

# GENERAL NOTICE

## NOTICE 911 OF 2012



**Independent Communications Authority of South Africa**

Pinmill Farm, 164 Katherine Street, Sandton

Private Bag X10002, Sandton, 2146

**ICASA PRELIMINARY REPORT ON THE PUBLIC CONSULTATION  
PROCESSES:**

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

**OCTOBER 2012**

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

### INVITATION FOR WRITTEN REPRESENTATIONS

In terms of Section 4B of the Independent Communications Authority of South Africa Act (Act No 13 of 2000), interested persons are hereby invited to submit their written representations on the **ICASA preliminary report on the public consultation processes: Issues Paper on the Review of the Broadcasting Regulatory Framework towards a Digitally Converged Environment** published herewith by the Authority. A copy of the proposed regulation will be made available on the Authority's website at <http://www.icasa.org.za> and in the ICASA Library at No. 164 Katherine Street, Pinmill Farm, (Ground Floor at Block D), SANDTON between 09h00 and 15h00, Monday to Friday only.

Written representations with regard to the ICASA preliminary views and draft report on the public consultation processes must be submitted to the Authority by no later than 12h00 on 14 December 2012 by post, hand delivery or electronically (in Microsoft Word) and marked specifically Attention: Mr Collin Dimakatso Mashile. Delivery address: Block A, Pinmill Farm, 164 Katherine Street, Sandton. Where possible, written representations should also be e-mailed to: [regulatoryreview@icasa.org.za](mailto:regulatoryreview@icasa.org.za) or by facsimile: 011 566-3672/3802 or by telephone: 011 566-3671/3801; between 09h00 and 15h00, Monday to Friday only.

The Authority will hold its public hearings from 23-25 January 2013.

Written representation(s) received by ICASA pursuant to this notice, will be made available for inspection by interested persons at the ICASA library and such copies will be obtainable upon payment of the prescribed fee.

At the request of any person who submits written representations pursuant to this notice, ICASA may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for

confidentiality is refused, the person who made the request will be allowed to withdraw such representations or portion(s) thereof.

Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral representations.



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

**DATE:** 24/10/2012  
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## 1. EXECUTIVE SUMMARY

- 1.1 The Independent Communication Authority of South Africa, hereafter referred to as the Authority, carried out an audit and review previous regulations governing the broadcasting industry so as to take into account these new technological, cultural, economic and social challenges.
- 1.2 The Authority published an Issues Paper for public consultation on the need to review analogue regulatory regimes as a result of the transition to digital terrestrial television broadcasting and engaged in various public processes to consult stakeholders on its Issues Paper.
- 1.3 The role of the public consultation was to ensure that all South Africans, across the nine Provinces, participate in the regulatory making processes and work of the Authority. This was also intended to ensure that the Authority receives as much valuable feedback from all key stakeholders. The consultation process took place between January and June 2012.
- 1.4 The Authority's Preliminary Report is aimed providing a general overview of the main comments and views received around the key topics of the Issues Paper; and to presents ICASA's preliminary views on how these issues are going to be reflected in the final report and Authority's work for the coming 3-5 years.
- 1.5 The summary of the Authority's preliminary views are contained in Part D.
- 1.6 From November to December 2012 the Authority will engage the relevant stakeholders in another public and comprehensive consultative process.

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

### **2.1 INTRODUCTION**

**2.1.1** On 08 December 2011, the Authority published the Issues Paper: A Review of the Broadcasting Regulatory Framework towards a digitally converged environment (Government Gazette No. 34826) that called upon stakeholders to respond to and make submissions regarding the above. The first deadline for submissions was 16 March 2012, which was subsequently postponed to 16 April 2012.

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

**2.1.3** On 16 April 2012 the Authority had received nineteen submissions. Seventeen of these indicated their wish to make oral presentations. Responses were received from: Academics; Film and TV companies; Telecommunications companies; Broadcasters; Publishers and the press; Consultancy firms; Trade associations and trade unions; Manufacturers; Regulatory bodies; Charities and Consumer groups; Governments; and Individuals. The Authority undertook its own analysis and complemented it with that which was provided in submissions.

**2.1.4** On 23 April 2012, the Authority published the Notice of public hearings: Issues Paper: A Review of the Broadcasting Regulatory Framework towards a digitally converged environment (Government Gazette No. 35287) detailing the schedule for hearings, 09-11 May 2012.

**2.1.5** Having reviewed the regulatory framework as it exists today, elicited a breadth of responses and considered all the information and information gathered through the Provincial Workshops, International Conference and submissions/hearings on the Issues Paper, the Authority would like to thank all the stakeholders that responded and contributed to these processes.

**2.1.6** The Authority has now adopted a decision and has chosen various regulatory options that take the utmost account of evidence provided, remarks made and the opinions that the Authority received from all stakeholders.

**2.1.7** It should in any event be acknowledged that the current regulatory regime dates from 1993, almost twenty years back. A further opportunity was provided by this review to audit and assess the suitability of the current regulatory framework arrangements for the new digital platforms and consumer technologies, and in helping meet the core Government's broadcasting policy cultural, economic and social objectives.

**2.1.8** The Authority is now tabling its preliminary views or provisional conclusions, after much analysis of issues raised, for further comments by the stakeholders. The purpose of this report is to also outline the regulations that the Authority intends prioritising towards supporting the 2020 policy vision. The Authority encourages the stakeholders to seriously and openly consider these positions so that clear options should be put forward for consideration before the final position is adopted.

**2.1.9** Last, it is also worth noting that the focus of this report is to provide the stakeholders with the further opportunity to plan together with the Authority and identify regulations that they believe should be prioritised during the next three to five years.

## 2.2 SUMMARY OF STAKEHOLDERS' RESPONSES

**2.2.1** This section intends to provide the summary of all responses to the issues that the authority raised and provide the Authority's preliminary views on most of these issues for further and final comments by interested stakeholders.

## 2.3 GENERAL COMMENTS ON THE ISSUES PAPER

**2.3.1** In general a recurring request in the discussions and responses from stakeholders was for the Authority to prioritise the review of local content regulations; improve its compliance and monitoring functions; support and safeguarding consumers and citizens by giving them confidence and clarity about the content and services they are accessing; collapse some of the regulations into one as there were too many regulations; ensure the continued protection of children and other targeted groups; provide more regulatory clarity and certainty; and that the current regulatory framework needs to be re-assessed and updated to remain credible as it is currently not fit or suitable for the new digital platforms and consumer technologies.

**2.3.2** With regards to national policy developments versus regulatory review respondents provided various opinions.

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

for the Authority to consider, at this point in time, issues which fall outside the scope of the current legislative framework and which the Authority does not have jurisdiction to regulate.

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

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

**2.3.6** ***The Authority*** is of the view that engaging in a regulatory review in this current juncture will not compromise or contradict policy making process in anyway. This consultative process will produce regulatory review findings document, which will provide the necessary input the Authority needs to take into account in the formulation of a new broadcasting regulatory framework in the light of the unfolding digital era. If necessary this process will also feed into the Ministerial Broadcasting Policy Review, and the regulator as one of the stakeholders will also make submissions. The process will not culminate into a new wholesale set of regulations.

**2.3.7** In relation to the scope of the review, ***SOS*** suggests that ICASA's current regulatory review process must be aimed narrowly to focus only on reviewing and amending its own broadcasting related regulations which are clearly out of step with the needs of the digital environment and in light of the revised and

finalised Digital Migration Policy, the last iteration of which was published by the DOC in Notice No. 124 published in Government Gazette 35051 dated 17 February 2012.

**2.3.8 e.tv** believes that many of the recently amended regulations and Position Papers have already taken into account the notion of convergence and the transition into an entirely digital environment. To this extent, such regulations need not be tampered with unless there is another pressing reason to do so. However, e.tv welcomes the regulatory review and submits that the Authority should use this process to take steps to ensure a fair competitive environment within the television industry.

**2.3.9 The Authority** has taken a holistic approach in reviewing regulatory framework and not a piece-meal approach of reviewing individual regulations without taking into consideration how they affect other related regulations. This all-encompassing objective approach taken by the Authority will allow the regulator and all stakeholders, to equally inform the process of prioritising individual regulations that need to be reviewed or amended moving into the digital era.

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

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

**2.3.12** *The Authority* has due regard for the broadcast market environment. As stated in the Issues Paper that one of the purposes of this process is to assess the continued viability and regulation of public, commercial and community broadcasters while fostering and promoting competition within the broadcast environment. *The Authority* notes that most of the submissions recommend that the Authority should embark on the chapter 10 inquiry around premium content and other related matters. It is evident that the Authority needs to engage on further research work with regards to premium content and other related matters to make a decision on whether to embark on a chapter 10 market review process. *The Authority* will conduct market study investigations where potential content-related competition issues are identified to promote fair and effective competition in content markets. This will be done in line with the requirements and procedures related to chapter 10 inquiries.

**2.3.13** For general compliance matters, *SOS* argues that there is a need for a monitoring and compliance system that is able to respond quickly and effectively to the increased demands of the digital environment. Furthermore, they endorsed the proposal made by *Media Monitoring Africa (MMA)* in their oral presentation to the Authority on ICASA's draft DTT regulations that ICASA should establish a Monitoring and Compliance Advisory Group. MMA has proposed that the group be made up of a range of stakeholders including the broadcasters, independent

producers, representatives from civil society and international experts. The task of this advisory group would be to develop effective monitoring and compliance systems for the DTT environment and to ensure the effective implementation of these systems.

**2.3.14 *The Authority*** has a statutory mandate in terms of the Constitution, the ICASA Act and the Electronic Communications Act to regulate broadcasting activities in South Africa, in the public interest. The Authority is tasked with ensuring compliance by Licensees with the terms and conditions of their licenses, the EC Act, the ICASA Act and any relevant legislation and regulations.

**2.3.15 *The Authority*** monitors compliance by all television and radio Licensees on a regular basis in respect of their license terms and condition. In formulating Annual Compliance Reports the Authority focuses on the following key areas: Geographic Coverage, Languages, Format, Local Content Obligations, General Programming Obligations, Training and Skills Development Obligations, Ownership and Control Obligations and the Regulations on South African Music/Television Content, Regulations Regarding Standard Terms and Conditions, General Fees Regulations and USAF Regulations. Where compliance is not achieved, the Authority mentions in the Annual Compliance Report (forwarded to the Licensee) which obligations in the license terms and conditions as well as relevant regulations the Licensee failed to comply with.

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

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

### 3 PART B: COMMENTS ON THE CONTENT OF THE ISSUES PAPER

The aim of this Section is to provide a general analysis of the detailed comments on the existing regulations that govern the broadcasting sector contained in the Issues Paper.

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

**3.1.1 Mbetshu** is of the view that the authority should broaden the scope of the current ownership. No drastic changes, but strict monitoring as it broadens must accommodate the disadvantaged who do not have easy access to funding and also address issues of gender and disabilities as the constitution prescribes. Also make the license conditions to give the Historical Disadvantaged a bigger share as the market owners and listed companies to provide seed money, this referring to listed companies.

**3.1.2** In addressing the issue of how should the Authority deal with listed companies in relation to Historically Disadvantaged Individuals (HDI), **NAMEC** argued that the Authority has an obligation towards addressing the imbalances of the past, as it has an opportunity to transform the sector by ensuring there is an HDI friendly criterion when dealing with listed companies.

**3.1.3 Kagiso Media** submits that many of the problems with ownership and control emanate from legislative provisions which have to be fully addressed as part of the national broadcasting policy review process. They submit that the 2004 Ownership and Control review's provisions on listed companies and foreign ownership and control provide a useful precedent and that similar provisions ought to pertain to BBBEE. **Kagiso Media** recommends that the Authority should revert to the recommendations of the 2004 Ownership and control.

**3.1.4 *Right to Know*** argues that there must be less concentrated ownership and control of media and a greater diversity of commercial and non-commercial media that can serve all sections of the population and enable a greater diversity of voices.

**3.1.5 *SOS*** is of the view that for at least the last decade, the broadcasting sector has been characterised by stagnation and that there have been a number of regulatory failures that have become evident in the past decade. This includes the fact that ICASA has added to the lack of competition in the subscription broadcasting sector by using its discretion to ensure that pro-competitive legislative measures prohibiting a single person from controlling more than one commercial television station and cross media control restrictions do not apply to subscription broadcasters. Going forward subscription broadcasters must be subject to ownership constraints, particularly in respect of cross-media ownership and the number of services a single corporate entity may control. Furthermore, ***SOS*** argues that the transformation of the ownership and control of the sector in terms of BBBEE appears to have stalled with the licensing of e-tv in 1997 and that the sector can no longer be said to be setting the standard for the transformation of the economy, a sad come down from the mid-1990s when broadcasting was clearly the most transformed sector of the economy.

**3.1.6** On whether the Authority should broaden, contain, abolish or change the scope of current Ownership and Control of Commercial Services and limitation on broadcasting rules? ***e.tv*** submits that this should be considered on a case by case basis taking into account factors such as the existing concentration of white media ownership in the country (which was grandfathered in 1994), the prospect of improving BBBEE ownership in the media sector, the viability of individual media businesses in an increasingly converged market environment and the

changing nature of media diversity given the increasing number of platforms which the public has access to for information and entertainment.

**3.1.7 Vodacom** submits that section 13 (3) of the EC Act only empowers ICASA to set a limit on, or restrict the ownership or control of an individual licence in order to meet the objectives set out in sub sections (a) and (b). Accordingly, ICASA is not empowered to impose such limit or restriction in order to “promote the ownership and control by historically disadvantaged groups in listed companies” because listed companies are subject to regulation the Johannesburg Stock Exchange (“JSE”) or other Securities Exchanges in cases of secondary listings. In addition, **Vodacom** argues the objective to promote empowerment and that for the promotion of competition and encouraging investment are not necessarily mutually exclusive policy objectives. Although it is not yet formally documented through research, it is evident that companies derive distinct commercial benefits from having excellent empowerment ratings. Business are leaning more favourably to those suppliers that offer a Rand-for-Rand recognition or better for spend values in terms of empowerment.

**3.1.8 The Authority** is pursuing the 2011 recommendations and the submission made to the Department of Communications during the ECA Amendments process. In addition, the Authority will be guided by the BBBEE legislation in the digitally converged environment as to what extent the percentage should be increased.

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

**3.2.1 Mbetsu** submits that one regulation should be applied to National, Provincial, Local and Bye-Elections. He also argues that the Authority should be aware that air-time for broadcast is money and like funding it should be on equal or proportional basis.

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

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

**3.2.4 SABC** argues that PEBs on television are unrealistic to most political parties, in 2009 and 2011 elections smaller parties could not afford to produce PEBs, thus they should be excluded on television. The public broadcaster also submits that the ECA does not make it a peremptory that all SABC services should carry PEB's, nor does it compel transmission of PEB's in prime time. It also supports the notion of a single set of Elections regulations.

**3.2.5 The Authority** agrees with having one set of regulations and will consider merging these regulations during the review thereof as they deal with similar issues

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

**3.3.1 Sentech** suggests that during the analogue transition time the self Help sites should be not be required to pay licence fees to the Authority and should instead be able to access funding from the USAF.

**3.3.2 Kagiso Media** submits that Icasa should reconsider whether it is appropriate for community broadcasting service licensees to make USAF contributions.

**3.3.3 SABC** recommends that a legislation amendment to exempt the SABC from contributing to USF. They elaborate to state that SABC should be a beneficiary rather than a contributor as it's mandated by legislation and policy to drive universal access of its services throughout the country.

**3.3.4 Vodacom** is of the view that mechanisms must be put in place to make USAF funds accessible to a wider range of communications service providers, subject to compliance with the requirements of the ECA. They believe that to limit access of fund to a specific category of licensed operators or specific type of service can create barriers that continue to support existing conditions and discourage the implementations of new technologies to provide services in serviced or underserved areas.

**3.3.5 The Authority** notes that most of the responses dealt with exempting certain broadcasters and electronic communications service-licensees and ensuring that such funds are accessible to a wider range of communications service providers. **The Authority** has also noted that the issues raised are of policy nature and will refer these to the Ministry of Communications.

### **3.4 SPORT BROADCASTING SERVICES REGULATIONS**

**3.4.1 Kagiso Media** submits that market failure in the area of sports broadcasting and premium content rights is inevitable given the power of monopoly players in South Africa's commercial television sector, whether free-to-air or subscription. The media group is the view that the Authority must be able to break a deadlock that arises as a result of commercial dispute over sports broadcasting content which threatens public interest. However, Kagiso Media believes that the Authority needs to first conduct two separate enquiries: Sports of national interest and Premium sport content, to assess whether the current regime unfairly favours Multichioce, the subscription broadcaster.

**3.4.2 Namec** is of the view that the Minister of Sports needs to intervene when there are contractual issues involved leading to the public not gaining access to listed sporting events.

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

**3.4.4 SOS** argues that the Authority must initiate an enquiry in terms of section 67 of the Electronic Communications Act (ECA) of 2005 and must consider introducing a range of pro-competitive measures to look at the acquisition, retention and use of sports broadcasting rights in South Africa. The enquiry should also interrogate the effectiveness of the current sports broadcasting regulatory regime and in particular, whether or not the current regulatory regime unfairly favours Multichoice, the effective monopoly subscription broadcaster, to the detriment of free-to-air broadcasters, particularly the SABC which the public turns to for national sports coverage. In addition, the coalition submits that the Authority must look at what sports broadcasting rights mean in the DTT environment and what regulatory changes, if any, need to be made to the current regulatory environment in order to protect the public interest in the DTT environment, the commercial viability of the SABC and the overall competitive environment in commercial broadcasting, whether free-to-air or subscription.

**3.4.5 e.tv** posits that, currently, the holding of sports rights and the broadcasting of sports is dominated by Supersport (Multichoice). This, as argued by the free to air broadcaster, has a negative effect on mass participation and information in sport. List of national sporting events should be reviewed and increased and rights of free-to-air broadcasters strengthened. As few South Africans have television access to top class sporting content, young South Africans are not encouraged to take up sport as they are not afforded a window to view the best

in the world and improve their own talents. This has the effect of slowing down transformation in sport – rugby is a perfect example of this, as its exclusive broadcast on Supersport (with delayed broadcasts on SABC) reinforces the perception that rugby remains a niche sporting code for the wealthy section of our country.

**3.4.6 *The SABC*** submits that in the absence of clear regulatory direction, it often finds itself negotiating with subscription broadcasters for secondary rights in a disadvantaged position. The secondary rights are highly priced and come with stringent conditions that do not allow the public broadcaster to exploit advertising till the eve of the date of the event. This state of affairs, as argued by public broadcaster, not only hinders the SABC in the discharge of its mandate, but it promotes anti-competitive behaviour. In addition, the public broadcaster posits that these regulations must be reviewed and a clause be included to prohibit a subscription from including in its service the broadcasting of a national sporting event, unless the free-to-air broadcaster has also acquired the right to broadcast the event live, delayed live or delayed. Should a free-to-air broadcaster fail to acquire such rights, the subscription broadcaster may approach the Authority for consent. ***The SABC*** is also of the view that any review of sport regulations should state that it is not obliged to broadcast all events of national interest. They further argue that the broadcast of the listed events must be spread amongst the FTA broadcasters, while also proposing that the SABC be allocated a ring fenced special budget/funding to fund rights of acquisition of national sporting events and developmental and minority sports. It is their recommendation that the South African boxing title fights be included on the list as it will be in the public interest to do so.

**3.4.7 *The Authority*** notes the above-mentioned critical issues related to sport broadcasting services regulations and will consider them during the review thereof in the next financial year.

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

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

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

**3.5.3** During the public hearings, *Mnet* sustained their argument by pointing out to the fact that the word "unidirectional", calves out broadcasting as a very particular type of transmission and therefore excludes any kind of bidirectional transmissions. This definition of broadcasting in the ECA has certain implications. *Mnet* maintains, however, that they support the approach that maintains an equitable regulatory approach when broadcasting services and services that look like broadcasting are considered.

**3.5.4 *Kagiso Media*** is of the view that the 2010 IPTV and VOD might need to be reviewed in light of the DOC led broadcasting policy review process.

**3.5.5 *e.tv*** submits that due to the Position Paper on IPTV and VoD being recently finalised, all relevant issues were dealt with during the process culminating in the Position Paper. There has been very few if any relevant changes in the market place, since that time, necessitating a re-analysis of the Position Paper and *e.tv* therefore believes it would be premature to do so. In this regard, *e.tv* agrees with the Position Paper to the effect that IPTV/VoD should be subject to chapter 9 of the ECA (and the related regulations). During the public hearings, *etv* stressed their submission by stating that they support an approach which maintains an equitable regulatory approach between services broadcasting services and services that are like broadcasting. In addition, ***e.tv*** argues that IPTV/VoD should not be separately regulated even though there may have been limited take-up of this offering to date. The Authority should rather analyse why there has been limited take-up within the confines of the existing market place rather than looking to regulate IPTV/VoD differently to broadcasting services.

**3.5.6 *Film and Publication Board (FPB)*** is in agreement with the current Position Paper. They submit that VoD are distributors which falls within the ambit of the FPB as defined in Chapter 1 of the FPB Act as amended. Therefore, there is no need for the Authority to develop a code of conduct for VoD content producers as the Authority has no jurisdiction over content distributed through these platforms. FPB motivates that they require that all VoD distributors that register with them to have an ECS License with ICASA. Accordingly, they recommend that the Authority institute licence penalties for VoD distributors who do not comply with FPB regulations and processes, through the license conditions of all licensed VoD distributors.

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

**3.5.8 Mbetshu** is of a view that IPTV Services must be subjected to same ownership and control and code of conduct regulations.

**3.5.9 The FPB** brings about a distinctive submission which would compel VoD services (ECNS) to be subjected to a certain level of content regulation through licensing conditions, for the protection of consumers, especially children.

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

**3.5.11** The findings further express minor conflicting views in terms of regulations of IPTV/VoD and other new platforms. While other stakeholders advocate light touch approach to regulating these relatively new services, others debate that similar regulations should apply to all broadcasting and broadcasting like services.

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

### 3.6 DIGITAL TERRESTRIAL TELEVISION REGULATIONS

**3.6.1 e.tv** submits that the finalisation of the DTT regulations is still pending following hearings which were held recently. Etv and SABC refers the Authority to both its written submission and oral presentation made in respect of the draft regulations and requests the Authority to reference these submissions when considering the matters raised herein. In addition to the above, **e.tv** submits that there are regulatory issues which have not been dealt with and need to be dealt with by the Authority going into the digitally converged environment. These have been raised by e.tv in the past and those issues are the need for more effective regulation of pay TV and more effective regulation of the public service broadcaster. **e.tv** further argues against the introduction of new television players until the impact of dominant players on the market has been addressed and a full market study has been done to assess the viability of new players and the impact on the continued viability of existing players.

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

**3.6.3** Both **e.tv** and **SOS** want the introduction of new players. However the difference is that e.tv is clear in that the introduction of new players must be done after a market study, whereas SOS equally argues for section 67 market inquiry and for introduction of new players without stating any priority as to what must come first.

E.tv wants a process similar to that undertaken when it was licenced, meaning the introduction of new players before digital switch on is not a priority.

**3.6.4 Vodacom** submits that the licensing of new players in the digitally converged environment should be based on the type of service they provide, not necessarily on the type of technology or platform used to deliver the service as the ECA provides for technologically neutral framework.

**3.6.5 The Authority** notes that the majority of submissions dealt with the debate on the timing of introduction of new players during the development of the migration processes and the Authority submits that those issues are being dealt with in a separate digital migration process. ***The focus of this section, the Authority would like to point out, however was on the Digital Terrestrial Television framework post dual illumination. Submissions did not share their views on the type of licensing framework within the DTT environment. The Authority*** is of the view that the new players in the DTT environment should provide the demand, need and support analysis for their proposed services. ***The Authority*** will provide a new technology neutral licensing framework for the regulation of digitally converged networks and services.

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

**3.7.1 Namec** is of the view that ASA should be accountable to ICASA, while Mbetshu suggests that the two organisation work closely together.

**3.7.2 Mbetshu** is adamant that Advertisements, sponsorships and product placement should be left to the creativity of the broadcasting commercial experts and the

advertising. He submits that they have been trained and know the rules , also too many regulators could hamper their creativity.

**3.7.3 *Kagiso Media*** is of the view that it was not necessary to embark on the 2009 Advertising regulations review.

**3.7.4 *e.tv*** submits that the Authority should look into the current market trend of the dominant pay TV broadcaster, DSTV and put limitations on the extent to which pay TV can take the advertising revenue. They argue that the participation of etv in the advertising market is unregulated and it therefore has started to erode the revenue base of free-to-air channels, which rely largely on advertising revenue, ie. ***e.tv***. ***e.tv*** argues a significant trend in the South African broadcasting market which must be considered is the commercialisation of the SABC, which undermines the core notion of public service broadcasting. The free-to-air commercial broadcaster believes that the situation whereby the SABC continues to take approximately 50% of the free-to-air television advertising market must be corrected urgently. The free-to-air commercial broadcaster posits that for every 12 minutes of advertising on e.tv there are 36 minutes of advertising on the SABC television channels. This makes the SABC three times as competitive as e.tv in the analogue market in areas in which it also receives a secondary source of revenue. Thus broadcaster argues that the Authority needs to conduct an enquiry and subsequently enact regulations which limit advertising on the public television services of the SABC.

**3.7.5 *SABC*** refers the Authority to its 2009 written and oral submissions. However, there is a need to relook into the DTT environment where there will be more sufficient airtime space for advertising particularly in prime time. Therefore they propose a need for more flexibility in multichannel DTT environment.

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

**3.7.7 *Right to Know*** campaign submits that advertising and sponsorship are the primary sources of income for the media and in order to be sustainable they cater for information needs of the wealthier sections of the population and promote perspectives that do not threaten their advertisers. The trend to commercialization of the media has spread to the public arm of the SABC and non-profit community media in the context of a government policy that underfunded public/community media, leaving them to compete for advertising in the marketplace. They caution that the commercialization of public and community media, through the dependence on advertising for sustainability, limit the range of opinions and news gathering agendas available to everyone living in South Africa. ***Right to know*** supports SOS Coalition call for these divisions to be collapsed and for all channels to be public channels, due to the fact that the public channels make more money than the commercial channels. This situation, they argue, brings into question the need for the division of the SABC into commercial and public arms.

**3.7.8 *Vodacom*** submits that regulations of Advertising Infomercials and Programme Sponsorship should be left to the domain of the ASA because of its expertise in dealing with issues of this nature.

**3.7.9** Delegates at ***the Eastern Cape Provincial workshop*** raised concerns regarding the promotion of liquor advertising and sponsorship during programmes and sporting events. Taking into consideration the views emanating from the Ministry

of Health that these should be banned, their enquiry was around who should be responsible for monitoring advertising.

**3.7.10 Commission on Gender Equality (CGE)** proposed that the Advertising Standards Authority should monitor advertisers as some of the adverts are degrading to society.

**3.7.11 The Authority** will strengthen the relationship with ASA to clarify perceptions about the overlapping jurisdiction and has made the same submission to the legislative review of the ECA.

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

**3.8.1 Namec** supports the notion that the Authority should be the one responsible for developing the code, this they state with reference to an incidence where Top TV required 24hour channels of adult material and other pornographic programs.

**3.8.2 Namec** and **Mbetshu** agree that broadcasters be required to provide tapes and transcripts to groups and/or individuals that have lodged a complaint against broadcast material, but the two disagrees on regulating secret filming and recording of members of the public hypnotism, occult and psychic practices; and showing of on-going judicial processes in TV programmes.

**3.8.3 Kagiso Media** states that the Code is not entirely appropriate for subscription broadcasters, and suggest that the Authority introduce a new Code, specifying that the existing code is for free-to-air broadcasters and the new code for Subscription broadcasters. They also submit that the audience advisory regime for free to air broadcasters ought to be more stringent than those imposed on subscription broadcasters and that there should be fewer advisory obligations

post the watershed period. They advocate technological neutrality and cautions against over-regulating new and evolving services like IPTV.

**3.8.4 e.tv** posits that the Code of Conduct currently deals adequately with audience advisories and there is no need for any change to be introduced. They reason that the introduction of DTT will mean that an electronic programme guide (EPG) is also available for all terrestrial channels, than this will have the added advantage and safety mechanism of allowing channels to place proper audience advisories on the EPG which will be available at all relevant times. **e.tv** also suggests that there should be no changes of the current classification system used by broadcasters. The free-to-air broadcaster states that broadcasters have their own internal controls which adequately deal with classifications and there are sanctions for non-compliance. In addition, **e.tv** argues that the current Code and regulatory system provisions are technology-neutral and are able to deal with a multi-channel, digital and converged environment and no changes are necessary in this regard. **e.tv** submit that, the complaint system require no change as well, as tapes are provided to the broadcasting complaints commission of South Africa (BCCSA) when complaints are lodged and are available for purchase by all members of the public including complainants. **e.tv** argues that there is no need to change the existing system.

**3.8.5 The FPB** advocates for a single media content classification in the country, they suggests that the Authority should make it a requirement in the code of conduct for broadcasting licensees to make use of the FPB Classification Guidelines. They submit that the Authority should institute a penalty system for broadcasting licensees who are found not to be complying with this specific provision. They state that where FPB has already made a classification decision, this decision ought to remain the same even when being flighted on a broadcasting service. **The FPB** argues that the proliferation of classification systems with each broadcaster classifying its own content can lead to confusion of consumers as

different age ratings and consumer advice is provided, depending on who has classified the material. FPB further propose the establishment of a regulator's forum to assess the possibility of partnership on common regulatory issues.

**3.8.6** *The Authority's* consideration is that current complaints mechanisms do not factor the situation where complainants are poor people who do not afford to purchase tapes. The lack of purchasing power could prove to be a deterring factor, to complainants, when it comes to lodging a complaint and seeing the process to its logical conclusion. The Authority is of the view that the complaints mechanisms should ensure tapes and transcripts are easily accessible to complainants regardless of whether they can afford to purchase them or not. In terms of the Code of Conduct and a single media classification, *the Authority* has commenced engagements with the FPB and the broadcasters on the prospects of a single classification system.

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

**3.9.1** *Kagiso Media* suggests that the Authority must publish an annual report on broadcasters' compliance with Commissioning Protocols to bolster public confidence. They are of the view that the challenge does not lie with the provisions of the regulations, but in monitoring and enforcement thereof.

**3.9.2** *SOS* submits that independent production is an area in which the problems lie not wholly with the provisions of ICASA's regulations but also in the monitoring and enforcement thereof. *SOS* states that broadcasters have missed their deadlines in submitting their commissioning protocols and have not been penalised. Further, documents submitted were unduly complicated and lengthy contradicting ICASA's stipulations around simplicity and transparency. *SOS* thus believes that the regulations need to be more effectively monitored and

implemented. Further, **SOS** is of the view that in recognition of the vastly different power ratios that exist between television broadcasters and independent producers, ICASA should not allow broadcasters to amend their commissioning protocols without ICASA's approval. The coalition also suggests that ICASA publish an annual report providing evidence of its monitoring of broadcasters' compliance with ICASA's Commissioning Protocols in order to bolster public confidence in the efficacy of the Commissioning Protocols.

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

**3.9.4 The Authority** received and approved Commissioning Protocols from broadcasters in 2010 and has not received any requests for amendments of the said Protocols from broadcasters to date. Annual Compliance Reports compiled by the Authority include compliance assessment of Independent Production. **The Authority** will ensure that more is done in terms of monitoring compliance with all of its regulations.

### **3.10 MUST CARRY REGULATIONS**

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

**3.10.2 Kagiso Media** submits that not all digital platforms are equal and that the satellite platform lends itself far more easily to the DTT rules than the DTT platform does. They argue that it is nonsensical for the subscription broadcasters on the DTT platform to be expected to carry dozens of public channels, which could in some instances be similar or more than that of the DTT subscription broadcasters. They reason that this requirement on DTT platforms may unduly burden new market entrants and lead to market failure. The ability of large incumbent operators such as Multichoice to establish a high floor price for SABC channels could put the viability of a new subscription DTT market entrant at risk. **Kagiso Media** adds that, as long as the South African DTT regulatory environment are designed that anyone with a STB can access the public channels of the SABC, must carry rules for subscription DTT are unnecessary and would result in waste of spectrum. They further submit that those channels falling within the definition of “public commercial services” ought not to have a must carry status. **Kagiso Media** reasons that it goes against the rationale of must carry to have the “commercial services” from part of the must carry obligation. During the public hearings, **Kagiso Media** raised the commercial terms of must carry agreements as another concern that the Authority should regulate. They point out that the regulations require must carry but leave the commercial negotiations up to the parties and they think that this has not worked effectively and that the Authority needs to reconsider that. **Kagiso Media** submit that the current regulations make it difficult to be able to conclude those agreements because there are subtleties about must carry, must offer, who pays whom and that should be clarified to make it a much more effective regulation mechanism.

**3.10.3 e.tv** proposes that there is a need to regulate the manner in which and extent to which free-to-air channels are re-transmitted by the dominant pay TV satellite operator. Prior to promulgating relevant re-transmission regulations, e.tv

suggests that the Authority should look at international precedent where the re-transmission is subject to copyright and is accompanied by an obligation on the satellite platform to pay a copyright fee to the free-to-air broadcaster. There is a must-carry obligation on leading satellite platforms to carry the PSB channels and all leading free-to-air networks. Sometimes, as in the US, the free-to-air networks can opt to withhold their services from re-transmission unless a fee is paid (referred to as the 're-transmission consent'); and Satellite platform owners must pick up extra transmission costs arising from the carriage of the free-to-air channels on that platform.

**3.10.4 SABC** submits that in the digital environment subscription broadcasters should be allowed to carry SABC 1, 2 and 3 only and only on condition that the parties concerned are allowed to negotiate the commercial terms of the must carry agreements as per the prescripts of the ECA. They advise that the Authority should conduct an inquiry to ascertain and analyse if the regulations serve the purpose for which they were developed. In their additional submission, SABC submit that they do not support the continuance of must carry regime for the South African broadcasting landscape. They reason that the main driving force behind must carry, as in Europe, is the objective of universal access, contrary to that, the public broadcasting services are the largest broadcasting platform in South Africa and therefore they do not need institutional protection through must carry obligations. They also reason that the must carry obligations unjustifiably distorts competition and intervenes in market freedom. *The SABC* acknowledges that the must carry regime cannot be abolished without change of the wording of the legislation, they therefore advocate that the must carry regime should be reformed to be less distortive by limiting the channels subject to the must carry rules. They also acquaint the Authority to the current international literature which offers various modern alternatives, such as "must offer" provisions, where the duty is on the broadcaster to offer certain content under reasonable terms.

**3.10.5** In an attempt to address the challenges (and in agreement with Kagiso Media) with the must carry regulations, *the SABC* submit that the review process should give the Authority an opportunity to exclude all SABC commercial channels from the must carry obligations. They reason the commercial channel is not publicly financed and the inclusion thereof as a must carry channel is not only conceptually unjustifiable, but also contributes to an anti-competitive environment, especially that the SABC is forced to make their content available at no cost. They support this argument through highlighting that public broadcasting service is defined in the ECA to be "any broadcasting service provided by the [SABC] or other state owned enterprise" and therefore, commercial service excludes public broadcasting. With regard to the payment of fees, the SABC argues that the regulations dictating that the SABC make its broadcasting content available at no cost and prescribing that they bear the transmission costs to subscription broadcasters are ultra vires, in that section 60(3) specifically states that the programmes must be carried 'subject to commercially negotiable terms'. *SABC* propose that it would be beneficial if for the relevant broadcasters were left to negotiate market related terms and conditions in a reasonable and fair manner.

**3.10.6** *The Authority* carries its mandate within the defined legislative framework is obliged to provide for the continuance of the must carry rules, therefore this rules out any suggestion that the must carry regulations should be abolished. The 2008 Broadcasting Digital Migration (BDM) policy in paragraph 2.3.5 states that "This Policy provides that the "must carry" arrangements, which require broadcasting services to carry public broadcasting services, continue in the new digital environment, fulfilling the important aspect of providing public broadcasting services to all citizens."

**3.10.7** The current regulations requires a SBS licensee to carry PBS channels if it has a minimum of 29 channels [regulation 5(a)]. Further the regulations do not force the

SBS to carry all PBS channels; rather this is dependent on the number of channel they have for every 20 channels added to their bouquet. The stakeholders challenge with the must carry regulations largely relates to the payment of fees, which is dealt with in the ECA's section 60(3) which states that regulation of must carry ought to be prescribed "subject to commercially negotiable terms".

**3.10.8 The Authority** will continue to follow the United Kingdom's Communications Review seminar series, the current debates and studies related to platform payment flows and carriage of public service roadcasting channels on pay television platforms. **The Authority** will however deal with all concerns and challenges holistically when conducting the specific review of the must carry regulations.

### 3.11 SUBSCRIPTION BROADCASTING SERVICES REGULATIONS

**3.11.1 Kagiso Media** submits that the current regulations require complete overhaul in the context of DTT. They would like the Authority to conduct an Inquiry of the Subscription television market; such must reflect a commitment to increase competition and additional services for the South African audience.

**3.11.2 e.tv** is of the view that DStv's dominance and participation in the advertising market is a threat to the advertising base of other sectors of broadcasting; therefore the foundation on which South African broadcasting policy and regulation is built, is being undermined. Furthermore, **e.tv** argues that the dominance of DStv on the free-to-air broadcasters gives them competitive advantage within the pay TV sector. The long term consequences are that the viability of broadcasters other than DStv will be under threat and that the public interest obligations of the free-to-air broadcasters may no longer be performed. **e.tv** thus submits that once subscription broadcasters reach a predetermined

threshold, they should have stronger and additional restrictions on the extent to which they can carry advertising than those which presently exist, including even stricter restrictions on low-cost pay bouquets that are virtually free owing to the low subscription price. **e.tv** also add that international precedent exists for dominant pay TV operators to be required to run an open platform which enables other pay TV operators to have access to the platform and to offer pay TV services to consumers off that platform. Currently, no such requirement exists in the South African market. e.tv believes regulation of this type is essential in order to create a competitive market and urges the Authority to promulgate the necessary regulation in this regard.

**3.11.3 SOS** share similar view with e.tv in that the subscription market is effectively monopolised by Multichoice which owns both DSTV and M-Net and the lone struggling competitor, Top TV has tried to resort to porn channels to survive. The coalition, however, is of the opinion that ICASA is to blame for failing to ensure a thriving competitive subscription market.

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

**3.11.5 The Authority** will in future review these regulations in relation to the new digital environment, which presents new business models and requires new regulatory approach.

### 3.12 SELF HELP STATIONS REGULATIONS

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

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

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

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

**3.12.4 Vodacom** submits that in examining the question of self-help arrangement, the Authority should consider whether all areas currently requiring analogue transmission facilities will be able to convert to digital equipment. In light of the above, **Vodacom** points out that ICASA should conduct a market research on self-help transmissions to establish the relevance of the continued existence of self-help transmissions with a particular emphasis on the role played by self-help radio stations and whether there is an alternative means of providing access to broadcasting services in locations currently serviced by self - help transmissions. Furthermore, **Vodacom** posits that unless ICASA imposes universal service obligations on the public service broadcaster to ensure communities currently serviced by self-help stations also receive broadcasting signals there is no reason why the status quo relating to self - help stations should not be carried over the to the digital era.

**3.12.5 The Authority** will assess the relevance of self-help stations after the dual illumination period and also audit the number of these self-help stations.

### 3.13 SOUTH AFRICAN LOCAL CONTENT REGULATIONS

**3.13.1 Mnet** states that the current South African Television Content Regulations cannot be practically implemented in a multi-channel environment. They are unworkable in the DTT environment as they provide for the measurement of South African content per channel, rather than per bouquet. These obligations imposed per channel are exceptionally onerous in a digital multi-channel environment. The imposition of per channel local content obligations greatly increases the content and compliance costs for broadcasters during migration.

**3.13.2 Mbetshu** is also of the same view that the immediate review of existing local content quotas will assist in the identification of multi-channel digital environment. For him, Local content quotas should apply to a service and not necessary to all new digital channels since it is expensive to produce and is challenged by high standard and quality requirement

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

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

**3.13.5 SOS** is of the view that the multi-channel digital terrestrial television (DTT) environment does indeed require new ways of regulating local content. Thus broadcaster or network-based quotas, that is, the ability to distribute local content obligations across an offered bouquet of channels will be necessary, including in respect of free-to-air broadcasters. Furthermore, **SOS** suggests that all platforms carrying audio and/or audio-visual content distributed from within South Africa

ought to be subject to appropriate local content requirements and subscription broadcasters, whether satellite or DTT, ought to be able to continue to choose to comply with budgetary-based local content quotas as an alternative.

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

**3.13.7 *e.tv*** submits that the existing local content regulations must be reviewed before the introduction of DTT. The regulation of local content in DTT should be governed by the existing Local Content Regulations, subject to one crucial proviso: the Local Content Regulations should not apply until such time as there is a minimum of 4 million functioning free-to-air DTT set-top-boxes installed in the country. ***e.tv*** further adds that, notwithstanding the provision contained in any individual free-to-air commercial television broadcasting licence, the local content regulations requiring an average of 35% local content for commercial TV licensees should apply and be measured across the licensee's whole bouquet (i.e. there should be no quota for each individual channel so that if one channel exceeds this quota another channel may have less local content). They point out this is what currently pertains to other multi-channel television licensees and it would be prejudicial if this principle were not carried over to the free-to-air DTT broadcasters.

**3.13.8 *The Authority*** is also aware of the challenges local content holds in light of a multi-channel environment and would not want to impose regulations that will constrain the sustainability of the broadcasting services and content production sector. ***The Authority*** has prioritised these regulations and has begun with the review thereof in relation to the post dual illumination environment through the commissioning of a cost benefit analysis study related to Section 61 of the ECA.

### 3.14 COMMUNITY BROADCASTING SERVICES REGULATIONS

**3.14.1 *Sentech*** states that the term of licence for community broadcasters should be increased to 10 years and should be exempted from paying renewal and amendment fees when such processes are brought before the Authority. Furthermore they point out that where a service licence is linked or attached to a spectrum licence the Authority must enforce all related regulations regarding spectrum usage, relating to the current limitations with regard to coverage area. *Sentech* advises the Authority to consider giving more scope to community broadcasters, relaxing rules relating to advertising of community broadcasters and bringing a balance between sustainability of and the funding model of community broadcasters. *Sentech* further stated that community broadcasting principle is based on a non-profit basis as defined in the ECA and the introduction of the subscription concept into community broadcasting contradicts that principle.

**3.14.2 *Tshwane TV*** proposes that ICASA should develop and publish legally binding Regulations for Community Television Governance Structures, nomination and election of Board of Directors and to create a framework for holding of Annual General Meetings by Community Television Service Licensees. In addition, the community broadcaster proposes that it should be compulsory for ICASA to monitor and observe the holding of Annual General Meetings by Community Television Service licensees. *Tshwane TV* propose that ICASA should develop and publish Regulations that will formally enable Community Television Broadcasting Service licensee to request and receive funding from various sources like private investors and local government. The Regulations should outline the terms of reference for the Investment. *Tshwane TV* posits that the duration of Class Television Broadcasting Service License be increased from seven years to fifteen years in line with other categories of Television Broadcasting Services, like Subscription and Free to Air. They also propose that

ICASA should create a regulatory framework that will troduction of at least four (4) Community Television Broadcasting Service in the rural Provinces, like Limpopo and KwaZulu-Natal, during the era of digital broadcasting.

**3.14.3** Furthermore, *Tshwane TV* suggests that ICASA should develop and publish in line with the objectives of the ECA, Regulations that enable Community Television Service licensees to be allowed to be received by audiences outside the license area. The community broadcaster proposes that the Authority develop and publish regulations that create regulatory framework for licensing of Subscription Community Television. Tshwane TV also submits that ICASA should develop and publish Regulations that create a framework for regulating Satellite Free to Air Community Television Broadcasting Service, as the ECA allows for a satellite Free to Air Community Television Broadcasting Service. In addition Tshwane TV also propose that ICASA should develop and publish a regulatory framework on how the management contracts shall be regulated, monitored and enforced in the best interest of the development, sustainability and viability of the Community Television market in South Africa.

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

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

**3.14.6** *The Authority* has observed that certain community broadcasters have been presented with challenges from local government representatives who seek to have undue influence on the administration of the stations. If not regulated and managed properly by community broadcasters local government funding option might exacerbate such a trend. Also, the community broadcasting sector does

not attract as much advertising and sponsorship as other tiers of broadcasters. This has led to financial difficulties for many community broadcasters and thus a challenge in sustaining viable community broadcasters, especially in rural provinces. **The Authority** recognises the urgent need to review and update its position paper and regulations on the community broadcasting sector; and will continue to engage with the industry and the Department of Communications on these matters.

### 3.15 SPECIAL EVENTS LICENSES REGULATIONS

**3.15.1 Mbetshu** states that in the digital environment, there will be no need for such regulations and self-help status.

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

**3.15.3 The Authority** will review and update this regulation to suite the digital environment.

### 3.16 LOW POWER SOUND BROADCASTING REGULATIONS

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

**3.16.2 Rock FM 91.9** asked the Authority to recommend to the Ministry to amend legislation regarding low power broadcasters, which will deal with changing the definition of Low Power from 1 Watt to 10-50 Watts. They submit that Low Power

stations have been the target of larger station who unintentionally or not have damaged the viability of these stations. For example, at night and towards weekends, the larger stations increase their Watts to 500, causing interference and swallowing up the 1Watt stations. Furthermore, **Rock FM 91.9** states that the biggest challenge for Low Power broadcasters is securing advertising revenue within the coverage area, as the regulation and licence conditions requires that advertising be sourced from the same coverage area. Due to poor signal, they could not secure advertising from businesses within their coverage areas. **Rock FM 91.9** is also concerned about the status of Low Power stations during the transition from analogue to digital broadcasting.

**3.16.3 The Authority** has considered the above issues and made Legislative recommendations on the ECA Bill Amendmendts.

### **3.17 REGIONAL TELEVISION BROADCASTING SERVICES POSITION PAPER**

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

**3.17.2 Namec** is of the view that there is a need for regional television broadcasting and the Authority should make sure by appointing these broadcasters as the sector needs to be transformed.

**3.17.3 Mbetshu** submits that South Africa does not need the luxury of Regional Community Television if SABC is still to have regional television for a Province like the Eastern Cape. He suggested that it should either be a regional television with autonomy under SABC having its regional directorate broadcasting in 3

languages that are dominant in the region, and have its own programming including regional news, actuality and talk shows, but links with the mother SABC body for national news and sport.

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

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

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

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

**3.18.1 Kagiso Media** is of the view that the overhauling of private commercial television broadcasting services position paper ought not to delay the licensing of commercial free-to-air DTT television services.

**3.18.2 e.tv** suggests that the Authority should conduct a market study before licensing any new players to determine the current conditions in the South African market place and the impact this would have on existing players (both in regard to their current analogue channels and their digital incentive channels) and the sustainability of a new player. e.tv argues It would be inappropriate, irrational and unreasonable (and a departure from past practice) to merely award a new entrant a licence without undergoing this process. This process would, e.tv

argues, also determine the regulatory conditions under which any new free-to-air player is licensed. In sum, e.tv submits that the Authority cannot begin to consider licensing any new players who will compete for advertising until such time as it has fulfilled its mandate to create a fair competitive environment and has created the market conditions for a new entrant to survive and for existing players to remain viable.

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

### 3.19 PRIVATE SOUND BROADCASTING SERVICES POSITION PAPER

**3.19.1 Kagiso Media** submits that the above regulations require complete overhaul in the context of digital migration. They would like the Authority to conduct an Inquiry of the Subscription television market; such must reflect a commitment to increase completion and additional services for the South African audience. Kagiso Media also believes that the Authority must improve its monitoring and enforcement capacity for both radio and television and that the state of local content industry will be object of significant attention in the DOC led policy review.

**3.19.2 The Authority** agrees that the above regulations require complete overhaul in the context of digital migration and will engage in such a review within the next 3-5 years.

#### 4 PART C: GENERAL ISSUES FOR FURTHER COMMENT

In addition to the formal and specific regulatory questions, there are other issues that were commented upon by the stakeholders.

##### 4.1 SOCIAL COHESION

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

**4.1.2 *Kagiso Media*** is of the view that the concept of "social cohesion" and how to broadcast to support that, is something that the SABC ought to be doing as part of its Charter obligations and that the DoC-led national policy review process is best placed to suggest amended provisions to the SABC Charter.

**4.1.3 *The Authority*** will engage with relevant Government Departments and broadcasters on how they can contribute and play a major role with regards to social cohesion.

##### 4.2 SABC CHARTER

**4.2.1 *Sentech*** states that the issue of ICASA exercising its oversight role to the SABC falls outside what is permitted by legislation. The Authority cannot go beyond the current provisions of the Broadcasting Act in relation to its oversight of the SABC.

**4.2.2 Kagiso Media** is of the view that the concept of “social cohesion” and how to broadcast to support that, is something that the SABC ought to be doing as part of its Charter obligations and that the DOC-led national policy review process is best placed to suggest amended provisions to the SABC Charter.

**4.2.3 e.tv** submits that the Broadcasting Act obliges the Authority to monitor and enforce the SABC’s compliance with its Charter. To date, e.tv is unaware of what action the Authority has taken to fulfil its oversight role. e.tv suggests that the Authority take a more direct and proactive approach in ensuring that the relevant provisions of the ECA are adhered to by the SABC. e.tv suggests that the Authority does not monitor the SABC’S compliance with licence conditions, the requirement to operate separately the public and commercial service divisions, the requirement to provide regular inputs of public opinion on its services and the requirement to develop a Code of Practice with which both the services and personnel must comply. Failure by the Authority to fulfil its compliance monitoring mandate, argues e.tv, impacts negatively on the entire television market as it allows the SABC to blur the boundaries between its public and commercial service divisions with the effect that there is often little distinction between the two.

**4.2.4** During the International Conference, **Seidl** explained that statutory obligations have made the digital transition much more difficult for the Canadian Broadcasting Corporation (CBC) given its unique mandate to serve all Canadians regardless of where they live or the media markets in which they are served with CBC’s largest group of over-the-air transmitters. The CBC was given one extra year to find solutions for viewers that may have lost access to their over-the-air signals.

**4.2.5** Furthermore, **Robin Foster** argued that the PSB has to find if it still matters or will it still do so even in an converged environment. He pointed out that PSBs

around the world are oscillating between government driven funding through license fees and taxes, commercial and advertising revenues, all of which are not a clear certainty due to the contrasting pros and cons they experience. Foster lists about five areas through which PSB can be sustained, namely: making a case for the retention of the PSB in a converged environment; developing of new ways to deliver PSB to the public; making sure that funding is available so that the PSB delivers on its mandate; reshaping of organizational models that can effectively deliver on the PSB promises in an new digital environment; and observation and assessment of the governance and accountability structures of the PSBs.

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

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

## 5 PART D: SUMMARY OF THE AUTHORITY'S PRELIMINARY VIEWS

### 5.1 GENERAL COMMENTS ON THE ISSUES PAPER

**5.1.1** *The Authority* is of the view that engaging in a regulatory review in this current juncture will not compromise or contradict policy making process in anyway. This consultative process will produce regulatory review findings document, which will provide the necessary input the Authority needs to take into account in the formulation of a new broadcasting regulatory framework in the light of the unfolding digital era. If necessary this process will also feed into the Ministerial Broadcasting Policy Review, and the regulator as one of the stakeholders will also make submissions. The process will not culminate into a new wholesale set of regulations.

**5.1.2** *The Authority* has taken a holistic approach in reviewing regulatory framework and not a piece-meal approach of reviewing individual regulations without taking into consideration how they affect other related regulations. This all-encompassing objective approach taken by the Authority will allow the regulator and all stakeholders, to equally inform the process of prioritising individual regulations that need to be reviewed or amended moving into the digital era.

**5.1.3** *The Authority* has due regard for the broadcast market environment. As stated in the Issues Paper that one of the purposes of this process is to assess the continued viability and regulation of public, commercial and community broadcasters while fostering and promoting competition within the broadcast environment. *The Authority* notes that most of the submissions recommend that the Authority should embark on the chapter 10 inquiry around premium content and other related matters. It is evident that the Authority needs to engage on further research work with regards to premium content and other related matters to make a decision on whether to embark on a chapter 10 market review process. *The Authority* will conduct market study investigations where potential

content-related competition issues are identified to promote fair and effective competition in content markets. This will be done in line with the requirements and procedures related to chapter 10 inquiries.

**5.1.4 *The Authority*** has a statutory mandate in terms of the Constitution, the ICASA Act and the Electronic Communications Act to regulate broadcasting activities in South Africa, in the public interest. The Authority is tasked with ensuring compliance by Licensees with the terms and conditions of their licenses, the EC Act, the ICASA Act and any relevant legislation and regulations.

**5.1.5 *The Authority*** monitors compliance by all television and radio Licensees on a regular basis in respect of their license terms and condition. In formulating Annual Compliance Reports the Authority focuses on the following key areas: Geographic Coverage, Languages, Format, Local Content Obligations, General Programming Obligations, Training and Skills Development Obligations, Ownership and Control Obligations and the Regulations on South African Music/Television Content, Regulations Regarding Standard Terms and Conditions, General Fees Regulations and USAF Regulations. Where compliance is not achieved, the Authority mentions in the Annual Compliance Report (forwarded to the Licensee) which obligations in the license terms and conditions as well as relevant regulations the Licensee failed to comply with.

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

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

## **5.2 COMMENTS ON THE CONTENT OF THE ISSUES PAPER**

### **5.2.1 REVIEW OF OWNERSHIP AND CONTROL OF COMMERCIAL SERVICES AND LIMITATIONS ON BROADCASTING**

**5.2.1.1** *The Authority* is pursuing the 2011 recommendations and the submission made to the Department of Communications during the ECA Amendments process. In addition, the Authority will be guided by the BBBEE legislation in the digitally converged environment as to what extent the percentage should be increased.

### **5.2.2 THE REGULATION OF NATIONAL AND MUNICIPAL ELECTIONS BROADCASTING**

**5.2.2.1** *The Authority* agrees with having one set of regulations and will consider merging these regulations during the review thereof as they deal with similar issues.

### **5.2.3 REGULATIONS IN RESPECT OF THE PRESCRIBED ANNUAL CONTRIBUTIONS OF LICENSEES TO THE UNIVERSAL SERVICE AND ACCESS FUND**

**5.2.3.1** *The Authority* notes that most of the responses dealt with exempting certain broadcasters and electronic communications service licensees and ensuring that such funds are accessible to a wider range of communications service

providers. **The Authority** has also noted that the issues raised are of policy nature and will refer these to the Ministry of Communications.

#### **5.2.4 SPORT BROADCASTING SERVICES REGULATIONS**

5.2.4.1 **The Authority** notes the above-mentioned critical issues related to sport broadcasting services regulations and will consider them during the review thereof in the next financial year.

#### **5.2.5 REGULATORY APPROACH TO IPTV AND VOD POSITION PAPER**

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

#### **5.2.6 DIGITAL TERRESTRIAL TELEVISION REGULATIONS**

5.2.6.1 **The Authority** notes that the majority of submissions dealt with the debate on the timing of introduction of new players during the development of the migration processes and the Authority submits that those issues are being dealt with in a separate digital migration process. The focus of this section, the Authority would like to point out, however was on the Digital Terrestrial Television framework post dual illumination. Submissions did not share their views on the type of licensing framework within the DTT environment. **The Authority** is of the view that the new players in the DTT environment should provide the demand, need and support analysis for their proposed services. **The Authority** will provide a new technology neutral licensing framework for the regulation of digitally converged networks and services.

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

5.2.7.1 *The Authority* will strengthen the relationship with ASA to clarify perceptions about the overlapping jurisdiction and has made the same submission to the legislative review of the ECA.

### **5.2.8 REGULATION FOR THE CODE OF CONDUCT FOR BROADCASTING SERVICE LICENSEES**

5.2.8.1 *The Authority's* consideration is that current complaints mechanisms do not factor the situation where complainants are poor people who do not afford to purchase tapes. The lack of purchasing power could prove to be a deterring factor, to complainants, when it comes to lodging a complaint and seeing the process to its logical conclusion. *The Authority* is of the view that the complaints mechanisms should ensure tapes and transcripts are easily accessible to complainants regardless of whether they can afford to purchase them or not. In terms of the Code of Conduct and a single media classification, *the Authority* has commenced engagements with the FPB and the broadcasters on the prospects of a single classification system.

### **5.2.9 COMMISSIONING OF INDEPENDENTLY PRODUCED SOUTH AFRICAN PROGRAMMING REGULATIONS.**

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

Production. **The Authority** will ensure that more is done in terms of monitoring compliance with all of its regulations.

#### 5.2.10 MUST CARRY REGULATIONS

5.2.10.1 **The Authority** carries its mandate within the defined legislative framework is obliged to provide for the continuance of the must carry rules, therefore this rules out any suggestion that the must carry regulations should be abolished. The 2008 Broadcasting Digital Migration (BDM) policy in paragraph 2.3.5 states that "This Policy provides that the "must carry" arrangements, which require broadcasting services to carry public broadcasting services, continue in the new digital environment, fulfilling the important aspect of providing public broadcasting services to all citizens."

5.2.10.2 **The Authority** will continue to follow the United Kingdom's Communications Review seminar series, the current debates and studies related to platform payment flows and carriage of public service roadcasting channels on pay television platforms. **The Authority** will however deal with all concerns and challenges holistically when conducting the specific review of the must carry regulations.

#### 5.2.11 SUBSCRIPTION BROADCASTING SERVICES REGULATIONS

5.2.11.1 **The Authority** will in future review these regulations in relation to the new digital environment, which presents new business models and requires new regulatory approach.

#### **5.2.12 SELF HELP STATIONS REGULATIONS**

5.2.12.1 *The Authority* will assess the relevance of self-help stations after the dual illumination period and also audit the number of these self-help stations.

#### **5.2.13 SOUTH AFRICAN LOCAL CONTENT REGULATIONS**

5.2.13.1 *The Authority* is also aware of the challenges local content holds in light of a multi-channel environment and would not want to impose regulations that will constrain the sustainability of the broadcasting services and content production sector. *The Authority* has prioritised these regulations and has began with the review thereof in relation to the post dual illumination environment through the commissioning of a cost benefit analysis study related to Section 61 of the ECA.

#### **5.2.14 COMMUNITY BROADCASTING SERVICES REGULATIONS**

5.2.14.1 *The Authority* has observed that certain community broadcasters have been presented with challenges from local government representatives who seek to have undue influence on the administration of the stations. If not regulated and managed properly by community broadcasters local government funding option might exacerbate such a trend. Also, the community broadcasting sector does not attract as much advertising and sponsorship as other tiers of broadcasters. This has led to financial difficulties for many community broadcasters and thus a challenge in sustaining viable community broadcasters, especially in rural provinces. *The Authority* recognises the urgent need to review and update its position paper and regulations on the community broadcasting sector; and will continue to engage with the industry and the Department of Communications on these matters.

#### **5.2.15 SPECIAL EVENTS LICENSES REGULATIONS**

5.2.15.1 *The Authority* will review and update this regulation to suite the digital environment.

#### **5.2.16 LOW POWER SOUND BROADCASTING REGULATIONS**

5.2.16.1 *The Authority* has considered the above issues and made Legislative recommendations on the ECA Bill Amendments.

#### **5.2.17 REGIONAL TELEVISION BROADCASTING SERVICES POSITION PAPER**

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

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

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

#### **5.2.19 PRIVATE SOUND BROADCASTING SERVICES POSITION PAPER**

5.2.19.1 *The Authority* agrees that the above regulations require complete overhaul in the context of digital migration and will engage in such a review within the next 3-5 years.

### 5.3 GENERAL ISSUES FOR FURTHER COMMENT

#### 5.3.1 SOCIAL COHESION

5.3.1.1 *The Authority* will engage with relevant Government Departments and broadcasters on how they can contribute and play a major role with regards to social cohesion.

#### 5.3.2 SABC CHARTER

5.3.2.1 *The Authority* has considered the issues raised with regards to the SABC Charter and will share them with the Ministry of Communications.

## **6 PART E: CONCLUSIONS AND NEXT STEPS**

6.1 It became evident during the provincial workshops that there are scorching issues that needed to be addressed through policy and regulatory framework. Stakeholders were encouraged to focus more on the questions raised in the published document in order to make a meaningful contribution to the review process.

6.2 Variety of regulatory, policy and general broadcast issues were raised. There were direct and indirect comments on the Issues paper, amongst others; Challenges facing community broadcasting dominated the consultation process in all provinces, issues such as the corporate governance, ownership, Sentech tariffs and funding came out strongly.

6.3 The obvious interest was on digital migration, questions such as advantages and disadvantages thereof, financial cost to be borne by citizens, Digital migration's role in addressing the universal access to broadcasting services, the government subsidy available and the government's process to be followed in identifying the poor households were tabled. The Authority was asked why it is taking so long to finalise the digital migration process, and concerns were raised on the possibility of not meeting the International Telecommunications Union switch off deadline of 2015.

6.4 Interoperability of set top boxes was also raised as an issue of concern as to whether set top boxes will be compatible with the set top boxes provided by subscription broadcasters.

6.5 Access to signal for radio and television in underserviced area presented to be a challenge in some provinces with the main challenge being the radio signal in rural areas.

6.6 People with Disabilities were concerned that the Regulatory Review Issues paper presentation did not capture the disability issues which are the challenges they face with regard to most of the Authority's regulations which do not address targeted groups, i.e. women, youth, disabled and elderly people. They proposed that the Authority should prioritise targeted groups as well as accessibility to broadcasting services.

6.7 The use of predominantly developed (Western) countries for international benchmark in the issues paper was questioned. The attendees wanted to know why African countries and those in the developing world like India and Brazil were not used for benchmark purposes, as well as the relationship of the South African Regulator and its African counterparts.

6.8 Other general concerns were procedure followed by the Authority with regard to the Issues paper document. The main issue was that the Regulatory Review Process was premature as the legislation should come first before a Regulatory Review process. The emphasis was that a Policy from government should give direction before the Authority can embark on the Regulatory Review process, due to the fact that policy and legislative review should precedes regulation, in order to ensure orderly development.

6.9 There were also concerns about the ICASA consultation processes not being transparent and not communicated to the public on time. It was argued that not everyone can access the published government gazettes. Other mechanisms should therefore be sought to enlighten stakeholders of the outcomes.

6.10 The Authority addressed all of these during the Provincial workshops, International Conference and during the public hearings and meetings with those organisations that required to meet with the Council of the Authority.

6.11 The Authority indicated and still holds the view that the regulatory review process is not isolated to the Authority as these developments happen globally and more recent examples are Australia's Convergence Review Final Report and the United Kingdom's Communications Review. Therefore the Authority will continue to monitor such developments until a final position is adopted.

6.12 Against the background of the aforementioned developments in regulatory policy development, and to contribute usefully to the processes that has already been undertaken and in response to submissions by stakeholders, the Authority envisages that the regulatory items/themes that are mentioned below in Appendix A will be at the core of the Authority's regulatory work programme for the next 3-5 years (Medium Term Expenditure Framework). The Authority will not restrict itself to just these areas of works, but they will have priority. These will be reviewed regularly and depending on the comments from the interested stakeholders the Authority will make amendments if so required.

6.13 Stakeholders should therefore also refer to the Appendices in order to find the Authority's draft regulatory plans for the next 3-5 years to support the 2020 vision outlined at the Department of Communications Policy Conference in Midrand.

6.14 The Authority particularly welcomes written submissions on the above positions it has adopted and whether the Stakeholders agree with the outline of the Authority's regulatory prioritisation as outlined in Appendix A.

6.15 Furthermore, the Authority will re-engage with all stakeholders at a provincial level between November and December 2012 before holding final public hearings in Johannesburg during January 2013.

6.16 Please submit your comments in a generally readable electronic format. All submissions will be published on the Authority's website if not requested otherwise. If you would like your contribution to be treated confidentially, please indicate this at the top of the first page of your submission. Should you want to add a cover letter please do so in a separate document.

6.17 In case your comments exceeds four pages please start your submission with an Executive Summary. All submissions should be mailed to the functional mailbox of the Project Team: [regulatoryreview@icasa.org.za](mailto:regulatoryreview@icasa.org.za)

**PART F: APPENDICES****APPENDIX A: REGULATIONS TO BE PRIORITISED TOWARDS 2020 FOR  
STAKEHOLDER CONSIDERATION**

<b>REGULATIONS</b>	<b>2013/2014</b>	<b>2014/2015</b>	<b>2015/2016</b>	<b>2016/2017</b>	<b>2017/2018</b>
Review and develop Local Content Regulations for the new digital broadcasting environment	✓	✓			
Review of Regulations governing broadcasting for Political Elections	✓				
Review and develop Sports Broadcasting Regulations	✓	✓			
Review and develop Must-Carry Regulations	✓	✓			
Initiate the development of new regulatory and licensing framework for Broadcasting Service in the Digital Broadcasting Environment		✓	✓		
Initiate the development of new regulatory framework		✓	✓		

for Electronic Programme Guides and interoperability of broadcasting services					
Review and develop regulations governing Advertising and Sponsorship		✓	✓		
Review of Regulations governing Code of Conduct for Broadcasters		✓	✓		
Inquiry into Community Broadcasting Regulatory and Licensing Framework			✓	✓	
Inquiry into Digital Radio Broadcasting Regulatory and Licensing Framework			✓	✓	

## **APPENDIX B: REPORT ON PROVINCIAL WORKSHOPS RELATING TO THE ISSUES PAPER**

### **INTRODUCTION**

1.1 On the 8<sup>th</sup> of December 2011 the Independent Communications Authority of South Africa ("the Authority") published an Issues Paper on Broadcasting Regulatory Review towards a digitally converged environment. Subsequent to that workshops were held nationally to;

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

1.2 The Authority was assisted by the Government Communications and Information System (GCIS) in some provinces with regards to the invitation of stakeholders to the workshop. The audience largely comprised of community broadcasters, independent producers, students, set top box (STB) manufacturers, government departments and business people.

1.3 Stakeholders engaged and raised a variety of regulatory and policy issues. Some of the issues were general broadcast issues and a few related to the direct questions from the Issues paper. This was followed by a session of clarity seeking questions and comments. Community broadcasting issues dominated the session. Below is a summation of issues raised per province.

### **2. NORTHERN CAPE (KIMBERLEY) 12 JANUARY 2012**

2.1 The workshop was attended by wide ranging audience comprised of community radio stations, non-governmental organisations, DoC, GCIS and other government institutions.

- 2.2 The attendees suggested that the regulatory review should have waited for a complete review of the broadcasting landscape. They were of the view that policy and legislative review should have preceded regulatory review, as this would have ensured an orderly development.
- 2.3 The audience from the radio broadcasting sector raised a concern that the issues paper tends to focus more on television, and they are worried that the radio sector is going to be neglected. They further enquired about the benefits and costs of migration from analogue to digital broadcasting for consumers.
- 2.4 The attendees complained that community radio stations' management does not encourage community participation on local programming issues. They also highlighted the management's inability to provide training and skills for volunteers.
- 2.5 They asked if the equipment used by independent producers to produce programmes will have to be changed in order to be compatible with digital broadcasting, and whether government will assist in subsidising the purchase of new equipment. They further suggested that the SABC should share their infrastructure to produce programmes, and also assist in training the community radio volunteers.
- 2.6 The attendees complained that Sentech and SAMRO fees are exorbitant; in addition, they are burdened with contributions to USAF and MDDA. Community radio stations also questioned the uniform contribution by all broadcasters to USAF and suggested that they should be exempted from contribution to USAF.
- 2.7 The community broadcasters highlighted that community radio stations contravene their licence conditions due to pressure from their listeners requesting them to play more music. Therefore they suggested that licence conditions need to be relaxed for the viability of community radio stations.

2.8 The community broadcasters indicated that the application process for community radio should be simplified as it can take up to 6 months for completion.

2.9 The attendees indicated that they do not receive signal for radio and TV in Namaqualand, whereas the signal spills to Namibia. They further mentioned that the community of interest stretch more than 200km, while the Authority gives radio stations 1kw which does not cover the entire community. They therefore questioned how this challenge would be addressed if radio stations are not going to migrate.

2.10 The community broadcasters stated that the SABC is funded by government; therefore community radio stations should get access to a special live feed of national news and sport of national interest.

2.11 The attendees suggested that ICASA, DoC and related stakeholders have to work together in facilitating, organising and informing the broadcasting sector, especially community broadcasting, and the public about the importance, impact, nature and extent of the imminent digital migration processes.

### **3. EASTERN CAPE (EAST LONDON) 17 JANUARY 2012**

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

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

- 3.3 They further cautioned the Authority that voluntarism in community radio stations is not sustainable.
- 3.4 The attendees complained that there is no diversity in terms of news as the local broadcasters show national news and not what is happening in their community.
- 3.5 The attendees asked about the possibility of merging community radio stations if they are closer to each other. Furthermore they suggested that ICASA should improve the monitoring of signal coverage as community radio stations are of the view that the allocated frequency is issued throughout the province whilst it is only for the geographic area in their licence conditions. They complained about community broadcasters that cover 8 provinces. The attendees also raised challenges in terms of coverage where there are mountains and downhills.
- 3.6 Religious broadcasters wanted to know if they can get space in the airwaves.
- 3.7 The attendees raised a concern that the community radio stations are owned by individuals and not the community. They suggested that there should be a new formal way of appointing board members and not just a show of hands as it is done currently. They complained that board members serving the community are interested in popularity while not addressing community issues.
- 3.8 The audience were also concerned about the promotion of liquor in advertising especially during sporting events and wanted to know who is responsible to monitor advertising.
- 3.9 The attendees pointed out that community broadcasters are supposed to include programming for youth, children and persons with disabilities in their programming schedule. The community have raised the abovementioned matter with the broadcasters concerned, however they failed to respond positively.

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

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

3.12 Community radio stations raised an issued about costly Sentech tarrifs which have become a financial burden. They suggested that the approximate R20 000 charged by Sentech should be reduced to a manageable fee.

#### **4. WESTERN CAPE (STELLENBOSCH) 19 JANUARY 2012**

4.1 The attendees comprised largely of representatives from the community broadcasting sector and set top box manufactures. The latter group was interested in locating a central role they believe they have to assume in the digital migration process. Very few questions raised in the workshop related to questions posed in the Issues Paper. Attendees focused on the community broadcast challenges and the digital migration process. Digital migration questions and comments related to both regulatory and policy issues.

4.2 The attendees wanted to know how the regulatory review process relates with the policy review. They were of the view that policy review precedes a regulatory process.

4.3 A majority of participants were interested in the advantages and disadvantages of digital migration for the ordinary citizen. The fundamental concern was the financial cost to be borne by citizens. They argued for consumer education with regards to

the financial cost that the consumer might incur, the government subsidy available and the process to access such.

4.4 Another point of interest pertained to how the dual illumination period will affect the poor households. The attendees enquired at what stage of the dual illumination period those depending on government subsidy will get set top boxes and access digital television. In summing up the issue, they argued that the expected commencement and the completion of the dual illumination period will not be sufficient to distribute set top boxes or subsidy vouchers to all poor households qualifying for a government subsidy.

4.5 Those interested in the business aspect of digital migration wanted to know how the digital migration process will benefit SMMEs and new businesses eager to play a role in the digital broadcast sector. Of significance to them was whether the Authority will retain a separate spectrum for Black economic empowerment (BEE) ownership. They argued that, using the digital migration process, the Authority should further entrench competition and facilitate a bigger ownership and control role for HDIs.

4.6 Representatives from the radio sector, largely from community broadcasting, were interested in their role in the digital migration process. They complained that from what they have observed, when deliberating on digital migration, television seems to be the main focus. They urged the Authority and the DoC to begin discussions and do research around digital radio, as to when will it commence and what will it imply for licensed community broadcasters. They want the digital radio migration process to be communicated early and be easily comprehensible by an ordinary citizen. Their main concern is that they do not want the digital radio migration process to exacerbate the signal interference challenges currently experienced by many radio stations.

4.7 Community broadcasters enquired if they will be subsidised to migrate from analogue to digital radio broadcasting, specifically in terms of signal distribution for those who self-provide, taking into account the costs involved in the current television migration process. They contended that the costly nature of digital migration may put many community broadcasters out of business, more so those who do signal self-distribution.

## **5 MPUMALANGA (NELSPRUIT) 26 JANUARY 2012**

5.1 The workshop was attended by wide ranging audience namely: Community radio stations, interested parties, members of the community and Government departments including the DoC, GCIS, and the Department of Economic Development, Environment and Tourism. They raised a variety of regulatory and policy issues, and a few related to the direct questions from the Issues Paper.

5.2 The audiences wanted to know how the process of Regulatory Review will add value to the people of Mpumalanga. They stressed that Mpumalanga as a province needs special attention; while there are a lot of community radio stations in some municipalities, more should be done to diversify the voice of the people at local level especially in the Gert Sibande and Nkangala District municipalities.

5.3 The stakeholders enquired about the advantages and disadvantages of digital migration. There was a concern about migrating cost to the public with regards to acquiring a Set Top Box in both rural and urban communities. Another concern was the fact that migration might not have immediate benefits for the people of Mpumalanga.

5.4 Attendees raised an issue with regard to interoperability of set top boxes. They were concerned whether the free to air set top boxes are going to be compatible with the set top boxes provided by subscription broadcasters. They further queried why it is taking long for the Authority to finalise the digital migration process.

5.5 The attendees wanted clarity on who would distribute and access internet protocol television (IPTV) and video on demand (VOD), and how it would be monitored.

5.6 The audience questioned the fairness of the moratorium on licensing of community television as the Authority licensed other community television broadcasters after the moratorium was passed, and they would like the process to be reviewed as a matter of urgency. Attendees also suggested that community television and radio application process should be simplified.

5.7 Community radio stations questioned the uniform contribution to USAF and the amount they are supposed to contribute considering that they do not make profit.

5.8 The audience said that ICASA does not hold broadcasters responsible for not considering issues of persons with disabilities in their broadcasts.

5.9 They questioned ICASA's working relationship with other industry bodies such as the Competition Commission, BCCSA, ASASA, Sentech and National Consumer Commission.

## **6 NORTH WEST (MAFIKENG) 31 JANUARY 2012**

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

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

- 6.3 Lack of consumer awareness on digital migration was a concern for participants. They wanted to know how it is going to affect the person on the street in terms of the picture quality on their television set, the number of increasing channels and economic advantages thereof. Community members were curious and scared that digital migration might actually decrease jobs instead.
- 6.4 Another issue from this group was the fact that consumers can access commercial radio stations on the cellular phone, but it is not the case with community radio stations.
- 6.5 Participants wanted clarity on what Internet Protocol Television (IPTV) is and whether it is a way for the future.
- 6.6 They advised that the workshop would be more fruitful if all role players were available, for example the Department of Communications (DOC) and Media Development and Diversity Agency (MDDA). An issue was raised on the lock-in process of Sentech whereby the community broadcasters are locked into a contract and charged exorbitant fees.
- 6.7 There was a concern that advertised goods cannot perform as per the promise in the advert, therefore control measures for advertising need to be considered in light of digital migration.
- 6.8 There were concerns regarding companies that exploit people through advertising messages in consumers' cellular phones.
- 6.9 People with disabilities expressed great disappointments regarding access to broadcasting services. They advised that more research be done to ensure that persons with disabilities are properly served, and it should be reported on the efforts that have been made so far. These concerns need to be dealt with before migration and they wanted to know how digital migration was going to affect them.

6.10 The last question was on the National Frequency Plan whereby participants wanted to know whose responsibility it was between ICASA and DOC.

## **7 NORTH WEST (RUSTENBURG) 02 FEBRUARY 2012**

7.1 Participants sought clarity on the consumer complaint processes and enquired on the framework for regulating foreign telecom operators.

7.2 Community radio stations indicated that they would like to be included in the Sports Broadcasting Regulations to acquire rights to broadcast sports of national interest. The suggestion was that it did not have to be direct, that the process would go through the SABC, where SABC would make available their live broadcast of the Sport event to the community radio stations for free.

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

7.4 The importance of public awareness on digital migration became apparent when participants sought clarity on what the advantages of digital migration were and whether the consumer required special equipment to be able to view television in the digital era. They also enquired on how broadband relates to digital migration.

7.5 There was confusion from community radio broadcasters who indicated that they had already migrated to digital broadcasting, this referring to their recently updated digital equipment.

7.6 Participants expressed their concerns that poor people will be the ones most affected by digital migration, this in reference to the financial implications of the whole migration process, for example the cost of a set top box.

7.7 They further raised their concerns on the possibility of not meeting the International Telecommunications Union deadline of 2015 as a country.

#### **8. KWA-ZULU NATAL (DURBAN): 07 February 2012**

8.1 The attendees comprised of representatives from the community broadcasting sector (both television and radio), the public broadcaster, manufactures, Association for the physically challenged and interested members of the public. The majority of the attendees did not read the Issues paper, but relied on the presentations done by both the Authority and the DoC. Attendees were interested on the digital migration process, community broadcast challenges, disability and protection of children issues, and the licensing and monitoring issues.

8.2 There was also a general concern by the attendees with regard to the Issues paper document. Their concern was mainly on the procedure followed by the Authority. They were of the view that the Regulatory Review document was premature as the legislation should come first before a Regulatory Review process. They emphasised that a Policy from government should give direction before the Authority can embark on the Regulatory Review process.

8.3 They were also concerned about the ICASA consultation processes not being transparent and not being communicated to the public on time. They argued that there are instances where the Authority consulted with them when introducing new regulations or amending those, but the Authority does not communicate the final outcome of the process to the public considering that it's not everyone who can access the published government gazettes.

8.4 The majority of attendees showed enthusiasm to learn more about digital migration and understand how it will affect them. They were not clear on the government's digital migration process in terms of the process to be followed by the DoC in

identifying the poor households in rural areas. Furthermore, they enquired how digital migration will assist in addressing the issue of universal access as there are people who cannot access the current analogue television. On the other hand, the manufacturers were concerned about the state of readiness for the DTT transmitters. Community radio broadcasters were interested on whether digital audio will be licensed and regulated during the dual illumination period. Broadcasters who are self-transmitting were worried about the costs to be incurred for digital migration.

8.5 The manufacturers were interested on knowing whether the SABS specifications included the encryption of Set Top Boxes.

8.6 The community TV broadcasters were concerned about the digital migration regulations and wanted clarity with regard to the percentage allocated to them. They asked how the Authority intended to allocate equal percentage to all community TV broadcasters without prejudicing others in different geographical areas. They were interested in knowing whether the Authority will create a space on the second DTT multiplex for community TV, as the first multiplex was allocated to the public broadcaster and the permanently licensed community TV.

8.7 People with Disabilities were concerned that the Regulatory Review Issues paper presentation did not capture the disability issues, and they highlighted the challenges they face with regard to most of the Authority's regulations which do not address targeted groups, i.e. Women, youth, disabled and elderly people. They proposed that the Authority should cease to reflect the targeted groups' matters as an afterthought, but make sure that their issues are catered for. They emphasised that IPTV needs to be regulated in order to protect children from being exposed to access information that is beyond their age restriction.

8.8 The attendees highlighted the fact that the licensing procedure changed without informing the public. Previously with the IBA, the Authority used to have public

hearings before awarding licenses, but licenses are now awarded without public participation. Those interested in special events licensing complained that the process is not easily understandable. They were also concerned that ICASA awards community broadcasting licenses without assessing whether the applicants have the necessary infrastructure to broadcast.

8.9 They emphasized that KZN as a province has its own unique geographical landscape challenges, therefore it should be treated differently from other provinces.

#### **9. LIMPOPO (POLOKWANE) 16 FEBRUARY 2012**

9.1 The participants were concerned that if the Authority offer incentive channels to SABC this might be an overload of information. They questioned whether more channels will affect the amount paid for television licenses; they were worried about the possible increase in terms of the amount to be paid for television licenses. Community broadcasting service licensees wanted to know why consumers pay for SABC television licenses and not community radio.

9.2 Community radio stations wanted to know how they will be affected by digital migration especially in terms of the equipment they will have to purchase to deliver the digital signal. Furthermore they asked for clarity on where to send money for contributions to USAF. They enquired why community radio stations are not exempted from paying USAF. Another question of clarity was on the possibility for community radio stations to upgrade to commercial radio station and the process and requirements thereof.

9.3 With regards to the question in the Issues Paper on the necessity for Special event licenses the attendees wanted to find out if the Authority is thinking of closing down on Special events licenses after dual illumination.

9.4 The participants highlighted that they have been hearing about the processes geared towards introducing digital migration and are wondering why this has not happened yet. They asked if there are difficulties in implementing digitisation as the Authority is silent on the matter.

9.5 In terms of commissioning local content they suggested that ICASA should empower people to develop content and this is because they were not sure about the Authority's role in terms of South African Local content.

9.6 The attendees from the University of Limpopo asked if there is a way that ICASA can capacitate them to make a submission to the current process in the form of a fund that can be made available to do research. They highlighted that they do have capacity in terms of media literacy to participate meaningfully in the process. This will assist them in future as media graduates do not have jobs and community radio stations are closing down. They wanted ICASA to recommend a way of dealing with this situation.

9.7 The attendees suggested that there should be a framework to coordinate media associations such as Community Workers Forum and South African Communications Forum as this will assist in strengthening media in South Africa.

9.8 Few questions were asked on digital migration including;

- What is the difference between Set top boxes and decoders?
- Has there been a survey on digital migration and what were the outcomes?
- What happens when there is spillage (exceeding the allocated frequency)?
- There are always talks about the advantages of Digital Migration, what are the disadvantages?

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

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

#### **10. FREE STATE (BLOEMFONTEIN) 14 FEBRUARY 2012**

10.1 The use of predominantly developed (Western) countries for international benchmark in the issues paper was questioned. The attendees wanted to know why African countries and those in the developing world like India and Brazil were not used for benchmark purposes. This led to a follow up on issues relating to what kind of relationship does the Authority have with its African counterparts.

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

10.3 The attendees wanted to know what are the advantages and disadvantages of digital migration. There were concerns that migration seem to be geared towards benefitting television broadcasters and has no immediate benefit for the citizens of the republic. The second concern was the migrating cost to the public. How much would an ordinary citizen be expected to pay to access digital television? The issue was that ordinary poor citizens struggle to buy a television set and when they have managed to do that they cannot afford to pay a television licence. Thus any additional cost for set top boxes would not be in their interest.

10.4 There was a view that the Authority must develop a digital television license framework since digital migration promises new platforms. Furthermore the Authority must open up the broadcast sector for competition through licensing new players. The consensus from the attendees was that digital migration process must be used to bring about new opportunities for historically disadvantaged

individuals (HDIs) and not maintain the current status quo of big companies dominating the broadcast sector.

10.5 Interoperability of set top boxes was also raised as an issue of concern regarding whether new government subsidised set top boxes will be compatible with the set top boxes provided by subscription broadcasters.

10.6 The concern around advertising was how the Authority will regulate advertising in new services like internet protocol television (IPTV) and video on demand (VOD). The participants wanted to know whether advertising will be regulated in the same way as it is done currently or a different regulatory system will be considered to cover new services.

10.7 Community broadcasting issues dominated the session. The attendees raised critical questions and suggestions about the current community broadcast regulatory model.

10.8 There were general community broadcast issues. Firstly, participants wanted to know the application process for a community broadcasting licence, both radio and television. They questioned why the Authority pronounced a moratorium on community television licensing when some Provinces like the Free State do not have any community television. They argued that this moratorium should have been pronounced once every Province has at least one community television license. A few community representatives that have successful community radio stations argued that they can operate successful community television stations.

10.9 Secondly, there was a discussion on who is or should be responsible for community broadcaster's annual general meetings (AGM). They questioned the role of the community in AGMs when there is a dispute and whether it is the Authority or the broadcaster's board responsibility for organising the AGM. These questions were raised in lieu of the recurring challenges community broadcasters

face in their AGMs. The argument raised is that the current community broadcasting regulatory framework does not give clear guidelines on AGMs.

10.10 There was a suggestion that incumbent board members should not be given a major role in organising AGMs, for they have a vested interest of exerting influence to return to the board or putting preferred individuals they will be able to control.

10.11 Despite the existence of law that prohibits political office bearers from being active role players in community broadcasting, there was an argument that local political representatives still assume major responsibilities at board or managerial level of community radio stations. The Authority's monitoring system was said to be weak because it has failed to detect such acts. A proposal was made that the Authority should consider working with national intelligence security to scrutinize the background of board members.

10.12 It was submitted that all relevant institutions concerned with the development of community broadcasters should work together to improve the governance and finances of community broadcasters. It was argued that some board members collude with stations managers to plunder the stations finances. This is aided by weak financial controls and lack of proper book keeping. They recommended that the Authority should review the Community broadcasting regulatory model, though there were no substantial details provided to support how the recommendation should be carried out.

10.13 The community broadcasters raised an issue relating to music royalty charges. They posited that the Southern African Music Rights Organisation (SAMRO) expects them to pay exorbitant royalty fees they cannot afford as they are not profit making broadcasters. The limited profit they make, they argued, goes back to operational expenditure and thus cannot afford to pay SAMRO what is due to them. They want to know what the Authority and the DoC are doing from a policy

and regulatory side to aid the situation. They want to be exempted from paying music royalty fees.

10.14 Community broadcasters also contend that excessive spectrum fees charged by Sentech, the signal provider, are threatening their financial viability. They reason that Sentech should not charge them similar fees to commercial broadcasters. As a solution they recommended that the DoC directly subsidises the community broadcasting spectrum fees or the Authority regulates spectrum fees.

10.15 A majority of the questions were with regards to community broadcasting and what role is the DoC playing in ensuring a vibrant and sustainable community radio stations.

10.16 There was an argument that the DoC needed to conduct more consumer awareness education on how it empowers small, macro and medium sized enterprises (SMMEs) in the information and communications technology (ICT) environment. Community broadcasters also want the DoC to do more work in ensuring the sector is self-sustainable. However there was no clear argument on what exactly is expected from the DoC beyond what it does for the sector.