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Attention: Mr Colin Dimakatso Mashile
Regulatory Review
ICASA
Email: regulatoryreview@icasa.org.za

14 December 2012

Dear Mr Mashile

WRITTEN SUBMISSIONS BY THE SOS SUPPORT PUBLIC BROADCASTING COALITION ON ICASA'S PRELIMINARY REPORT ON THE REVIEW OF THE BROADCASTING REGULATORY FRAMEWORK TOWARDS A DIGITALLY CONVERGED ENVIRONMENT

1. INTRODUCTION

1.1. In Notice No. 891 published in Government Gazette 34828 dated 8 December 2011 ICASA published Issues Paper: A Review of the Broadcasting Regulatory Framework Towards a Digitally Converged Environment ("the Notice"). In the Notice (as amended by a subsequent Notice), ICASA invited interested persons to make written representations thereon. Further, in Notice 911 published in Government Gazette 35842 dated 31 October 2011, ICASA published its Preliminary Report on the Public Consultation Processes that took place as a result of the Notice ("the Preliminary Report") and further invited interested persons to make written representation thereon by 12h00 on 14 December 2012 and gave notice of its intention to hold public hearings from 23-25 January 2012. SOS thanks ICASA for the opportunity of making these written submissions and hereby requests an opportunity to make oral representations at such hearings

1.2. SOS recognises that the Preliminary Report represents a significant amount of work which has gone into the preparation thereof. For ICASA's ease of reference it deals with the issues raised in the Preliminary Report in the order in which they arise in the Preliminary Report, as is set out below. SOS deals only with those issues in the Preliminary Report which it is of the view require particular comment and we focus on diversity of services and effective monitoring and compliance particularly in respect of local content and independent production.

2. INTRODUCTION TO SOS

2.1. The “SOS: Support Public Broadcasting” Coalition is a membership-based coalition representing unions, NGOs, CBOs, community media, independent film and TV production sector organisations; academics, freedom of expression activists and concerned individuals. The vision of the SOS Coalition is to create a public broadcasting system dedicated to the broadcasting of quality, diverse, citizen-orientated public programming committed to deepening South Africa’s Constitution.

2.2. The SOS Coalition represents a number of trade unions including COSATU, CWU, BEMAWU and MWASA; independent film and TV production sector organisations including the South African Screen Federation (SASFED); and a host of NGOs and CBOs including the Freedom of Expression Institute (FXI) and Media Monitoring Africa (MMA); as well as a number of academics and freedom of expression activists. (Please see annexure 1)

3. AD PARAGRAPH 2.3.9: PRIORITISING OF INDIVIDUAL REGULATIONS TO BE AMENDED

3.1. SOS notes ICASA’s commitment to dealing with the regulatory review in an “all-encompassing objective approach” to inform the process of “prioritising individual regulations that need to be reviewed or amended”. However SOS respectfully submits that there are a number of instances where ICASA has clearly indicated in the Preliminary Report that individual regulations require to be reviewed and amended and yet these regulatory amendment processes do not feature in Part F of the Preliminary Report which Part F identifies the particular regulations to be prioritised in the period leading between now and 2020 for stakeholder consideration. For ICASA’s ease of reference such regulations and/or regulatory processes which do not yet appear in yet need to be specifically provided for in Part F include:

3.1.1. ICASA’s decision to undertake further research on premium content issues with a view to initiating a Chapter 10 process as provided for in paragraph 2.3.12 of the Preliminary Report;

3.1.2. ICASA’s decision to reconfirm the need to bring about changes to the ownership and control regime provided for in the ECA in accordance with its 2011 Position Paper and applicable Broad Based Black Economic Empowerment (“BBBEE”) legislation as provided for in paragraph 3.1.8 of the Preliminary Report;

- 3.1.3. ICASA's decision to take up the issue of exemptions for community broadcasting licensees in respect of their Universal Service and Access Fund contributions as provided for in paragraph 3.3.5 of the Preliminary Report;
 - 3.1.4. ICASA's decision to review its IPTV and Video on Demand Position Paper as provided for in paragraph 3.5.1 of the Preliminary Report;
 - 3.1.5. ICASA's decision to review its Subscription Regulations as provided for in paragraph 3.11.5 of the Preliminary Report;
 - 3.1.6. ICASA's decision to review and update the regulatory regime regarding Special Events Licences as provided for in paragraph 3.15.3 of the Preliminary Report;
 - 3.1.7. ICASA's decision to review and update its Regional Television Position Paper as provided for in paragraph 3.17.6 of the Preliminary Report; and
 - 3.1.8. ICASA's decision to review and update its Free to Air Private Television Position Paper as provided for in paragraph 3.18.3 of the Preliminary Report.
- 3.2. SOS is of the respectful view that provision must be made in part F for all of the above processes to be undertaken and completed.
4. AD PARAGRAPH 2.3.12 GENERAL COMPETITION
- 4.1. ICASA has made it clear that it recognises the need, following representations by SOS and others, "to engage on further research work with regards to premium content and other related matters to make a decision on whether to embark on a chapter 10 market review process".
 - 4.2. However no firm time table is set either for the further research work or for the chapter 10 market review process. SOS is of the firm view that this study (and the chapter 10 market review process which ought to follow) must take place before the licensing of new DTT subscription operators.
 - 4.3. In this regard we respectfully also suggest that the review of ICASA's Sports Broadcasting Regulations (slated to commence in 2013) simply cannot take place in isolation without considering sports rights as an integral part of premium content, the rights to which must be regulated in a pro-competitive manner in order to encourage sustainable new market entrants.

4.4. Consequently SOS requests ICASA to amend Part F to:

4.4.1. make timeous provision for the market research to be conducted; and

4.4.2. ensure that pro-competitive regulatory interventions are made with regard to sports broadcasting rights as an integral part of premium content regulation.

5. AD PARAGRAPHS 2.3.15, 2.3.16, 3.9.4, 3.13.8 AND 5.1.4 – 5.1.7, MONITORING AND COMPLIANCE, LOCAL CONTENT AND INDEPENDENT PRODUCTION

5.1. ICASA clearly recognises its vital role in ensuring compliance by licensees with broadcasting statutes, regulations and licence conditions and further recognises that more needs to be done in regard thereto. SOS has a number of additional recommendations which it believes would greatly assist ICASA and the public in assessing regulatory compliance by licensees.

5.2. ICASA undertakes to institute “quarterly” meetings with stakeholders on monitoring and compliance issues. SOS is of the respectful view that this commitment is somewhat vague. No indication is given as to when such quarterly meetings are to commence and which “stakeholders” are to be consulted. Consequently SOS suggests that:

5.2.1. the Monitoring and Compliance Stakeholder Forum be formally constituted as a standing or special committee of ICASA in terms of section 17 of the ICASA Act, including representatives of local content producers, civil society and the National Association of Broadcasters;

5.2.2. the commitment to quarterly meetings ought to be concretised such that the meetings commence in the first quarter of 2013 and that this be recorded in Part F of the Preliminary Report;

5.2.3. ICASA must ensure that outside experts in monitoring, local content and independent production are appointed as additional members to such standing or special committee as is provided for in section 17(2)(b) read with 17(3) of the ICASA Act; and

5.2.4. SOS is of the view that such a committee ought to be established immediately and that its initial tasks ought to be:

5.2.4.1. carry out an evaluation of the strengths and weaknesses of the existing monitoring regime, so as to assist in the regulator meeting its current obligations;

- 5.2.4.2. undertake a detailed monitoring exercise of all television broadcasters to assess current compliance with all programming-related obligations;
 - 5.2.4.3. develop the form or forms required for television programming obligations compliance reporting to be included in the Compliance Manual Regulations as suggested in paragraph 5.3 below; and
 - 5.2.4.4. design a turn-key solution for a new regime for monitoring in a digital environment.
- 5.3. An issue that is of concern to SOS is the fact that the Preliminary Report does not explain why, in the context of the universal recognition of the importance of accurate reporting to the transparent monitoring of compliance with regulatory obligations, television broadcasters appear not be required to comply with the reporting provisions of the Compliance Procedure Manual Regulations¹. SOS respectfully requests, in the interests of transparency, fairness and pro-competitive environment, that:
- 5.3.1. the Compliance Procedure Manual Regulations be amended such that television broadcasters are also required to report on monitoring and compliance, particularly with regard to content issues. In this regard:
 - 5.3.1.1. All television broadcasters whether free to air or subscription, public, commercial or community have programming obligations. Sadly ICASA has never regulated the reporting format thereof. This ought to have been done in order to better facilitate monitoring and compliance assessment by ICASA of broadcaster's compliance with statutory, regulatory and licence obligations.
 - 5.3.1.2. SOS formally calls upon ICASA to amend the Compliance Manual Regulations to include forms for content obligations (provided for both in regulation and in licence conditions) compliance reporting to deal with, inter alia, *all* of the following four critical issues (our emphasis):
 - 5.3.1.2.1. language obligations;
 - 5.3.1.2.2. general programming genre obligations;

¹ See section 7 of Notice 902 published in Government Gazette 34863 dated 15 December 2011. Note that the wording is very unclear but it is clear that none of the Broadcasting related reporting forms (namely Forms 8A-10) are applicable to television .

- 5.3.1.2.3. local content obligations, including:
 - 5.3.1.2.3.1. percentage of overall local content broadcast;
 - 5.3.1.2.3.2. local content by genre obligations for public and commercial broadcaster, including subscription broadcasters, specified in the SA Television Content Regulations;
 - 5.3.1.2.3.3. the specified minimum percentage of gross revenue spent on SA television content programming by subscription broadcasters, if applicable;
 - 5.3.1.2.3.4. reporting on format factors used in determining compliance with local content by genre and African language requirements; and
 - 5.3.1.2.3.5. reporting on repeats; and
- 5.3.1.2.4. Independent television production obligations, including
 - 5.3.1.2.4.1. the percentage of independently-produced programming broadcast; and
 - 5.3.1.2.4.2. the format factor for diversity in commissioning.

In regard to the above, we urge ICASA, in addition to the reporting obligations set out above, to investigate adopting the certification system for local content that has been adopted by the Canadian Radio-Television and Telecommunications Commission which provides an additional confirmation of compliance. Details of this certification system can be found at the [Canadian Radio-television and Telecommunications Commission website](#); and

- 5.3.2. a process for the review of such regulations is provided for in Part F of the Preliminary Report, to be completed prior to the licensing of new subscription DTT market entrants.

5.4. Thirdly SOS is extremely concerned at ICASA's repeated assertions that it does conduct monitoring and compliance. As no mention was made of SOS's detailed case study of ICASA's monitoring and compliance of the SABC provided as part of the additional [submissions](#) made by

SOS as a result of questions posed by ICASA at the initial Regulatory Review Hearings. We include same herein so that other members of the public may have access to same and formally request ICASA to consider the implications thereof for monitoring and compliance in future:

5.4.1. ICASA's Challenges As Regards Monitoring And Enforcing Compliance Effectively – An SABC Case Study

5.4.1.1. Local content regulations have been in place since 1993 (IBA Local Content Act of 1993). In terms of public TV broadcasters, section 3.1 of the first set of these regulations required the public broadcaster to comply with local content quotas by 1998, and required the regulator to monitor such compliance. While these regulations were updated and amended over the years since the migration to the current regulator ICASA, it has as far as we are aware in fact produced only one report on SABC's local content compliance and that is the report released in March 2010, which dealt with the 2008/9 year. Further the current local content regulations (last amended in 2006) empower ICASA to review its local content regulations within three years² (that would have been 2009). We believe it noteworthy that six years has elapsed since ICASA's last local content regulatory exercise and no review of the current regulations has taken place. Further despite the fact that section 4(1)(a) of the ICASA Act places a clear and unambiguous duty on the Authority to exercise its duty to monitor compliance with licences and regulations under the ECA, Broadcast and ICASA Acts, the regulator has only produced a single compliance report on the public broadcasters' TV services in this area of compliance reporting in the 14 years there should have been compliance to date.

5.4.1.2. Unfortunately the single SABC TV Compliance Report (2008/2009) published by ICASA's Licensing and Compliance Division in March 2010 ("the SABC Report") has a number of glaring gaps. We touch on a number of these. We reiterate that we are unable to perform ICASA's regulatory role and therefore do not purport to have the final word on issues raised in these submissions. What we are able to do is to point to monitoring errors or gaps which ICASA must investigate and address to ensure compliance by the public broadcaster (and, we would add, all broadcasters) with the applicable legal regime.

² Section 10.1 of the South African Television Content Regulations Published in Notice 154 published in Government Gazette No 28454 dated 31 January 2006.

- 5.4.1.3. SOS is very aware of ICASA's financial and capacity constraints and has been vocal in its support of ICASA's budget being significantly increased through it being allowed to keep all licence and administrative fees for its own "cost of regulation" purposes.
- 5.4.1.4. Nevertheless, unless ICASA can, on its own, verify compliance reports, such reports are effectively worthless. The public can have no confidence in a broadcaster's statement of compliance unless the regulator is able definitively to state whether or not these are accurate and to take action if they are not indeed accurate. This is the primary role of a broadcasting regulator. A regulator that is unable to monitor compliance with laws, regulations and licence conditions cannot act in the public interest because it lacks the necessary information upon which to act.
- 5.4.1.5. SOS wishes to use the SABC Report as a salient example of ICASA's challenges, in our view, to monitor local content compliance effectively. This is not to undermine or denigrate ICASA but to point out gaps which render it ineffective. Our aim is to assist ICASA to perform its constitutional functions effectively and well so as to further the public interest in broadcasting.

5.4.2. SABC Provides No Independently Verifiable Supporting Data

- 5.4.2.1. The SABC compliance reports submitted quarterly to ICASA and as reflected in the SABC Report contain bold statements of compliance. This can be contrasted with the M-Net Report also produced by ICASA in January 2012, in which M-Net provides, as annexures, language and programming reports from independent production houses confirming its local content and language compliance figures.
- 5.4.2.2. We formally request ICASA to require the SABC to provide substantiated compliance reports that go beyond statements of compliance and the provision of a set of percentages.
- 5.4.2.3. We also formally request that ICASA provide proof of having independently verified the content of the SABC's quarterly compliance reports as these appear to simply have been accepted as factually accurate.

5.4.3. ICASA's Challenges as Regards Monitoring - Timing

- 5.4.3.1. Of the entire 2008/9 year, ICASA has independently monitored SABC 1 and 2 for only a single month namely September 2008 and, in respect of SABC 3, part of October 2008 too. This is simply not sufficient to be able to hold the public broadcaster to account as it is too easy for the SABC to allege that any gaps were made up in the other months of the year. SOS calls upon ICASA to ensure that independent monitoring of compliance is carried out at all times.
- 5.4.3.2. Also, it is important to note that the monitoring that was done, was conducted prior to the financial crisis at the SABC. The crisis started to unfold from the beginning of 2009. This means that no monitoring has happened during the period when the general public started complaining about the SABC's constant broadcast of repeats and when the SABC stopped bringing out regular RFP books to commission new programming.
- 5.4.3.3. Of the period that ICASA did in fact monitor, it did not monitor the full performance period, that period that is relevant to determining compliance with local content quotas and programming genre licence conditions. It monitored only the period 05h00 to 18h00. The South African Television Performance Period is defined in the SA Television Regulations as being the total number of hours between 05h00 and 23h00. Therefore ICASA failed to monitor five hours of the performance period every day, rendering the so-called monitoring necessarily inaccurate and ineffective.
- 5.4.3.4. Unfortunately, ICASA's monitoring neglected to cover Prime Time, which is defined in the SA Television Regulations as being the period between 18h00 and 22h00. This is problematic as a number of the SABC's television service licence conditions specifically require local content programming during prime time. Consequently ICASA is unable to state with any degree of certainty whether or not the SABC complied with its legal requirements to broadcast local content and independently produced local content during prime time which is when the vast majority of South Africans watch television.

5.4.4. ICASA's Challenge as Regards Monitoring and Compliance with Local Content Quotas

- 5.4.4.1. Notwithstanding the above gaps in ICASA's monitoring, its assessment of the SABC's compliance is illuminating and deeply troubling.
- 5.4.4.2. It is clear from the SABC Report that ICASA was aware of the need to monitor compliance not only with programme genre requirements specified in the various licence conditions, but also with the local content quotas specified in the SA Television Content Regulations. However, nowhere in any of ICASA's assessment of the monitoring it did in fact do, does ICASA ever specify whether or not any of the SABC's three television channels in fact complied with its local content quotas as per the local content regulations (last updated 2006 – sections 3,4, and 8). In the conclusion it only mentions attempting to monitor compliance with the licence terms and conditions.
- 5.4.4.3. Unfortunately there is no mention of programming format factors and how these were calculated as required by the SA Television Content Regulations nor is there any mention of the calculations regarding repeat programming as required by the SA Television Content Regulations.
- 5.4.4.4. The SABC Report, and in particular section 6 thereof, is silent on the monitoring of this critical aspect of ICASA's public mandate. There is simply no mention of its having considered local content compliance as part of its monitoring.

5.4.5. ICASA's Challenges as regards its Monitoring Compliance with Independent Television Production Percentage and Commissioning Procedures

- 5.4.5.1. It is clear from the SABC Report that ICASA was aware of the need to monitor compliance not only with programme genre requirements specified in the various licence conditions, but also with the independent production percentage and commissioning procedures specified in the SA Television Content Regulations (section 6 and 7). However, nowhere in any of ICASA's assessment of the monitoring it did in fact do, does ICASA ever specify whether or not any of the SABC's three television channels in fact complied with its independent production percentage requirement or a review of commissioning procedures.
- 5.4.5.2. There is also no mention of the SABC's compliance with independent production percentage and the requirement for a reasonable spread across particular

programme genres as is required in terms of the SA Television Content Regulations.

- 5.4.5.3. The SABC Report, and in particular section 6 thereof, is silent on the monitoring of this critical aspect of ICASA's public mandate. There is simply no mention of its having considered local content and independent production and commissioning procedures compliance as part of its monitoring.

5.4.6. ICASA's Findings with Regard to Programme Genre and Language Compliance Indicate Non-Compliance and Ought to Have Resulted in Further Enquiry

- 5.4.6.1. The tables contained in section 6 of the SABC Report which is headed "Analysis Across Channels" show a failure on the part of the SABC to comply with its programming genre and language-related licence conditions in respect of each of its three television channels. We highlight only a few of the most obvious examples below.
- 5.4.6.2. In respect of SABC 1, the only programming genre licence condition that SABC 1 *complied with* during the period monitored by ICASA was education (our emphasis).
- 5.4.6.3. In respect of SABC 2, the only programming genre licence condition that SABC 2 *complied with* during the period actually monitored by ICASA was current affairs (our emphasis). Further SABC 2 did not comply with language licence conditions during the period monitored by ICASA.
- 5.4.6.4. In respect of SABC3, SABC 3 did not comply with *any* of its only programming genre or language-related licence conditions during the period actually monitored by ICASA.
- 5.4.6.5. Given that the SABC failed to comply with its programming obligations in respect of programming genres and languages, the issues that ICASA did investigate, we are of the view that ICASA ought to have taken the matter further, investigated thoroughly and enquired about other obligations rather than simply let the matter rest.

5.4.7. Lack of Correlation Between ICASA's Monitoring and the SABC's Own Quarterly Reports

- 5.4.7.1. The SABC states in its quarterly reports (reproduced in the SABC Report) that it is overwhelmingly exceeding its local content quotas imposed by regulation, although it is noteworthy that the SABC's own quarterly reports are silent on independent production. Unfortunately because ICASA has failed to assess the SABC's compliance with local content quotas it is impossible for anyone, within the regulator or outside of it, to say with any confidence that the SABC does in fact comply with its regulatory obligations in respect of local content and/or independent production.
- 5.4.7.2. Further, the lack of rigour evidenced in ICASA's failure independently to monitor compliance with regulations and licence conditions so as to be able to verify the SABC's Quarterly reports is evidenced in the SABC Report's inadequate conclusions. We find it disappointing that ICASA's only monitoring and assessment report of the SABC concludes with the dispiriting words: "The Authority cannot conclusively deduce that the SABC did not comply with its licence terms and conditions". Again, such a conclusion clearly requires further investigation until ICASA is able to make a definitive determination.

5.4.8. Results of SASFED's Monitoring of SABC Compliance With Local Content And Independent Production Obligations Over A Three Month Period

- 5.4.8.1. One of SOS's member organisations is the South African Screen Federation, ("SASFED"). SASFED has independently monitored all three of the SABC's television channels for a period of three months in December 2010 and February 2011.
- 5.4.8.2. The detailed results of SASFED's monitoring efforts are contained in the [excel spread-sheet](#) provided herewith. SASFED's monitoring found systematic non-compliance with the SABC's local content quota obligations. In this regard not a single channel was within 10% of complying with its local content obligations during the three months in question.
- 5.4.8.3. SOS points out that just as none of the SABC's channels met their programming genre and language obligations during the period that ICASA did in fact monitor them, so none of the SABC's channels met their local content obligations during

the period that SASFED monitored them. Again, SOS formally calls upon ICASA to investigate the SABC's non-compliance with all programming-related obligations whether contained in regulations or licence conditions and suggests that such an investigation be extended to all television licensees, public, commercial and community, free to air and subscription.

6. AD PARAGRAPH 3.1.8 OWNERSHIP AND CONTROL

6.1. SOS is extremely disturbed at the fact that the Preliminary Report contains no detail regarding ICASA's position on ownership and control issues. SOS is of the view that this has been a difficult and vexed issue for many years now and that ICASA has failed to provide clear direction on this issue.

6.2. SOS is of the view that it is problematic for ICASA to reaffirm its adherence to the 2011 Ownership and Control Findings Paper³ when that paper states in its conclusion that ICASA "will make further recommendations in respect of changes which should be incorporated in the scheduled amendment of the ECA" and yet no-where does it set out ICASA's proposed wording for such proposed amendments, leaving industry and the public in general entirely in the dark as to what ICASA's actual position on a number of ownership and control issues actually is.

6.3. Consequently SOS is of the respectful view that as part of the Preliminary Report, ICASA sets out, in detail, its ownership and control-related proposed amendments to the ECA.

6.4. Secondly, SOS is also concerned that no mention is made as to the decision taken by ICASA in 2007 without consultation or public process of any kind, to exempt subscription broadcasters from complying with sections 65 and 66 of the ECA.

6.5. Consequently, SOS reiterates that such a decision requires reconsideration in light of the introduction of DTT and requests ICASA to set down a time-table for such reconsideration in Part F of the Preliminary Report.

7. AD PARAGRAPH 3.3.5 UNIVERSAL AND ACCESS FUND CONTRIBUTIONS BY COMMUNITY BROADCASTING SERVICES

7.1. SOS notes that ICASA has said that a decision to exempt, *inter alia*, community broadcasting licensees from making USAAF contributions is a policy issue that it will refer to the Ministry of Communications.

³ See Notice 624 published in Government Gazette 34601 dated 15 September 2011.

7.2. Further, SOS is of the respectful view that ICASA has failed properly to appreciate the extent of its powers in regard to exempting licensees from making USAAF contributions.

7.3. In terms of section 89(2)(a) grants ICASA a wide discretion to determine the basis and manner of such contributions. It is important to note that while an upper limit on such contributions is set in that section, no lower limit is set. Consequently ICASA clearly as the power to determine that certain broadcasters (or indeed other types of licensees) can pay low or even no USAAF contribution. This is a matter to be determined by way of regulation and consequently SOS suggests that a review of ICASA's USAAF Regulations⁴ is in order and that the timing for such review be contained in Part F to the Preliminary Report.

8. AD PARAGRAPH 3.7.11 ICASA'S RELATIONSHIP WITH THE ADVERTISING STANDARDS AUTHORITY AND REVIEW OF ITS ADVERTISING REGULATIONS

8.1. SOS notes ICASA's stated intention to strengthen its relationship with the Advertising Standards Authority and suggests that a formal MOU is entered into and published in the Government Gazette so that the public understands the formal nature of the relationship.

8.2. SOS further notes that ICASA intends to review its Advertising Regulations in the 2014-2016 period. SOS wishes to place on record its view that the Advertising Regulations Review needs to consider placing additional restrictions upon the amount of advertising that a subscription broadcaster may attract. In this regard:

8.2.1. SOS is of the view that the dominant player in subscription broadcasting, DSTV, is, by its very dominance skewing the advertising pie available to all broadcasters with negative effects for the industry.

8.2.2. We are of the view that ICASA ought to make recommendations for an amendment to section 60(4) of the ECA to provide for a sliding scale of allowable income from advertising depending on the level of market share that a particular subscription broadcaster has.

8.2.3. ICASA ought to investigate whether or not a more sustainable and competitive subscription broadcasting sector would not be brought about by:

⁴ Notice 93 published in Government Gazette 34010 dated 10 February 2011.

8.2.3.1. limits on the percentage of available advertising that a single subscription broadcaster may have; alternatively

8.2.3.2. introducing a sliding scale of subscription vs allowable advertising revenue along the following lines:

8.2.3.2.1. at start up, a subscription broadcaster is required to ensure that 50%+1 of revenue is derived from subscriptions;

8.2.3.2.2. at 25% market share, a subscription broadcaster is required to ensure that 60%+1 of revenue is derived from subscriptions;

8.2.3.2.3. at 50% market share, a subscription broadcaster is required to ensure that 70%+1 of revenue is derived from subscriptions; and

8.2.3.2.4. at 75% or more market share, a subscription broadcaster is required to ensure that 80%+1 of revenue is derived from subscriptions.

9. AD PARAGRAPH 3.14.6 COMMUNITY BROADCASTING AND POSITION PAPER

9.1. SOS notes that ICASA has undertaken to conduct its community broadcasting review in 2015-2017.

9.2. SOS is of the respectful view that this review is scheduled to take place far too long in the future and that community broadcasting is in danger of falling dangerously behind with respect to the introduction of DTT.

9.3. SOS is of the view that human resource capacity and financial sustainability problems in the community broadcasting sector are already at crisis levels and that a review of the sector must be conducted urgently and must be completed before the end of the dual illumination period.

10. AD PARAGRAPH 6.4 INTEROPERABILITY OF SET TOP BOXES

10.1. SOS is extremely disappointed that this issue is merely noted by ICASA and that ICASA gives no undertaking to regulate for the interoperability of STBs even although this is part of the Digital Migration Policy.

10.2. SOS reiterates that the issue of interoperability of STBs must be included in the DTT regulations as without STB interoperability it is unlikely that the introduction of DTT will indeed result in sustainable new market entrants providing additional services to the public.

11. CONCLUSION

11.1.SOS thanks ICASA for the opportunity of making these written submissions on the Preliminary Report.

11.2.SOS trusts that ICASA will find these submissions helpful.

11.3.Please do not hesitate to contact us if SOS can be of any further assistance to ICASA, you have any queries or require any additional information.

11.4.SOS looks forward to participating in the oral hearings on the Preliminary Report.

Thank you

Yours Sincerely

Carol Mohlala

Coordinator

SOS: Support Public Broadcasting

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Annexure 1

Members of the Civil Society Coalition SOS: Supporting Public Broadcasting

- AIDC (Alternative Information Development Centre)
- BEMAWU (The Broadcast, Electronic Media and Allied Workers Union)
- COSATU (Congress of South African Trade Unions)
- Communication Workers Union (CWU)
- Creative Workers Union of South Africa (CWUSA)
- Documentary Filmmakers Association
- Ecumenical Services for Social and Economic Transformation (ESSET)
- Federation of South African Unions (FEDUSA)
- IDASA, an African Democracy Institute
- The FXI (Freedom of Expression Institute)
- The FXN (Freedom of Expression Network)
- The IPO (Independent Producers Organisation)
- The IAJ (Institute for the Advancement of Journalism)
- The MMA (Media Monitoring Africa)
- The South African Screen Federation (SASFED)
- MISA South Africa (The South African National Chapter of the Media Institute of Southern Africa)
- The NCRF (National Community Radio Forum)
- The National Consumer Forum
- SANGONET (The South African Non-Governmental Organisation Network)
- SAHA (The South African History Archives)
- The TAC (Treatment Action Campaign)
- Workers World Media Productions
- Writers Guild South Africa
- Ms. Ingrid Bruynse – Bright Media
- Mr. Raymond Louw – South African National Editors Forum (in his private capacity)
- Prof. Anton Harber – Caxton Professor of Journalism, University of the Witwatersrand (in his private capacity)
- Prof. Devan Pillay – Head of Sociology Department, University of the Witwatersrand
- Prof. Tawana Kupe – Associate Professor of Media Studies and Dean of the Faculty of Humanities, University of the Witwatersrand (in his private capacity)
- Ms. Justine Limpitlaw – broadcasting lawyer (in her private capacity)
- Ms. Jeanette Minnie of Zambezi FoX – international Freedom of Expression and Media Consultant