEs are only used to procure peripheral products and services.

6.C.3.9 Allotment of BEE points for tenders - It has been suggested that the 10 out of 100 points normally allocated for BEE compliance by SOEs when calling for responses for procurement tenders is too low and should be increased. It is submitted that this practice does not encourage established companies to comply with BEE requirements as they can make up for their lack of BEE status by, for instance, offering better prices.

6.C.3.10 Unfavourable pricing from black SMMEs - Due to their relative size and lack of sourcing power, black SMMEs find it difficult to enjoy better discounts than established larger enterprises. Consequently black SMMEs experience difficulty in offering better pricing in order to compete.

6.C.3.11 Unfavourable Centralised Procurement Practice - It is submitted that most procurement decisions are made in Gauteng on behalf of the other regions. It is argued that this practice stunts regional growth and does not encourage local enterprises to be properly considered when procuring for goods and services and further encourages the abuse of local SMMEs.

6.C.3.12 Procurement Commitments Monitoring at All Levels - It is submitted that where large tenders, involving black SMMEs are awarded, a monitoring mechanism be put in place to ensure that tender conditions and commitments made in the submissions are followed through during implementation. There is a tendency to only screen companies responding to a tender, whilst they subsequently outsource or subcontract to non empowered companies.

- 6.C.3.13 Original Equipment Manufacturers (OEM)** - Where OEMs, mainly foreign owned enterprises, are specifically invited to respond to tenders or are allowed to do so without any requirement for BEE, black SMMEs find it impossible to participate as they cannot compete on any front and are practically excluded.
- 6.C.3.14 Best Practices in Procurement** - There currently exists no published industry best practice models in procurement. More significantly the absence of an authorised recognised and industry backed monitoring and accreditation body is a huge challenge that needs urgent attention.
- 6.C.3.15 Increased Access to Procurement Opportunities By Black SMMEs and Black Engendered Enterprises** - for historical and practical reasons, black SMMEs and engendered enterprises find it difficult to access procurement contracts from large enterprises and Government.
- 6.C.3.16 Procurement Emphasis** - there seems to be greater emphasis or reliance on equity when procurement considerations are made. This, to the exclusion of other key pillars of BBBEE.
- 6.C.3.17 Procurement spend allocated to black-owned SMMEs** - The transformation of established white owned companies into empowered companies is seen as posing a threat to the development of black owned SMMEs. Once traditionally white owned companies have taken on a BEE partner, such companies are preferred to black owned SMMEs. The Charter must ensure the achievement of transformation in relation to this indicator does not negatively impact the development and growth of SMMEs.

6.D. SKILLS DEVELOPMENT

6.D.1. Overview

According to a recent report (published in February 2004), South Africa's position in the human development index has dropped from 94th to 107th place in 2002 despite an aggressive national skills development policy through the Skills Development Act and other legislation³.

The same report states that only 29 percent of the African⁴ (that is, excluding "Indian" and "Coloured") school-leavers are able to secure jobs despite a shortage of skills. In the same report, it is stated that South Africa occupies almost all the last positions in indices that had to do with science and technology capacity.

It is generally agreed that there exists no coherent implementation of a national ICT skills development strategy. Only 21 percent of the skills development levy paying companies had grant disbursements reimbursed to them for the implementation of training programmes. This number drops even further to 7 percent for the small levy-paying employers⁵.

The development of skills in the ICT sector is identified as one of the major catalysts for transformation in the sector. Currently, blacks occupy the overwhelming majority of semi-skilled and non-skilled positions whereas whites occupy most highly skilled and specialist positions in the sector.

Due to lack of commitment there is a tendency among certain enterprises to view skills development as an onerous exercise and to regard the statutory levy (of 1 percent of wage bill) merely as an additional form of taxation. There is also a view that prior to 1994 there existed a clear commitment by enterprises to skills development and training, which favoured whites. The

³ Budlender, D. 2004 *International Benchmarks, Human Resource Development Review*, Chapter 11, HSRC

⁴ Kraak, A. 2004 *HRD and the Skills Crisis, Human Resource Development Review*, Chapter 28, HSRC

⁵ Kraak, A. 2004 *HRD and the Skills Crisis, Human Resource Development Review*, Chapter 28, HSRC

business sector has also been accused of failing to second sufficiently senior representatives to governing structures of the SETAs.

The following are some of the major challenges in respect of this core component:-

6.D.3.1 Co-ordination - There needs to be co-ordination and alignment of skills development programmes in the industry as well as alignment of the long-term requirements of industry with the capacity of the tertiary education sector.

6.D.3.2 'Fly-by-Night' Training Institutions - These institutions create artificial and unrecognized skills that are both costly and raise misguided expectations by the labour entrants. This is exacerbated by the practice of dubious certification of learners, which certificates are not recognised by the market.

6.D.3.3 Accreditation of training providers - It has been submitted that procedures by SETAs in awarding accreditation to training providers are cumbersome.

6.D.3.4 Management Skills - shortage of black management skills, especially amongst women ICT professionals, must be addressed.

6.D.3.5 Mathematics and Science - The shortage of mathematics and science students at secondary school is limiting career opportunities for students in the ICT sector.

6.D.3.6 Funding for High Level Training - Currently there is no allocated funding for learnerships, internships and skills development programmes beyond NQF 5.

6.D.3.7 Experiential Training - Companies that provide experiential training cannot claim back from SETAs as part of their skills development programme.

6.D.3.8 Access to Training on other Learnerships outside ICT - Companies in the ICT sector find it difficult to access training on learnerships offered under the auspices of other SETAs.

6.D.3.9 Retention of ICT Skills Within the Sector - Often due to redundancies and retrenchment, valuable ICT skills are lost.

6.D.3.10 Implementation of the IIP - There is a tendency for companies to view skills development as a regulatory requirement than an investment in skills for their own enterprises.

6.D.3.11 Placement of Learners after Learnerships Programmes - Learners that graduate from learnerships programmes still find it difficult to get employment.

6.D.3.12 SMMEs Compliance with SDA - It has been submitted that compliance with the SDA by SMMEs is both onerous and cumbersome.

6.E. EMPLOYMENT EQUITY

6.E.1. Overview

The Employment Equity Act was established in order to accelerate equity in the workplace. According to the preliminary findings of 2002/3 analysis of the WSP-Training Report 2002/3 from the ISETT SETA, the ICT sector (excluding Broadcasting) employs 108,574 people in South Africa⁶, a mere 0.8 percent of the 13.7 million economic active population in South Africa⁷. Employment Equity will be regarded as an indispensable element of a business strategy benefiting both employers and employees alike. It should further be regarded as a mechanism or tool, which will ultimately result in employers having access to a wider skills base, and thereby maximising profits. The employment equity profile in the ICT sector (excluding Broadcasting) is as follows:

Occupational Level	Black Female	Black Representation (including Male and Female)
Senior Officials	4.36%	20.00%
Professionals	5.79%	22.98%
Technicians & Associate Professionals	8.90%	46.66%
Clerical / Admin Workers	29.14%	51.44%
Service Workers	30.18%	62.27%
Plant & Machine Operators and Assemblers	26.27%	85.47%
Labourers	37.75%	93.93%
Elementary Occupations	39.70%	91.29%

Source: WSP-Training Report 2002/3

The following are some of the major challenges in respect of this core component:-

6.E.3.1 'Window-dressing' - Some companies tend to be opportunistic and rely on window-dressing as a mechanism for meeting employment equity targets.

⁶ ISETT SETA, 2004, *Analysis of 2002/3 WSP and Training Report of the Information Systems, Electronics and Telecommunications Technologies Sectors*

⁷ Stats SA 2004 *Labour Force Survey*

6.E.3.2 Line versus Support functions – Black employees are often appointed into support and administrative functions, which are peripheral to the core business operation.

6.E.3.3 Diversity Management – Black people are expected to adapt to the entrenched company culture without any regard or sensitivities to their cultural values and norms such as “ubuntu/botho”.

6.E.3.4 “Statutory Exemptions” – Enterprises employing less than fifty people have no legal obligation under the Employment Equity Act to submit Employment Equity (EE) reports and plans. This situation makes it difficult to accurately determine, assess and monitor employment equity practices in the sector. Where employment equity intervention may be required as far as these enterprises are concerned, this task is not made very easy.

6.F. EQUITY OWNERSHIP

6.F.1. Overview

Black people directly own approximately 2.9%⁸ of all publicly listed Information Technology and Electronics enterprises on the JSE. Data relating to non-listed entities is relatively more difficult to access. The Council will conduct such research.

Various legislation and regulations within the sector, such as the Telecommunications Act and the Broadcasting Act, address the issue of empowerment with special emphasis on equity ownership. Other ICT sub-sectors such as Electronics and Information Technology are not subjected to special regulation relating to ownership.

For the purposes of this Charter the key elements or criteria for the equity ownership BEE indicator are:-

Control which is directly related to voting rights attaching to the shares acquired; Sharing of risk and reward directly related to capital growth and depreciation (loss); and any other legal rights of a shareholder according to South African law.

The following are some of the major challenges in respect of this core component:-

6.F.3.1 Funding – This is one of the major challenges facing black people wishing to acquire equity in ICT enterprises.

- **Access:** Funds are available for developmental financing in both the private and public institutions such as DFI's. However, black people have difficulty accessing such funds as a result of a lack of information and the requirements for funding. In the previous historical dispensation, the black population in South Africa never had the opportunity to build an adequate capital base to support

⁸ Wu, C. Lorio, P. and Naidoo, C., 2004, *An Analysis of the BEE Status of JSE-listed Information Technology and Electronic Sectors*, Unpublished research, Empowerdex. The analysis was based on ownership information in the IT software, IT hardware and Electronics sectors of the JSE. (The analysis was based on JSE-listed companies in IT Software, IT Hardware and Electronic sectors as at September 2003 and exclude the media and telecommunication sub-sectors.)

funding requirements. Traditional requirements for funding have therefore themselves become stumbling blocks for financing BEE transactions.

- **Mechanisms** - In many instances, terms associated with funding mechanisms are usually restrictive, and as such, limit the economic benefits flowing to black participants.
- **Cost** - Empowerment transactions are often too expensive for the black participants seeking to conclude empowerment deals. Often these deals are viewed as too risky and attract a high finance premium. In some instances, the price of an asset under acquisition would be highly inflated or the owners regard empowerment as an easy way to cash out.
- **Lack of Institutional Capacity** - In some instances, agencies entrusted with the disbursement of funds for BEE do not have sufficient capacity and expertise to implement such policies. This, in turn, results in funding earmarked for BEE transactions not being allocated or used as intended.

6.F.3.2 Non-recognition of Empowerment Goodwill - In the valuation of companies targeted for BEE transactions for the purposes of determining the price for shares, no recognition is generally accorded to the intangible enhancement of value brought about by the mere fact of complying with BEE requirements.

6.F.3.3 Due Diligence Capability - In most cases and due to a lack of resources potential BEE partners lack the capacity to conduct a proper due diligence on the target white company and have to rely solely on their financiers or the information provided by the target company in affixing value for the BEE stake. This often leads to the BEE partner paying more and being taken advantage of by unscrupulous funders and/or potential “partners”.

6.F.3.4 Shareholder Agreements - In some instances, terms contained in shareholder agreements may be used to limit ownership and control by

black participants. This sometimes owes to the inherent uneven bargaining positions of the parties to a particular BEE transaction.

- 6.F.3.5 'Fronting'** - This practice still remains a major problem in the ICT sector and other related sectors, and should be strictly prohibited in the ICT Charter.
- 6.F.3.6 Foreign-based ICT enterprises** - Some foreign owned and controlled ICT enterprises submitted that, due to the stringent ownership restrictions from their parent companies and the need to preserve intellectual property, amongst others, it is difficult to dilute their ownership. Certain sections of the industry were vehemently opposed to any specialised treatment of multinationals in respect of this issue.
- 6.F.3.7 State Owned Enterprises (SOEs)** - The Charter should provide specific guidance as to the empowerment status of SOEs with particular reference to the equity ownership indicator.
- 6.F.3.8 Unfavourable Dividend Policies** - It has been submitted that there exists a tendency by some larger entities, mainly with management contracts in joint ventures, to implement unfavourable dividend policies, such as perpetual deferment of declaring dividends. This would then make it difficult for the black shareholders to repay their loans or debts in respect of their funding from any of the profits made in the joint venture and, in some instances, default on their loan repayments.
- 6.F.3.9 Direct versus Indirect Ownership** - There has been debate within the industry as to the advisability of including both direct and indirect forms of ownership in achieving the required score for the equity component of the scorecard. The inclusion of an indirect ownership element has been criticised for the inherent weakness of not conferring real and direct influence on the operational direction of the "empowered" enterprise.

- 6.F.3.10 Broad-based Collective Ownership** - The ownership element of BEE is inherently prone to benefit only a handful of black people external to the enterprise and mainly resident in the large cities.
- 6.F.3.11 Limitations on BEE Shareholding** - The issue where a BEE shareholder sells shares on the open market or to a non-BEE third party must be addressed. Concern has been raised regarding the effect such a transaction would have on the points accrued as a result of the original deal.
- 6.F.3.12 Impact of Large Equity Deals** - Cognisance needs to be taken of the relative complexity and impact of large equity transactions in respect of the intended black partners' ability to raise the required capital. Recognition also needs to be given to the fact that that when it comes to certain size of BEE deals, the economic impact cannot simplistically be measured by reference to percentages alone.
- 6.F.3.13 Deferred Ownership** - Certain models which have been used to satisfy the equity ownership element tend to be structured with the inherent weakness that the vesting of share ownership is based on a future uncertain event the achievement of which is not within the powers or control of the black partners. On the other hand, it is acknowledged that the acquisition of voting rights, which should happen upfront, is not necessarily attained with the vesting of economic benefits.

6.G. MANAGEMENT AND CONTROL

6.G.1 Overview

Black people currently hold approximately 14.2%⁹ of all director positions in publicly listed Information Technology and Electronics enterprises at the JSE. Of this, black women occupy a mere 1.23%⁵ of executive directorship positions and 1.37%³ of non-executive positions.

The ratio of executive to non-executive directors on the JSE is estimated at around 1:1 for all directors. However, the ratio for black executive director to black non-executive director is currently estimated at 1:6¹⁰. The research indicates that most black directors are currently appointed as non-executive directors.

The following are some of the major challenges in respect of this core component:-

6.G.3.1 Lack of Meaningful Participation by Blacks at Management Level – Most management positions are still occupied by whites.

6.G.3.2 ‘Window-dressing’ - Some companies tend to be opportunistic and rely on ‘window-dressing’ as a mechanism of addressing management at operational level. This practise refers to the situation where black or female candidates would be appointed with the appropriate title but with little or no say in the areas related directly to their positions or title. In many instances, this has manifested itself in the prevalent practice of “*fronting*”.

6.G.3.3 ‘Job Hopping’ – Job hopping by black managers has been identified as a challenge in the sense that there is a small pool of skilled black managers to draw on. Investment in such managers is risky given that once they become skilled they are often lured by higher salaries elsewhere. On the other hand the argument is made that this may not be a challenge *per se* but in fact a

⁹ Wu, C. Lorio, P. and Naidoo, C. , 2004, *An Analysis of the BEE Status of JSE-listed Information Technology and Electronic Sectors*, Unpublished research, Empowerdex

¹⁰ Jack, V. and Wu, C. 2003. *Pioneers, Powers and Pundits, black management on the JSE* www.empowerdex.com, Empowerdex

challenge or a symptom of the market place. Any limited resource (in this case black managers) will attract a premium.

6.G.3.4 Succession Planning - There is evidence of a lack of succession planning and mentoring in the ICT industry.

6.G.3.5 Under-employment - Black managers are appointed into positions where their skills and qualifications are not fully utilized.

6.G.3.6 Pledging and/or Ceding of Shares to Financiers - Traditionally, control and by default, executive management in any enterprise is determined by ownership. Shareholders exercise control over the shares they own by appointing executive management of their choice. In the case of BEE and the limited funding related thereto, where equity transactions have been done, shares are generally pledged to financiers as security. Financiers tend to insist on complete control over the shares that have been pledged to them, thus limiting the ability of the black shareholder to appoint management of their choice.

PART C

CHAPTER SEVEN

Bearing in mind the agreed scope and application of this Charter (Chapter 3), the situational analysis (Chapter 4), the extensive consultative process (Chapter 5) and having considered the challenges facing the sector in general and in respect to specific core components (Chapter 6), the Parties to this Charter do hereby commit themselves to attain the objectives enunciated in the respective core components listed below by adopting to the methods, mechanisms, principles and means agreed to addressing the challenges identified in Part B above:

7.A ACCESS TO ICTs AND CORPORATE SOCIAL INVESTMENT

7.A.2 Objectives_

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to procure our best endeavours and to also act in good faith in order to:-

- identify and align initiatives with national priority programmes, particularly the e-Government Strategy where possible;
- impart ICT skills to previously disadvantaged communities and individuals with special emphasis on rural communities;
- support the provision of affordable and universal access to ICT infrastructure and services;
- co-ordinate various initiatives to enhance their collective impact;
- take full advantage of traditional corporate social investment and promote the allocation of corporate social investments to initiatives that aim to “bridge the digital divide”;
- connect villages with ICTs and establish community access points;

- connect universities, colleges, secondary schools and primary schools with ICTs and adapt all primary and secondary school curricula to meet the challenges of the Information Society, taking into account the existing national programmes;
- connect health centres and hospitals with ICTs; and
- encourage Public Private Partnerships (PPPs), but with the proviso that PPPs do not in any way diminish the role of the State.

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to the principles and means as described herein below:-

7.A3.1 Absence of Supportive Infrastructure - The Council must co-ordinate/liaise with the various Government departments such as the Department of Education, Public Works, Public Service and Administration.

7.A3.2 Lack of Co-ordination -The Council through the accreditation process will ensure that resources are not duplicated. There should be general coordination, information sharing and the encouragement of collaboration between entities within and outside the ICT sector e.g. the Mindset Project, a project incorporating financial services and ICT enterprises.

7.A3.3 Burden on SMMEs -A healthy balance needs to be struck between competing national policy priorities. Whilst enterprises are encouraged to contribute to transformation and economic growth, the need to grow a vibrant SMME sector as a catalyst for job creation and economic growth is also crucial.

SMMEs will therefore be exempted from directly executing ICT CSI projects. However, instead of the stipulated 1.5% contribution by other enterprises, SMMEs are required to contribute 0.75% of PBT to a

dedicated fund that will, for example, be used to assist rural SMMEs or co-operatives.

7.A3.4 Sustainability and Impact –Accredited projects will be closely scrutinized and monitored by the Council. Any such project must have an integrated plan and be properly coordinated such that it involves all stakeholders so as to optimise the intended benefits and impact on sustainable development and empowerment of local communities.

7.A3.5 Relevance of Existing Projects to ICT –Industry specific initiatives will be accredited by the Council and have been translated into the scorecard as *“investment in sustainable ICT Council accredited projects aimed at accelerating access to ICT and training.*

Accredited projects will not only focus on the rollout of infrastructure but include training and development of relevant applications, recognising that this is important to ensure the effective usage of the technology and infrastructure.

7.A3.6 Company Control –The charter recognises that enterprises wish to retain autonomy over how money is spent. A second indicator has been incorporated in the residual category as *“general CSI”*. General CSI must be interpreted in the widest possible sense. It is however recommended that companies invest in projects that are national priorities such as HIV/Aids, crime prevention or youth development.

7.A3.7 CSI Measurement – PBT, from an accounting perspective is the fairer measurement and a more accurate reflection of a company’s performance. PBT has thus been adopted as the measurement in this Charter.

Enterprises that do not make a PBT cannot conceivably be compelled to make a contribution to the residual category. In such a case

companies will reflect their contribution as 1% of 0 PBT and be allocated the full points for the indicator. Enterprises, when assessing what their 1% of PBT spend is will have regard to PBT in the preceding financial year.

On the issue of the PBT measurement having a different impact, depending on whether a company is locally or foreign controlled, the Council must initiate discussions with **the dti** and Treasury.

7.A3.8 Requirements for Accreditation –Stakeholders have agreed on the following broad goals which should inform the accreditation of projects:

- maximum access to ICT infrastructure and services, as well as ICT education and training for all South Africans by end of 2014. In this regard, by 2012 no South African learner should reside more than a 10km radius away from such access to high-end ICT infrastructure, eg Internet connectivity. This programme should be undertaken in collaboration with other bodies such as Government, NGOs and existing projects such as the Khanya Project (Western Cape), Kingdom On-line (KZN) and the Gauteng On-line Project;
- projects that support rural and marginalised communities, entrepreneurship and youth development with a special focus on young women;
- projects whose main effects are to:
 - connect villages with ICTs and establish community access points;
 - connect universities, colleges, secondary schools and primary schools with ICTs and adapt all primary and secondary school curricula to meet the challenges of the Information Society, taking into account the national circumstances; and
 - connect health centres and hospitals with ICTs.

The Council must issue guidelines as to the criteria for accreditation. Projects that clearly fall within the guidelines issued by the Council will automatically qualify for accreditation subject to ratification by the Council when assessing the annual BEE reports submitted by enterprises to the Council. However, enterprises may apply to the Council to have projects accredited where there is doubt as to whether a particular project complies with the guidelines issued by the Council.

The Council must take the following criteria into account when issuing guidelines and considering whether to accredit projects:

- Projects must support the broad national goals identified by the sector;
- Projects must adopt a partnership approach, involving Government and recipient communities to support sustainability;
- Similarly, the project design must adopt a consultative approach, be sustainable; be driven by empowerment of recipient communities and have monitoring and evaluation tools to assess the impact and return on investment;
- Projects must provide for a rigorous, intensive and a structured skills development component; and
- Ensure that Public Private Partnerships (PPPs) are encouraged in order to bridge the digital divide, but with the proviso that PPPs do not in any way diminish the role of the State.

7.A3.9 Existing Obligations in the Regulated sub-sectors - The process of alignment referred to in Part B of this Charter (aimed at aligning ICASA regulations with the provisions of this Charter) must clearly spell out the extent to which existing obligations placed on enterprises in the regulated sub-sectors should be taken into account in the fulfillment of the requirements contained under this component.

7.B. ENTERPRISE DEVELOPMENT

7.B.2. Objectives

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to procure our best endeavours and to also act in good faith in order to:-

- substantially increase participation by black entrepreneurs in the sector;
- create a supportive environment that will ensure the development of a sustainable black entrepreneurship base, including the targeting of entrepreneurial skills development for black women, the youth and the disabled;
- establish a viable, sustainable and globally competitive entrepreneurial base;
- promote and support better co-ordination and co-operation between and amongst technology incubators, government, state owned enterprises, the private sector and incubated companies, ensuring that such activities are regional and engage with marginalised communities;
- encourage the creation and sustainability of SMMEs, especially black SMMEs; and
- create employment.

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to the principles and means as described herein below:-

7.B.3.1 Prevalence of Low Value-Adding ICT Enterprises – This challenge has been addressed in the Preferential Procurement section.

7.B.3.2 Sustainability of Start-up ICT Enterprises – Incubation should be considered as another option to develop sustainable enterprises. The incubation process needs to be co-ordinated with institutions of

higher learning, which together with the enterprises should be working to develop a unique South African based intellectual property.

- 7.B.3.3 Lack of Entrepreneurial Culture/Job seeking mentality** –Formal and informal entrepreneurship programmes need to be introduced by the sector. The sector must find ways to utilise the resources available within itself (especially in the broadcasting sector) to support mass education campaigns in the field of entrepreneurship and enterprise development.
- 7.B.3.4 Lack of Management Experience and/or Training** –When properly applied, skills development, training and mentoring should also be directed to address lack of management skills. However, management experience can only be gained over time.
- 7.B.3.5 Reluctance to Partner with BEE Companies and SMMEs** – Partnerships must drive enterprise development through the entire supply chain by transferring business knowledge and skills that are essential for sustainable growth. In a mentor/protégé relationship there should be clearly stated agreements detailing the terms and conditions of engagement, which must include timelines and repayment of loans, if any. Enterprises, especially multinationals, should be encouraged to support and partner with SMMEs by bringing offshore business to South Africa through identifying SMMEs for development work, Business Process Outsorce (BPO) and call centre functions that can be transferred to South Africa.
- 7.B.3.6 SMME Development Programme** –Although the strategy is aimed at developing the ICT sector, it is recognised that certain enterprises may be better placed to develop enterprises in other sectors. Such developments should be encouraged, especially if they support the development of the value chain relevant to the ICT sector.

Price matching, a practice where certain commodity prices are set at a competitive level and benchmarked to ensure supplier sustainability and to discourage price war, needs to be considered in favour of SMMEs. Special assistance should be provided to SMMEs by organisations that issue tenders during the tendering process. This is intended to increase the participation and capacity to meet the tender requirements by black SMMEs.

It is a precondition for achieving any score in respect of this core component that at least 30% of the enterprise development spend of an enterprise be directed at black-owned SMMEs.

7.B.3.7 Lack of Commitment to Develop Sizeable Black Enterprises

- The effective application of the procurement guidelines within this Charter will incentivise the development of all BEE enterprises regardless of size.

7.B.3.8 Limited Knowledge of Available Enterprise Support

Programmes - The Council should establish a database of all relevant information in this regard, as well as promoting industry communication campaigns.

7.B.3.9 Insufficient Support - Incentives offered by the dti and National Treasury must not be discriminatory towards locally based enterprises.

7.B.3.10 Measurement Criteria - Proportion of eligible procurement spend and jobs created are deemed the most fair measurement criteria. The Working Group, failing which the Council, must conduct or commission a study on the most appropriate measurement criteria as well as formula by which jobs created are qualified.

7.B.3.11 Financial Management Education - A possible partnership or collaboration between the relevant SETAs in the ICT sector and the

Bank SETA may help address this need through mechanisms such as learnerships amongst others.

7.B.4. SMME Exemption

SMMEs with an annual turnover of less than R10 million shall automatically be exempted from complying with this component.

7.C. PREFERENTIAL PROCUREMENT

7.C.2. Objectives

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to procure our best endeavours and to also act in good faith in order to:-

- increase the amount of money spent on procuring from BEE enterprises; focus should be on procuring from Black-owned and Black-empowered enterprises;
- provide incentives for enterprises to procure from (respective sectoral) Charter compliant enterprises thus ensuring the domino effect of affirmative procurement is realised throughout the economy;
- use affirmative procurement as a means to ensure that ICT and other skills that would otherwise be lost through instances such as retrenchments are still made available to the sector and the economy;
- promote job creation through the use of, and development of South African manufactured products, content and intellectual property in line with the principles of the Proudly South African campaign;
- promote the sustainable development of Black-owned SMMEs; and
- establish a coordinated framework for the implementation of black supplier development programs.

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to the principles and means as described herein below:-

- 7.C.3.1 Peripheral and non-core procurement** – It should be a pre-condition of compliance with the condition of the scorecard that the majority of the core procurement spend should be directed to black suppliers.

- 7.C.3.2 Abuse of Non-Discretionary Spend Principle - The Council** needs to address this issue and provide clear guidelines in this regard.
- 7.C.3.3 Lack of Suitable Black Suppliers** -Where no suitable BEE supplier can be found, purchasing entities must take action to develop the capacity, in terms of the Enterprise Development criteria of this Charter. The accreditation process envisaged in this Charter will create a database of potential BEE suppliers in partnership with existing programmes such as **the dti** website ICT-E database. The use of sub-contractors is to be encouraged, where appropriate, particularly in the procurement of services such as installation, cabling, maintenance and support.
- 7.C.3.4 Quality of Product and Delivery** - This problem is sometimes attitudinal but these concerns are often genuine and will be addressed through improved supply agreements that include quality management processes. Purchasers should seek ways to transfer appropriate skills to the suppliers.
- 7.C.3.5 Preferential Payment Cycles** - Companies must spell out in their published procurement policies what payment terms are reserved for black owned SMMEs expressed in days from receipt of invoice. Points will be awarded for policies stipulating a maximum payment period of fifteen days or less.
- 7.C.3.6 Improved Delivery Mechanisms** - Agencies such as SITA should not only undertake to achieve the highest possible compliance with this Charter but will recognize that they have a special role to play as Government is the single largest purchasing entity in the sector. This should equally apply to all SOEs active in the ICT sector.
- 7.C.3.7 Inter-sectoral Co-ordination** - The issue of co-ordination and consistency between separate industries and charters is addressed by

cross-reference to other sectoral charters and to the principles enshrined in the BBBEE Act where no sectoral charter exists. Currently, the Financial Sector charter is to be given particular attention. The Council needs to take up this issue for championing within the BEE Advisory Council.

7.C.3.8 Abuse of Black SMMEs for Tendering Purposes - Enterprises who are found to be abusing SMMEs need to be black-listed. Further, organisations such as the SMME Forum, SACF, BITF and other watchdog bodies should be encouraged to play an active role in ensuring that SMMEs are protected from this abuse. **the dti** needs to also be directly involved in this effort.

In addition, it must be a precondition for scoring any points in respect of this component that 30% of eligible procurement spend is directed at black-owned SMMEs. Where an enterprise can demonstrate to the Council that their procurement patterns will make it inherently incapable to comply with this requirement the Council may, upon application by such an enterprise, stipulate a lower percentage in this regard.

7.C.3.9 Allotment of BEE Points for Tenders - It be recommended to Government to amend the relevant legislation in so far as it stipulates otherwise, that 20 out of 100 points in tender adjudications be allocated for BEE. It has also been suggested that a local supplier amount portion be set aside.

7.C.3.10 Unfavourable Pricing from Black SMMEs - It is recommended that a 30% minimum amount of procurement in large tenders be set aside for participation by black SMMEs thus ensuring that they are not systematically excluded from participation.

7.C.3.11 Unfavourable Centralised Procurement Practice - Purchasers from enterprises and public entities operating nationally must allocate a

portion of procurement opportunities to local BEE companies in various regions. The Council in conjunction with provincial stakeholders must formulate specific guidelines.

7.C.3.12 Procurement Commitments Monitoring at All Levels – A special procurement accreditation and monitoring sub-committee should be created by the Council to audit procurement practices of ICT enterprises. The mandate of this subcommittee should be extended to include post contractual audits.

7.C.3.13 Original Equipment Manufacturers (OEM) – Invitations to supply products sourced from overseas must allow for a local channel through BEE enterprises to be included and must also allow for local products to be offered where they meet the technical specifications. Foreign enterprises will be required to show how they are assisting with Enterprise Development, and ensuring that there is a limitation on the money that flows out of the country. These measures must be carefully designed and communicated so as not to discourage the inflow of foreign direct investment.

7.C.3.14 Best Practices in Procurement – The ICT Council will prepare a code of good practice, based on established publications (such as the World Information Technology & Services Alliance White Paper issued in 2004) and on further research.

7.C.3.15 Increased Access to Procurement Opportunities By Black SMMEs and Black Engendered Enterprises - Some procurement managers have stressed the need for set asides for Black SMMEs and for Black women owned enterprises. This suggestion also includes the possibility of set asides for youth participation. This issue is best dealt with by including appropriate questions in a model Supplier Questionnaire.

7.C.3.16 Procurement Emphasis - Black companies need to be bound by broad based requirements of this and other Charters as well as similar transformational instruments: equity should not be the sole determinant of their status.

7.C.3.17 Procurement Spend Allocated to Black-owned SMMEs - The scorecard should cater for set asides for Black owned SMMEs to remedy this problem.

7.D. SKILLS DEVELOPMENT

7.D.2. Objectives

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to procure our best endeavours and to also act in good faith in order to:-

- promote and support the aims and objectives of the Skills Development Act as well as the ISETT SETA, MAPPP SETA and other relevant bodies;
- increase the number of black skilled people, including black women, the youth and black people with disabilities, at the management, technical and specialist levels;
- ensure that skills development and training programmes mirror market demand in the sector;
- ensure that the institutions that supply ICT education and training are on track in providing what the labour market requires;
- promote awareness of career opportunities in the ICT sector at secondary and tertiary institutions;
- ensure that BEE accredited ICT companies comply with the requirements of the Skills Development Act, irrespective of size of the enterprise;
- co-operate with the relevant regulatory authority in the commercialisation of training institutions and programs in the ICT sector, especially those causing over-supply of specific skills in the sector;
- set clear and precise guidelines over and above the existing statutory requirements, for effective skills development initiatives specifically aimed at black people;
- set annual guidelines for the number of learnerships required to be registered in each sub-sector of the ICT sector;
- assist the ISETT SETA and other SETAs relevant to the ICT sector in formulating tripartite partnerships between enterprises, training service providers and itself to embark on learnerships, internships and other relevant skills programmes that feed directly into skill gap areas; and

- help facilitate the creation of a database of contract workers by the ISETT SETA.

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to the principles and means as described herein below:-

- 7.D.3.1 Co-ordination** -The Departments of Labour, Education, Science and Technology, as well as the South African Qualifications Authority and the SETAs applicable in this sector should work together in co-ordinating and aligning skills development programmes in the industry with the long term requirements of the industry working together with training providers and the tertiary education sector.
- 7.D.3.2 ‘Fly-by-Night’ Training Institutions** - The Education and Training Qualifications Assurance bodies of the SETAs are responsible and must be more effective in the monitoring of suspected or unaccredited training providers.
- 7.D.3.3 Accreditation of training providers** - The SETAs should fast track the process of accrediting qualified training providers. This should also include a clear set of guidelines on the process, time frames and the requirements for compliance.
- 7.D.3.4 Management Skills** - Companies should develop mentoring programmes that target black employees especially women in identified positions for succession planning.
- 7.D.3.5 Mathematics and Science** - ICT career awareness programmes should be implemented at primary and secondary school levels. Schools should also be invited to academic institutions open days, private company visits and programmes organised by DoE, DST and NSTF that promote career opportunities in mathematics and science.

- 7.D.3.6 Funding for High Level Training** - The ISETT and MAPPP SETAs, National Skills Fund and other relevant funding bodies should set aside funding for high level training even if it is not unit standard based.
- 7.D.3.7 Experiential Training** - The SETAs should assist companies that provide experiential training to university graduates in recognising and accrediting their training within the learnership framework.
- 7.D.3.8 Access to Training on other Learnerships outside ICT** - The ISETT and MAPPP SETAs should conclude agreements with other SETAs to provide additional training.
- 7.D.3.9 Retention of ICT Skills Within the Sector** - Companies should identify areas where market growth is declining and jobs could be at risk. Measures should be initiated timeously to develop and move staff to the new growth areas, by training and re-skilling employees working in business areas.
- 7.D.3.10 Implementation of Investors in People (IIP)** - Companies should be encouraged to adopt IIP when developing their WSP and WSPiR.
- 7.D.3.11 Placement of Learners after Completion of Learnership Programmes** Companies should indicate the proportion of learners which they place in the workplace after the learnership programmes have been completed. The Council, in conjunction with DoL and the SETAs should devise a method of rewarding or incentivising companies that provide post-learnership permanent employment.
- 7.D.3.12 SMMEs Compliance with SDA** - The Skills Development Act (SD Act) recommends that large and medium companies should assist SMME's to comply with the SD Act. The Council, in conjunction with DoL and the SETAs should devise a method of rewarding or

incentivising companies that provide post-learnership permanent employment.

7.E. EMPLOYMENT EQUITY

7.E.2 Objectives

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to procure our best endeavours and to also act in good faith in order to:-

- ensure that BEE accredited ICT companies comply with the requirements of the Employment Equity (EE) Act;
- encourage SMMEs, which are otherwise exempted from the requirements of the EE Act, to submit information for purposes of sector skills assessments;
- encourage enterprises to develop and implement Affirmative Action policies and guidelines;
- align employment equity targets with skills development programmes and outcomes;
- encourage enterprises to embark on diversity management programmes for all employees at all levels;
- place specific focus on the participation of black people, including black women, the youth and people with disabilities, in the first line decision making positions; and
- ensure black people, including black women, the youth and people with disabilities participate at all levels of management in enterprises, especially at the operational level.

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to the principles and means as described herein below:-

- 7.E.3.1** **‘Window-dressing’** - Companies should develop set measurement criteria for performance measurement outcomes with clearly defined job descriptions and tasks, and accompanied by an appropriate budget, where applicable. This will ensure that

candidates are not placed in positions in created structures that give false impressions of their positions. Window dressing should be regarded as a form of fronting and should be dealt by the proposed Anti-Fronting sub-Committee of the Council.

7.E.3.2 **Line versus Support functions** - Companies should identify strategic positions / jobs which are imperative to the survival of their organisations. These positions should then be prioritised for black candidates.

7.E.3.3 **Diversity Management** - Induction programmes which incorporate diversity management and gender sensitivity programmes should be implemented to addresses cultural and other differences within organizations and must include transformation in the workplace.

7.E.3.4 **“Statutory Exemptions”** - Companies that are exempt from complying with the EE Act should be encouraged to submit Employment Equity data on a voluntary basis so as to improve the quality of sector statistics.

7.F. EQUITY OWNERSHIP

7.F.2. Objectives

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to procure our best endeavours and to also act in good faith in order to:-

- increase the number of black people, including black women and other marginalised groupings who directly own and control existing and new ICT enterprises;
- eliminate and discourage the practice of token ownership committed by blacks and whites alike, otherwise commonly referred to as *fronting*;
- set an acceptable minimum target and, where it is deemed appropriate, sub-sector targets for levels of shareholding held by black people including black women in ICT companies operating in South Africa;
- encourage the notion of collective ownership through co-operatives and other similar structures; and
- provide a standardized definition of ownership.

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to the principles and means as described herein below:-

7.F.3.1 Funding – DFI's should fund the development of BEE enterprises as opposed to just giving guarantees. The procedures or processes of acquiring these finances should be made favourable for black entrepreneurs. In addition the visibility of these organizations needs to be improved by mass advertising campaigns and a presence in mainly black areas.

While funding is a problem, so too is the criteria for funding (i.e. traditional banking criteria such as balance sheet strength) and public

servants who control the funding who may not be qualified to analyse business plans etc. The problems relating to funding, criteria for funding and the lack of capacities within the institutions which control such funds must be addressed, as this sometimes leads to funds being unutilised.

It has been submitted that the Council must make proposals to the Department of Labour (DoL) as to how unutilised funds in the relevant SETAs can be used as collateral for broad-based BEE within the sector.

A special BEE fund must be established to finance the acquisition of equity from established companies in the ICT industry. For example, the R15 billion earmarked by Treasury for BEE could be apportioned per sector. The ICT sector's portion must then be ring-fenced for financing in the ICT sector.

7.F.3.2 Non-recognition of Empowerment Goodwill - The inclusion of black people in the equity ownership of a company should be regarded as a valuable contribution to a new partnership. This intangible asset, embedded in every genuine BEE transaction, should be regarded as goodwill outside the traditional methods of valuation. Stakeholders are urged to consider guidelines on how to treat this type of goodwill and make provision for its consideration in mitigating funding requirements by black participants. The BEE Council in consultations with academics and the financial sector, amongst others, must develop guidelines on how to treat this type of goodwill and make provision for its considerations.

7.F.3.3 Due diligence capability - Guidelines regarding valuation methods and due diligence processes to determine the value of BEE investments must be designed by the Council.

7.F.3.4 Shareholder Agreements - In the process of conducting accreditation, the Council must ensure that shareholder agreements are scrutinised with the view to eliminate prejudicial terms that limit effective black ownership and control.

7.F.3.5 'Fronting'- The Council should publish and regularly review a clear comprehensive definition of fronting with specific examples of what is prohibited.

The Council should appoint, from amongst its members, an Anti-Fronting Sub-committee which may co-opt other specialists with expertise in the areas of company law, corporate finance, auditing, and HR development.

It has also been recommended that anti-fronting guidelines need to be developed in conjunction with other stakeholders including a mechanism for blacklisting companies and individuals engaged in fronting.

Where fraud or other criminal activity is suspected, the Council must refer the matter to the appropriate law enforcement authorities.

Whistle-blowing in this area by concerned parties including potential partners, employees, competitors and customers must be encouraged by means of a hotline established by the Council.

7.F.3.6 Foreign-based ICT Enterprises -The negotiation process has resulted in the following consensus position:

1. The key elements or criteria for the Ownership BEE indicator are as stated above in the Overview of this section.
2. There will be no blanket exemptions for any organisation from the requirement to comply with the equity provisions and targets contained in this charter.

3. Subject to satisfying the conditions contained in paragraph 4, 5 and 6 below and on a case by case basis, the Council may upon application permit any company, including a multinational company, specifically defined terms of release from complying with the equity requirements of this charter.

4. Any company which can demonstrate that compliance with the equity requirements of this charter will cause inherent commercial harm to its business due to:-
 - 4.1. legal, technological or policy barriers which are incompatible with the sale of equity in the ordinary course of events; or
 - 4.2. any other such impediment(s) shall be permitted to propose alternative equity models, provided that such models:-
 - (a) are proposed in a genuine effort to overcome the barrier(s) in question; and
 - (b) fulfil the transformational purpose of equity ownership (i.e. voting rights, etc)

5. In the event that -:
 - 5.1 the barriers are found to exist; and
 - 5.2 no alternative model(s) are proposed or found to be capable of overcoming such barriers,

then the Council may issue the company involved with a Certificate of Permitted Non-Compliance.

6. The certificate contemplated in paragraph 5 above shall only be granted if it is shown that the barrier in question was not put in place mainly for the purpose of avoiding compliance with this charter or similar transformational instrument and in the case of parent - company policy if such policy is shown to:-
 - 6.1. have existed and been published prior to 25 June 2003;

- 6.2. and be globally and uniformly applied by such parent company.
7. Barriers only related to the ordinary costs of entering into an empowerment deal shall be specifically excluded from the dispensation contemplated in this section of the Charter.
8. In the event that a company is issued with a Certificate of Permitted Non-Compliance, then it will be allocated a score of zero in relation to the equity / shareholding indicator of the scorecard and will accordingly be permitted to attain its bronze, silver or gold rating by adding up its total score on the remaining indicators.
9. The Council shall, from time to time and subject to maintaining confidentiality of the parties involved, publish for general information various barriers and equity models submitted to it in this regard, indicate whether these were accepted or not and state the reasons for its decisions.
10. The Working Group must ensure that the context within which consensus was reached in respect of this section is properly and timeously communicated to the Council as soon as the latter is established.

7.F.3.7 State Owned Enterprises (SOEs) - After consultation with the sector SOEs, consensus was reached as follows:

- 3.7.1 As a general rule, for SOEs to qualify under the equity section of the Charter, the scorecard target need only be achieved in relation to the non-government total shareholding. The exception to this general rule shall relate to SOEs which conduct business in competition with other commercial enterprises in the sector. In this case such SOEs shall be compelled to partner with other BEE enterprises when

tendering for contracts and, collectively, need to meet a combined minimum black equity ownership as stipulated in the equity section of the scorecard.

In the case of wholly-owned SOE's and on a case-by-case basis, enterprises shall have to apply for a Certificate of Permitted Non-Compliance from the Council. Each such certificate will be tailored for the specific circumstances of the applicant in respect of the manner in which the equity points will be made up.

The process by which the Certificate of Permitted Non-Compliance will be issued is to be determined between the ICT Empowerment Working Group and the SOE's, and will be tailored along the lines adopted for the Multinationals.

7.3.2. A two-a-side four person committee has been established between the SOEs and the Working Group and charged with putting concrete proposals in this regard. Consensus must be reached on these proposals before the commencement date of the Charter.

7.F.3.8 Unfavourable Dividend Policies - Dividend policies or similar mechanisms must be adaptable and strike a healthy balance between the need to repay debt finance and the working capital requirements of the BEE enterprises.

7.F.3.9 Direct versus Indirect Ownership - It shall not matter whether the shares are directly or indirectly held, subject to the following provisions:

- The ownership of shares by institutional investors such as pension funds or the PIC is expressly excluded.

- The portion of indirect ownership must generally not exceed 30% of the target unless expressly permitted by the Council, upon application.
- For indirect ownership to be eligible for computation into the total ownership component score, the shareholders agreement must provide voting pool or similar arrangements which have the effect of a black voting block with not less than 25.1% collective power.

The main intention of allowing indirect ownership is to encourage creative broad based ownership models which conform with the definitional elements of ownership contained in the definitions section of this Charter.

7.F.3.10

Broad-based collective ownership - Extra points should be awarded to enterprises for the inclusion of broad-based mechanisms that seek to involve employees such as ESOPs, rural community participation, geographic and gender spread. Broad-based equity should include a gender and geographic spread to avoid a situation where only black men and people from specific provinces benefit. It is also imperative that black employees play a substantial and meaningful role in equity ownership in the enterprises that employ them and the BEE Council should issue guidelines on what form such participation should take.

Other broad based mechanisms such as retail schemes specifically aimed at black people should also accrue extra points for enterprises. The principle as applied in Telkom's Khulisa and other retail schemes needs to be encouraged.

7.F.3.11

Limitations on BEE Shareholding - Where a BEE shareholder sells shares in the open market or to a non-BEE third party, the original enterprise should, on application and showing good cause, attract BEE points for an agreed window period not exceeding 12 months where the shares are transferred or sold

through no fault of the empowered company. This period is meant for the said BEE company to source a replacement BEE partner and is subject to extension being granted by the Council.

This Charter should deal with the issue of premature disposal of shares by BEE shareholders. The intention is to protect and maintain the BEE status of the said empowered company. A standard clause addressing this issue needs to be formulated by the Council for proposed inclusion in all BEE agreements concluded in the sector.

7.F.3.12

Impact of Large Equity Deals – Any company which is independently valued at more than R5 billion and has declared an intention to enter into an equity deal in its own right may, upon application to the BEE council and at the Council's discretion, be granted a customised and/or extended schedule in respect of the ownership indicator. Generally, such extended schedule (roadmap) must result in the long term target still being met on the 28 February 2015.

In each case that such an extended schedule is granted or refused, the Council must in its Annual Report issue a summary of the facts and its decision. The decision of the Council in this regard shall be final and binding. A creative dispensation should be found to accommodate this reality.

7.F.3.13

Deferred Ownership – Any transaction which involves black people acquiring shares on a conditional, deferred basis, dependant on the happening of a future uncertain event shall not be scored upfront for the purposes of this section until the happening, or otherwise of the event.

7.G. MANAGEMENT AND CONTROL

7.G.2. Objectives

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to procure our best endeavours and to also act in good faith in order to:-

- increase the number of black people, including black women, and people with disabilities in executive management and board positions in the ICT sector; and
- increase the number of black people, especially the youth, given opportunities to be fast-tracked into executive management positions.

In respect of the challenges enunciated in the preceding Part B we, the parties to this Charter, commit ourselves to the principles and means as described herein below:-

7.G.3.1 Lack of meaningful participation by blacks at management level – Black management development programmes need to be made more widely available, affordable and easily accessible. This will ensure that a larger pool of black managers is available to draw from.

7.G.3.2 ‘Window-dressing’ - The Council should scrutinise the employment conditions of black executives in the sector including such issues as job description, remuneration, and level of responsibility.

7.G.3.3 ‘Job hopping’ – One of the possible ways to combat the underlying problem is to increase the pool of available black managers or skilled resources so that they are no longer limited and therefore do not attract a premium.

7.G.3.4 Succession Planning – When developing employment equity plans and reports, enterprises need to provide details regarding succession planning and mentoring programmes.

7.G.3.5 Under-employment - It is recommended that companies avoid this practice, and where it has been brought to the attention of the Council, it should be referred to the appropriated authorities for action.

7.G.3.6 Pledging and/or Ceding of Shares to Financiers - A clear distinction needs to be made when shares are pledged as security as opposed to when they are ceded. Further, a mechanism needs to be developed to allow for control to vest in black people whilst their shares are still encumbered which will enable the black shareholder to appoint executive management of their choice.

CHAPTER EIGHT

SCORECARD

The ICT BEE Scorecard presents, in a matrix format, the major BEE indicators including their respective targets and weightings. The scorecard only provides quantifiable transformational targets and should be applied in conjunction with all other provisions of this Charter. The balanced scorecard method applies, that is, the total score should be calculated by adding up the scores separately computed in respect of each component. It is therefore possible to overscore in certain components and thereby compensate for low scores in others.

8.1 Core Component

The Core Component column of the scorecard lists all the broad based aspects of transformation as determined by the Department of Trade and Industry (**the dti**). It also expands the specifics of these in the “Indicators” column.

8.2 Indicators

The indicators outlined in the scorecard and the respective targets are used to, as accurately as possible, measure transformational requirements and achievements by enterprises in each of the areas indicated therein.

8.3 Targets

The targets are divided into two terms namely mid-term (MT) and long-term (LT) as defined. The principles and targets contained in this Charter will be applied from the effective date (1 March 2005) and shall remain applicable even beyond the long-term date (28 February 2015).

For the first five (5) years of the operation of this Charter (i.e. 2005 to 2010) an annual minimum total score (AMTS) for each particular year must be attained, as

specified in the table below. Failing which, an enterprise will be classified as “un-empowered”.

COMPLIANCE/ REPORTING	AMTS
PERIOD	
1/3/2005 to 28/2/2006	45% - 50%
1/3/2006 to 28/2/2007	51% - 65%
1/3/2007 to 28/2/2008	66% - 79%
1/3/2008 to 28/2/2009	80% - 99%
1/3/2009 to 28/2/2010	100%

Any enterprise which:

- attains the AMTS will be awarded a “Bronze Certificate of Empowerment” by the Council; or
- exceeds the AMTS by a score of not less than 25% will be awarded a “Silver Certificate of Empowerment” by the Council; or
- exceeds the AMTS by a score of not less than 40% will be awarded a “Gold Certificate of Empowerment” by the Council; or
- exceeds the AMTS by a score of 50% or more will be awarded a “Platinum Certificate of Empowerment” by the Council.

The Council shall determine the AMTS formula for the Long-Term (LT) targets (i.e. 2010 to 2015). In doing so, the Council shall take into consideration the collective views of the sector as expressed in its periodic reviews of the Charter.

8.4 Weightings

The “*ICT Split Weighting*” represents weightings as determined specifically by and for the ICT sector. The split weightings are added to give a “*Total Weighting*” for that Core Component. The total weighting of the components shall add up to a maximum 100 basis points.

8.5 Minimum score

To the extent that there shall be no exemptions on any of the Core Components of the scorecard, a minimum score of 40% needs to be obtained for each core component before any certificate of empowerment may be awarded. This provision shall not apply to the equity ownership component in respect of which the full voting rights must accrue at the commencement of the BEE partnership.

8.6 Bonus points

In respect of all scorecard core components it is possible to earn bonus points in excess of the minimum score stipulated in the scorecard. Criteria for earning bonus points are set out in the scorecard. In all instances these bonus points are aimed at *incentivising* enterprises to broaden the effect of their transformation programmes to include any of the following:-

- SMMEs;
- Rural communities;
- Disabled persons; or
- Black recipients of ICT skills development

No bonus points may be earned:-

- in respect of any indicator unless at least 50% of the score for that indicator is attained;
- by an enterprise which would otherwise have failed to qualify for a Bronze Certificate of Empowerment due to a low AMTS.

8.7 General

8.7.1 In the first two years of the operation of the Charter, the Council shall conduct or sanction training courses for managers who have to implement this Charter.

8.7.2 Initially, the Working Group (in conjunction with the NEDLAC process) and then the Council, must develop a Practical Manual, with examples, as well as implement an interactive portal to communicate the basic methods of applying this scorecard.

CORE COMPONENT	INDICATORS	MID TERM TARGET (2010)	LONG TERM TARGET (2015)	SPLIT Weighting in %	TOTAL Weighting in %
Indirect Empowerment Score					
A. Access to ICTs and Corporate Social Investment	a) Investment in sustainable Council accredited projects aimed at accelerating access to ICTs & training for black people measured as a % of profits before tax ("PBT");	1% of PBT	1% of PBT	7	11
	b) General CSI as a % of PBT. <i>Bonus points capped at 20% of total score gained by locating an accredited project referred to in (a) above in a rural area. (This will be calculated at 10% per project per year.)</i>	0.5% of PBT	0.5% of PBT	4	
B. Enterprise Development	Voluntary establishment and/or support of through financial and/or other means measured as a % of eligible procurement spend :- a) black-owned enterprises b) black-empowered enterprises; c) black-engendered enterprises, d) youth-owned enterprises; e) jobs created and sustainability of recipient enterprises. (measurement methodology to be advised) <i>Minimum 30% of Enterprise Development must be directed towards black-owned SMMEs. Bonus points capped at 10% of total score gained by including disabled persons with minimum 5% equity participation on any of the above. (This will be calculated at 1% bonus point per 1% disabled persons participation.)</i>	5% of eligible procurement spend	5% of eligible procurement spend	4 2 2 2 2	12

C. Preferential Procurement	<p>a) Procurement of goods and services as a % of eligible procurement spend from: -</p> <ul style="list-style-type: none"> i) black owned enterprises; ii) black empowered enterprises; iii) black-engendered enterprises; iv) black youth-owned enterprises; <p>b) Published favourable payment terms for black-owned SMMEs (less than or equal to 15 days).</p> <p><i>Minimum 30% of eligible procurement spend must be directed towards black-owned SMMEs for any points to accrue or be earned in respect of this core component.</i></p> <p><i>Bonus points capped at 10% of total score gained by including disabled persons with minimum 5% equity participation on any of the above. (This will be calculated at 1% bonus point per 1% disabled persons participation.)</i></p>	60%	80%	<p>10</p> <p>4</p> <p>3</p> <p>3</p> <p>2</p>	22
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Human Resource Development and Employment Equity Score

D. Skills Development	<p>a) Full compliance with Skills Development (SD) Act, including WSP, WSPiR and IIP as certified by the relevant SETA;</p> <p>b) Extra spend above statutory SD levy targeted at: -</p> <ul style="list-style-type: none"> i. black employees; ii. women; iii. youth; iv. disabled <p>c) Provision of learnerships for unemployed learners;</p> <p>d) Provision of learnerships for current employees;</p> <p>e) Provision of executive development training programmes.</p> <p><i>Bonus points capped at 30% of total score on (b) above, earned at 10% of points per extra 1% of payroll above target (b).</i></p>	<p>a) 1% of payroll per SD Act</p> <p>b) 1% of payroll</p> <p>c) 5% of staff complement</p> <p>d) 5% of total SD spend</p> <p>e) 5% of total SD spend</p>	<p>a) 1% of payroll per SD Act</p> <p>b) 1% of payroll</p> <p>c) 5% of staff complement</p> <p>d) 5% of total SD spend</p> <p>e) 5% of total SD spend</p>	<p>3</p> <p>6</p> <p>3</p> <p>2</p> <p>1</p> <p>2</p> <p>1</p> <p>2</p>	20
E. Employment Equity	<p>a) Compliance with EE Act as certified by DoL or ICT Council;</p> <p>b) Achievement of set performance targets in respect of: -</p> <ul style="list-style-type: none"> i. Black people in senior management positions; ii. Black people in other management positions; iii. Black women in senior management positions; iv. Black women in other management positions <p><i>Bonus points capped at 20% of total score for this indicator gained by doubling the targets as set out in (b) iii or (b) iv above. This will be capped at 10% for each indicator.</i></p>	<p>100%</p> <p>30%</p> <p>55%</p> <p>12%</p> <p>20%</p>	<p>100%</p> <p>50%</p> <p>65%</p> <p>30%</p> <p>25%</p>	<p>3</p> <p>3</p> <p>2</p> <p>1</p> <p>1</p>	10

Direct Empowerment Score

F. Equity Ownership	% share of economic benefits as reflected by direct shareholding by: - a) black people; b) black women as a % of (a) above; c) youth as a % of (a) above; <i>Bonus points capped at 20% of total score gained by including broad-based collective ownership with minimum 10% equity participation on any of the above. (This will be calculated at 2% bonus point per 1% equity participation through broad-based collective ownership mechanisms.)</i> <i>Further Bonus points capped at 10% of total score gained by including disabled persons with any of the above categories.</i>	30% 30% 10%	30% 40% 15%	10 3.5 1.5	15
G. Management and Control	a) % black people in executive management; b) % black women in executive management as a % of (a) above; c) % black people on the board of directors; d) % black women on the board of directors as a % of (d) above; e) % youth on the board of directors or in executive management as a % of a) or c) above. <i>Bonus points capped at 10% of total score gained by including disabled persons with minimum 10% participation within any of the above. (This will be calculated at 1% bonus point per 1% disabled persons participation.)</i>	40% 35% 40% 30% 15%	60% 50% 40% 50% 15%	3 2 3 1 1	10

Part D

CHAPTER 9

GOVERNANCE

THE ICT BEE COUNCIL

9.1. Establishment of the Council

The operation of the Charter is intended to commence on 1 March 2005. With effect to this date the ICT Empowerment Charter Working Group shall be dissolved and the implementation phase and all matters incidental thereto shall be handed over to the Council.

The finalisation of this Chapter shall constitute the main deliverables of the multi-sectoral negotiations envisaged to take place under the auspices of the NEDLAC ICT Sector Summit Steering Committee during the interim phase (i.e. 1 November 2004 until 28 February 2005).

What is contained below is only proposals based on some of the submissions received over the 18 months of consultations. The intention is merely to use these proposals to kick-start the interim phase negotiation process.

9.2 Governing Principles

The Council shall be guided by the following five basic principles:-

- 9.2.1 Transparency;
- 9.2.2 Fairness;
- 9.2.3 Corporate Governance;
- 9.2.4 Consultation and Inclusivity; and
- 9.2.5 Socio-economic Transformation.

9.3. Functions of the Council

- 9.3.1. The Council shall be the custodian of the ICT Charter;
- 9.3.2. The Council shall monitor and review the implementation of the Charter and all matters related thereto in the ICT sector;
- 9.3.3. The Council shall co-operate with the Presidential National Commission on Information Society and Development and other organs of state on all matters relating to BEE in the ICT sector;
- 9.3.4. The Council shall participate in the development and fostering of common standards and codes of ethics for the implementation of BEE in the industry and compliance with BEE legislation and Codes of Good Practice;
- 9.3.5. The Council shall establish an Executive Committee, led by a Chief Executive, to attend to its routine work and specifically to:
 - 9.3.5.1 receive, consider and approve annual audits from each ICT enterprise that applies for accreditation;
 - 9.3.5.2 recommend, set and publish applicable fees in respect of accreditation;
 - 9.3.5.3 issue guidance notes on the interpretation and application of the Charter;
 - 9.3.5.4 prepare an annual review which outlines progress and evaluates new areas of intervention;
 - 9.3.5.5 submit the annual review to the BEE Advisory Council for discussion and publication;
 - 9.3.5.6 prepare interim reports at appropriate intervals;
 - 9.3.5.7 undertake the reviews identified in terms of the Charter, no less than four (4) times between 2005 and 2015 to ensure that the Charter has the requisite impact on the broad base of the country's communities;
 - 9.3.5.8 certify agencies that will audit companies in the sector for BEE accreditations purposes;
 - 9.3.5.9 confirm ICT BEE ratings and accreditations;

- 9.3.5.10 engage with government, public sector bodies, the BEE Advisory Council and other regulatory agencies to promote the implementation of the Charter;
 - 9.3.5.11 upon request, provide advice and training to the industry on matters related to the Charter; and
 - 9.3.5.12 assess, evaluate and commission research on specific areas where such research is not available.
- 9.3.6. The Council will ensure that the executive is adequately resourced and supported to fulfil its mandate as envisaged in the Charter. A business plan will be commissioned which will, amongst other things, outline a budget for the work of the Council;
- 9.3.7. The Council shall be responsible for the accreditation of national ICT projects aimed at *'bridging the digital divide'* in conjunction with existing bodies such as the Presidential National Commission on Information Society and Development, the Universal Service Agency, the Digital Divide Partnership, ICASA, the CSIR, trade unions, NGOs and other organs of civil society;
- 9.3.8. The Council shall facilitate the co-ordination of extra-industry programmes and/or initiatives where there exist clearly defined projects of mutual collaboration or co-operation. As part of its inter-sectoral liaison responsibilities, the Council shall extend audit functions to include other sector charters such as the Financial Sector Charter; and
- 9.3.9. The Council shall be charged with participation in the quest for long term solutions to the challenges posed by the Open Source / Proprietary platform debate. This function shall be executed in conjunction with bodies such as **the dti**, the CSIR Open Source Centre, and others.

9.4. Composition of the Council, Appointment of Members and Terms of Office

- 9.41.. The Council shall consist of 22 members with the following proposed composition:-

- 9.4.1.1 a Chairperson, who shall be appointed by the Minister of Communications in consultation with the broader stakeholder constituencies; and
- 9.4.1.2 a Chief Executive Officer, who shall be responsible for the daily administration and operations of the Council and shall serve on the Council in an ex-officio capacity; and
- 3.1.3 20 permanent members in number who shall be representative of the broad stakeholder constituencies as follows:-

Industry Associations (8 members)

- 3.1.3.1 Broadcasting sub-sector represented by 2 members;
- 3.1.3.2 Electronics sub-sector represented by 2 members;
- 3.1.3.3 Information Technology sub-sector represented by 2 members;
- 3.1.3.4 Telecommunications sub-sector represented by 2 members;

Broader Stakeholders / Social Partners (7 members)

- 3.1.3.5 Government represented by 3 members;
- 3.1.3.6 Community represented by 2 members;
- 3.1.3.7 Labour represented by 2 members;

Special Interest Groupings (5 members)

- 3.1.3.8 SETAs represented by 1 member;
- 3.1.3.9 ICASA represented by 1 member;
- 3.1.3.10 SMMEs represented by 1 member;
- 3.1.3.11 Women represented by 1 member; and
- 3.1.3.12 Provincial Co-ordinator - 1 member.

- 9.4.2. When appointing members in terms of the above regard shall be given to the need for the Council:-

- 9.4.2.1. to have appropriate expertise;
- 9.4.2.2. to represent different relevant constituencies including trade unions, business, community organisations, etc;
- 9.4.2.3. to be gender representative;

9.4.2.4 to be representative of the demographics of the country;
and

9.4.2.5 to spread its footprint across the geographic provinces of
the country.

9.4.3 In appointing members in terms of the above, appropriate
consultative processes shall be followed.

9.4.4. One member of the Council shall be appointed as the deputy
chairperson and shall act as the chairperson of the Council in the
absence of the person so appointed as per paragraph 9.4.2.1 above.

9.4.5. The terms of office for members of the Council shall be 3 years and no
member shall be eligible to serve for more than two successive terms.

9.5. Powers of the Council

9.5.1. The Council will be established as an independent body with the
mandate to, *inter alia*, oversee the implementation of the ICT Charter;

9.5.2. The Council may create sub-committees to deal with specific matters as
and when required; and

9.5.3. The Council may co-opt experts to serve on or advise sub-committees as
contemplated in 9.2.2 above.

9.6. The Constitution of the Council, the Codes of Business Ethics and Corporate Governance

9.6.1 A constitution for the Council must be tabled for adoption at the first
meeting of the Council and must be adopted by a simple majority
within 60 working days after the effective date of this Charter.

9.6.2 The constitution of the Council may be amended from time to time
after consultation with the Council.

9.6.3 The Council must, in consultation with the BEE Advisory Council
and by resolution, formulate rules to further regulate its proceedings.

9.7 Eligibility of Council Members

A person may not be appointed or continue as a Council member if such a person:

- 9.7.1 is not a South African citizen;
- 9.7.2 is an unrehabilitated insolvent; or
 - 9.7.3 is of unsound mind, or is subject to an order of a competent court declaring such person to be mentally ill or mentally disordered; or
 - 9.7.4 has at any time been removed from an office of trust on account of misconduct; or
 - 9.7.5 or has been found guilty in terms of the Prevention of Corruption Act.

9.8 Funding of the Council

9.81 The Council shall be funded jointly by the ICT sector and Government on an equal basis. The Council may also raise funding through other mechanisms that may be deemed appropriate from time to time. The funding mechanism should ensure cross-subsidisation or exemption of SMMEs with regard to the applicable accreditation fees and/or the ICT sector funding referred to in the preceding sentence.

CHAPTER 10

THE SIGNATORIES

We the undersigned organisations, as representatives of the broader ICT sector and its various stakeholders, having participated in the processes leading to the formulation and adoption of this Charter and to the extent that we acknowledge that there may exist any other relevant outstanding matter still to be distilled through further consultations involving other stakeholders in finalising this Charter as required in Law, do hereby commit ourselves as follows:

- ❖ we adopt the spirit and pronouncements of this Charter;
- ❖ we are bound by the requirements of this Charter;
- ❖ we will always act in good faith and employ good endeavours to promote and advance economic transformation in the ICT sector specifically, and in the broader economy in general; and
- ❖ we will always act in good faith and employ good endeavours to promote and support the objectives of this Charter, including those as specifically set out in Chapters One and Three.

Thus signed at Rivonia on 22 October 2004 by us as duly authorised representatives of the respective under-mentioned organisations:

President
for : **Black IT Forum**
(BITF)

President
for : **Communications**
Cabling Association of
South Africa (CCASA)

President
for : **Computer Society of**
South Africa (CSSA)

President

for : **Electronic Industry
Federation (EIF)**

Chairperson

for : **Independent
Communications Authority
of South Africa (ICASA)**

President

for : **Information Industry
South Africa (IISA)**

President

for : **Internet Service
Providers Association (ISPA)**

President

for : **Information
Technology Association
(ITA)**

Chief Executive

for : **ISETT SETA**

Chairperson

for : **MAPPP SETA**

Chairperson

for : **National Association of
Broadcasters (NAB)**

President

for : **National Community
Radio Forum (NCRF)**

President

for : **National Independent
Telecommunications
Organisations of S.A.
(NITOSA)**

Co-ordinator

for : **NEDLAC - Community**

Co-ordinator

for : **NEDLAC - Labour**

President

*for : South African
Communications Forum
(SACF)*

President

*for : South African Contact
Centre Community
(SACCCOM)*

President

*for : South African SMME
Forum (SMME Forum)*

President

*for : South African VANS
Associations (SAVA)*

Chief Executive

*for : Universal Service
Agency (USA)*

President

for : Women in ICT (WICT)

President

for : Business Unity SA (BUSA)



The ICT Charter

**HAMBA Digital Divide!
WOZA Transformation!**

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