

3.10 Commercial Funding

Commercial funding covers advertising and sponsorships. Similar to other jurisdictions, commercial revenue is a major source of revenue for the SABC as it accounts for 76% and 77% of the total revenue in 2005/6/7 respectively largely generated by its public service division comprising of fifteen radio and two television stations.

As the current financial situation can attest, although it has been a reliable source of funding for the SABC, it may no longer be a sustainable option for the future due to increased competition.

- 28. What should be the future considerations of this revenue stream?**
- 29. Should policy distinguish between public and commercial services divisions of the SABC in respect of this revenue stream?**
- 30. Should there be limitations on advertising on the broadcaster's public division and an increase in its funding by other avenues to ensure maximum fulfillment of its public service mandate?**
- 31. As part of reducing the SABC reliance on commercial, advertising quotas be introduced during different time-channels?**

4 Governance and Accountability

4.1 Composition of the Board

The Broadcasting Act outlines the SABC board as consisting of:

- (a) 12 non-executive members appointed by Parliament following a public participation process;
- (b) The Group Chief Executive Officer, the Chief Operations Officer or their equivalence, who are executive members of the board. The Act is, however, silent on who appoints the latter.

The legal stand-off between the Board and the Group Chief Executive during 2008 underlined the deficiency of this composition. In other words, although the Group Chief Executive is appointed by the Board, the lines of accountability are quite blurred as s/he subsequently wields the same amount of power as the Board that appointed him/her.

The Broadcasting Act accords the Board of the corporation with the responsibilities of controlling the affairs of the public broadcaster. Surely this responsibility was meant for the Board identified in s12 (a) and appointed in accordance with s13 of the Broadcasting Act. In South Africa, the Media Development and Diversity agency established by the MDDA Act 2002, and Independent Communication Authority Act (ICASA), 2000, provide classic examples of this model.

32. In view of the problems experienced at the SABC, should the definition of the Board of the SABC refer only to non-executive members identified in s12 (a)?

33. Will the relegation of the GCEO, CFO and COO to ex officio status provide clear accountability between the Board and the executive since the Board appoint them?

4.2 Appointing Procedures for the Board

Section 13 of the Broadcasting Act, provides that the twelve non-executive members of the Board must be appointed by the President on the advice of the National Assembly and that it should be in a manner ensuring public participation in the nomination process, transparency and openness.

34. Is this model effective enough in ensuring that the individuals identified through the process are experienced and skilled requisite for managing the affairs of the corporation?

35. If not, how should this model be revised to meet the objectives of section 13?

4.3 Performance Management System of the Board

While the Broadcasting Act requires the Board to perform certain functions at the corporation it does not put in place performance system to evaluate the Board in this regard. Neither is any entity assigned with the responsibility of ensuring that there is performance management system to measure the performance

of the Board. While the Minister is expected to perform oversight roles, this responsibility is not within his/her mandate as outlined in the Act.

36. Should there be a performance management system and how should it be implemented?

37. Taking into account the appointment procedures outlined in s13, and the need to guarantee the 'administrative independence' of the corporation as envisaged in the Act on one hand, and ensuring that the organization runs efficiently with timeous decision making process, who should be responsible for such management system?

4.4 Capacity of the Board

s13(4) provides for the requirements for skills and expertise that Board members should have, in order to ensure representativity of the broader South African society it is often inevitable that not all the individuals to sit on the SABC Board would have a broadcasting or related background, this often limits nominations to a particular sector of the country.

38. Is the number of Board members sufficient or superfluous, thus having a bearing on the speedy decision making environment?

39. Given the diverse profile of the Board, what sort of capacity mechanisms should be put in place to assist in decision- making? Can ad hoc advisory body comprising members of the public who have proven expertise in the fields of broadcasting and technology, broadcasting regulation, media law, business practice and finance to mention a few, who would then advise the Board be considered in this regard to assist?

40. How can such a body be managed if introduced?

4.5 The Role of the Minister

The SABC has a stringent regime of accountability as it has to account in terms of the PFMA (Public Finance Management Act), Companies Act, Articles of Association and the Broadcasting Act. The conflict that raged throughout 2008 to midway 2009 at the SABC seems to underline the inherent contradictions and/or incompatibilities in these documents.

The role of the Minister in respect of the public broadcaster is very minimal as it only relates to financial matters as contained in s18 of the Act. In its submission to the Minister, Freedom of Expression Institute (FXI) contends that this is tantamount to interference as it undermines the independence of the Public Broadcaster. Key to FXI is s13 (11) of the PFMA which confers in the Board the responsibilities of controlling the affairs of the Corporation. The SABC as a public broadcaster is a public institution whose finance is governed by provision of the PFMA. Understanding the relative uniqueness of the SABC in contrast to other public institutions, the PFMA equally assigns to the Minister certain oversight responsibilities as the Executive Authority.

41. Taking into account the provisions of the PFMA and understanding FXI's submission, what should the Minister's role in the public broadcaster be?

In dealing with this question, submissions should recall the stand-off between the Group Chief Executive and the Board in 2008 wherein because of this limited role, the Minister could not take any action on the matter as s/he is not the appointing authority. Equally Parliament was too distant to take immediate action.

42. In view of this, what should be the role of Parliament?

4.6 Role of the Regulator in respect of the Public Broadcaster

The ICASA Act 2000 confers in the regulator two sets of responsibilities: monitoring and enforcing compliance with the Charter and editorial code. These are in addition to general responsibilities associated with any regulator in any broadcasting environment relating to license conditions and content, etc.

Although the Broadcasting Act stipulates that the SABC has to comply with ICASA's Code of Conduct, ICASA has since delegated that legislated authority to the industry body. Section 54 (1) of the EC Act provides that the Authority must review existing regulations setting out a code of conduct for broadcasting service to adhere to but section 54(30) stipulates that the provisions of subsection 54(2) do not apply to broadcasting services licensee who is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a code of conduct enforced by that body by means of its own disciplinary mechanisms, provided such code of conduct and disciplinary mechanisms are acceptable to the Authority.

The Broadcasting Act, as amended makes provision for the submission of the SABC's Editorial Code but it is not clear to what extent does ICASA's jurisdiction extend to the contents of the Code. Furthermore, the role of ICASA does not extend to Corporate Governance issues leaving a vacuum on who should adjudicate on corporate governance issues, should it be the Parliament through the Minister or should that be a regulatory function bestowed on the regulator because of its independence by establishment.

43. Is the role of the regulator in respect of the public broadcaster adequate?

44. What additional or special roles should be accorded to the regulator to ensure that the public broadcaster is regulated in the public interest?

45. Has this delegated function of ICASA to an industry body further diluted its role as the regulator?

4.7 Public Participation

Public accountability of any public broadcaster is defined and evaluated on how it interacts with the members of the public. There are various ways in which public accountability of public broadcasters is measured, The SABC is required in terms of section (6) (5) (a) to formulate policies that will serve as a guide in fulfilling its public service mandate when making editorial and programming decisions. S(6) (6) of the Act requires the Board to ensure that there is public participation in the development of the policies in *subsection 5* by inviting and considering public comment on such draft policies and that regular inputs of public opinion is given due consideration. These policies are to form the bases on which its Editorial Code is premised, which has to be largely informed by the values enshrined in the Constitution of South Africa.

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| <p>46. Are the Editorial Policies reflective of the SABC's mandate and values enshrined in the Constitution?</p> <p>47. Is the process of developing the editorial policies responsive to the needs of the public? How can this process be improved?</p> |
| <p>48. How often should the editorial policy be changed?</p> <p>49. What other public accountability measures should be put in place to ensure effective and efficient public participation?</p> |

5 PART B: COMMUNITY BROADCASTING SERVICES

5.1 Background

The market shakeup and changes have similarly resonated in the community broadcasting sector, particularly community radio which has been a conspicuous phenomenon in the post 1994 era to address diversity and access to the media by historically disadvantaged groups in South Africa. Although over 150 licenses were issued by ICASA since 1995, the high rate of closures in the late 1990s underlined the challenges faced by the sector both from a policy and operational point of view. Central to these challenges is the lack of co-operation within station's management structures which results in the erosion of community participation and non-compliance to the principles of governance. This often leads to questions around the policy framework which governs the community broadcasting sector, whether:

- The objective of existence of community broadcasting is being met in lieu of their public service broadcasting mandate?
- The funding model as outlined in the legislative and policy framework is realistic in view of competition, convergence and digital migration for them to pursue public service mandate?

These challenges require a responsive broadcasting policy approach to revise the country's vision for public service broadcasting by ensuring that the public interest ethos fundamental to South Africa's broadcasting policies is preserved, particularly at community level.

s34(4) of the Broadcasting Act (1999) prescribes a public service mandate to be carried by community broadcasting services, though relegated to community level. Despite some challenges highlighted above, community broadcasting has demonstrated its potential to contribute towards addressing development and public interest mandates relating to access both in terms of ownership and information, diversity, community identity and cohesion and empowerment. The need to reposition community broadcasting to this technological development is critical for it to expand its community broadcasting mandates.

This policy process proposes the establishment of the Community Broadcasting Charter encompassing sections 3 (16, 17, 18, 19) and 50 of the ECA. The Charter is in recognition of community broadcasting as an ideal means of fostering freedom of expression and information, the development of culture and active participation in community life enshrined in the Constitution of South Africa.

This initiative is in recognition of the fundamental role that community broadcasting plays in the preservation of democracy, social cohesion and the vehicle to drive economic development in communities.

The Charter shall have the following key elements:

- Defining Community Broadcasters;
- The Licensing Process for Community Broadcasters;
- Ownership and Management Structures;

- Funding and Finance;
- Staffing and Training;
- Programming;
- Community and Audience Relations.

ICASA as the regulatory body is to enforce and monitor the community broadcasting sector's compliance to the Charter.

50. Would you support such a charter?

51. How can the regulator be capacitated to monitor compliance with the charter and take appropriate action where possible?

5.2 Defining Community Broadcasting

Section 1 of the Broadcasting Act, No. 4 of 1999, read in conjunction with section 1 of the EC Act defines community broadcasting as a service which is fully controlled by a non-profit entity and carried on for non-profitable purposes, serves a particular community, encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service, and may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned.

52. Is the definition as provided for in the Broadcasting Act and EC Act sufficient?

5.3 Objectives of Community Broadcasting

It is envisioned that the objectives of Community Broadcasting Service should be based on these key principles that they are governed by:

- **Public access:** this is to ensure that members of the community served have access to the airwaves and are granted opportunities to experience broadcasting first hand;
- **Local origination:** community broadcasters have an obligation to reflect the communities which they serve in broadcast content. It has to be locally originated and produced;
- **Community Participation:** promotion of community participation in the production and management of communication systems and in the
- **Ownership and control of the means of communication:** participation in the selection and provision of programmes through the establishment of programming councils/committees/representative of different sectors within the community served; and

- **Non-profit:** it has to be fully controlled by a non profit entity and carried on for non-profitable purposes. The Authority shall, in accordance with section 32(5) of the Broadcasting Act, audit the financial records of all community television services.

53. What other elements should be included in the charter and how should each element be addressed?

54. How can public service broadcasting ensure that the above objectives are met?

5.4 News editorial policy

Section 2(s)(ii) of the EC Act obliges the Authority to ensure that, when viewed collectively, broadcasters must provide for regular news services, actuality programmes on matters of public interest, programmes on political issues of interest, and programmes on matters of international, national, regional and local significance. Community broadcasters will have to indicate how they intend to ensure that the news broadcasts is reflective to a large extent the community served.

Section 32(4) of the Broadcasting Act states that the programming provided by a community broadcasting service must reflect the needs of the people in the community which must include amongst others cultural, religious, language and geographic needs. Community television broadcasting services will be expected to broadcast programming that supports and promotes sustainable development, participatory democracy and human rights, as well as, the educational objectives, information needs, language, culture and entertainment interests of participating groups such as women, youth, civic and sport interest groups.

55. How can this be tightened and further more ensuring effective monitoring on the part of the regulator?

5.5 Local content policy

Community broadcasters need to indicate how they intend to comply with the South African Content Quotas. More than anything how they intend to tap into the talent in the communities they serve. It is unfortunate that the regulatory framework for SA Content quotas does not further make the distinction to accommodate talent in the various communities that the community broadcasters are based in.

5.6 Programming Policy

section 32(4) of the Broadcasting Act states that the programming provided by a community broadcasting service must reflect the needs of the people in the community which must include amongst others cultural, religious, language and geographic needs and must:

- provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by the broadcasting service covering the same area;
- be informational, educational and entertaining;
- focus on the provision of programmes that highlight grassroots community issues, including, but not limited to, developmental issues, health care, basic information and general education, environmental affairs, local and international, and the reflection of local culture. Trends all over the world indicate that programme diversity is essential for community broadcasters to thrive. Their ability to complement and not duplicate already existing broadcasting services is very important;
- Promote the development of a sense of common purpose with democracy and improve quality of life.

5.7 Governance of the Community broadcasting Services

5.7.1 Ownership and Management Structures

The Broadcasting Act provides for clear guidelines as to the ownership and management structures which community stations should operate states that stations should be owned and controlled by not-for-profit organisations, s32 (3) of the *Broadcasting Act 4* of 1999 makes provisions for the governance of the community broadcasting service license. S32 (ss3) of the *Broadcasting Act 4* of 1999 provides that community broadcasting service licensee , must be managed and controlled by a board which must be democratically elected from members of the community in the licensed geographic area, However, the Broadcasting Act does not make provision for the nomination process and qualifying criteria of the Board of the community broadcasting licensee as it does in the composition of the Board of the public service broadcasting licensee as provided in s13 of the *Broadcasting Act*.

5.7.2 Appointment Procedure

Section 32 of the Broadcasting Act makes provision for the inclusion of the community in the nomination and composition of the board of the community broadcasting services. The obligation to inform the public about board participation rests with the community broadcasting license holder. The Community broadcasting licensees should be accountable to the public by informing the public about the activities vital to its sustainability. It should be a statutory obligation of the community sound broadcasting licensee to inform the community about its role in the direction of the community sound broadcasting license.

56. What mechanisms should be put in place to improve Board appointment at community broadcasting services?

5.7.3 Terms for the Board

57. Should policy specify the maximum terms for the appointment of Boards serving on community broadcasting services?

58. What should be the qualifying criteria for Board members at community level of broadcasting?

5.7.4 The Licensing Process for Community Broadcasters

The EC Act prescribes the procedure which ICASA is bound to follow when allocating licenses under this Act, in terms of section 5, broadcasting services that require a class license amongst others include community broadcasters which may upon registration process in the prescribed manner by ICASA be granted a class license for community broadcasting services. This has led to many community stations being licensed without a plan on how they will be sustained. Currently the majority of the stations relies on government support either via the MDDA and/or direct through the Department of Communications through its community broadcasting support programme. It has become clear that the funds available cannot sustain the sector especially if the number continues to increase at the current levels.

The EC Act does not distinguish between the geographic and communities of interest license a distinction which was provided for in the IBA Act. The IBA Act provided for two types of community broadcasting services, geographic license and community of interest license, wherein the community served by a geographic broadcasting service is geographically founded. The service caters to persons or a community whose communality is determined principally by their residing in a particular geographic area.

59. To what degree has the new licensing regime ushered by the ECA maintained or diluted community broadcasting distinctions provided for in the now repealed IBA Act?

60. In view of sustainability problems for the sector, are the new license procedures viable for sustaining community broadcasting services in South Africa?

5.7.5 Funding

Community Broadcasting Services is also characterized by a hybrid funding model in the same manner as the public broadcaster, *Section 1 of the Broadcasting Act, states that community broadcasting may be funded by donations, grants, sponsorships or advertising or membership fees or by any combination of the aforementioned.* On the one hand, the mixed funding model ensures that community broadcasting licensees have multiple sources of funding. On the other hand, mixed avenues of funding may impede with the objectives of the community broadcasting.

In terms of the regulatory framework by ICASA, for community broadcasting services there are no restrictions or caps on the number of minutes per hour for advertising which is not the case for community television broadcasting service which has limitations. ICASA in its Position Paper for Community Television Broadcasting services decided to place limitations advertising to an average of 10 minutes per hour measured annually, with a maximum of 12 minutes allowed in any hour.⁵This has over the years proven to be an unrealistic source of revenue for community broadcasting services especially those located in remote rural areas, often finding it difficult to provide programming that fulfills the public interest remit and opting for commercially oriented programming to attract advertising market share. Digital Migration and beyond exacerbates the challenges as the audience market share will further fragment due to consumer choice brought on by a multi channel environment. It is important to re-visit advertising as a revenue source for community broadcasters.

Despite the challenges that the mixed funding model has presented, community broadcasters have demonstrated the potential to contribute towards addressing development and public interest mandates relating to access in terms of ownership and information, diversity, community identity and cohesion and empowerment especially in the rural areas. They fulfill the public interest mandate to communities especially those who are faced with geographic discrimination throughout the nine provinces in South Africa.

The establishment of the regulatory framework and guidelines for funding is essential. Such guidelines will be the benchmark through which the fulfillment of the goals of the community broadcasting can be measured. In the absence of the regulatory framework there would be conflict of interests between community goals and the intentions of the funders. It will also be difficult to hold the community broadcasting service accountable.

61. How should community broadcasting services be funded?

⁵ Community Television Broadcasting: Position Paper

6 PART C: COMMERCIAL BROADCASTING SERVICES:**6.1 Background**

The role of commercial broadcasting service in public service broadcasting can be divided in three parts, namely; Carrying of local Content in accordance with the quotas, must carry obligations and Funding through levies in respect of content production and contribution to Universal Service and Access Fund (USAF) as provided for in the ECA.

Must carry refers to an obligation often imposed on subscription television services to carry public channels of the public broadcasters. It is impossible when reviewing the funding model of the SABC not to revisit the must-carry obligations. Section 60 (3) of the Electronic Communications Act provides that ICASA must prescribe regulations regarding the extent to which subscription broadcast services must carry, subject to commercially negotiable terms, the television programmes provided by a public broadcast service licensee. The ECA, however, does not specify who should benefit from this commercial transaction of must-carry.

Appreciating the fact that the primary intention for must-carry regulations is universal access to programming that is deemed to be in the public interest irrespective of the platform, it is thus important that the matter is approached with the redefinition and re-alignment of the concept of public service broadcasting.

These regulations were drafted in an analogue environment wherein the interpretation of programmes was such that the entire television channels of the public broadcaster were to be carried by subscription licensee, even the commercial channels with which they have to gain a competitive edge. Unlike in a multi-channel environment wherein it would be the public service channels which are fully funded by government and television license fees and not funded through advertising that would be subject to the must-carry provisions. It is important not to lose sight of who the primary beneficiaries are of the must-carry regulations.

Though the original intention of must carry was to enhance access to public broadcasting services, two things have become clear: Content is expensive to produce and that on their own subscription broadcasters benefit commercially for carrying public channels. While the ECA provides that must carry should be applied subject to commercially agreed terms, it does not specify who should receive such payment.

**62. In view of the above, should must-carry be another revenue stream for public broadcasting?
If so, how should it be implemented to give effect to this objective?**

63. Should the must-carry regulations be revisited to take into consideration the looming re-organisation of the public broadcaster brought on by the intended review of the Broadcasting Act and Digital Migration?

7 PART D: SIGNAL DISTRIBUTION (Sentech)

7.1 Background

Signal distribution is the backbone of every broadcasting industry. Although competition is promoted in South Africa, the massive investment of Government in Sentech as the signal distributor should be highlighted. The company has over 220 high-sites scattered throughout the country which will take years for any company to replicate, state of the art technological training facility, in the last few years played a crucial part in assisting a number of African countries on signal distribution and planning and continued to assist the fledgling community broadcasting sector with preparatory work around signal distribution and coverage maps in preparation for the ICASA licensing process as obligated by its conditions as a common carrier signal distribution licensee.

The above, without doubt, demonstrates the value of Sentech as a public entity and its strategic nature in terms of realizing socio-economic development objectives⁶. The 2005 July Cabinet Lekgotla decided that Sentech is a strategic national asset, which has important infrastructure and expertise. It will be unfortunate if this infrastructure is not used to the maximum benefit to achieve the country's developmental goals. For this to happen, policy relating to Sentech objectives and public service broadcasting mandate should provide a clear direction that is consistent with the 2005 Cabinet Lekgotla's decision. Consistent with this policy is a funding model that ensures that the company is sustainable for it to discharge its public service broadcasting mandate relating to its core business⁷.

Current legislation has proved to be inadequate in this regard. Although Sentech Act (1996) attempted to clarify this role, the amendment to s5⁸ by the ECA 2005, completely diluted those roles and the fundamental intentions of introducing a common carrier status in South Africa⁹. On its own, the Act only succeeded in separating Sentech from the SABC and converting it into a public company without succinctly outlining its mandate and how that mandate should be funded. The dilution of its common carrier status with the amendment of s5 of Sentech Act has not only placed the entity in a precarious position, it has created a lot of uncertainty regarding the entity's future and its efficient use as a strategic asset identified by the 2005 Cabinet Lekgotla.

⁶ See the Minister's 25 May 2006 Budget Speech

⁷ Sentech has been established primarily as a broadcasting signal distributor. Its public service broadcasting mandate is within this context.

⁸ As in the Sentech Act, s5 dealt with the object and business of the company as a common carrier licensee issued in terms of s33 of the IBA Act. In the ECA, this section has been amended to read as follows: "The main object and business of the company shall be to provide electronic communications services and electronic communications network services in accordance with the Electronic Communications Act."

⁹ As mandated by s37(iii) of the IBA Act, a common carrier is obliged to provide signal distribution to broadcasting licensees upon their request on an equitable, reasonable, non-preferential and non-discriminatory basis. This is an obligation that not many commercial signal distributors may want to carry as does not allow for cherry picking or cream-skimming.

The amendment to s5 of the Sentech Act means that a common carrier status is opened up for competition. While indeed pro-competition policies are advanced and promoted by the Republic's policies including ICTs, economic lessons have demonstrated that market approaches do not always provide solutions to the developmental needs of the country. The 2005 July Cabinet decision, has adequately demonstrated that even in this era of heightened competition and technological development manifested through convergence and digital migration, government should continue to have control over certain assets that are critical to its developmental agenda. These strategic assets should not only assist in achieving developmental goals as a developmental state. They should also be alternative to the country's economy should market failures occur. Lessons from the telecommunications sector have adequately demonstrated that it will be perilous for government to solely rely on the market for fulfilling its development agenda. The role of Sentech in Africa highlighted in preceding paragraphs underlines the importance of this entity. Together with SAPO, SABC and Infracore, Sentech can be used as a vehicle for South Africa to forge relationship with its African counterparts on ICT matters as lessons have already demonstrated.

64. How should Sentech's mandate be revised to reflect the developmental goals of the country, including but not limited to broadcasting digital migration and 2010 FIFA World Cup?

65. In view of the need to ensure the viability of Sentech and in recognition of 2005 July Cabinet Lekgotla's decision, should common carrier status be reinstated and ring-fenced to carry all the public broadcasting services and community broadcasting licences?

66. To enable it to sustain its signal distribution mandate, how should Sentech be funded?

67. What other critical issues should be considered in respect of Sentech?

8 CONCLUSION

“...broadcasting is too important to be left to the market. It has unrivalled influence on our cultural identity, our way of understanding ourselves and the world in which we live and our ability to participate effectively in a democratic society” (Foster et al, :152).

Fifteen years into democracy and amid all these stupendous changes taking shape in the broader ICT industry, this discussion paper provides an opportunity for all South Africans to shape their own broadcasting in the way that it can serve their needs and contribute to socio-economic development. The paper may have inadvertently omitted some critical issues that are considered important and relevant to public service broadcasting. Therefore, submissions are encouraged to include those issues for consideration. As per the late Minister, Dr. Matsepe-Casaburri’s intention during her 2008 Budget Vote Speech, this has to be comprehensive a process that will shape broadcasting that is best suited for our democracy.

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