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**CONTENTS • INHOUD**

*No.*

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No.      Gazette  
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**GOVERNMENT NOTICE**

**Communications, Department of**

*Government Notice*

755 Electronic Communications Act (36/2005): Notice inviting comments on Public Service Broadcasting Discussion  
Paper to amend the Broadcasting Act, 1999..... 3 32420

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## GOVERNMENT NOTICE

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### DEPARTMENT OF COMMUNICATIONS

No. 755

20 July 2009

#### MINISTER OF COMMUNICATIONS ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)

#### NOTICE INVITING COMMENTS ON PUBLIC SERVICE BROADCASTING DISCUSSION PAPER TO AMEND THE BROADCASTING ACT, 1999 (AS AMENDED).

The Department has gazette the Public Service Broadcasting Discussion Document as a process towards the amendment of the Broadcasting Act , in terms of section 3(1) of the Electronic Communications Act, 2005 (Act No. 36 of 2005).

Interested persons are invited to furnish comments on the Public Broadcasting Service Discussion Document , within 21 days of the date of publication of this notice at any of the following addresses:

For attention: Dr. Mashilo Boloka  
The Director, Broadcasting Policy  
Department of Communications;

post to: Private Bag X 860  
Pretoria  
0001;

or deliver to: First Floor, Block A3  
iParioli Office Park  
399 Duncan Street  
Hatfield;

or fax to: (012) 427 8059

or e-mail to: [mashilob@doc.gov.za](mailto:mashilob@doc.gov.za)

The closing date is 20<sup>th</sup> August 2009 (Earlier submissions are encouraged to expedite the analysis). Please note that comments received after the closing date may be disregarded.

Dr. Boloka can be reached at tel. (012) 427 8055 for any enquiries.



**the doc**

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Department:  
Communications  
**REPUBLIC OF SOUTH AFRICA**

**PUBLIC SERVICE BROADCASTING: REPOSITIONING  
BROADCASTING FOR NATIONAL DEVELOPMENT  
DISCUSSION PAPER  
JULY 2009**

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## Table of Contents

<b>LIST OF ACRONYMS</b> .....	<b>iv</b>
<b>GLOSSARY OF TERMS</b> .....	<b>v</b>
<b>FOREWORD BY THE MINISTER</b> .....	<b>vi</b>
<b>AIMS OF DISCUSSION DOCUMENT</b> .....	<b>vii</b>
<b>1. INTRODUCTION</b> .....	<b>1</b>
<b>1.1. Background</b>	<b>1</b>
<b>2. PUBLIC SERVICE BROADCASTING</b> .....	<b>4</b>
<b>2.1. Defining Public Service Broadcasting</b>	<b>4</b>
<b>2.2. General Public Service Obligations</b>	<b>4</b>
<b>2.3. The Benefits of Public Service Broadcasting Policy to South Africa</b>	<b>4</b>
<b>3. PART A: PUBLIC SERVICE BROADCASTING SERVICES</b> .....	<b>6</b>
<b>3.1. The Charter for the South African Broadcasting Corporation</b>	<b>6</b>
<b>3.2. Public Interest Mandate</b>	<b>6</b>
<b>3.3. Organisation</b>	<b>7</b>
<b>3.4. Funding Framework</b>	<b>8</b>
<b>3.5. Public Funding</b>	<b>10</b>
<b>3.6. Licence Fees</b>	<b>10</b>
<b>3.7. Collection System and Administration</b>	<b>11</b>
<b>3.8. Economic Constraints: Affordability</b>	<b>12</b>
<b>3.9. Government Funding</b>	<b>12</b>
<b>3.10. Commercial Funding</b>	<b>13</b>
<b>4. Governance and Accountability</b> .....	<b>14</b>
<b>4.1. Composition of the Board</b>	<b>14</b>
<b>4.2. Appointing Procedures for the Board</b>	<b>15</b>
<b>4.3. Performance Management System of the Board</b>	<b>15</b>
<b>4.4. Capacity of the Board</b>	<b>15</b>
<b>4.5. The Role of the Minister</b>	<b>16</b>
<b>4.6. Role of the Regulator in respect of the Public Broadcaster</b>	<b>16</b>
<b>4.7. Public Participation</b>	<b>17</b>

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<b>5. PART B: COMMUNITY BROADCASTING SERVICES.....</b>	<b>18</b>
5.1. Background	18
5.2. Defining Community Broadcasting	20
5.3. Objectives of Community Broadcasting	20
5.4. News editorial policy	20
5.5. Local content policy	21
5.6. Programming Policy	21
5.7. Governance of the Community broadcasting Services	22
5.7.1. Ownership and Management Structures	22
5.7.2. Appointment Procedure	22
5.7.3. Terms for the Board	22
5.7.4. The Licensing Process for Community Broadcasters	23
5.7.5. Funding	23
<b>6. PART C: COMMERCIAL BROADCASTING SERVICES:.....</b>	<b>24</b>
6.1. Background	24
<b>7. PART D: SIGNAL DISTRIBUTION (Sentech).....</b>	<b>26</b>
7.1. Background	27
<b>8. CONCLUSION .....</b>	<b>29</b>

**LIST OF ACRONYMS**

<b>BBC</b>	: British Broadcasting Corporation
<b>CFO</b>	: Chief Financial Officer
<b>COO</b>	: Chief Operating Officer
<b>DOC</b>	: Department of Communications
<b>DTT</b>	: Digital Terrestrial Transmission
<b>ECA</b>	: Electronic Communications Act
<b>FXI</b>	: Freedom of Expression Institute
<b>GCEO</b>	: Group Chief Executive Officer
<b>IBA</b>	: Independent Broadcasting Authority
<b>ICASA</b>	: Independent Communications Authority of South Africa
<b>KBS</b>	: Korean Broadcasting Services
<b>LSMs</b>	: Living Standards Measures
<b>MDDA</b>	: Media Development and Diversity Agency
<b>PFMA</b>	: Public Finance Management Act
<b>SABC</b>	: South African Broadcasting Corporation
<b>SAPO</b>	: South African Post Office
<b>Portfolio Committee</b>	: Portfolio Committee of Communications



**GLOSSARY OF TERMS**

<b>Act</b>	: Broadcasting Act
<b>Board</b>	: SABC Board as defined in the Broadcasting Act
<b>Corporation</b>	: South African Broadcasting Corporation
<b>Group Chief Executive Officer:</b>	Group Chief Executive Officer of the Corporation
<b>Regulator :</b>	Independent Communications Authority of South Africa
<b>Minister</b>	: Minister of Communications

**FOREWORD BY THE MINISTER**

It has been over ten years since major legislative changes occurred in the South African broadcasting system. While indeed some legislative amendments occurred since, they were quite often minor as they sought to address specific issues. As some of us can vividly remember, the existing legislation was to remove the public broadcaster from government control and, this objective has been achieved. The rapid technological developments manifested through convergence and broadcasting digital migration and the management and financial crisis besieging the SABC as a public broadcaster have made it evidently clear that legislative review is necessary, therefore, inevitable. Like I said in my maiden Budget Vote speech earlier in June, a new vision and mandate for public broadcasting services in line with South Africa's developmental agenda is required, and the governance of the South African Broadcasting Corporation (SABC) needs to be strengthened. It serves no purpose to apportion blame on any institution or individuals.

We should take wisdom from the Japanese's *Kaizen* philosophy that when something is broken, it is not a crisis, but we should view this as an opportunity to fix it. This discussion paper provides all of us, as South Africans, with an opportunity, to thoroughly put the issues of the public broadcaster on the agenda so as to collectively build and ensure that we have a public broadcaster that is best suited for our democracy. This is a vision that started with my predecessor and comrade, Dr. Ivy Matsepe-Casaburri and we should together continue on this path until the vision is ultimately realised. Our next phase is to ensure that the public broadcaster is well positioned and sustainable to be able to fulfill its mandate in a developmental state. This can only happen if sound management and financial systems are in place to ensure that both the management and the Board are accountable to the people of South Africa regarding the SABC's activities and financial expenditure.

While indeed the public broadcaster is expected to play a leading role in development, it cannot do so alone, because development is collective responsibility that the country's entire broadcasting system has to carry. It is on the basis that the Discussion paper contains matters relating to community broadcasting services which have to perform this role at community level, and Sentech as the back bone of any broadcasting system ensuring that broadcasting signal, both radio and television, is ubiquitously available throughout the corners of the Republic. Commercial broadcasting services are included within the context of a major supporting role that they have to perform.

Admittedly, the Discussion paper is quite long with explanatory texts accompanied by over 70 questions. This underlines the magnitude and the complexity of issues at hand which can only be addressed now and here. Every view or input made in this regard will be acknowledged and taken seriously, because this is the foundation on which our vibrant democracy is built.

**General (Retired) Sphiwe Nyanda**  
**Minister**

## AIMS OF DISCUSSION DOCUMENT

During her 2008 Budget Vote speech, the Minister of Communications, Dr Ivy Matsepe-Casaburri said:

*On SABC, there has been a national debate about our public broadcaster as a result of the views that emerged out of the Portfolio Committee's hearings. A very positive outcome of this has been a national focus on what our national broadcaster should be; what it should do to meet the needs of all and not some and how it should be governed. The diversity of views across a wide range of factors, including appointment processes and internal management effectiveness, its content, relevance etc. have been expressed. It is evident that both the Executive and Parliament will have to review the legislation and appointing processes to ascertain whether this legislation, drawn up at a particular historical time, is relevant for our current historical conjuncture. The powers given to the appointing authority, the processes of appointing and removing board members, the Public Broadcaster's Charter, and the role of the executive and/or Parliament, clearly need reviewing, without sacrificing the broadcaster's independence but clarifying the nature, content and form of that independence.*

In fulfilling its mandate of developing an overarching policy framework for the broadcasting industry, the Department of Communication ('DOC') is embarking on a policy process that is aimed at developing a comprehensive approach to the policy framework for public service broadcasting in South Africa.

The primary purpose of this Discussion Document is to give all the stakeholders an opportunity to inform the process. It is envisaged that the Discussion Document will generate and solicit relevant research as well as a wide range of opinions and comments to inform the policy process and the culmination of this process would be the publication of a Public Service Broadcasting Bill to eventually repeal the Broadcasting Act.

All interested parties are invited to respond to these questions in written submissions, where possible, follow-up discussions will be held on the contents of the submissions with relevant parties. The Discussion Document is structured in the form of questions supported by explanatory and contextual discussions. The Discussion Document is divided into four (4) Parts;

PART A: Public Broadcasting Services

PART B: Community Broadcasting Services

PART C: Commercial Broadcasting services

PART D: Signal Distribution Services

**Contact Information**

All inquiries related to this discussion paper can be addressed to Dr. Mashilo Boloka Tel; 012 427 8055 or mashilob@doc.gov.za

**Submissions**

The closing date of submission is 20<sup>th</sup> August 2009

**Note: Earlier submissions are encouraged in order to expedite the process.**

Written submissions can be made to the attention of:

**Dr. Mashilo Boloka** or alternately posted to:

**Block A3**

**399 iParioli Office Park**

**Duncan Street**

**Hatfield**

**Pretoria**

**Email: mashilob@doc.gov.za**

## 1. INTRODUCTION

### 1.1. Background

The policy framework ushered by both the Independent Broadcasting Authority Act (IBA) in 1993 and the *White Paper on Broadcasting* subsequent to it in 1999 was a turning point in the ecology of South African broadcasting services. Not only did it transform the public broadcaster from being a government mouth-piece, it eventually brought competition through the unbundling of the SABC by disposing some of its stations to private entities. It further provided new opportunities for the licensing of new entrants both commercial and non-profit oriented community radio stations.

Although these changes have realised the vision of the *IBA Act* and *White Paper on Broadcasting* by enhancing access to and diversity of broadcasting services, they have strangled the dominant power long held by the SABC's radio and television services both at the level of audience and advertising. Although the SABC still remains strong, its audience base is gradually on the decline as is the case with other public broadcasters globally.

In addition to a competitive landscape outlined briefly above, the SABC like any other broadcaster throughout the world exist in an environment rapidly transformed by convergence of technologies and digital migration or the movement of broadcasting systems from analogue to digital. This phenomenon is inevitably being experienced globally. Consistent with world changes, South Africa has made a commitment to start the process of switching off analogue signal with effective from 1 November 2008. The transition from analogue to digital broadcasting services will see a further introduction of additional licences on the broadcasting market. Although this will further add to content diversity and competition to the market, it is expected to inflict further market loss on the public broadcaster in the country.

The changing broadcasting landscape brought by competition, convergence and digital migration, as manifestation of technological development, have become inevitable trends around which broadcasting evolves. For many broadcasting pundits throughout the world, these changes have presented huge challenges regarding the provision of public service by public broadcasters. Throughout the world, these changes have posited questions relating to the future of and the need for public service broadcasting whether it should continue to be the sole responsibility of the public broadcaster. These questions are being asked amid the management and financial crisis besieging the SABC.

Elsewhere, the growing dominance of market approaches in the provision of broadcasting services, including public broadcasting services have raised concerns about the rapid decline in public service broadcasting ethos. With regard to the public broadcaster, these approaches have fuelled concerns for

the justification for public funding. It has always been the Department's view that the issue of the public broadcaster should not be dealt with in piece-meal, but holistically to ensure that South Africa has a public broadcaster that is best suited to our emerging democracy. To this end, the fundamental questions should and continue to be:

- What is the new mandate of the public broadcaster?
- How should this mandate be funded?
- What governance structure should be put in place to ensure public accountability?
- What consistent and transparent procedures should be followed to put the governance structure in place?
- What reporting mechanisms are required to ensure public confidence?

The last few years have seen major reviews for public broadcasting systems taking place in countries such as the UK, Canada, Korea and Australia to deal with the challenges above. In South Africa these issues were expected to be dealt with after the enactment of the Electronic Communications Act ('EC Act') as per the SABC and other industry players' submissions during the EC Act deliberations that it should be dealt with separately. As a result while the larger part of the Broadcasting Act was repealed and carried over into the ECA, chapter IV relating to Public Broadcasting Service and the Charter of the Corporation remained in its entirety.

This discussion paper therefore provides an opportunity for all South Africans to engage in these matters so as to shape the future of public broadcasting in South Africa to serve their needs. While the discussion paper attempts to address the above issues, submissions are welcome on any other issue that inadvertently omitted, but may be relevant to effective functioning of public service broadcasting in South Africa.

The market shakeup and changes outlined above have similarly resonated in the community broadcasting sector, particularly community radio which has been a conspicuous phenomenon in the post-apartheid era to address diversity and access to the media by historically disadvantaged groups. Although licences continue to be issued in this sector, its vulnerability remains evident. This unfortunately occurs despite strong government support and the establishment of the Media Development and Diversity Agency (MDDA). Central to these challenges continue to be the ongoing bickering between the boards and the station's management presumably due to the lack of policy clarity regarding their roles, increasing dearth of community participation at the stations and accountability measures.

The issue of public service broadcasting cannot be adequately dealt with without signal distribution as a backbone for any broadcasting environment. In South Africa; this is largely provided by Sentech as a common carrier obligated to provide broadcasting signal distribution to broadcasting licensees upon request on an equitable, reasonable, non-preferential and non-discriminatory basis subject to its technological capacity to do so. Despite this common carrier status being diluted by the ECA, Sentech is

still obligated to carry broadcasting service licences based on the principles outlined above as a public entity.

In view of these changes highlighted above, a responsive policy is required to reposition the country's broadcasting services not only to these challenges, but more importantly to ensure that in responding to these changes, the public interest ethos fundamental to South Africa's broadcasting policies are not withered nor diluted. It is based on this fundamental premise that public views are sought to inform public service broadcasting policy. The concept of public service broadcasting is premised on the idea that free market will not adequately serve public goods in relation to broadcasting services both in terms of reception and quality.

## 2. PUBLIC SERVICE BROADCASTING

### 2.1. Defining Public Service Broadcasting

Within the context of this Discussion Document, public service broadcasting can be defined as a *service that is rendered by any broadcasting service licensee to the public in pursuance of national goals relating to democracy, culture and development.*

Although public service broadcasting is applied in many countries, its scope, nature the manner in which it is applied differs as it is rooted in cultural and social objectives that broadcasting institutions have to serve in the societies in which they are located. It further overcomes the short-term and unpredictable demands of elite consumers by focusing on the national interest. To this end, public service model advocates for state support for broadcasting services in pursuance of public service goals based on the following principles:

- Accountability and responsibility;
- Diversity and choice;
- Contribution to national identity and social cohesion;
- Development.

### 2.2. General Public Service Obligations

Proponents<sup>1</sup> of public service broadcasting outline the public service obligations as follows:

- Sustaining, defending national culture and cultural diversity
- Fostering democratic process
- Enhancing social, political and cultural cohesion

### 2.3. The Benefits of Public Service Broadcasting Policy to South Africa

- Consistent with the Digital Migration policy, public service broadcasting policy realigns broadcasting system to the developmental goals of the country;
- It places development at the core of broadcasting services, thus underlining its alignment to South Africa as a development state;
- It places public service not only as a responsibility of the public broadcaster, but all the tiers of broadcasting system, including signal distributors;

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<sup>1</sup> See Karol Jakubowicz, *Public service broadcasting: A new beginning, or the beginning of the end?* [www.knowledgepolitics.org.za](http://www.knowledgepolitics.org.za).



- It designs a sustainable funding model for public service broadcasting mandates particularly for the public broadcaster as the leader of public service in a broadcasting environment.

Even in this era of rapid technological development and heightened competition, the broadcasting system should continue to serve the public interest and assist the country in its developmental paths. Thus sustaining, defending national culture and cultural diversity, fostering democratic process enhancing social, political and cultural cohesion, independence, universality and distinctiveness should continue to be the pillars on which South Africa's public service broadcasting system is built.

Policy making should thus no longer be focused only on institutional establishments and their operations, per se, but also the service that an institution is established to perform and thereafter the institutional alignment of that organisation and its funding model in pursuance of that service.

Redefining public service broadcasting should be in a manner that moves beyond the institutionalisation of the services and draws a distinction between *public service broadcasting* and *public broadcasting services*. In view of this, public service broadcasting can no longer be the sole responsibility of the public broadcaster, though it is expected to be a leader in this regard. It is on this basis that this Discussion Document contains sections dealing with other tiers of broadcasting systems in South Africa.

### 3. PART A: PUBLIC SERVICE BROADCASTING SERVICES

#### 3.1. The Charter for the South African Broadcasting Corporation

#### 3.2. Public Interest Mandate

The South African Broadcasting Corporation ('SABC') is currently the only provider of public broadcasting services in South Africa. The democratic dispensation post-1994 saw the transformation of the SABC from a state controlled broadcasting service to a public broadcasting service. This transformation process was premised on redefining the role of the public broadcaster and aligning it to support the democratic processes already underway.

This endeavor was intended to ensure the establishment of a public broadcaster that was truly reflective of the political, social and economic climate of the country and to serve as a pillar for the regeneration of the South African society.

The Broadcasting Act (1999) provided for the re-licensing of the SABC to reflect and affirm its status as a public broadcasting service. Section (6) (1) of the Act, provides for the SABC Charter wherein its mandate was to be derived. It set the tone and outlined the objectives of the SABC, as a public broadcaster. It has been more than a decade since the establishment and implementation of the SABC Charter.

Although the Broadcasting Act has seen over three amendments processes, the amendments are quite minor as they addressed specific issues than the Charter in its entirety. This Discussion paper seeks to re-visit the Charter and analyse it within the broader context of the developments that have been gradually reshaping the broadcasting industry as outlined in the preceding sections. The crisis facing the SABC seems to suggest that the existing legislative and policy framework has been out-paced by the evolving broadcasting landscape due to technological advancements and the socio-economic climate changes.

Worldwide, Charters are often used as policy documents to re-position public broadcasters for different historical epochs. In this regard, Charters should have a lifespan, its term should be stipulated and the procedure for review clearly outlined. The jurisdictional implications on who should adjudicate the process should be clarified as well. In South Africa, the current legislation makes no provision for the continuous review of the Charter with clear timelines to ensure relevance to industry developments.

Proponents of public service broadcasting argue that in the changing broadcasting landscape the mandate of the public broadcaster can no longer be confined to just the provision of broadcast content that informs, educates and entertains. They are concerned with the relevance of the traditional obligations

or traditional mandates imposed on public broadcasters. The relevance of these traditional mandates in the wake of evolving broadcasting environments brought on by technological developments and competition. In that it is proving even more important that the concept of public service broadcasting should be re-visited and its mandates redefined to understand the need for its existence.

Therefore,

- 1. In view of South Africa as a developmental state and further taking into account technological developments evidenced through convergence and broadcasting digital migration what should the new mandate of the public broadcasters be?**
- 2. What should be the term of the Charter?**
- 3. How should its review be conducted?**
- 4. Are the current procedures responsibilities relating to the charter efficiently and effectively workable?**
- 5. In view of the changing landscape, what should be the new mandate of the SABC as a public broadcaster? Is the SABC mandate, as constituted, still relevant to fulfill national goals in the wake of developments in the broadcasting sector particularly the objectives of the Digital Migration Policy, 2008?**

### **3.3. Organisation**

*Section (9)* of the Broadcasting Amendment Act provided for the reorganisation of the Corporation to consist of two operational divisions, public service division and the commercial service division. The existence of the public service division is premised on the execution of the mandate of the SABC as outlined in section (8) of the Broadcasting Act, whereas the commercial service division is set to exist and be regulated like any other commercial broadcaster and to primarily subsidise the public service division. Currently, Channel Africa and SABC International, which are the SABC's international operations, are not defined by any legislative and policy framework although they are financially administered by the SABC. This has effectively meant that they have managed to fall outside the scope of broadcasting policy and are proving to be a policy nightmare as existing policies are not able to deal with their reality as international services. Although these services are considered not to be broadcasting licensee but channels packaged by the SABC for broadcasting on the satellite platforms, much thought has to be given in how they are absorbed into the organisation so that they fall within the realms of broadcasting policy.

The SABC was granted regional television licenses after an application process as per the provisions of section 22A of the Broadcasting Act, as amended. They were to be funded by money appropriated by Parliament, grants, donations and sponsorships and compliment the national broadcasting mandate of the SABC by providing for regional marginalised languages and promotion of cultural diversity. However, the condition for issuance of these licenses was based on the ability of these services securing funding

which has proved to be a problem for the public broadcaster. As a result, regional television is yet to take off despite being mooted as far back as 2002.

Broadcasting Digital Migration does not only provide opportunities for the public broadcaster. It further imposes additional obligations relating to the provision of new developmental channels, including three regional ones. All these changes points to an inevitable reorganization of the public broadcaster. In view of this,

- 6. Is the reorganisation as envisioned by the Broadcasting Act still relevant for public service broadcasting taking into consideration the technical developments outlined above and the various services that it continues to introduce, including its international services, Channel Africa and SABC International?**
- 7. What should be the role of its international services? In view of the objectives for the international services, should SABC International be made available free-to-air domestically?**

### **3.4 Funding Framework**

The Charter prescribed a funding model for the public broadcaster to generate revenue. Benchmarked against democratic international jurisdictions, generation of revenue was aligned to the objective of its existence and was premised on the preservation of the public interest mandate and the protection of its viability. The Charter provides for a Hybrid funding model for the public broadcaster without prescribing limitations on the different streams. *Section 8 (b) of the Broadcasting Amendment Act, 2002, provides that the public broadcaster's objectives ...are to be funded by advertisements, subscription, sponsorship, license fees or any other means....*<sup>2</sup>

Although the SABC had been reorganised into the public and commercial wings, there was no clear legislated distinction in how these divisions were to generate revenue given their respective objective of existence. The public service division in terms of its license condition had more public interest programming obligations while at the same time was subject to the commercial talons through the generation of revenue from commercial activities. Section 10(2) of the Broadcasting Amendment Act provides that the public wing of the SABC *may draw revenue from advertising and sponsorships, grants and donations, as well as license fees levied in respect of the licensing of persons in relation to television sets, and may receive grants from the state.*

The commercial division of the public broadcaster was to exist and function like any other commercial broadcasting entity as per the provisions of *section 11(a) which states that it be subject to the same policy and regulatory structures as outlined in this Act for commercial broadcasting services.* The definition for commercial broadcasting services is defined along revenue generation in the Broadcasting Act wherein it

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<sup>2</sup> Broadcasting Amendment Act, 2002

is stated that a '*commercial broadcasting service means a broadcasting service operating for profit or as part of a profit entity but excludes any broadcasting service provided by a public broadcasting service licensee.*'<sup>3</sup>

This meant that the commercial division of the public broadcaster was recognised as a commercial entity within the umbrella license of the SABC. Its primary objective amongst others was to provide subsidies for the public services to the extent recommended by the Board and approved by the Minister. The legislation does not specify the amount of such subsidies and reporting mechanism to ensure that happens in accordance with the objectives of the legislation. This is further complicated by the fact that the public service division has demonstrated to accumulate more revenue in advertising than its commercial counterpart.

- 8. How should the public broadcaster be funded?**
- 9. Is the hybrid model sustainable in a multichannel environment and how can it be revised?**
- 10. Should there be a distinction between the revenue streams for both public and commercial divisions?**
- 11. What mechanisms should be put in place to ensure that the commercial division fulfills its obligations in respect of subsidising the public division as per the objective of the legislation?**
- 12. How should Channel Africa and SABC international be funded, especially if it has to be available domestically free-to-air?**
- 13. What about regional television which despite being provided for in the Broadcasting amendment Act 2002, is yet to take off due to lack of funding, thus underlying the difficulty of the funding model proposed in the Act? How should it be funded? Should provincial funding be considered in this regard?**
- 14. Depending on the proposals on the funding model, how can we ensure that the public service division's funding ensure and promotes the public interest mandate?**
- 15. Should there be financial accountability mechanisms instituted in conjunction with the provisions of the PFMA Act, to ensure transparency in expenditure?**

### **3.5 Public Funding**

Public funding comprises licence fees and government funding through direct transfers.

### **3.6 Licence Fees**

The license fee model has proven to be a major source of revenue for many public broadcasters throughout the world. In South Africa, the collection of TV license fees is governed by Section 10 (2) of the Broadcasting Act, which provides that the public broadcaster may draw revenue from television

<sup>3</sup> Ibid.

licenses levied in respect of the licensing of persons in relation to a television set. According to the IBA Act television license means 'a current and valid written license issued in terms of this Act for the use of a television set'<sup>4</sup> and subsequently the fee payable means a 'fee prescribed in terms of the Broadcasting Act and payable for the use of a television set'. Section 27(1)(a) provides that *no person may use any television set unless such person is in possession of a television license issued by the Corporation against payment of the prescribed fee for each television set so used or unless exempted by regulation..'* The Broadcasting Act also stipulates' *that any person or business entity possessing or using a television set must have a valid (paid-up) license for that set..'*

Irrespective of whether a TV set is used to view SABC TV, or other broadcasters' television services or only videos and/or DVD's, a valid license is required. In fact, the license remains payable even if a TV set is not used at all. The payment is dependent on ownership of a television set. This translates to the fact that the revenue base of the license fees in South Africa is dependent on the penetration of the television set in the country.

- 16. Should television ownership method still be justified as a requirement for a television license even when television receivers are no longer the sole means broadcast content is distributed?**
- 17. Should Section 27(1)(a) be revised to incorporate the use of any television receiving equipment such as a digital box, DVD or video recorder, PC, laptop or mobile phone to watch or record TV programmes as they are being shown on TV?**
- 18. In view of technological changes, can license fees be maintained as a revenue stream for funding public broadcasting services?**

### **3.7 Collection System and Administration**

The SABC has been empowered with the responsibility to collect license fees. The SABC's Audience Services Division (ASD), is an internal division responsible for license fee collection and of the TV license system. The division is assisted by a number of entities and private suppliers including retailers, the Post Office and Private Legal Firms, some of which do charge the SABC collection and administration fees. The SABC's Annual Report stipulated the difficulties associated with collection of the license fees. Thus, of the R739 million collected from license fees, R201 million was used for collections and administration resulting in only R539 million transferred to public broadcasting service. This is further compounded by the fact that of the 8 057 000 households that had television sets in 2007, 2.67 million were fully paid, 2.56 million had made partial payments and 88 000 had taken out a TV license but had made no payments at all and 1.2 million had made a single payment at the time of purchasing a television set.

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<sup>4</sup> Broadcasting Amendment Act, 2002

In the UK the public broadcaster, BBC, is authorised by the Communications Act, of 2003 to collect license fees. The money received is first paid into the Government Consolidated Fund. It is then subsequently included in the vote for the Department of Culture Media and Sport in that year's Appropriation Act, and then passed on to the BBC for the running of its own services free from commercial advertisements. The license fee is classified as a tax. Since 1991, collection and enforcement of the fee is the responsibility of the BBC in its role as TV Licensing Authority. It subcontracts the obligation to commercial organisations trading jointly under the name TV Licensing. The BBC Trust is entrusted with the guardianship role over the license fee revenue; it has the ultimate responsibility subject to the provisions of the Royal Charter. It is established by an act of Parliament as the guardian of the license fee revenue and the public interest. It thus, has stewardship of the license fee revenue and its other resources.

In Germany the TV license is collected by GEZ, a TV license collection Agency. All television receivers' sales and owners' details are registered with GEZ at the point of sale thus it is responsible for collection of license fees.

In South Korea, the television license fee is collected for Korean Broadcasting Services (KBS) and EBS by the national electrical company, built in electricity bills.

- 19. Should the collection of license fees be the responsibility of the SABC or another statutory organization that will also manage and distribute funds collected in this manner?**
- 20. What activities of the public broadcaster should be funded by the licence fees?**
- 21. What mechanisms should be in place to ensure transparency in revenue generated through licence fees?**
- 22. What other methods can be utilised for the collection of television license fee to address non-payment?**
- 23. Subject to the continuation of license fees as a revenue stream, should a separate agency be identified or established to collect and distribute licence fees?**

### **3.8 Economic Constraints: Affordability**

The license fee model has proven to be a major source of revenue for many public broadcasters throughout the world. However, the current license fee system has proven difficult to apply in South Africa both from a collection and sustainability fronts. The amount on license fees payable is not sustainable as it is incremental, based on disposable household income, and at times this model is applied universally across the population. This means that as the amount inevitably increases and the socio-economic situation changes, many poor households will struggle to keep up with it, thus resulting in high rate of non-payment.

In a country like South Africa this difficulty goes beyond collection inefficiencies. It is inevitably a socio-economic issue, which undoubtedly affect the financial position and the viability of the public broadcaster in pursuance of its public service mandate. 80% of the South African population survives on government grants and 40% earn below R2 500, which effectively means that the sustainability of the license fee model will prove even more difficult. The Bureau of Marketing Research Report, revealed that over 77% of the country's population earn below R50 000 per annum. The SABC in its Annual Report further confirmed the reality when it indicated that there are 3.1 million households in LSM's 3-5 category, who because of lack of disposable income will not be able to pay the annual license fee of R225.00. The inflationary and incremental nature of the license fee further aggravates the problem, as the amount inevitably increases, many poor households will struggle to keep up with it. The volatile South African markets make it even difficult for the license fees to be regarded as a sustainable source of income for the public broadcaster. Despite being a huge potential of sustaining the public broadcasting, the scenario described above underlines the difficulties inherent in the license fee model.

- 24. In view of the economic constraints and South Africa's economic profile, what should be the future of license fees as a revenue stream for sustaining public broadcasting services?**
- 25. Should the license fees funds continue to be directly payable to the SABC?**

### **3.9 Government Funding**

Throughout the world, government funding has always been a major source of funding and sustaining public broadcasting services. However, as countries in many parts of the world have shown, including Canada and Australia, it has proven to be inadequate in the era of high programme costs. In many developing countries wherein this form of funding has to fiercely compete with other pressing social and infrastructural needs like housing security, education and water and sanitation and so forth, the situation has been more desperate.

In South Africa, this has been accounting for between 2-4% of the total SABC revenue and it has been largely for infrastructure projects. There have been vociferous calls for more government funding for the SABC to save the public broadcaster from competing for advertising thus compromising its public service mandate.

- 26. What sustainable percentage should constitute government funding, as a revenue stream, for public broadcaster?**
- 27. What should this type of funding be used for? Should the commercial service division be exempted from government funding?**



### **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><b>46. Are the Editorial Policies reflective of the SABC's mandate and values enshrined in the Constitution?</b></p> <p><b>47. Is the process of developing the editorial policies responsive to the needs of the public? How can this process be improved?</b></p> |
| <p><b>48. How often should the editorial policy be changed?</b></p> <p><b>49. What other public accountability measures should be put in place to ensure effective and efficient public participation?</b></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.<sup>5</sup>This 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?**

<sup>5</sup> 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 objectives<sup>6</sup>. 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 business<sup>7</sup>.

Current legislation has proved to be inadequate in this regard. Although Sentech Act (1996) attempted to clarify this role, the amendment to s5<sup>8</sup> by the ECA 2005, completely diluted those roles and the fundamental intentions of introducing a common carrier status in South Africa<sup>9</sup>. 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.

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<sup>6</sup> See the Minister's 25 May 2006 Budget Speech

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

<sup>8</sup> 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."

<sup>9</sup> 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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