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**CONTENTS • INHOUD**

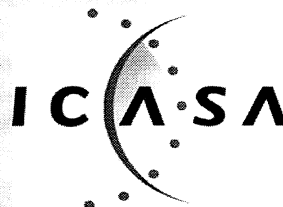
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Page  
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No.**GENERAL NOTICE****Independent Communications Authority of South Africa***General Notice*

643 ICASA Final Report: The Review of Broadcasting Regulatory Framework Towards a Digitally Converged Environment in South Africa: March 2013 .....	3	36598
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## GENERAL NOTICE

### NOTICE 643 OF 2013



**Independent Communications Authority of South Africa**

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### **ICASA FINAL REPORT**

**THE REVIEW OF BROADCASTING REGULATORY FRAMEWORK TOWARDS  
A DIGITALLY CONVERGED ENVIRONMENT IN SOUTH AFRICA**

**MARCH 2013**

***INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA***

**TABLE OF CONTENTS**

<b><u>CONTENTS</u></b>	<b><u>PAGE</u></b>
<b>1. EXECUTIVE SUMMARY.....</b>	<b>04</b>
<b>2. PART A: INTRODUCTION AND PURPOSE.....</b>	<b>05</b>
2.1 Introduction .....	05
2.2 Process.....	05
<b>3. PART B: ANALYSIS OF WRITTEN AND ORAL SUBMISSIONS.....</b>	<b>07</b>
3.1 Review of Ownership and Control of Commercial Services and Limitations on Broadcasting.....	07
3.2 The Regulation of Elections Broadcasting.....	10
3.3 Regulations in respect of the prescribed annual contributions of licensees to the Universal Service and Access Fund.....	11
3.4 Sport Broadcasting Services Regulations.....	12
3.5 Regulatory approach to IPTV and VOD Position Paper.....	16
3.6 Digital Terrestrial Television Regulations.....	19
3.7 Regulation of Television Advertising, Programme Sponsorship and Infomercials....	21
3.8 Regulation for the Code of Conduct for Broadcasting Service Licensees.....	24
3.9 Commissioning of independently produced South African programming Regulations.....	27

3.10	Must Carry Regulations.....	28
3.11	Subscription Broadcasting Services Regulations.....	33
3.12	Self Help Stations Regulations.....	34
3.13	South African Local Content Regulations.....	36
3.14	Community Broadcasting Services Regulations.....	38
3.15	Special Events Licenses Regulations.....	41
3.16	Low Power Sound Broadcasting Regulations.....	41
3.17	Regional Television Broadcasting Services Position Paper.....	42
3.18	Position Paper for the introduction of the first Free-to-Air Private Television Service in South Africa.....	44
3.19	Private Sound Broadcasting Services Position Paper.....	44
<b>4.</b>	<b>PART C: GENERAL ISSUES .....</b>	<b>46</b>
4.1	National Policy Developments versus Regulatory Review.....	46
4.2	Competition Matters.....	48
4.3	Monitoring and Compliance.....	49
4.4	Social Cohesion.....	50
4.5	Sabc Charter.....	51
4.6	Interoperability of Set Top Boxes .....	53
<b>5.</b>	<b>PART D: CONCLUSIONS .....</b>	<b>55</b>
<b>6.</b>	<b>Appendix A: Regulations to be prioritised towards 2020 .....</b>	<b>57</b>
<b>7.</b>	<b>Appendix B: Report on Provincial Workshops.....</b>	<b>61</b>
<b>8.</b>	<b>Appendix C: List of submissions.....</b>	<b>80</b>

## **1. EXECUTIVE SUMMARY**

- 1.1 The Independent Communication Authority of South Africa ("herein referred to as the Authority"), carried out an audit and review of previous regulations governing the broadcasting industry to take into account the new technological, cultural, economic and social challenges.
- 1.2 The Authority initiated this review by publishing an Issues Paper on 08 December 2011 and conducted two phases of public consultation to solicit stakeholder views on the need to review the existing analogue-based regulatory regime for broadcasting services as a result of the transition to digital terrestrial television broadcasting.
- 1.3 Public consultation involved engagement with all stakeholders affected by broadcasting services in South Africa, being the public at large, all forms of licensees, regional stakeholders as well as civil society organisations.
- 1.4 This report contains the Authority's direction in the development of revised or amended regulations affecting broadcasting over the next 3-5 years based on views expressed by all stakeholders.

## **2. PART A: INTRODUCTION AND PURPOSE**

### **2.1 INTRODUCTION**

2.1.1 The Authority initiated this review based on the impact of Digital Terrestrial Television as well as queries and recommendations from stakeholders.

2.1.2 The current regulatory regime dates back to 1993. The transition to Digital Terrestrial Television significantly affects the form and nature of regulation of broadcasting services into the future. This review process presented an opportunity to review, audit and assess the suitability of the current regulatory framework arrangements for the new digital platforms and consumer technologies, and in helping meet Government's core goals of broadcasting policy, amongst others being "to promote the provision and development of a diverse range of sound and television broadcasting services on a national, regional and local level, that cater for all language and cultural groups and provide entertainment, education and information; and encourage fair competition in the provision of programmes and services".

2.1.3 The Authority assessed and engaged in the regulatory review to not only ensure that the planning of regulatory actions is well suited to the digital broadcasting environment, but also to understand broadcasting market developments and expectations of the public and industry in preparing for the future digital broadcasting environment.

2.1.4 The review provided the Authority with the opportunity to strengthen the current regulatory regime, gain an understanding of stakeholders' views on the objective of the regulation of broadcasting services, to encompass a balance between economic and technical regulatory objectives whilst ensuring the importance of

the social and cultural requirements for South Africa. These include the promotion of fair and efficient competition, to ensure access to broadcasting services through the social objectives of promotion of universal access and service obligations, the management of rules governing ownership and control that are both economic and social in their objectives, issues of taste and decency, the level and quality of children's programming, protection of children from harmful material and the provision of South African content.

2.1.5 Through the process of public consultation in the provinces and submission by stakeholders, the Authority adopted final positions that took the utmost account of evidence provided, remarks made and the opinions that the Authority received from all stakeholders.

2.1.6 It is also worth noting that the Authority intends prioritising various regulations during the next three to five years towards supporting the 2020 policy vision.

## 2.2 PROCESS

2.2.1 On 08 December 2011, the Authority published the Issues Paper: *"A Review of the Broadcasting Regulatory Framework towards a digitally converged environment"* (Government Gazette No. 34826) that called upon stakeholders to submit their views on the future needs for the regulation of broadcasting services. The first deadline for submissions was 16 March 2012, which was subsequently postponed to 16 April 2012.

2.2.2 From 16 January 2012 to 14 February 2012 the Authority engaged in Provincial workshops. This was followed by a consideration of certain pertinent local and international best practice/benchmarks at the International Conference, from 20-21 February 2012.



- 2.2.3 On 16 April 2012 the Authority received nineteen submissions and seventeen of these indicated their wish to make oral presentations. Responses were received from: Academics; Film and TV companies; Telecommunications companies; Broadcasters; Publishers and the press; Consultancy firms; Trade associations and trade unions; Manufacturers; Regulatory bodies; Charities and Consumer groups; Governments; and Individuals.
- 2.2.4 On 23 April 2012, the Authority published the Notice of public hearings: Issues Paper: A Review of the Broadcasting Regulatory Framework towards a digitally converged environment (Government Gazette No. 35287) detailing the schedule for hearings, 09-11 May 2012.
- 2.2.5 On the 31 October 2012, the Authority published a preliminary report for public consultations: *"The Review of the Broadcasting Regulatory Framework towards a Digitally Converged Environment"* (Government Gazette No. 35842). The Authority invited stakeholders and the public to respond and make submissions regarding the above. The deadline for the submission was the 14th December 2012.
- 2.2.6 The Authority held public consultations from the 19th November to 13th December 2012 in all Provinces of the country. The following stakeholders made submissions, namely: Right to Know, Media Monitoring Africa, Kagiso Media, SOS Support Public Broadcasting, Eskom, The Voice of Wits, Telkom, Media Policy and Democracy Project, NAB, e-tv, SABC and M-net.

### 3 PART B: ANALYSIS OF WRITTEN AND ORAL SUBMISSIONS

The aim of this Section is to provide a general analysis of the detailed stakeholder comments on the existing regulations that govern the broadcasting sector contained in the Issues Paper published under GN 891 in Government Gazette 34828 of 08 December 2011 and the Preliminary Report, as published under GN 911 in Government Gazette 35842 of 31 October 2012.

#### 3.1 REVIEW OF OWNERSHIP AND CONTROL OF COMMERCIAL SERVICES AND LIMITATIONS ON BROADCASTING

- 3.1.1 **Tozamile Mbetshu** is of the view that the Authority should broaden the scope of the current ownership and control regulations to accommodate disadvantaged groups who do not have easy access to funding and also address issues of gender and disabilities as the constitution prescribes. He further submits that the Authority should give the Historical Disadvantaged Individuals (HDI) a bigger share in the broadcast market.
- 3.1.2 In addressing the issue of how should the Authority deal with listed companies in relation to HDI, **NAMEC** argued that the Authority has an obligation towards addressing the imbalances of the past, as it has an opportunity to transform the sector by ensuring there is an HDI friendly criterion when dealing with listed companies.
- 3.1.3 **Kagiso Media** submits that many of the problems with ownership and control emanate from legislative provisions which have to be fully addressed as part of the national broadcasting policy review process. They submit that the 2004 Ownership and Control review's provisions on listed companies and foreign ownership and control provide a useful precedent and that similar provisions

ought to pertain to BBBEE. **Kagiso Media** recommends that the Authority should revert to the recommendations made in 2004 regarding Ownership and Control.

3.1.4 **Kagiso Media and SOS** are concerned that in the preliminary report the Authority makes no mention of its 2007 decision, taken without public consultation, to exempt subscription broadcasters from complying with sections 65 and 66 of the ECA. They further state that it is problematic for ICASA to reaffirm its adherence to the 2011 Ownership and Control Findings Paper when that paper states in its conclusion that ICASA will make further recommendations but the Authority does not set out proposed wording for such amendments. These stakeholders submit that ICASA is leaving the industry and the public in the dark as to its position on a number of ownership and control issues.

3.1.5 **SOS** is of the view that subscription broadcasters must be subject to ownership constraints, particularly in respect of cross-media ownership and the number of services a single corporate entity may control. Furthermore, SOS argues that the transformation of ownership and control of the sector in terms of BBBEE appears to have stalled with the licensing of e-tv in 1997 and that the sector can no longer be said to be setting the standard for the transformation of the economy.

3.1.6 **e.tv** submits that the scope of current Ownership and Control of Commercial Services and limitation should be considered on individual merits of the case. This should take into account factors such as: the existing concentration of white media ownership in the country (which was grandfathered in 1994); the prospect of improving BBBEE ownership in the media sector; the viability of individual media businesses in an increasingly converged market environment; and the changing nature of media diversity given the increasing number of platforms available for information and entertainment.

- 3.1.7 The **Media Policy and Democracy Project** submits that the current regulations on ownership and control do not address the concentration of media ownership in the hands of a few conglomerates. They further submit that the concentration of media ownership leads to lack of diversity, barriers to entry, a limitation of minority voices and a lack of competition. They propose that the above should also be applicable to subscription broadcasters.
- 3.1.8 **Right to Know** argues that there must be less concentrated ownership and control of the media and a greater diversity of commercial and non-commercial media that can serve all sections of the population and enable a greater diversity of voices.
- 3.1.9 **Vodacom** submits that section 13 (3) of the ECA only empowers ICASA to set a limit on, or restrict the ownership or control of an individual licence in order to meet the objectives set out in sub sections (a) and (b). Therefore, ICASA is not empowered to impose such limit or restriction in order to “promote the ownership and control by historically disadvantaged groups in listed companies” because listed companies are subject to regulation by the Johannesburg Stock Exchange (“JSE”) or other Securities Exchanges in cases of secondary listings.
- 3.1.10 In addition, **Vodacom** argues the objective to promote empowerment and that for the promotion of competition and encouraging investment are not necessarily mutually exclusive policy objectives. Vodacom submit that, although it is not yet formally documented through research, it is evident that companies derive distinct commercial benefits from having excellent empowerment ratings. Businesses are leaning more favourably to those suppliers that offer a Rand-for-Rand recognition or better for spend values in terms of empowerment.

3.1.11 Having carefully considered the views and submissions, the Authority maintains that it followed the guidelines as set out in Sections 65 and 66 of the Electronic Communications Act, no 36 of 2005 (the ECA), and submitted its recommendations to the Ministry of Communications. Therefore the Authority is pursuing the 2011 recommendations and the submission made to Department of Communications (DoC) during ECA amendments process. The Authority will also be guided by the BBBEE legislation, as amended from time to time.

### 3.2 THE REGULATION OF NATIONAL AND MUNICIPAL ELECTIONS BROADCASTING

3.2.1 **Mbetshu** submits that one regulation should be applied to National, Provincial, Local and Bye-Elections. He also argues that funding for political parties should be on equal basis to avoid a situation where broadcast air-time is afforded by a few big parties.

3.2.2 **Namec** is of the view that the allocation of time must be proportional to percentage vote, i.e. parties to be allocated time according to the percentage of votes.

3.2.3 **Kagiso Media** argues that generally broadcasters adhere to election regulations although they believe that ICASA's monitoring and reporting on compliance therewith, ought to be enhanced. The media group further posits that should new regulations be considered in light of DTT, ICASA must ensure that commercial and community broadcasters continue to have the right to choose whether or not to carry party elections broadcasts (PEBs) and/or political advertisements (PAs).

3.2.4 **SABC** argues that PEBs on television were unrealistic to most political parties, during the 2009 and 2011 elections - smaller parties could not afford to produce

PEBs, thus they should be excluded on television. The public broadcaster also submits that the ECA does not make it peremptory that all SABC services should carry PEB's, nor does it compel transmission of PEB's in prime time. The Corporation also supports the notion of a single set of Elections regulations.

- 3.2.5 **The objective of these regulations is similar and therefore the Authority agrees with the notion of having one set of Elections regulations and will merge the two during the 2013/2014 financial year.**

### **3.3 REGULATIONS IN RESPECT OF THE PRESCRIBED ANNUAL CONTRIBUTIONS OF LICENSEES TO THE UNIVERSAL SERVICE AND ACCESS FUND (USAF)**

- 3.3.1 ***Sentech*** suggests that during the period of analogue transition, Self Help sites should not be required to pay licence fees to the Authority, but instead should have access to funding from the USAF.
- 3.3.2 ***Kagiso Media*** submits that ICASA should reconsider whether it is appropriate for community broadcasting service licensees to make USAF contributions.
- 3.3.3 ***SABC*** recommends that any legislative amendment should exempt the SABC from contributing to USAF. They elaborate that SABC should be a beneficiary rather than a contributor, as it is mandated by legislation and policy to drive universal access of its services throughout the country.
- 3.3.4 ***Vodacom*** is of the view that mechanisms must be put in place to make USAF accessible to a wider range of communication service providers, subject to compliance with the requirements of the ECA. They believe that to limit access of the fund to a specific category of licensed operators or specific type of service can create barriers that continue to support existing conditions, and discourage

the implementation of new technologies to provide services in serviced or underserved areas.

3.3.5 **SOS and Kagiso Media** are of the view that ICASA has failed to appreciate the extent of its powers with regard to exempting community broadcasting service licensees from making USAF contributions. They reason that Section 89(2)(a) of the ECA grants ICASA wide discretion in determining the basis and manner of such contributions. They also argue that while an upper limit on such contributions is set, no lower limit is set. In their view ICASA has the power to determine which community broadcasters can pay a reduced rate or be fully exempted from making USAF contributions.

3.3.6 **The Authority** notes that most responses dealt with exempting certain broadcasters and electronic communications service licensees from making contributions to USAF; and on ensuring that such funds are accessible to a wider range of communications service providers.

3.3.7 **Whilst the Authority** acknowledges the responsibility of determining the basis and manner of such contribution not exceeding 1%, Section 89 (1) of the ECA stipulates that every holder of a licence must pay the prescribed annual contributions of the licensee's licensed activity to the USAF. The Section 89 policy related issues raised, i.e. fully exempting some broadcasters, will be referred to the Ministry of Communications.

### 3.4 SPORT BROADCASTING SERVICES REGULATIONS

3.4.1 **Kagiso Media** submits that market failure in the area of sport broadcasting and premium content rights is inevitable given the power of monopoly players in South Africa's commercial television sector, whether free-to-air (FTA) or subscription. The media group is of the view that the Authority must be able to

break a deadlock that arises as a result of commercial dispute over sport broadcasting content which threatens public interest. However, Kagiso Media believes that the Authority needs to first conduct two separate enquiries. The first being into Sports of National Interest and the second being Premium sport content, to assess whether the current regime unfairly favours the dominant subscription broadcaster.

3.4.2 **Namec** is of the view that the Minister of Sport needs to intervene when there are contractual issues that might lead to the public not accessing listed sporting events.

3.4.3 **Mbetshu** states that sporting events that are of an international nature, i.e. where South African flags and the National Anthem is sung before the event, should be available on free-to-air television.

3.4.4 **SOS Coalition** argues that the Authority must initiate an enquiry in terms of section 67 of the ECA and must consider introducing a range of pro-competitive measures to look at the acquisition, retention and use of sport broadcasting rights in South Africa. This enquiry should also interrogate the effectiveness of the current sport broadcasting regulatory regime and in particular, whether or not the current regulatory regime unfairly favours the effective monopoly of the incumbent subscription broadcaster, to the detriment of free-to-air broadcasters, and particularly the public broadcaster which the public relies on for national sport coverage.

3.4.5 In addition, the coalition submits that the Authority must look at what sport broadcasting rights mean in the DTT environment. They further asked what regulatory changes, if any, need to be made to the current regulatory environment in order to protect the public interest, the commercial viability of the



public broadcaster and the overall competitive environment in commercial broadcasting, whether free-to-air or subscription.

- 3.4.6 **e.tv** posits that, currently, the holding of sport rights and the broadcasting of sport favours the dominant subscription broadcaster. This, as argued by the commercial FTA broadcaster, has a negative effect on mass participation and information in sport.
- 3.4.7 Furthermore, **e.tv** states that the listing of national sporting events should be reviewed and increased in order to strengthen the rights of free-to-air broadcasters. Young South Africans are not encouraged to take up sport as they are not afforded an opportunity to view the best in the world and improve their own talents. **e.tv** posit that this has the effect of slowing down transformation in sport – rugby is a perfect example of this, as its exclusive broadcast on Supersport (with delayed broadcasts on SABC) reinforces the perception that rugby remains a niche sporting code for the wealthy section of our country.
- 3.4.8 **The SABC** submits that in the absence of clear regulatory direction, it often finds itself negotiating with subscription broadcasters for secondary rights in a disadvantaged position. The secondary rights are highly priced and come with stringent conditions that do not allow the public broadcaster to exploit advertising till the eve of the date of the event. This state of affairs, as argued by the public broadcaster, not only hinders the SABC in the discharge of its mandate, but it promotes anti-competitive behaviour. In addition, the public broadcaster posits that these regulations must be reviewed and a clause be included to prohibit a subscription broadcaster from including in its service the broadcasting of a national sporting event, unless the free-to-air broadcaster has also acquired the right to broadcast the event live, delayed live or delayed. Should a free-to-air broadcaster fail to acquire such rights, the subscription broadcaster may approach the Authority for consent.

3.4.9 **The SABC** is also of the view that any review of sport regulations should state that it is not obliged to broadcast all events of national interest. They further argue that the broadcast of listed events must be spread amongst the FTA broadcasters. The SABC also proposes that it be allocated a ring fenced special budget/funding to fund rights of acquisition of national sporting events, developmental and minority sports. They further recommend that the South African boxing title fights be included on the list as it will be in the public interest to do so.

3.4.10 The **SABC** also suggests that the Authority look into the stringent terms and conditions imposed by subscription broadcasters to FTA broadcasters in the case of sub-licensing of sporting events. The SABC allege that it is difficult to interfere with advertising as this is a pre-packaged deal.

3.4.11 SABC disagree with the community broadcasters' viewpoint that because the SABC is publicly funded, it should provide special feed of national news and sport of national interest to community broadcasters. The SABC indicates that the assertion that it is funded by government is a skewed interpretation because sharing such content has financial implication in terms of intellectual property rights and additional charges from content providers. Therefore, the SABC urges the Authority to consider the financial burden that is related to such a suggestion.

3.4.12 According to **Mnet** the migration of the existing terrestrial television broadcasting services to DTT is not a basis for reviewing the Sport Broadcasting Services Regulations as migration matters have been considered by the Authority since the mid-2000s. They state that the current Sport Broadcasting Services Regulations of 2010 were debated, drafted and finalised in the context of the migration to DTT and with a digital multi-channel environment in mind.

3.4.13 The Authority notes the above-mentioned critical issues related to sport broadcasting services regulations and will consider the views submitted when reviewing the Sport of national interest regulations.

3.4.14 In relation to an enquiry on Premium sport content, the Authority views in 4.2.3 below holds.

### 3.5 REGULATORY APPROACH TO IPTV AND VOD POSITION PAPER

3.5.1 **Sentech** submits that, in the spirit of convergence, IPTV should not be limited to broadcasting and the position paper should therefore be reviewed. They reason that since the position paper is not a regulation, the Authority should introduce regulations to support any position it takes in line with section 4 of the ECA. The determination of IPTV as a broadcasting service should be reviewed and be followed by a regulatory impact assessment to inform the regulatory environment. They further submit that there should be no room for must-carry in the IPTV platform in the digital environment. They also state that the position paper has stated that VOD is an ECN service and therefore it falls outside the must-carry framework.

3.5.2 **Mnet** advises that the definitions in the ECA determine the extent to which the Authority may intervene and make regulations in relation to new media platforms. They argued that the regulatory approach to IPTV/VOD could change when the Authority's position has been determined by the definition of "broadcasting" in the ECA. Thus they maintain that in the absence of a legislative amendment, any debate on these issues would be purely academic.

3.5.3 In their oral submission, **Mnet** pointed to the fact that the word "unidirectional", calves out broadcasting as a very particular type of transmission and therefore excludes any kind of bidirectional transmissions. Mnet maintains, however, that

they support the approach that maintains an equitable regulatory approach when broadcasting services and services that look like broadcasting are considered.

- 3.5.4 **Telkom** submits that the current definition of broadcasting be reviewed to align with the digitally converged environment. They are of the view that the definition should reflect more of the characteristics of service instead of the characteristics of the channel or end-user device that deliver service.
- 3.5.5 **Kagiso Media** is of the view that the 2010 IPTV and VOD Position Paper might need to be reviewed in light of the DOC led broadcasting policy review process.
- 3.5.6 **e.tv** submits that due to the Position Paper on IPTV and VoD being recently finalised, all relevant issues were dealt with during the process culminating in the Position Paper. There has been very little if any relevant change in the market place, since that time, necessitating a re-analysis of the Position Paper and e.tv therefore believes it would be premature to do so. In this regard, e.tv agrees with the Position Paper to the effect that IPTV/VoD should be subject to chapter 9 of the ECA (and the related regulations).
- 3.5.7 In the public hearings, **e.tv** emphasised their submission by stating that they support an approach which maintains an equitable regulatory approach between broadcasting services and services that are like broadcasting. In addition, **e.tv** argues that IPTV/VoD should not be separately regulated even though there may have been limited take-up of this offering to date. They propose that the Authority should rather analyse why there has been limited take-up within the confines of the existing market place rather than looking to regulate IPTV/VoD differently to broadcasting services.
- 3.5.8 The **Film and Publication Board (FPB)** is in agreement with the current Position Paper. They submit that VoD are distributors which falls within the ambit of the

FPB as defined in Chapter 1 of the FPB Act as amended. Therefore, there is no need for the Authority to develop a code of conduct for VoD content producers as the Authority has no jurisdiction over content distributed through these platforms. The FPB motivates that all VoD distributors that register with them should have an ECS License with ICASA. Accordingly, they recommend that the Authority institute licence penalties for VoD distributors who do not comply with FPB regulations and processes, through the license conditions of all licensed VoD distributors.

3.5.9 **SABC and Vodacom** recommend that these services be subject to a light touch regulatory approach, at least for a certain period of time until the market gains traction. **Vodacom** further submits that the adoption of strict regulations in the start-up phase of the service could have the effect of hampering service development and roll-out.

3.5.10 **Mbetshu** is of the view that IPTV Services must also be subjected to ownership and control as well as code of conduct regulations.

3.5.11 **Telkom** raised concerns regarding the Authority's intention to review the IPTV/VOD position paper, stating that the Authority should exercise restraint and allow the market to develop according to commercial priorities before any regulatory interventions. They advise that this will give the Authority the opportunity to observe different market layers emerging with technologies.

3.5.12 The Authority discovered, through this review process, that there is consensus among most stakeholders in support of the current position paper, with only a few disagreements from **Sentech and Kagiso Media**.

3.5.13 The findings further express minor conflicting views in terms of regulating IPTV and other new platforms. While some stakeholders advocate a light

touch approach to regulating these relatively new services, others debate that similar regulations should apply to all broadcasting and broadcasting like services.

3.5.14 The Authority appreciates the different views and acknowledges that any changes will be considered during the revisiting of IPTV/VoD position paper and when making input accordingly in the legislative review processes.

### 3.6 DIGITAL TERRESTRIAL TELEVISION REGULATIONS

3.6.1 **e.tv** submits that there is a need for more effective regulation of pay TV and of the public service broadcaster. **e.tv** further argues against the introduction of new television players until the impact of dominant players in the market has been addressed and a full market study has been conducted to assess the viability of new players and the impact on the continued viability of existing players.

3.6.2 **SOS** is of the view that the success of DTT can be measured by whether or not South Africans are able to reap the so-called “digital dividend”, that is vacated spectrum being made available to new services so that the public has access to a diverse range of affordable new community, commercial and public broadcasting services. If DTT is introduced without a significant increase in the diversity of broadcasting services offered to the public, it will have failed. Thus, **SOS** recommends that the Authority should licence new subscription and FTA DTT operators, including national, regional and local services.

3.6.3 **SOS** argues for section 67 market inquiry and for introduction of new players without stating any priority as to what must come first, and **e.tv** calls for the introduction of new players, however after a market study.

- 3.6.4 **Vodacom** submits that the licensing of new players in the digitally converged environment should be based on the type of service they provide, not necessarily on the type of technology or platform used to deliver the service as the ECA provides for technologically neutral framework.
- 3.6.5 **Kagiso Media** is of the view that the development of a new framework for the DTT platform ought not to delay the licensing of new players and that such a framework must be developed well before the end of the dual illumination period. They also submit that the timing of the framework review (2014/15) is incorrect as the new players should be licensed in a transparent regulatory framework. They argue that the review ought to take place before 2014 to allow for licensing of new players before the dual illumination period end.
- 3.6.6 The Authority notes that the majority of submissions dealt with the debate on the timing of introduction of new players during the development of the migration process. The focus of this section, the Authority would like to point out, however was on the Digital Terrestrial Television framework post dual illumination. Submissions did not share their views on the type of licensing framework within the DTT environment.
- 3.6.7 With regards to the DTT licensing framework post dual illumination period, the Authority is of the view that the new players in the DTT environment should provide a demand, need and support analysis for their proposed services.

### 3.7 REGULATIONS RELATING TO THE DEFINITION OF ADVERTISING AND THE REGULATION OF INFORMERCIALS AND PROGRAMME SPONSORSHIP IN RESPECT OF BROADCASTING ACTIVITIES

3.7.1 **Namec** is of the view that the Advertising Standards Authority (ASA) should be accountable to ICASA, while Mbetshu suggests that the two organisations should work closely together.

3.7.2 **Mbetshu** expresses a view that advertisements, sponsorships and product placement should be left to the creativity of the broadcasters and the advertisers.

3.7.3 **Kagiso Media** is of the view that advertising and related issues might be reviewed as part of the DoC led broadcasting policy review process and may require consequential amendments to the ECA. Kagiso Media therefore recommend that the Authority await possible amendments to the ECA prior to revisiting the 1999 Advertising regulations.

3.7.4 **e.tv** submits that the Authority should look into the current market trend of the dominant pay TV broadcaster, and put limitations on the extent to which pay TV licensees may generate revenue from advertising. They argue that the participation of the dominant pay TV broadcaster in the advertising market is unregulated and it has started to erode the revenue base of free-to-air channels, which rely largely on advertising revenue.

3.7.5 According to e.tv there is no need to tamper with the regulatory system for advertising or the relationship between the Authority and the ASA, as the FTA broadcaster is unaware of any substantive problems that would merit a change.

3.7.6 In addition, **e.tv** argues that the trend of commercialisation of the SABC in the South African broadcasting market undermines the core notion of public service



broadcasting. The FTA commercial broadcaster posits that the SABC continues to take approximately 50% of the FTA television advertising market and the status quo must be urgently corrected. They indicate that for every 12 minutes of advertising on e.tv there are 36 minutes of advertising on the SABC television channels. This makes the SABC three times as competitive as e.tv in the analogue market in areas in which it also receives a secondary source of revenue. Thus e.tv argues that the Authority needs to conduct an enquiry and subsequently enact regulations which limit advertising on the public television services of the SABC.

3.7.7 **SABC** posits that there is a need to relook into the DTT environment where there will be more sufficient airtime space for advertising particularly in prime time. Therefore they propose a need for more flexibility in multichannel DTT environment.

3.7.8 **Sentech** submits that the rules of advertising for community broadcasters should be relaxed; however, e.tv opposes this notion. e.tv reason that undue reliance on commercial sources of revenue is likely to result in community and public broadcasters departing from their respective mandate.

3.7.9 The **Right to Know** campaign submits that the media currently caters for information needs of the wealthier sections of the population and promote perspectives that do not threaten advertisers as their primary source of income. The trend to commercialization of the media has spread to the public arm of the SABC and non-profit community media in the context of a government policy that underfunded public/community media, leaving them to compete for advertising in the marketplace. They caution that the commercialization of public and community media, through the dependence on advertising for sustainability, limits the range of opinions and news gathering agendas available to everyone living in South Africa.

- 3.7.10 ***Right to know*** supports the SOS Coalition for the collapse of the SABC divisions into public channels, due to the fact that the public channels make more money than the commercial channels. This situation, they argue, brings into question the need for the division of the SABC into commercial and public arms.
- 3.7.11 ***Vodacom*** submits that regulations of Advertising Infomercials and Programme Sponsorship should be left to the domain of the ASA because of its expertise in dealing with issues of this nature.
- 3.7.12 The ***Commission on Gender Equality (CGE)*** proposes that the ASA should monitor advertisers as some of the adverts are degrading to society, in particular women.
- 3.7.13 ***SOS*** and ***Kagiso Media*** suggest that a formal MoU should be entered into between ICASA and ASA. They propose that such an MoU be published in the Government Gazette so that the public understand the formal nature of the relationship.
- 3.7.14 ***SOS*** further submits that the Advertising Regulations Review need to consider placing additional restrictions upon the amount of advertising that a subscription broadcaster may attract.
- 3.7.15 The Authority will strengthen the relationship with ASA, through an MoU, to clarify perceptions about the overlapping jurisdiction and has made the same submission to the legislative review of the ECA.
- 3.7.16 The Authority submits that the advertising market is regulated in line with Section 60(4) of ECA read with subscription broadcasting services regulations. Any further limitations for advertising on subscription broadcasting services will require legislative amendmends.

3.7.17 In 2009, during the review of the advertising regulations, broadcasters submitted that the 1999 advertising regulations are still sufficient and do not have to be changed or augmented. The Authority will review these in the coming financial years.

3.7.18 Further, the Authority is of the view that with regards to community broadcasting services, it would not be able to limit their advertising beyond its legislative mandate. In terms of standards terms and conditions regulations for class licenses, their scope of coverage and therefore advertising market is limited to their coverage areas.

### 3.8 REGULATION FOR THE CODE OF CONDUCT FOR BROADCASTING SERVICE LICENSEES

3.8.1 The **FPB** advocates for a single media content classification in the country, recommending that the Authority make it a requirement in the code of conduct for broadcasting licensees to make use of the FPB Classification Guidelines. They submit that the Authority should institute a penalty system for broadcasting licensees who do not comply with this specific provision. They state that where FPB has already made a classification decision, this ought to remain the same even when being flighted on a broadcasting service. The FPB argues that the proliferation of classification systems with each broadcaster classifying its own content can lead to confusion of consumers as different age ratings and consumer advice is provided. FPB further propose the establishment of a regulator's forum to assess the possibility of partnership on common regulatory issues.

3.8.2 **Namec** supports the notion that the Authority should be the one responsible for developing the code, they justify this with reference to Top TV's application for authorisation of 24-hour channels of adult material.

- 3.8.3 **Namec** and **Mbetshu** agree that broadcasters should be required to provide tapes and transcripts to groups and/or individuals that have lodged a complaint against broadcast material. However, they disagreed on whether or not to regulate secret filming and recording of the public hypnotism, occult and psychic practices and showing on-going judicial processes in TV programmes.
- 3.8.4 **Kagiso Media** states that the Code of Conduct is not entirely appropriate for subscription broadcasters, and suggest that the Authority should introduce a different Code of Conduct for subscription broadcasters. They also submit that the audience advisory regime for FTA broadcasters ought to be more stringent than the one imposed on subscription broadcasters and that there should be fewer advisory obligations post the watershed period. They advocate technological neutrality and cautions against over-regulating new and evolving services like IPTV.
- 3.8.5 **Kagiso Media** is concerned that the Authority's report makes no mention of the self-regulatory system operated by the BCCSA. They are also concerned that the public is not involved in the process leading to the development of an MOU that is unfolding between ICASA and the FPB.
- 3.8.6 **e.tv** posits that the Code of Conduct currently deals adequately with audience advisories and there is no need for any change to be made. They reason that the introduction of DTT will mean that an electronic programme guide (EPG) is also available for all terrestrial channels, introducing a new safety mechanism of allowing channels to provide readily available audience advisories.
- 3.8.7 **e.tv** also suggests that there should be no changes of the current classification system used by broadcasters. The FTA commercial broadcaster states that broadcasters have their own internal controls which adequately deal with classifications and there are sanctions for non-compliance. e.tv further indicates

that the FPB does not have the independence from government which ICASA has. Therefore, they caution that the move to unify the classification system could ultimately result in ICASA compromising its independence under pressure from the FPB.

3.8.8 In addition, **e.tv** argues that the current Code of Conduct and regulatory provisions are technology-neutral and are able to deal with a multi-channel digitally converged environment, therefore changes are not necessary in this regard. The FTA commercial broadcaster further submits that the complaint system require no change, as tapes are provided to the Broadcasting Complaints Commission of South Africa (BCCSA) when complaints are lodged and are available for purchase by complainants.

3.8.9 The Authority's consideration is that the current complaints mechanisms do not factor in the situation where complainants are unable to afford the purchasing of tapes, thereby being a deterrent to the effective lodgement of justified concerns. The Authority is of the view that the complaints mechanisms should ensure tapes and transcripts are easily accessible to complainants regardless of whether they can afford to purchase them or not.

3.8.10 In terms of a single media classification, the Authority has commenced engagements with the FPB and the broadcasters on the prospects of a single classification system. The process of developing a Memorandum of Understanding between the Authority and FPB is still on-going and the public will have access to a signed MOU.

### 3.9 COMMISSIONING OF INDEPENDENTLY PRODUCED SOUTH AFRICAN PROGRAMMING REGULATIONS.

- 3.9.1 **Kagiso Media** suggests that the Authority must publish an annual report on broadcasters' compliance with Commissioning Protocols to ensure greater transparency and inspire public confidence. They are of the view that the challenge does not lie with the provisions of the regulations, but in monitoring and enforcement thereof. They also propose that the Compliance Procedure Manual be amended such that television broadcasters are also required to report on monitoring and compliance, particularly with regard to independent production issues.
- 3.9.2 **SOS** submits that independent production is an area in which the problems lie not wholly with the provisions of ICASA's regulations but also in the monitoring and enforcement thereof. SOS states that broadcasters have missed their deadlines in submitting their commissioning protocols and have not been penalised. They also raise a concern that documents submitted were unduly complicated and lengthy contradicting ICASA's stipulations around simplicity and transparency. Therefore SOS believes that the regulations need to be more effectively implemented and monitored.
- 3.9.3 Furthermore, **SOS** is of the view that in recognition of the vastly different negotiating position that exists between television broadcasters and independent producers, ICASA should not allow broadcasters to amend their commissioning protocols without ICASA's approval. The coalition also suggests that ICASA publish an annual report providing evidence of its monitoring of broadcasters' compliance with ICASA's Commissioning Protocols in order to bolster public confidence in the efficacy of the Commissioning Protocols.

3.9.4 **SABC** states that there should be constant review of the Independent Production Industry to deliver on local content especially on languages other than English and also in view of the demands for content in a multichannel DTT environment.

3.9.5 The Authority received and approved Commissioning Protocols from broadcasters in 2010 and has not received any requests for amendments of the said Protocols from broadcasters to date. Annual Compliance Reports compiled by the Authority include compliance assessment of Independent Production.

### 3.10 MUST CARRY REGULATIONS

3.10.1 **Mnet** submits that given the provisions of s60 (3) of the ECA, the Authority has no choice on whether the public broadcasting services should continue to have a must-carry status. In the absence of a legislative amendment, any debate on that issue would be purely academic. They reiterate that Must Carry regulations were designed for a multi-channel environment. As a result **Mnet** is of the view that suggestions that the regulations are not capable of being applied to digital broadcasting services is incorrect and the view that further amendments are required simply for the purposes of digital migration is flawed.

3.10.2 **Mnet** is of the view that embarking on a review of Must Carry Regulations at this early stage would create commercial uncertainty for subscription broadcasting services and the SABC. They also submit that the existing **Mnet** analogue decoder receives the FTA channels without having to set aside capacity for the carriage of these channels

3.10.3 **Kagiso Media** submits that not all digital platforms are equal and that the satellite platform lends itself far more easily to the must carry rules than the DTT platform. They argue that it is nonsensical for the subscription broadcasters on

the DTT platform to be expected to carry dozens of public channels, which could in some instances be similar or more than that of the DTT subscription broadcasters. They reason that this requirement on DTT platforms may unduly burden new market entrants and lead to market failure. The ability of large incumbent operators to establish a high floor price for SABC channels could put the viability of a new subscription DTT market entrant at risk.

3.10.4 **Kagiso Media** adds that, as long as the South African DTT regulatory environment is designed in such a way that anyone with a STB can access the public channels of the SABC, must carry rules for subscription DTT are unnecessary and would result in a waste of spectrum. They further submit that those channels falling within the definition of “public commercial services” ought not to have “must carry” status. **Kagiso Media** reasons that it goes against the rationale of must carry to have “commercial services” as part of the must carry obligation.

3.10.5 At the public hearings, **Kagiso Media** raised the commercial terms of must carry agreements as another concern that the Authority should regulate. They pointed out that the regulations require must-carry provisions, leaving the costs and revenues linked to must-carry up to commercial negotiations between parties. **Kagiso Media** submit that the current regulations make it difficult to be able to conclude those agreements because there is a lack of clarity between must-carry / must-offer and who pays whom. This should be clarified through a review of the regulations.

3.10.6 **Kagiso Media** is of the view that ICASA has misconstrued the Digital Policy which requires universal access to public broadcasting. They reason that not all subscription broadcasters must carry public broadcasting channels even if there is such universal access to public broadcasting.



3.10.7 **e.tv** proposes that there is a need to regulate the manner and extent in which FTA channels are re-transmitted by the dominant pay TV satellite operator. Prior to promulgating relevant re-transmission regulations, e.tv suggests that the Authority should look at international precedent where the re-transmission is subject to copyright and is accompanied by an obligation on the satellite platform to pay a copyright fee to the FTA broadcaster. There is a must-carry obligation on leading satellite platforms to carry the PSB channels and all leading FTA networks. Sometimes, as in the US, the FTA networks can opt to withhold their services from re-transmission unless a fee is paid (referred to as the 're-transmission consent'); and Satellite platform owners must pick up extra transmission costs arising from the carriage of the FTA channels on that platform.

3.10.8 **SABC** submit that they do not support the continuance of the must carry regime for the South African broadcasting landscape. They reason that the main driving force behind must-carry, as in Europe, is the objective of universal access. SABC argues that public broadcasting services are the largest broadcasting platform in South Africa and therefore do not need institutional protection through must carry obligations. They also reason that the must carry obligations unjustifiably distorts competition and intervenes in market freedom.

3.10.9 **The SABC** acknowledges that the must carry regime cannot be abolished without change of the wording of existing legislation, therefore advocating that the must carry regime should be reformed to be less distortive by limiting the channels subject to must-carry rules. The public broadcaster also refers the Authority to the current international literature which offers various modern alternatives, such as "must offer" provisions, where the broadcaster offer certain content under reasonable terms.

3.10.10 SABC submits that in the absence of legislative amendments in digital environment, subscription broadcasters should be allowed to carry SABC 1, 2 and 3 only, on condition that the parties concerned are allowed to negotiate the commercial terms of the must carry agreements as per the prescripts of the ECA. They advise that the Authority should conduct an inquiry to ascertain and analyse if the regulations serve the purpose for which they were developed.

3.10.11 In an attempt to address the challenges (and in agreement with Kagiso Media) with the must carry regulations, *the SABC* submit that the review process should give the Authority an opportunity to exclude all SABC commercial channels from the must carry obligations. They reason the commercial channel is not publicly financed and the inclusion thereof as a must carry channel is not only conceptually unjustifiable, but also contributes to an anti-competitive environment, especially since the SABC has to make its content available at no cost. The SABC support this argument through highlighting that a public broadcasting service is defined in the ECA to be “any broadcasting service provided by the [SABC] or other state owned enterprise”.

3.10.12 With regard to the payment of fees, the SABC argues that the regulations dictating that the SABC make its broadcasting content available at no cost and prescribing that they bear the transmission costs to subscription broadcasters are ultra vires, in that section 60(3) specifically states that the programmes must be carried ‘subject to commercially negotiable terms’. The *SABC* propose that it would be beneficial if the relevant broadcasters are left to negotiate market related terms and conditions in a reasonable and fair manner.

3.10.13 **The Authority is mandated by Section 60 (3) of the ECA to provide for the prescription of must carry regulations.**

3.10.14 The 2008 Broadcasting Digital Migration (BDM) policy in paragraph 2.3.5 states that “This Policy provides that the “must carry” arrangements, which require broadcasting services to carry public broadcasting services, continue in the new digital environment, fulfilling the important aspect of providing public broadcasting services to all citizens.”

3.10.15 The current regulations requires a Subscription Broadcasting Service (SBS) licensee to carry PBS channels if it has a minimum of 30 channels [regulation 5(a)]. Further the regulations do not force the SBS to carry all PBS channels; rather this is dependent on the number of channels they have, meaning that for every 20th channel added to their bouquet, over and above the 30 channels, will be a must-carry channel.

3.10.16 FTA broadcasters continue to raise concerns regarding the necessity for and the flow of payment of fees between FTA and subscription broadcasters.

3.10.17 The “must-carry” obligation is a critical component of achieving universal service and access. The Authority intends to review these regulations in line with the move to digital broadcasting.

3.10.18 The Authority will continue to follow the international discourse regarding platform payment flows and carriage of public service broadcasting channels on pay television platforms.

### 3.11 SUBSCRIPTION BROADCASTING SERVICES REGULATIONS

3.11.1 *Kagiso Media* submits that the current regulations require a complete overhaul in the context of DTT. They argue that the Authority will not be in a position to embark upon a review of its Subscription Broadcasting Regulations until it has

undertaken a market study and competition enquiry as to what is needed to promote a competitive and sustainable subscription broadcasting sector. The review of these regulations, Kagiso Media suggests, must take place before the new DTT subscription market entrants come on air to ensure the success of new DTT subscription services.

3.11.2 **e.tv** is of the view that the dominance of DStv and its participation in the advertising market is a threat to the advertising base of other sectors of broadcasting. Therefore the foundation on which South African broadcasting policy and regulation is built, is being undermined. Furthermore, **e.tv** argues that the dominance of DStv on the FTA broadcasters gives them a competitive advantage within the pay TV sector. The long term consequences are that the viability of broadcasters other than DStv will be under threat and that the public interest obligations of the FTA broadcasters may no longer be performed. **e.tv** thus submits that once subscription broadcasters reach a predetermined threshold, they should have stronger and additional restrictions on the extent to which they can carry advertising than those which presently exist, including even stricter restrictions on low-cost pay bouquets that are virtually free owing to the low subscription price.

3.11.3 **e.tv** also add that international precedent exists for dominant pay TV operators to be required to run an open platform which enables other pay TV operators to have access to the platform and to offer pay TV services to consumers off that platform. Currently, no such requirement exists in the South African market. **e.tv** believes regulation of this type is essential in order to create a competitive market and urges the Authority to promulgate the necessary regulation in this regard.

3.11.4 **SOS** share a similar view with **e.tv** in that the subscription market is effectively monopolised by Multichoice which owns both DSTV and M-Net and the lone

struggling competitor, Top TV has tried to resort to adult channels to survive. The coalition, however, is of the opinion that ICASA is to blame for failing to ensure a thriving competitive subscription market.

3.11.5 **The SABC** argues for the retention of light touch regulation for subscription broadcasting.

3.11.6 The **Media Policy and Democracy Project** is of the view that new players cannot find attractive content for consumers as the supply chain has been monopolised.

3.11.7 **Telkom** proposes that the Authority must have the same level of priority for an Inquiry into Subscription broadcasting services as they have for an Inquiry into Community broadcasting services. They asked if the Authority considered the potential benefit of conducting the two processes simultaneously to ensure consistency and alignment of mandates.

3.11.8 **The Authority** agrees that the current regulations requires a review in the context of digital environment, taking into account the possible need to amend the current licensing framework.

### 3.12 SELF HELP STATIONS REGULATIONS

3.12.1 **Sentech** advances that through DTT everyone should have access to broadcasting television either via terrestrial and/or satellite for free-to-air services. The principle of self-help stations should not be allowed to continue under the converged environment as this will subsequently imply that some communities will be excluded from services in the converged environment.

3.12.2 **Sentech** adds that the amendment to the Broadcasting Digital Migration policy clearly states that areas that cannot be reached via DTT should be enabled to receive services via satellite. Therefore, there is no need for the Self Help principle in the digital environment. However, the current self-help stations must be brought in line with the licensing regime in a digital environment. Under the digital environment in the medium to long term, **Sentech** submits, the Authority needs to strategize on how smaller communities can be accommodated in any planned multiplex beyond analogue switch-off. This should include using the L-band to accommodate smaller communities.

3.12.3 **Kagiso Media** submits that self-help stations are not appropriate in the DTT environment and that universal service and access obligations need to be fulfilled by an agreement between the relevant broadcasters and signal distributors.

3.12.4 **SABC** says data base management and co-ordination of these self-help stations poses a challenge, therefore they recommend that the new DTT platforms and low power transmitter roll out plan should assist with coverage.

3.12.5 **Vodacom** points out that ICASA should conduct market research on self-help transmissions to establish the relevance of the continued existence of self-help transmissions with a particular emphasis on the role played by self-help radio stations and whether there is an alternative means of providing access to broadcasting services in locations currently serviced by self - help transmissions. Furthermore, **Vodacom** posits that unless ICASA imposes universal service obligations on the public service broadcaster to ensure communities currently serviced by self-help stations also receive broadcasting signals there is no reason why the status quo relating to self - help stations should not be carried over to the digital era.

3.12.6 **The Authority** will assess the relevance of self-help stations for universal service and access after the dual illumination period and also audit the number of these self-help stations.

### 3.13 SOUTH AFRICAN LOCAL CONTENT REGULATIONS

3.13.1 **Mnet** states that the current South African Television Content Regulations cannot be practically implemented in a multi-channel environment. They are unworkable in the DTT environment as they provide for the measurement of South African content per channel, rather than per bouquet. These obligations imposed per channel are exceptionally onerous in a digital multi-channel environment. The imposition of per channel local content obligations greatly increases the content and compliance costs for broadcasters during migration. **Mnet** emphasises that the review of the Local Content Regulations is a priority but is concerned that the Authority intends to conduct this review between 2013 and 2015 which will amount to a delay for promulgation of these regulations.

3.13.2 **SABC** submits that equal local content quotas should be applicable to all broadcasters who offer the same services, contrary to the proposal by Kagiso Media of imposing phased-in compliance on new licensees over a five year period. They believe that the kind of arrangement proposed by Kagiso Media will work to the advantage of new entrants and the detriment of existing broadcasters as they are incurring digital migration costs and their viability will be threatened. They similarly support the urgent review of Local Content Regulations.

3.13.3 **Mbetshu** is of the view that the immediate review of existing local content quotas will assist in facilitating the introduction of the multi-channel digital environment. For him, Local content quotas should apply to a service and not necessary to all new digital channels since it is expensive to produce.

3.13.4 **Namec** suggests that the quotas of local content should also be applied to music channels.

3.13.5 **Kagiso Media** submits that local content and the state of local cultural industry will be addressed in the national broadcasting policy review by the Ministry.

3.13.6 **SOS** is of the view that the multi-channel digital terrestrial television (DTT) environment require new ways of regulating local content, for example broadcaster or network-based quotas, which is the ability to distribute local content obligations across an offered bouquet of channels, will be necessary.

3.13.7 Furthermore, **SOS** suggests that all platforms carrying audio and/or audio-visual content distributed from within South Africa ought to be subject to appropriate local content requirements and that subscription broadcasters, whether satellite or DTT, ought to be able to continue to choose to comply with budgetary-based local content quotas as an alternative.

3.13.8 **On Demand TV** submits that the Content Regulations should be amended or repealed to allow for new opportunities with digital television. They believe that digital television must open more opportunities for local content.

3.13.9 **e.tv** submits that the existing local content regulations must be reviewed before the introduction of DTT. The regulation of local content in DTT should be governed by the existing Local Content Regulations, subject to one crucial proviso: the Local Content Regulations should not apply until such time as there is a minimum of 4 million functioning FTA DTT set-top-boxes installed in the country.

3.13.10 **e.tv** further adds that, notwithstanding the provision contained in any individual FTA commercial television broadcasting licence, the local content



regulations requiring an average of 35% local content for commercial TV licensees should apply and be measured across the licensee's whole bouquet (i.e. there should be no quota for each individual channel so that if one channel exceeds this quota another channel may have less local content). They point out that this is what currently pertains to other multi-channel television licensees and it would be prejudicial if this principle were not carried over to the free-to-air DTT broadcasters.

3.13.11 ***The Authority*** is also aware of the challenges local content holds in light of a multi-channel environment and would not want to impose regulations that will constrain the sustainability of the broadcasting services and content production sector. ***The Authority*** has prioritised the review of these regulations for the 2013/2015 financial years.

### 3.14 COMMUNITY BROADCASTING SERVICES REGULATIONS

3.14.1 ***Sentech*** states that the term of licence for community broadcasters should be increased to 10 years and should be exempted from paying renewal and amendment fees when such processes are brought before the Authority. Furthermore they point out that where a service licence is linked or attached to a spectrum licence the Authority must enforce all related regulations regarding spectrum usage, relating to the current limitations to coverage area.

3.14.2 ***Sentech*** advises the Authority to consider giving more scope to community broadcasters, relaxing rules relating to advertising of community broadcasters and bringing a balance between sustainability of and the funding model of community broadcasters. ***Sentech*** further stated that the community broadcasting principle is based on a non-profit basis as defined in the ECA and the introduction of the subscription concept into community broadcasting contradicts that principle.

3.14.3 **Tshwane TV** proposes that ICASA should develop and publish legally binding Regulations for Community Television Governance Structures, nomination and election of Board of Directors and to create a framework for holding of Annual General Meetings by Community Television Service Licensees. In addition, the community broadcaster proposes that it should be compulsory for ICASA to monitor and observe the holding of Annual General Meetings by Community Television Service licensees.

3.14.4 **Tshwane TV** propose that ICASA should develop and publish Regulations that will formally enable Community Television Broadcasting Service licensees to request and receive funding from various sources like private investors and local government. The Regulations should outline the terms of reference for such investment. **Tshwane TV** posits that the duration of Class Television Broadcasting Service License be increased from seven years to fifteen years in line with other categories of Television Broadcasting Services, like Subscription and Free to Air. They also propose that ICASA should create a regulatory framework that will lead to the introduction of at least four (4) Community Television Broadcasting Service in rural Provinces, like Limpopo and KwaZulu-Natal, during the digital broadcasting era.

3.14.5 Furthermore, **Tshwane TV** suggests that ICASA should develop and publish, in line with the objectives of the ECA, regulations that enable Community Television Service licensees to be received by audiences outside the license area. The community broadcaster proposes that the Authority develop and publish regulations that create a regulatory framework for licensing of Subscription Community Television and Satellite FTA Community Television Broadcasting Service, as per ECA provisions.

3.14.6 In addition, **Tshwane TV** also proposes that ICASA should develop and publish a regulatory framework on how management contracts shall be regulated,

monitored and enforced in the interest of the development, sustainability and viability of the Community Television market in South Africa.

3.14.7 **SABC** submits that there is a need to redefine community broadcasting in view of new platforms such as DTT and Satellite. There is also a need to review the limitations on the coverage for community broadcasting so that there is certainty.

3.14.8 The *Commission on Gender Equality (CGE)* is concerned that some community TV stations have allegedly been sold to private trusts, as these should belong to the community not private individual.

3.14.9 *The Authority* notes that certain community broadcasters raised issues regarding local government representatives who seek to have undue influence on the administration and operations of the stations. The Authority observes that if not managed properly by community broadcasters, local government funding might exacerbate such a trend.

3.14.10 The Authority notes the concerns raised by stakeholders that the community broadcasting sector does not attract sufficient advertising and sponsorship to ensure financial viability. This has led to financial difficulties for many community broadcasters and thus a challenge in sustaining viable community broadcasters, especially in rural provinces. *The Authority* recognises the urgent need to review and update its position paper and regulations on the community broadcasting sector; and will continue to engage with the industry and the Department of Communications on these matters.

### **3.15 SPECIAL EVENTS LICENSES REGULATIONS**

3.15.1 **Mbetshu** states that in the digital environment, there will be no need for such regulations.

3.15.2 **SABC** submits that the above regulations may not be relevant given the scarcity of spectrum and new platforms and there is therefore a need for the Authority to review these regulations.

3.15.3 **The Authority** is of the view that there is a need for these regulations considering the objects of the Broadcasting Act and the ECA, and will assess and update these regulations in line with the digital environment.

### **3.16 LOW POWER SOUND BROADCASTING REGULATIONS**

3.16.1 **Sentech** recommends that the Authority must take into account interference issues when dealing with low power sound broadcasting services. Although there might still be a need for low power sound broadcasting services; it is not necessary for the Minister to increase the power limit beyond 1 Watt to avoid interference issues.

3.16.2 **Rock FM 91.9** and **the Voice of Wits** urges the Authority to review the Low Power Sound Broadcasting services regulations. They submit that the definition of low power should change to between 10 - 50 watts reasoning that they are currently restricted in terms of power provisions, and this has a direct impact on the stations to effectively fulfil their mandate and be financially viable. 1 Watt puts the station in breach of its own terms and conditions of service as it is failing to provide its community with the broadcasting service.

3.16.3 **Rock FM 91.9** further submits that Low Power stations have been the target of larger station who, intentionally or not, have damaged the viability of these stations. For example, at night and towards weekends, larger stations increase their power levels to 500 Watts, causing interference and swallowing up the 1Watt stations.

3.16.4 Furthermore, **Rock FM 91.9** states that the biggest challenge for Low Power broadcasters is securing advertising within the coverage area, as the regulation and licence conditions requires that advertising be sourced from the same coverage area. Due to poor signal strength, they are not able to secure advertising from businesses within their coverage areas. **Rock FM 91.9** is also concerned about the status of Low Power stations during the transition from analogue to digital broadcasting.

3.16.5 SABC submits that the Authority should consider changing the approval process of low power applications to be less administrative in order to fast track the roll out of public broadcasting services.

3.16.6 The Authority has considered the above issues and has made legislative recommendations on the ECA Amendment process to change the definition of low power from 1 Watt to 10 - 50 Watts.

### 3.17 REGIONAL TELEVISION BROADCASTING SERVICES POSITION PAPER

3.17.1 **Sentech** suggests that the Authority be pro-active in its regulation-making process and consider introducing channel authorisation to FTA broadcasting keeping in mind that in the digital environment coverage may extend beyond the licensed coverage areas.

3.17.2 **Namec** is of the view that there is a need for regional television broadcasting and the Authority should license more broadcasters to ensure transformation in the sector.

3.17.3 **Mbetshu** submits that South Africa does not need Regional Community Television if SABC is still to have regional television for a Province like the Eastern Cape. He suggests that it should either be a regional television station with autonomy under the SABC's regional directorate broadcasting in 3 languages that are dominant in the region, and have its own programming including regional news, actuality and talk shows, but links with the SABC for national news and sport.

3.17.4 **Kagiso Media** is of view that overhauling the regional television broadcasting services position paper ought not to delay the licensing of commercial regional FTA DTT services.

3.17.5 **SABC** is concerned about the availability of funds for them to broadcast regional television as provided for in the Broadcasting Act, and recommend that the Government should review the SABC funding model, since they require subsidy to kick-start regional TV.

3.17.6 **The Authority** will review the Position Paper to capture new developments brought about by digital convergence.

### 3.18 POSITION PAPER FOR THE INTRODUCTION OF THE FIRST FREE-TO-AIR PRIVATE TELEVISION SERVICE IN SOUTH AFRICA

3.18.1 **Kagiso Media** is of the view that the overhauling of private commercial television broadcasting services position paper ought not to delay the licensing of commercial FTA DTT television services. They suggest that the new FTA DTT

private operators should be licensed during the dual illumination period. They reason that, this will ensure that new services become available as part of the digital dividend as soon as the dual illumination period is over.

3.18.2 **e.tv** submits that the Authority cannot begin to consider licensing any new players who will compete for advertising until such time as it has fulfilled its mandate to create a fair competitive environment and has created the market conditions for a new entrant to survive and for existing players to remain viable. They argue that it would be inappropriate, irrational and unreasonable (and a departure from past practice) to merely award a new entrant a licence without undergoing this process. This process would, e.tv argues, also determine the regulatory conditions under which any new free-to-air player is licensed.

3.18.3 **The Authority** is of the view that the operators should conduct their own demand, need and support analysis before they submit their application. Since the free-to-air environment will be different in the new digitally converged environment, the Authority will endeavour to develop a new regulatory framework for this new environment.

### 3.19 PRIVATE SOUND BROADCASTING SERVICES POSITION PAPER

3.19.1 **Kagiso Media** submits that the above regulations require a complete overhaul in the context of digital migration. Kagiso Media also believes that the Authority must improve its monitoring and enforcement capacity for both radio and television.

3.19.2 **Kagiso Media** suggests that the Authority should consider retaining analogue broadcasting in the sound broadcasting context. They point out that international experiences show that the transition to digital radio is not smooth.

3.19.3 *The Authority* is following Digital Audio Broadcasting developments in other countries; however the main focus currently is to ensure a smooth television migration. Digital sound broadcasting will be considered after there is a clear legislative guide or policy directive.

3.19.4 *The Authority* intends to review the above regulations in the context of digital migration.



## 4. PART C: GENERAL ISSUES

This section intends to provide the summary of submissions to the general issues raised by stakeholders and the Authority.

### 4.1 National Policy Developments versus Regulatory Review

4.1.1 **Multichoice** is of the view that the Authority should withdraw the Issues Paper pending the finalisation of the Minister's review of the current broadcasting policy and posited amendments to the legislation. The subscription broadcaster supports reviews of the broadcasting policy, legislative and regulatory frameworks from time to time to ensure that they keep abreast of technological developments in line with international best practice. However it argues that the current legislation does not permit or empower the Authority to conduct a wide ranging review at this time. The subscription broadcaster further states that it is unhelpful and impermissible for the Authority to consider, at this point in time, issues which fall outside the scope of the current legislative framework and which the Authority does not have jurisdiction to regulate.

4.1.2 **SOS** urges the Authority against engaging in a large-scale regulatory review which, it argues, may turn out to be out of step with new national broadcasting policy as developed by the Department of Communications (DOC) and, worse, not in accordance with new national legislation which is likely to follow the DOC policy process.

4.1.3 Contrary to SOS and Multichoice, **e.tv** supports the notion that from time to time a regulatory review may be required and further argues that the Authority has the discretion to decide when to undertake such a review.

- 4.1.4 In relation to the scope of the review, **SOS** suggests that ICASA's current regulatory review process must be aimed narrowly to focus only on reviewing and amending its own broadcasting related regulations which are clearly out of step with the needs of the digital environment and in light of the revised and finalised Digital Migration Policy, the last iteration of which was published by the DOC in Notice No. 124 published in Government Gazette 35051 dated 17 February 2012.
- 4.1.5 **e.tv** believes that many of the recently amended regulations and Position Papers have already taken into account the notion of convergence and the transition into an entirely digital environment. To this extent, such regulations need not be tampered with unless there is a pressing reason to do so. However, **e.tv** welcomes the regulatory review and submits that the Authority should use this process to take steps to ensure a fair and competitive environment within the television industry.
- 4.1.6 **The Authority** is of the view that engaging in a regulatory review at this juncture will not compromise or contradict the policy making process in anyway. This consultative process has produced a regulatory review framework, which provides the necessary input the Authority sought in developing a new broadcasting regulatory framework.
- 4.1.7 This process will also feed into the Ministerial Broadcasting Policy Review, and the Authority as one of the stakeholders will make submissions.
- 4.1.8 **The Authority** adopted the holistic approach in reviewing the entire broadcasting regulatory framework so as to be able to fairly consider the linkages and impacts between related legislation and regulation. This all-encompassing approach has allowed the Authority and all stakeholders to

equally inform the process of prioritising individual regulations that need to be reviewed or amended moving into the digital era.

## 4.2 Competition Matters

4.2.1 **e.tv** submits that the Authority should have regard to the current market environment in the South African broadcasting sector and use the regulatory review to address the fundamental market conditions which are impacting on the health and future competitiveness of the South African broadcasting industry. The free-to-air commercial broadcaster posits that proactive competition regulation by the Authority is long overdue and has yet to be properly addressed despite the many submissions made to the Authority in this regard over a period of more than ten years. Each year in which the Authority fails to deal with competition matters results in an aggravation of the existing uncompetitive environment and has an ever-increasing impact on the viability of businesses affected by dominant players in the market.

4.2.2 In addition, **e.tv** submits that the ECA enjoins the Authority to consider the widespread impact the growth of DStv is having on the South African television market and to take action to preserve the viability of the free-to-air segment of the broadcasting industry and to create a more competitive environment within the pay TV sector. **e.tv** further submits that this falls squarely within the mandate of the Review of the Broadcasting Regulatory Framework and should therefore be considered during this process.

4.2.3 **The Authority** has due regard for the broadcast market environment. As stated in the Issues Paper, one of the purposes of this process is to assess the continued viability and regulation of public, commercial and community broadcasters while fostering and promoting competition within the broadcast environment. **The Authority** notes that most of the submissions

recommend that the Authority should conduct an enquiry into competition matters in the television broadcasting space, particularly focussing on access to premium content. It is evident that the Authority needs to engage on further research work with regards to premium content and other related matters to make a decision on whether to embark on a chapter 10 market review process. *The Authority* will conduct market study investigations where potential content-related competition issues are identified to promote fair and effective competition in content markets.

#### **4.3 Monitoring and Compliance**

- 4.3.1 *SOS* argues that there is a need for a monitoring and compliance system that is able to respond quickly and effectively to the increased demands of the digital environment. Furthermore, they endorsed the proposal made by ***Media Monitoring Africa (MMA)*** in their oral presentation to the Authority on ICASA's draft DTT regulations that ICASA should establish a Monitoring and Compliance Advisory Group. MMA has proposed that the group be made up of a range of stakeholders including the broadcasters, independent producers, representatives from civil society and international experts. The task of this advisory group would be to develop effective monitoring and compliance systems for the DTT environment and to ensure the effective implementation of these systems.
- 4.3.2 *The Authority* has a statutory mandate in terms of the Constitution, the ICASA Act and the ECA to regulate broadcasting activities in South Africa, in the public interest. The Authority is tasked with ensuring compliance by Licensees with the terms and conditions of their licenses, the ECA, the ICASA Act and any relevant legislation and regulations.
- 4.3.3 *The Authority* monitors compliance by all television and radio Licensees on a regular basis in respect of their license terms and condition. In

formulating Annual Compliance Reports the Authority focuses on the following key areas: Geographic Coverage, Languages, Format, Local Content Obligations, General Programming Obligations, Training and Skills Development Obligations, Ownership and Control Obligations and the Regulations on South African Music/Television Content, Regulations Regarding Standard Terms and Conditions, General Fees Regulations and USAF Regulations. Where compliance is not achieved, the Authority mentions in the Annual Compliance Report (forwarded to the Licensee) which obligations in the license terms and conditions as well as relevant regulations the Licensee failed to comply with.

4.3.4 *The Authority* acknowledges that it needs to ensure that more is done in terms of monitoring compliance with regulations. *The Authority* will engage stakeholders in transparent meetings to share information and ideas on local content, compliance monitoring analysis data and various other regulatory issues.

4.3.5 *The Authority* will also strive to research and develop flexible compliance and reporting frameworks that can be implemented for the new digitally converged environment.

#### 4.4 SOCIAL COHESION

4.4.1 *Namec* states that television is a powerful tool that often shapes peoples view or perception of what's happening outside their own world and can also cause people to change theirs. It should be used in a way that promotes the common social vision for the country. Promoting social cohesion and integration through television can change the way we look at ourselves and our neighbours. It should be used in a responsible manner.

- 4.4.2 ***Kagiso Media*** is of the view that the concept of “social cohesion” and how to broadcast to support that, is something that the SABC ought to be doing as part of its Charter obligations and that the DoC-led national policy review process is best placed to suggest amended provisions to the SABC Charter.
- 4.4.3 ***Kagiso Media*** is of the view that the DOC and Parliament are the relevant institutions to address whether or not broadcasting sector promotes social cohesion.
- 4.4.4 **The Authority believes that it has a role to play in social cohesion and will continue consulting relevant stakeholders.**
- 4.4.5 ***The Authority* will engage with relevant Government Departments and broadcasters on how they can contribute and play a major role with regards to social cohesion.**

#### **4.5 SABC CHARTER**

- 4.5.1 ***Sentech*** states that the issue of ICASA exercising its oversight role to the SABC falls outside what is permitted by legislation. The Authority cannot go beyond the current provisions of the Broadcasting Act in relation to its oversight of the SABC.
- 4.5.2 ***Kagiso Media*** is of the view that the concept of “social cohesion” and how to broadcast to support that, is something that the SABC ought to be doing as part of its Charter obligations and that the DOC-led national policy review process is best placed to suggest amended provisions to the SABC Charter.
- 4.5.3 ***Kagiso Media*** is of the view that the DOC and Parliament are the relevant institutes to address whether or not the SABC charter is meeting public

objectives. They reiterate that ICASA's function is to monitor and enforce the SABC's compliance with the charter.

- 4.5.4 **e.tv** submits that the Broadcasting Act obliges the Authority to monitor and enforce the SABC's compliance with its Charter. To date, e.tv is unaware of what action the Authority has taken to fulfil its oversight role. e.tv suggests that the Authority take a more direct and proactive approach in ensuring that the relevant provisions of the ECA are adhered to by the SABC. e.tv suggests that the Authority does not monitor the following obligations imposed on the SABC: compliance with licence conditions, the requirement to operate separately the public and commercial service divisions, the requirement to provide regular inputs of public opinion on its services and the requirement to develop a Code of Practice with which both services and personnel must comply. e.tv argues that failure by the Authority to fulfil its compliance monitoring mandate impacts negatively on the entire television market as it allows the SABC to blur the boundaries between its public and commercial service divisions with the effect that there is often little distinction between the two.
- 4.5.5 During the International Conference, **Seidl** explained that statutory obligations have made the digital transition much more difficult for the Canadian Broadcasting Corporation (CBC) given its unique mandate to serve all Canadians regardless of where they live or the media markets in which they are served with CBC's largest group of over-the-air transmitters. The CBC was given one extra year to find solutions for viewers that may have lost access to their over-the-air signals.
- 4.5.6 Furthermore, **Robin Foster** argued that the PSB has to find if it still matters or will it still do so even in an converged environment. He pointed out that PSBs around the world are oscillating between government driven funding through license fees and taxes, commercial and advertising revenues, all of which are not

a clear certainty due to the contrasting pros and cons they experience. Foster lists about five areas through which PSBs can be sustained, namely: making a case for the retention of the PSB in a converged environment; developing new ways to deliver PSB to the public; making sure that funding is available so that the PSB delivers on its mandate; reshaping of organizational models that can effectively deliver on the PSB promises in an new digital environment; and observation and assessment of the governance and accountability structures of the PSBs.

4.5.7 ***The People with Disability*** representatives made a proposal for the accessibility fund that would assist accessibility projects of all digital platforms by at least by 2013. For instance, the Federal Communications Commission (FCC), in the United States, charges about 1% tax meant to fund the efforts of disability projects. For this to be successful, broadcasters must constantly involve people with disabilities to provide practical solutions to their own problems.

4.5.8 ***The Authority*** has considered the above and will share them with the **Ministry of Communications**.

#### **4.6 Interoperability of Set Top Boxes (STB's)**

4.6.1 **Kagiso Media** submits that the issue of interoperability of STB's must be included in the DTT regulations. Without STB interoperability it is unlikely that the introduction of DTT will indeed result in sustainable new market entrants providing additional services to the public.

4.6.2 The **Media Policy and Democracy Project** propose that the Authority develop regulations to address interoperability. The challenge is that consumers who want to switch to another service provider must procure another STB.



**4.6.3 The Authority will address the above matter during the development of the digital terrestrial television framework, post dual illumination period.**

## 5 PART D: CONCLUSION

- 5.1 This broadcasting regulatory review process has resulted in some stakeholders emphasising that certain regulations, which have been in force since 1993 to date, should be left unchanged as the sector advances towards a digital environment.
- 5.2 Other stakeholders re-directed the Authority as to which regulations it should prioritise during the next few years. For example, People with Disabilities were concerned that most of the Authority's regulations do not address targeted groups, i.e. women, youth, disabled and elderly people, and they proposed that the Authority should prioritise targeted groups when dealing with universal access to broadcasting services.
- 5.3 Based on this consultation the Authority has identified a regulatory program that will strike an appropriate balance between regulation to achieve and preserve the social and cultural objectives of broadcasting in South Africa and regulation for economic and technical outcomes for the South African digital broadcasting environment. This regulatory program involves the prioritisation of regulations to be reviewed in the short, medium to long-term plans, taking into account the submissions received through this process, socio-economic concerns, legal obligations and the competing demands for the Authority needs to balance.
- 5.4 The Authority is of the view that in order to conduct substantive, efficient and valuable reviews there is a need to focus on a lesser number of regulations that the Authority and the stakeholders have identified as needing urgent attention.
- 5.5 Therefore the Authority has decided to commence with the review of Local Content Regulations and Elections Regulations in the 2013/2014 financial year. Local Content Regulations are critical for the success of digital broadcasting,

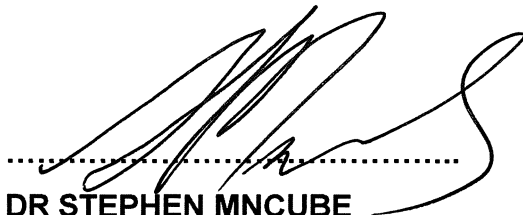
while Elections Regulations must be completed before national elections in the calendar year 2014.

- 5.6 Other regulations identified within the short term are Sport broadcasting services, Community broadcasting services, Subscription broadcasting services and Must Carry Regulations. The review of these regulations is important to create regulatory certainty for the sector in the DTT environment.
- 5.7 Regulations to be reviewed in the medium term timeframe include the licensing framework for DTT services, Advertising, Infomercials and programme sponsorship, Code of conduct for broadcasters, Private sound broadcasting services, Inquiry into Digital Radio Broadcasting Regulatory and Licensing Framework, Ownership and control, Introduction of the first Free-to-Air Television Service in South Africa as well as Universal service and access fund. The review of these regulations is identified as being critical to diversity, universal access and stability of the sector.
- 5.8 The long term regulations identified are IPTV and VOD, Regional Television Broadcasting Services, Low Power Sound Broadcasting, Self Help stations and Special Events Licenses. These were identified to encourage social cohesion, universal access and continued relevance of these to the digital broadcasting environment.
- 5.9 The Authority still holds the view that it is not the only regulator that has embarked on the regulatory review process; recent examples are Canadian Radio-television and Telecommunications Commission (CRTC) in Canada, Australia's Convergence Review Final Report and the United Kingdom's Communications Review.

5.10 Stakeholders should therefore also refer to the detailed list of all prioritised regulations is contained in annexure A in order to find the Authority's regulatory plans for the next coming years to support the Government's 2020 ICT vision.

5.11 The Authority benefitted greatly from all the inputs and views expressed by stakeholders in the context of South Africa's own broadcasting regulatory policy history and would like to thank all stakeholders who supported and participated in discussions and airing their views.

5.12 This paper represents the final positions of the Authority on this process.

A handwritten signature in black ink, appearing to be 'S. Mncube', is written over a horizontal dotted line.

**DR STEPHEN MNCUBE**  
**CHAIRPERSON**

**DATE:** .....

**6. APPENDIX A: REGULATIONS TO BE PRIORITISED TOWARDS 2020**

<b>REGULATIONS</b>	<b>SHORT-TERM 2013-2016</b>	<b>MEDIUM-TERM 2017-2019</b>	<b>LONG TERM 2020 &amp; beyond</b>
Review and develop Local Content Regulations for the new digital broadcasting environment	✓		
Review of Regulations governing broadcasting for Political Elections	✓		
Review and develop Sports Broadcasting Regulations	✓		
Review and develop Must-Carry Regulations	✓		
Subscription Broadcasting Services Regulations	✓		
Initiate the development of new regulatory and licensing framework for Broadcasting Service in the Digital Broadcasting Environment		✓	
Review and develop regulations governing Advertising and Sponsorship		✓	

Review of Regulations governing Code of Conduct for Broadcasters		✓	
Inquiry into Community Broadcasting Regulatory and Licensing Framework	✓		
Private Sound Broadcasting Services Position Paper		✓	
Inquiry into Digital Radio Broadcasting Regulatory and Licensing Framework		✓	
Review of Ownership and Control of commercial services and limitations on Broadcasting		✓	
Regulations in respect of the prescribed annual contributions of licensees to the Universal Service and Access Fund		✓	
Regulatory approach to IPTV and VOD Position Paper			✓
Position Paper for the		✓	

introduction of the first Free-to-Air Television Service in South Africa			
Regional Television Broadcasting Services Position Paper			✓
Low Power Sound Broadcasting Regulations			✓
Self Help Stations Regulations			✓
Special Events Licenses Regulations			✓

## **7. APPENDIX B: REPORT ON PROVINCIAL WORKSHOPS**

### **7.1 INTRODUCTION AND BACKGROUND**

7.1.1 The development of this report involved the publication, by the Independent Communications Authority of South Africa (“the Authority”), of an Issues Paper on Broadcasting Regulatory Review towards a digitally converged environment (published on the 08<sup>th</sup> of December 2011) and a Preliminary Report (published on the 31<sup>st</sup> of October 2012). Subsequent to the above publications, Provincial Workshops were held nationally to;

- create awareness,
- solicit comments, and
- provide clarity where required on the Issues Paper and Preliminary report.

7.1.2 The purpose of this Appendix is to outline a detailed report on the workshops held in all provinces. The aim was to engage the industry and the public at large about the imminent changes in the broadcasting industry.

7.1.3 The Authority was assisted by the Government Communications and Information System (GCIS) in some provinces with regards to the invitation of stakeholders to the workshops. The audience largely comprised of community broadcasters, independent producers, students, Set Top Box (STB) manufacturers, government departments and business people.

7.1.4 Representatives from Sentech also made presentations with regard to community radio and signal distribution matters and handled Sentech related issues that were raised by the attendees.

7.1.5 Stakeholders engaged and raised a variety of regulatory and policy issues. Some of the issues were general broadcast issues and a few related to the direct questions from the Issues paper and the Digital Migration regulations. This was

Page 62 of 80



followed by a session of clarity seeking questions and comments. Community broadcasting issues dominated the sessions. Below is a summation of issues raised per province.

## **7.2 NORTHERN CAPE**

- 7.2.1 The attendees suggested that the regulatory review should have waited for a complete review of the broadcasting landscape. They were of the view that the policy and legislative review should have preceded regulatory review.
- 7.2.2 Representatives from the radio broadcasting sector raised a concern that the issues paper tends to focus more on television, and were concerned that the radio sector is going to be neglected. They further enquired about the benefits and costs of migration from analogue to digital broadcasting for consumers.
- 7.2.3 The attendees complained that community radio stations' management does not encourage community participation on local programming issues. They also highlighted the management's inability to provide training and skills for volunteers.
- 7.2.4 They asked if the equipment used by independent producers to produce programmes will have to be changed in order to be compatible with digital broadcasting, and whether government will assist in subsidising the purchase of new equipment. They further suggested that the SABC should share their infrastructure to produce programmes, and also assist in training the community radio volunteers.
- 7.2.5 Furthermore community broadcasters stated that the SABC is funded by government; therefore community radio stations should get access to a special live feed of national news and sport of national interest.

- 7.2.6 The attendees complained that Sentech and South African Music Rights Organisation (SAMRO) fees are exorbitant; in addition, they are burdened with contributions to Universal Service and Access Fund (USAF) and Media Development and Diversity Agency (MDDA). Community radio stations also questioned the uniform contribution by all broadcasters to USAF and suggested that they should be exempted from contribution to USAF.
- 7.2.7 The community broadcasters highlighted that community radio stations contravene their licence conditions due to pressure from their listeners requesting them to play more music. Therefore they suggested that licence conditions need to be relaxed for the viability of community radio stations.
- 7.2.8 The community broadcasters indicated that the application process for community radio should be simplified as it can take up to 6 months for completion.
- 7.2.9 The attendees indicated that they do not receive signal for radio and television in Namaqualand, whereas the signal spills to Namibia. They further mentioned that the community of interest stretch more than 200km, while the Authority gives radio stations 1kW which does not cover the entire community. They therefore questioned how this challenge would be addressed if radio stations are not going to migrate.
- 7.2.10 The attendees suggested that ICASA, DoC and related stakeholders have to work together in facilitating, organising and informing the broadcasting sector, especially community broadcasting, and the public about the importance, impact, nature and extent of the imminent digital migration processes.
- 7.2.11 Radio Riverside submitted that if community radio cannot have access to the digital platform, media diversity would be compromised. They further stated that should SABC radio stations be accommodated in newly created multiplexes, they should also be allowed to be on those multiplexes free of charge. Their concern

was that they will not be able to afford the payment to SABC for allowing them to be on the SABC multiplex. They reasoned that failure to be afforded free space will create unfair competition.

7.2.12 They also raised a concern that Self-help stations are imposed on community radio stations and suggested that Sentech should assist them to have access to high sites.

### **7.3 EASTERN CAPE**

7.3.1 The audience suggested that the Eastern Cape should be allowed to get a television channel for trial purposes and would like ICASA to assist them with broadcast equipment. They further enquired if ICASA works with radio stations after granting them a license. They suggested that ICASA should change the way they handle complaints as its current approach is not proactive, monitoring officers must be more visible.

7.3.2 The audience highlighted that African music must be taken seriously and be played in radio stations.

7.3.3 They further cautioned the Authority that voluntarism in community radio stations is not sustainable.

7.3.4 The attendees complained that there is no diversity in terms of news as the local broadcasters show national news and not what is happening in their community.

7.3.5 The attendees asked about the possibility of merging community radio stations if they are closer to each other. Furthermore they suggested that ICASA should improve the monitoring of signal coverage as community radio stations are of the view that the allocated frequency is issued throughout the province whilst it is

only for the geographic area in their licence conditions. They complained about community broadcasters that cover 8 provinces. The attendees also raised challenges of interference and poor signal in terms of coverage more specifically in areas where there are mountains and downhill.

7.3.6 The attendees complained about the turnaround time for licensing of community broadcasters, in particular the application procedure to extend a coverage area.

7.3.7 The attendees raised a concern that the community radio stations are owned by individuals and not the community. They suggested that there should be a new formal way of appointing board members and not just a show of hands as it is currently done. They complained that board members serving the community are interested in popularity while not addressing community issues.

7.3.8 The audience were also concerned about the promotion of liquor in advertising especially during sporting events and wanted to know who is responsible to monitor this form of advertising.

7.3.9 The attendees pointed out that community broadcasters are supposed to include programming for youth, children and persons with disabilities in their programming schedule. The community members raised the abovementioned matter with the broadcasters concerned, however they failed to respond positively.

7.3.10 The attendees suggested the formation of a communications forum to address challenges in community radio stations relating to corporate governance issues, auditing of financials and unplanned programmes. They are of the view that the communications forum will assist the Authority with the monitoring of these community radio stations' challenges.

7.3.11 The attendees complained that they do not get access to sporting events including rugby and cricket.

7.3.12 Community radio stations raised an issued about costly Sentech tarrifs which have become a financial burden. They suggested that the approximate R20 000 charged by Sentech should be reduced to a manageable fee. They further raised a concern with regard to the contributions to USAF referring to the fact that community broadcasters do not make profit.

## **7.4 WESTERN CAPE**

7.4.1 The attendees wanted to know how the regulatory review process relates to the ministerial policy review. They were of the view that policy review precedes a regulatory process. They were concerned that whilst the Authority's report recognise the challenges the community broadcasters have been facing, it did not prioritise the regulations relating to community broadcasting within an acceptably short period of time.

7.4.2 Participants enquired about the advantages and disadvantages of digital migration for the ordinary citizen. The fundamental concern was the financial cost to be borne by citizens. They argued for consumer education with regards to the financial cost that the consumer might incur, the government subsidy available and the process to access such.

7.4.3 The attendees also asked how the dual illumination period will affect poor households. They enquired at what stage of the dual illumination period those depending on government subsidy will get Set Top Boxes and access digital television. They argued that the expected commencement and the completion of the dual illumination period will not be sufficient to distribute Set Top Boxes or subsidy vouchers to all poor households qualifying for a government subsidy.

- 7.4.4 Those interested in the business aspect of digital migration wanted to know how the digital migration process will benefit Small Medium and Micro Enterprises (SMMEs) and new businesses eager to play a role in the digital broadcast sector. Of significance to them was whether the Authority will retain a separate spectrum for Black Economic Empowerment (BEE) ownership. They argued that, using the digital migration process, the Authority should promote competition and facilitate a greater ownership and control role for HDIs.
- 7.4.5 Community sound broadcasters complained that from what they have observed, when deliberating on digital migration, television seems to be the main focus. They urged the Authority and the DoC to begin discussions and do research around digital radio, as to when will it commence and what will it imply for licensed community broadcasters. They want the digital radio migration process to be communicated early and be easily comprehended by an ordinary citizen. Their main concern was that they do not want the digital radio migration process to exacerbate the signal interference challenges currently experienced by many radio stations.
- 7.4.6 Community broadcasters enquired if they will be subsidised to migrate from analogue to digital broadcasting, specifically in terms of signal distribution for those who self-provide, taking into account the costs involved in the current television migration process. They contended that the costly nature of digital migration may put many community broadcasters out of business, more so those who do signal self-distribution.
- 7.4.7 In respect to advertising, the attendees said that the Advertising Standards Authority (ASA) does not have a legislative mandate and that when it comes to issues of advertising the Authority should take the lead and ASA should report to the Authority.

- 7.4.8 The audience advised the Authority to consider having an open window for the sport of national interest on subscription broadcasting platform, as is the case in other countries. This way all members of the public will have access to such games, irrespective of whether they subscribe to the broadcaster or not. Furthermore they advised that reviewing the issue of exclusive rights to sport of national interest should be a joint initiative between the Authority and the Competition Commission.
- 7.4.9 Attendees also raised a concern regarding the broadcasters' inability to acquire secondary rights. They would like ICASA to investigate the split packages, binding contracts and how Confederation of African Football rates, for example, are done 7 days before the games can take place.
- 7.4.10 The attendees raised a concern that DSTv is dominant and they advised that the Authority must create a conducive environment for other subscription broadcasters. They advised that one aspect to enable new players in the broadcasting market is to unbundle DSTv. They made an example of local loop unbundling, proposing that broadcasting follow a similar process.

## **7.5 MPUMALANGA**

- 7.5.1 The various audiences sought answers as to how the process of Regulatory Review will add value to the people of Mpumalanga. They stressed that Mpumalanga as a province needs special attention; while there are a lot of community radio stations in some municipalities, more should be done to diversify the voice of the people at local level especially in the Gert Sibande and Nkangala District municipalities.
- 7.5.2 There was a concern about migrating cost to the public with regards to acquiring a Set Top Box in both rural and urban communities. Another concern was the

fact that migration might not have immediate benefits for the people of Mpumalanga.

- 7.5.3 Attendees raised an issue with regard to interoperability of Set Top Boxes. They were concerned whether the FTA STBs are going to be compatible with the STBs provided by subscription broadcasters. They further queried why it is taking long for the Authority to finalise the digital migration process.
- 7.5.4 The attendees wanted clarity on who would distribute and access internet protocol television (IPTV) and video on demand (VOD), and how it would be monitored.
- 7.5.5 The audience questioned the fairness of the moratorium on licensing of community television as the Authority licensed other community television broadcasters after the moratorium was passed, and they would like the process to be reviewed as a matter of urgency. Attendees also suggested that community television and radio application process should be simplified.
- 7.5.6 Community radio stations questioned the uniform contribution to USAF and the amount they are supposed to contribute considering that they do not make profit.
- 7.5.7 The audience said that ICASA does not hold broadcasters responsible for not considering issues of persons with disabilities in their broadcasts.
- 7.5.8 They questioned ICASA's working relationship with other industry bodies such as the Competition Commission, BCCSA, ASASA, Sentech and National Consumer Commission.
- 7.5.9 Community broadcasters wanted to know if digital migration will include other channels from African countries. Furthermore they were concerned about the demographic representation in all channels of the public broadcaster that their languages are marginalised, namely Xitsonga, iSindebele and Siswati.



7.5.10 Community broadcasters are concerned that they do not enjoy same benefits as other broadcasters in terms of access to Sports Rights.

7.5.11 Community broadcasters complained that government put advertisements only on the SABC and would like to know why community broadcasters are not considered.

7.5.12 SACC was concerned about the poor access to broadcasting services due to the mountainous nature of the area and asked if digital migration will assist in improving access. Community broadcasters mentioned that they are having challenges with access to high sites and as a result a broadcaster allocated a radius of 150 km can only cover 50 km.

## **7.6 NORTH WEST**

7.6.1 Access to signal for radio and television in underserviced area presented to be a challenge in North West with the main challenge being the radio signal in rural areas. The stakeholders went further to explain that they receive the radio signal from their neighbouring country, Botswana, instead. Participants wanted clarity on the impact of digital migration on the signal, specifically in Mafikeng.

7.6.2 Members of the community radio stations raised concerns of the impact of digital migration on audio broadcasting, whether the current migration will affect all broadcasting services or only television.

7.6.3 Lack of consumer awareness on digital migration was a concern for participants. They wanted to know how it is going to affect the person on the street in terms of the picture quality on their television set, the number of increasing channels and economic advantages thereof. Community members were concerned that digital migration might actually decrease job opportunities instead.

- 7.6.4 Another issue from this group was the fact that consumers can access commercial radio stations on the cellular phone, but it is not the case with community radio stations.
- 7.6.5 Participants wanted clarity on what Internet Protocol Television (IPTV) is and whether it is a way for the future.
- 7.6.6 They advised that the workshop would be more fruitful if all role players were available, for example MDDA. An issue was raised on the lock-in process of Sentech whereby the community broadcasters are locked into a contract and charged exorbitant fees.
- 7.6.7 There was a concern that advertised goods cannot perform as per the promise in the advert, therefore control measures for advertising need to be considered in light of digital migration.
- 7.6.8 There were concerns regarding companies that exploit people through advertising messages in consumers' cellular phones.
- 7.6.9 People with disabilities expressed great disappointments regarding access to broadcasting services. They advised that more research be done to ensure that persons with disabilities are properly served, and it should be reported on the efforts that have been made so far. These concerns need to be dealt with before migration and they wanted to know how digital migration was going to affect them.
- 7.6.10 The last question was on the National Frequency Plan whereby participants wanted to know whose responsibility it was between ICASA and DOC.
- 7.6.11 Community radio stations indicated that they would like to be included in the Sports Broadcasting Regulations to acquire rights to broadcast sports of national

interest. The suggestion was that the process of acquiring sport rights should be made available to them through live feed from the SABC for free.

7.6.12 The SABC raised a concern regarding the acquisition of secondary sport rights that are currently highly priced. They requested the Authority to intervene so that the rights are affordable.

7.6.13 Participants suggested that regional television should cater for all 11 languages, with special consideration for indigenous languages. Others pointed to the fact that regional televisions catering for the majority of languages spoken in one area could lead to marginalization of the minority living in the area.

## **7.7 KWA-ZULU NATAL**

7.7.1 The majority of attendees sought clarity on digital migration and how it will affect them. They were not clear on the government's digital migration process in terms of the process to be followed by the DoC in identifying the poor households in rural areas. Furthermore, they enquired how digital migration will assist in addressing the issue of universal access as there are people who cannot access the current analogue television. On the other hand, the manufacturers were concerned about the state of readiness for the DTT transmitters.

7.7.2 Community radio broadcasters wanted to know whether digital audio will be licensed and regulated during the dual illumination period. Broadcasters who are self-transmitting were worried about the costs to be incurred for digital migration.

7.7.3 The community television broadcasters were concerned about the digital migration regulations and wanted clarity with regard to the percentage allocated to them. They asked how the Authority intended to allocate equal percentage to all community television broadcasters without prejudicing others in different geographical areas. They were interested in knowing whether the Authority will

create a space on the second DTT multiplex for community television, as the first multiplex was allocated to the public broadcaster and the permanently licensed community television.

- 7.7.4 People with Disabilities proposed that the Authority should cease to reflect the targeted groups' matters as an afterthought, but make sure that their issues are prioritized. They also emphasized that IPTV needs to be regulated in order to protect children from being exposed to access information that is beyond their age restriction.
- 7.7.5 The attendees highlighted the fact that the community broadcasting licensing procedure was changed without informing the public. They stated that previously with the IBA, the Authority used to have public hearings before awarding licenses, but licenses are now awarded without public participation. They were also concerned that ICASA awards community broadcasting licenses without assessing whether the applicants have the necessary infrastructure to broadcast.
- 7.7.6 Those interested in special events licensing complained that the process is not easily understandable.
- 7.7.7 The attendees questioned the status of manufacturing and distribution of set top boxes ("STBs") and whether their submissions on the matter were considered. They further enquired on the cost of license fees for future DTT services or as a provider of STBs as well as what Digital Migration will mean for small companies.
- 7.7.8 They further enquired on whether the cost and maintenance of STBs will be affordable to the general public.
- 7.7.9 The DoC highlighted that the intention of the Policy is for the migration process and therefore wanted to know if the Authority was intending to licence new operators during the dual illumination period.

7.7.10 The attendees disagreed with the Authority's view that challenges raised by community broadcasters with regards to USAF contributions are matters of policy nature.

7.7.11 The SABC submitted that the must carry/must pay notion should apply moving into the digital era. They argued that the notion should have applied from the onset of the regulations and that it should, in fact, be backdated. This means that the subscription broadcaster will have to pay the public broadcasters for having carried them in the past. To support their argument they referred to the example of Top TV marketing its services using the SABC must carry channels.

7.7.12 The attendees also sought clarity on what the Authority is doing to ensure that the broadcasters comply with Commissioning of South African content regulations.

## **7.8 LIMPOPO**

7.8.1 The attendees questioned whether more channels for the SABC will affect the amount paid for television licenses. They were worried about the possible increase in terms of the amount to be paid for television licenses. While community broadcasting service licensees wanted to know why consumers pay for SABC television licenses and not community radio.

7.8.2 Community radio broadcasters wanted to know how they will be affected by digital migration especially in terms of the equipment they will have to purchase to deliver the digital signal. Furthermore, they asked for clarity on where to send money for contributions to USAF. They enquired why community radio stations are not exempted from paying USAF.

7.8.3 Attendees also wanted to find out if the Authority is thinking of ceasing to issue special events licenses after dual illumination.

7.8.4 Attendees asked if it is within ICASA's mandate to monitor and regulate the platform within which YouTube operates.

7.8.5 Community radio stations showed interest in being carried by DSTV like Soweto TV and asked about the possibility of being carried on the DSTV bouquet.

## **7.9 FREE STATE**

7.9.1 There was a request directed to the Authority that it should license a regional radio station targeting a largely African youth market in their home languages. The attendees argued that other provinces within the Republic seem to have diversity when it comes to privately owned radio stations, yet the Free State Province only has Ofm which does not cater for indigenous languages in the Province.

7.9.2 The attendees were concerned that migration seems to be geared towards benefitting television broadcasters and has no immediate benefit for the citizens of the republic. The second concern was the migrating cost to the public like how much an ordinary citizen would be expected to pay to access digital television. They also argued that additional cost for set top boxes would not be in their interest.

7.9.3 The attendees urged the Authority to develop a digital television license framework since digital migration promises new platforms. They also argued that the Authority must open up the broadcast sector for competition through licensing new players. The consensus from the attendees was that digital migration process must be used to bring about new opportunities for historically disadvantaged individuals (HDIs) and not maintain the current status quo of big companies dominating the broadcast sector.

- 7.9.4 Attendees asked whether the new government subsidized set top boxes will be compatible with the set top boxes provided by subscription broadcasters.
- 7.9.5 The concern around advertising was how the Authority will regulate advertising in new services like internet protocol television (IPTV) and video on demand (VOD). The participants wanted to know whether advertising will be regulated in the same way as it is done currently or a different regulatory system will be considered to cover new services.
- 7.9.6 There were general community broadcast issues. Firstly, participants wanted to know the application process for a community broadcasting licence, both in radio and television. They questioned why the Authority issued a moratorium on community television licensing when some Provinces like the Free State do not have any community television. They argued that this moratorium should have been implemented once every Province has at least one community television license. A few community representatives that have successful community radio stations argued that they can operate successful community television stations.
- 7.9.7 Secondly, there was a discussion on who is or should be responsible for community broadcaster's annual general meetings (AGM). They questioned the role of the community in AGMs when there is a dispute and whether it is the Authority or the broadcaster's board responsibility for organizing the AGM. These questions were raised in lieu of the recurring challenges community broadcasters face in their AGMs. The argument raised is that the current community broadcasting regulatory framework does not give clear guidelines on AGMs. They suggested that incumbent board members should not be given a major role in organizing AGMs, for they have a vested interest of exerting influence to return to the board or putting preferred individuals they will be able to control.
- 7.9.8 Despite the existence of law that prohibits political office bearers from being active role players in community broadcasting, there was an argument that local

political representatives still assume major responsibilities at board or managerial level of community radio stations. The Authority's monitoring system was said to be weak because it has failed to detect such acts.

- 7.9.9 It was submitted that all relevant institutions concerned with the development of community broadcasters should work together to improve the governance and finances of community broadcasters. It was argued that some board members collude with stations managers to plunder the stations finances. This is aided by weak financial controls and lack of proper book keeping. They recommended that the Authority should review the Community broadcasting regulatory model, though there were no substantial details provided to support how the recommendation should be carried out.
- 7.9.10 Community broadcasters raised a concern that the Southern African Music Rights Organization (SAMRO) expects them to pay exorbitant royalty fees they cannot afford as they are not profit making broadcasters. They argued that the limited profit they make goes back to operational expenditure and thus they cannot afford to pay SAMRO, therefore they want to be exempted from paying music royalty fees.
- 7.9.11 Community broadcasters also contend that excessive spectrum fees charged by Sentech, the signal provider, are threatening their financial viability. They reason that Sentech should not charge them similar fees to commercial broadcasters. As a solution they recommended that the DoC directly subsidizes the community broadcasting spectrum fees or the Authority should regulate spectrum fees.
- 7.9.12 The attendees asked for clarity regarding ownership of the community radio stations as to who owns them. They also enquired about the tariffs of accreditation for sport in case of sporting events on a community radio. Furthermore they wanted to know how community broadcasting stations will be able to provide content to the receivers.



7.9.13 There was an argument that the DoC needed to conduct more consumer awareness education on how it empowers small, macro and medium sized enterprises (SMMEs) in the information and communications technology (ICT) environment. Community broadcasters also want the DoC to do more work in ensuring the sector is self-sustainable.

## 8. APPENDIX C: LIST OF SUBMISSIONS

*The Authority would like to thank the following organisations and individuals who made submissions:*

- AME (African Media Entertainment)
  - Cape TV
  - e.tv
  - FPB (Film and Publication Board)
  - Kagiso Media
  - Multichoice
  - M-Net
  - Mbetshu Thozamile: Independent submission
  - Mpumalanga Community Television
  - NAB (National Association of Broadcasters)
  - NAMEC (National Association of Manufacturers in Electronic Components)
  - On Demand TV
  - Puk FM
  - Rhodes University
  - Right to Know (R2K): Civil Society Group
  - SABC (South African Broadcasting Corporation)
  - SACF (South African Communication's Forum)
  - Sentech
  - SOS (Support Public Broadcasting)
  - Tshwane TV
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