INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 173 OF 2018

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REGULATORY FRAMEWORK FOR COMMUNITY BROADCASTING

FINDINGS DOCUMENT

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1. ACKNOWLEDGEMENTS

The Independent Communications Authority of South Africa ("the Authority / ICASA") would like to acknowledge all stakeholders who participated in the process aimed at developing a Regulatory framework for Community Broadcasting Services.

The following stakeholders submitted written representations on the Discussion Document on Review of Regulatory Framework for Community Broadcasting Services published on 30 March 2017:

(1) Association of Christian Media
(2) Association of Community Television -South Africa
(3) Cape TV
(4) Capricorn Community Concepts
(5) e.tv
(6) Kagiso Media (Pty) Ltd
(7) M-NET and MultiChoice
(8) Radio Pulpit and Radio Cape Pulpit
(9) Sentech
(10) South African Broadcasting Corporation (SABC)
(11) South TV
(12) Tshwane TV
(13) Westbury Community Development Centre

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2. INTRODUCTION

2.1 On 30 March 2017, the Authority published a Discussion Paper ("the Discussion Document") on the Review of Regulatory Framework for Community Broadcasting Services[1]. The purpose of the Discussion Document was to generate comments from all stakeholders on the review of the Regulatory Framework for Community Broadcasting Services for both television and radio in South Africa. Section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act") requires the Authority to conduct an inquiry with regard to the achievement of the objects of the ICASA Act or the underlying statutes; regulations and guidelines made in terms of ICASA Act or underlying statutes; compliance by applicable persons with ICASA Act or underlying statutes; compliance with terms and conditions of any licence by the holder of the licence issued pursuant to the underlying statutes; and the exercise and performance of its powers, functions and duties in terms of the ICASA Act and underlying statutes.

2.2 The closing date for the written representations on the Discussion Document was 10 May 2017, extended to the 02 June 2017 due to request from stakeholders. The Authority received 13 (thirteen) written submissions, of which 8 (eight) made oral representations on 19 and 20 July 2017.

2.3 The Authority noted concerns raised by stakeholders in the final report on the Review of Broadcasting Regulatory Framework Towards a Digitally Converged Environment in South Africa[2] regarding challenges community broadcasters experience, and the need for urgent review of the framework on Community Broadcasting. The aforementioned concerns were raised in detail in the desktop research conducted by the Authority,

[1] General Notice No 170 of Government Gazette No.40660 of 30 March 2017
[2] Published in General Notice 643, Government Gazette 36598 of 25 June 2013.

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in telephonic and face to face interviews with stakeholders, and in the written submissions on the Discussion Document. The concerns include, amongst others, the inability to attract advertising, insufficient funding, lack of/limited access to appealing content, lack of resources, interference from local government and management companies, and governance challenges. The Authority has licensed numerous sound broadcasting services and a few community television broadcasters, however the abovementioned challenges negatively affect the viability of the sector. This review intends to address these challenges to improve the status of community broadcasting.

2.4 The Community Broadcasting tier focuses on addressing grassroots issues that are not addressed by commercial and public broadcasters, due to its proximity to communities. Community broadcasting is not supposed to compete, but should complement public and commercial broadcasting's role of providing information, entertainment and education. Thus, the Authority needs to come up with a regulatory framework to support the growth and sustainability of this tier of broadcasting.

2.5 This Findings Document summarises the views expressed by interested persons with respect to the proposed Regulatory Framework on Community Broadcasting. The summary is not exhaustive, but reflects on salient issues raised by interested parties. **The Findings Document is not published for comments, but rather to inform stakeholders on the findings from the input received after publication of the Discussion Document. The Findings Document also provides explanations to provisions in the Draft Regulations for Community Broadcasting Services: Radio and Television ("the draft regulations').**

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3. POLICY AND LEGISLATIVE MATTERS

3.1 The Authority is empowered by section 4(3) (a) of the ICASA Act to make recommendations to the Minister of Communications ("the Minister") on policy matters and amendments to the ICASA Act and the underlying statutes which accords to the objects of the ICASA Act and the underlying statutes to promote development in the broadcasting, electronic transactions, postal and electronic communications sectors. Thus, the Authority asked for stakeholders' input on legislation and policy related issues.[3]

3.2 The National Association of Broadcasters ("NAB") submits that it is through legislative amendments, and amendments of license conditions that the scope and ambit of community broadcasting can be increased. The NAB is of the view that the features as stipulated in legislation clearly 'define' the community tier of broadcasting. The NAB supports the publication of the Community Broadcasting Support Scheme Final Policy Paper published by the Department of Communications ("DoC"), as it brings the much needed clarity on the policy position regarding the financial support for the community broadcasting sector. The NAB encourages the Authority to work collaboratively with the DoC in finalizing this Discussion Document, as certain of the questions posed in the

[3] The Proclamation on Constitution of the Republic of South Africa, 1996: Transfer of administration of and powers and functions entrusted by legislation to certain Cabinet members in terms of section 97 of the Constitution, published on the 02 December 2014 in Gazette no. 38280, makes provision for policy recommendations to be made to the Ministers of Post and Telecommunications and Communications, respectively;

- The Minister of Communications in so far as ICASA may make recommendations to that Minister on policy matters and amendments to the ICASA Act and the Broadcasting Act, 1999, which accord with the objects of these Acts to promote development in the broadcasting sector; and
- The Minister of Telecommunications and Postal Services, in so far as ICASA may make recommendations to that Minister on policy matters and amendments to the ECA and the Postal Services Act, 1998, which accord with the objects of these Acts to promote development in the electronic transactions, postal and electronic communications sectors.

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Discussion Document are policy issues, and relate to the financial viability and governance of community broadcasting services.[4]

3.3 NAB is of the view that both the Broadcasting Act[5] and the ECA define community broadcasting services as a broadcasting service which:

- is fully controlled by a non-profit entity and carried on for non-profit purposes;
- serves a particular community;
- encourages members of the community served by it or persons associated with or promoting the interest of such community, to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and
- may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned.[6]

3.4 NAB is, however, concerned that there have been challenges over the years with monitoring and compliance to ensure that community broadcasters adhere to these distinctive features.[7]

3.5 The NAB recommends that the Authority should not consider enquiries, reports or policy formulated during analogue dispensation but rather to focus more specifically on the provisions made for community broadcasters during digital migration and whether the distinctive features

[4] NAB: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5
[5] No. 4 of 1999
[6] NAB: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 9
[7] ibid

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(including geographic boundaries) of community broadcasting will be affected.[8]

3.6 The South African Broadcasting Corporation ("SABC") is of the view that religious and cultural activities must be covered by the broadcasting services but its coverage must be geographically limited because the public broadcaster carries religious programming at a national level.[9]

3.7 ("SABC") submits that there is room for community broadcasting services in South Africa, given its distinctive societal role as the third tier of broadcasting. Community broadcasting is in proximity with communities, thus, it is best positioned to be an educational tool which fosters socio-economic development at the grassroots level. Therefore, it is imperative to have a regulatory framework that enables community broadcasting to stay in its position and deliver on its very important mandate within its communities.[10]

3.8 According to Pulpit Media Group there is no need to amend the legislative distinctions between community of interest and geographically-founded community broadcasting services and these ought to remain as is in the legislation.[11]

3.9 Sentech agrees with question 21 of the Discussion Document, as it is of the opinion that section 62 of the ECA does not require ICASA to regulate common carrier signal distribution tariffs. Regarding ICASA's assertion that it will consider mechanisms for reduction of signal distribution cost, Sentech believes that Chapter 10 of the ECA deals with competition

[8] Ibid, p 10
[9] SABC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 10
[10] Ibid, p 4
[11] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 15

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matters. The Authority's process to deal with competition matters must be in line with sections 67(4) and 4A of the ECA. ICASA needs to follow similar processes to the Call Termination Regulations.[12]

3.10 Sentech is of the view that the National Integrated ICT Policy White Paper's[13] view is that a separate policy process is being undertaken by the Ministry of Communications to review existing policies for the broadcasting sector. This policy is yet to be gazetted however, it is important to this review process, for example, there is an expectation that reviewing the meaning of "broadcasting" is related to internet, digital technologies and licensing categories. These are important for Sentech's survival especially when discussing issues of multiplex operator.[14]

3.11 South TV would like the regulatory requirements and obligations to be less stringent for TV.[15]

3.12 Association of Christian Media (ACM) emphasizes that legislative changes are not desirable, as they introduce further instability into the sector, and take a long time to be implemented.[16]

3.13 Capricorn Community Concepts reminded the Authority that the Authority conducted the Review of the Broadcasting Regulatory Framework in 2012, however the 2017 Discussion Document does not make any reference to the 2012 Review Report, as well as DTT. Both Standard Terms and Conditions and Process and Procedure Regulations should have waited for

[12] Sentech: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 6
[13] National Integrated ICT Policy White Paper, 28 September 2016
[14] Ibid, p 7 - 8
[15] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4
[16] ACM: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5

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this 2017 review process, before they were developed and enacted, as those regulations ignored the 2012 Review outcome.[17]

3.14 The Westbury Community Development Centre (WECODEC) raises a concern that there are no regulations specific to Community Television Broadcasters. Furthermore, WECODEC is of the view that section 2 (p) of the ECA should be amended to include the establishment of SMMEs providing ECN services to promote skills development and job creation within the ICT Sector.[18]

Policy related matters that will emanate from this process will be raised with the Department of Communications and legislative amendments will be proposed where necessary.

4. DEFINITIONS

4.1 The NAB submits that before consideration for a national community of interest station can be entertained, the Authority would have to make the necessary radio frequency assignments for "a national community of interest station". These assignments would have to accord with the applicable standards and requirements of the ITU and radio regulations, as agreed and adopted by the Republic. Should the Authority see the necessity to re-define community of interest stations and geographic stations, this would require a legislative amendment. An amendment must be evidence based, as well as a regulatory impact assessment (RIA) demonstrating the economic and social impact such an amendment would have on the community radio market.[19]

[17] Capricorn Community Concepts: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 1 - 3

[18] WECODEC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 16

[19] NAB: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 10 - 11

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4.2 South TV is of the view that audience fragmentation is normal. Community should not be viewed in a narrow geographical sense but should include various niches. People can now access media through personalised devices like phones and tablets. Communities are by-products of development and technological advancement.[20]

4.3 South TV further notes that profiles of communities differ because of the culture of commuting, for example, from Soweto to Sandton and being suburban. In defining community broadcasting South TV suggests that the Authority consider entrepreneurship values and innovation principles. Moving forward, South TV recommends innovation principles being:

- Creative content, which may set one licensee apart from the rest in terms of language provision and various formats of broadcast; and

- More content driven radio, for example, documentaries, drama and story-telling hence it is called alternative or grassroots media, should not duplicate the commercial and public sector. It should focus more on the development aspect etc.

4.4 South TV supports consolidation of similar profiled community broadcasting services into one service, however it should not be at the expense of 'localness and authenticity'.[21] South TV also argues that if the idea of national community of interest is explored, it must be clear how this will differ from the national broadcaster. Alternatively, it could be a platform that could commission production at grassroots communities as a channel.[22]

[20] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5
[21] Ibid, p3
[22] Ibid, p4

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4.5 Cape TV alludes that they differ with an assumption that the audience reach of the community broadcasting on DStv is limited to provincial, but rather it asserts that it is actually on a national basis. Cape TV further states that the comparison between free-to-air and Pay TV audiences is inconsistent because both audiences are fluid in that they oscillate between different channels. The broadcaster asserts that the availability of community broadcasting channels on DStv has been critical towards their survival. Cape TV encouraged ICASA to make a comparative international study regarding the performance of the community television broadcasters since being carried on DStv. Cape TV hopes this will assist in providing useful statistics with regard to audience figures.[23]

4.6 ACM submits that there are probably not enough available FM or AM channels to implement National Community of Interest broadcasting.[24]

4.7 Capricorn Community Concepts urges the Authority to publish guidelines in which provisions must be included for Community Trust.[25]

4.8 WECODEC believes that the community broadcasting market is not sufficiently described. The research should include initiatives of community broadcasting service providers that could not materialize due to the existing moratorium, lack of broadcasting spectrum and insufficient DTT regulations.[26]

[23] Cape TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5
[24] ACM: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4
[25] Capricorn Community Concepts: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 6
[26] WECODEC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4

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4.9 WECODEC highlights that there are 6 (six) community TV services including Bay TV. TBN is not included in the analysis of Adspend in the broadcasting sector. The community of interest broadcasters must be included in the analysis. WECODEC argues that any conclusions reached are incomplete, not accurate.[27]

4.10 WECODEC further suggests that the National Community Radio Forum (NCRF) should be utilized to facilitate and discuss the concept of national community of interest stations. There are lots of potential communities of interest which have a national footprint.[28]

ICASA is concerned that consolidation of community of interest stations and geographical community stations might blur the mandate and distinct features of the community broadcasting as these are likely to have different aspects in the terms and conditions.

The Authority did not include BayTV in the Adspend research as the focus was on the cumulative impact that licensees have on the market.

The Authority licenses 'niche' markets in the form of community of interest and other broadcasting categories like low power community and special events community depending on the applicant's objectives. The argument for a sound national community of interest has no legal basis, either from a legislative or regulatory perspective. Regulation 3 (1) of the regulations regarding standard terms and conditions[29] limits the licence area of a community broadcaster to *"… the maximum possible area covered by the frequency/ies and power level allocated to a Licensee in terms of the Radio Frequency Spectrum Licence, which*

[27] Ibid, p 5
[28] Ibid, p 8
[29] Regulations: Standard terms and conditions for class licences under Chapter 3 of the Electronic Communications Act (36/2005), Gazette number 33296.

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area may not exceed a district municipality as defined in the Local Government Municipal Structures Act No 117 of 1998."[30] **The specific licence area will be as defined by the licence issued to a licensee. The same applies for community television, "[t]he licence area for a Community Television Broadcast Service the maximum possible area covered by the frequency/ies and power level allocated to a Licensee, which may not exceed a Province as defined in the Constitution of the Republic of South Africa, Act 108 of 1996.**[31]

5. LICENSING

5.1 Registrations for the provision of community sound broadcasting is provided for in terms of section 5(2), (5)(b) and (8)(b), read with sections 16, 17, 18 and 19 of the ECA and the Processes and Procedure Regulations. The ECA has simplified the application process for community broadcasters. In considering any registration for a community broadcasting licence, the Authority is required to have due regard to the objects and principles as enunciated in section 2 of the ECA.

5.2 ACM is of the opinion that sufficient power is granted to the Authority in the ECA to facilitate orderly and strategic licensing of community broadcasters. One of the greatest causes of failure of community radio stations is the issuing of class licenses to "duplicate" stations (same community, similar format), without regard to diversity. According to ACM, if spectrum was unlimited, this would be acceptable, but cause difficulties and the best station would survive. The moratorium has stifled growth in community broadcasting for many communities that are not served by community radio or TV. The moratorium states that it will only be lifted by a notice to that effect published in the Government Gazette.

[30] ibid, p 9
[31] ibid, p9

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It is not clear how the revised regulations, notice 157 of 2016, particularly the ITA, will be implemented.[32]

5.3 Pulpit Media Group (RPCP)requires ICASA to consider the appropriateness of the existing Standard Terms and Conditions for Class Licences Regulations, 2010[33] given that they directly undermine the financial viability of some community broadcasters. In particular, RPCP is concerned that certain of the 2016 amendments to Standard Terms and Conditions for Class Licences Regulations ("the regulations") which are not appropriate for community of interest broadcasters. In this regard:

- Regulation 10A (8)(b) of Schedule 1 to the above Regulations provides that the "majority of content produced must be from the coverage area". RPCP are of the view that this provision is entirely appropriate for geographically-based community broadcasters focusing on the community needs of a particular geographical area. However, it is not appropriate for community of interest broadcasters; and

- Regulation 10A (11) of Schedule 1 to Standard Terms and Conditions for Class Licences Regulations provides that "program syndication/networks or programme sharing must not exceed 20% of the licensee's original programming". Again, this provision is entirely appropriate for geographically-based community broadcasters focusing on the community needs of a particular geographical area. However, it is not appropriate for community of interest broadcasters with the audience at whom the community broadcaster is aimed might be much larger than that provided in a single coverage area and therefore it would be of great assistance to community of interest broadcasters (for example Christian broadcasters)

[32] ACM: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p7

[33] Regulations: Standard terms and conditions for class licences under Chapter 3 of the Electronic Communications Act (36/200%, published on 14 June 2010, in Gazette 33296

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to be able to share programming as a way of reducing costs while still meeting the programming needs of its community of interest audiences.[34]

5.4 Pulpit Media Group submitted that it is still not possible for all speakers of a particular language to have access to sound broadcast programming in that language irrespective of where in the territory of the Republic they happen to be. This is with regards to the requirement that the Authority "promote the provision and development of a diverse range of sound … broadcasting services … that cater for all language groups" (section 2(s)(i) of the ECA).[35]

5.5 With regards to ICASA's reference to the 2016 amendments to the Licensing Processes and Procedures Regulations for Class Licences, 2010 in the Discussion Paper, and its questions on whether sections 16 to 18 of the ECA require to be amended to provide for an invitation to apply for spectrum in respect of class community broadcasting licensees, Pulpit Media Group is of the view that the fundamental problem is that broadcasting services ought not to be licensed by way of class licences registration process. It is section 5 of the ECA which ought to be amended to:

- remove community broadcasting from services requiring a class licence in terms of section 5 (5) of the ECA; and

- include community broadcasting as a free-to-air service on a local, regional or national scope requiring an individual licence in terms of section 5(3) of the ECA.[36]

[34] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p10
[35] Ibid, p2
[36] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4 - 5

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5.6 According to Pulpit Media Group, the above proposed amendments to section 5 of the ECA require a number of consequential amendments to the various regulations which give effect to the requirements of the ECA and these can be done in due course.

5.7 Pulpit Media Group would like the Authority to amend the provisions of section 50 of the ECA to include the kind of programming that is uniquely community-oriented to guard against an unwarranted overlap between community and commercial stations.[37]

5.8 Pulpit Media Group is of the view that ICASA is over-licensing resulting in over-crowding leading to lack of sustainability. With regards to licensing and community radio station format, RPCP raises the concerns regarding community broadcasting stations which broadcast on formats that mirror commercial stations such as majority music community stations.[38]

5.9 RPCP query how being a predominantly music station can be compatible with the objectives of the community broadcasting sector as set out in the ECA, in particular with the emphasis on serving the needs of that particular community unless:

- the music being played is directly related to the "specific, ascertainable common interest" being served by a community of interest station; or

- the music not only constitutes South African music content but is sourced within the geographical area serviced by the geographically-founded community station in question.[39]

[37] Ibid p11
[38] Ibid, p4 - 6
[39] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 11

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5.10 Pulpit Media Group is of the view that the class versus individual licensing conundrum that the community broadcasting sector finds itself in has a direct impact on the ability of some community sound broadcasters to attract advertising. Not having an individual-type licensing process is a challenge as ICASA cannot enquire into issues such as:

- demand for this service, taking into account existing community, public and commercial services in the area, as evidenced by potential audience surveys and the like; and
- the need for the service taking into account similar community broadcasting services let alone public and commercial services that may be available in the area.[40]

5.11 Pulpit Media Group argues that the rate of licensing additional stations is not in line with audience growth (up until the moratorium on licensing is lifted). They request ICASA to consider the number of community broadcasting licences that have been granted relative to the actual number of listeners as well as relative to the number of community broadcasting stations that are actually operational.[41]

5.12 Pulpit Media Group is concerned that the class licensing process, which continues to be effectively a registration process as provided for in the ECA (despite the newly provided for ITA processes in regulation), appears to have resulted in an unwitting splitting of potential community broadcasting audiences, with dire consequences for advertising and for the overall sustainability of the community broadcasting sector. ICASA has granted class licences to a number of community sound broadcasting services with almost identical programming competing for the same audiences and the same advertisers within the same coverage area. Pulpit Media Group further states that the entire class licensing process provided

[40] Ibid, p3
[41] Ibid, p 4

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for in the ECA in respect of community broadcasting services is in fact a nonsense. Broadcasting services that are provided using the radio frequency spectrum can never, in fact, be subject to a class licensing registration process for the following reasons:

- they require to be individually assigned spectrum to avoid interference;

- although their licences are styled as "class" licences, they are in fact individual licences as they have specific licence conditions applicable only to that particular community broadcasting service, whether these relate to news obligations, language obligations and/or format; and

- these licences have to be designated as "geographic" or "community of interest" stations as defined in terms of the ECA.[42]

5.13 Pulpit Media Group alludes that the current moratorium prevents new licences from being granted and this is contrary to ICASA's mandate because the effect is to prevent even exceptionally good applicants from applying, something that cannot be in the public interest.[43]

5.14 Pulpit Media Group believes that ICASA ought to grasp the nettle and consider withdrawing certain existing licences where the services being provided in terms thereof:

- are identical or extremely similar to existing community, public or commercial station serving the same coverage area;

[42] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p5
[43] Ibid, p 12

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- are in essence commercial services and not truly community services, as is the case with the predominantly music-formatted community stations; and/or

- are, in fact, not being provided because the station is effectively non-functional and is off-air.[44]

5.15 According to Pulpit Media Group, such a move would inevitably free up spectrum which can be reassigned to community broadcasting services that genuinely meet the unmet needs and demands of the community in question.

5.16 Pulpit Media Group is concerned that ICASA considers there to be nine licensed subscription television operators. This is somewhat disingenuous as only three are in fact operational namely, M-Net, DStv and Starsat. ICASA has made reference to a new regional TV channel, GAUTV and Pulpit Media Group request clarification as to whether this is a broadcasting service in its own right (and therefore licensed) or whether it is simply a channel carried on the DStv bouquet.[45]

5.17 The NAB is of the view that the registration process for class licences has been simplified and is less cumbersome than earlier processes. The NAB further alludes that Section 19 of the ECA read with the Processes and Procedures Regulations as amended, address licence renewal processes. From the NAB's point of view, the measures and interventions put in place for the registration of class licences are feasible. However, the effectiveness of this process will be determined once an ITA is published and the moratorium is lifted. The concern the NAB has regarding the moratorium is that it has been in place for a long time.[46]

[44] Ibid, p 6
[45] Ibid, p 4
[46] NAB: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 12 - 13

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5.18 The NAB does not think that sections 16, 17, and 18 of the ECA should to be amended. Section 16(2) stipulates that a registration of a class licence may be submitted at any time in the manner prescribed by the Authority. In the NAB's view, the Authority acted within its powers when prescribing that the registrations of class licences may be submitted twice a year and where necessary pursuant to an ITA.[47]

5.19 The NAB encourages the Authority to ensure that it assesses and carefully evaluates each registration and provides feedback timeously to the registrant. More importantly, however, is the need for the Authority to determine whether registrants are from areas that are under-served, or areas where there is an "over-supply" of stations. There has been concern with the "proliferation of community stations". Arguably, this could be because of ICASA not responding to a registrant within the stipulated 60 days - resulting in an applicant being deemed to have a license by day 61.[48]

5.20 Kagiso Media's submission concerns a single issue, the operation of quasi-commercial sound broadcasters masquerading as community broadcasters which negatively affect and indeed undermine both the community and the commercial broadcasting sectors. Kagiso Media respectfully submits that none of the 3 (three) stations, Hot FM, Mix FM and Lekker FM, is operating as a genuine community station serving the needs of an area or a community with a defined interest such as a religious or university community. Kagiso Media further states that there is no community of interest being served by these stations and, respectfully, no clearly identifiable Randburg, Midrand or Pretoria

[47] Ibid, p 13
[48] Ibid, p 14

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community programming, being provided, at least not as a majority of the programming provided on these stations.[49]

5.21 Kagiso Media is of the view that a geographically-founded community broadcasting service ought not to broadcast more than 20% music content in any event; although different considerations may well apply to community of interest broadcasters such as religious broadcasters in which case an upper limit of 40% music (focused on the interest of the stated community) is appropriate. Community stations that are effectively indistinguishable from music-formatted public and commercial stations available in the coverage area ought not to be licensed as these simply cannibalize available advertising in the area and unfairly compete against public and commercial stations with significant Media Development and Diversity Agency (the MDDA), company tax and licence fee obligations.[50]

5.22 Kagiso Media is aware that a moratorium on granting new community licences is currently in place but is of the view that this is not sustainable in law or practice going forward. Kagiso Media is of the respectful view that ICASA needs to put in place a proper process for assessing community broadcasting applicants.[51]

5.23 The SABC supports the current moratorium as it enables the Authority to determine the timing for consideration of class licence registrations. As a result, ICASA will pace itself for consideration of these licenses and also conduct necessary checks and balances. The SABC is of the view that if the moratorium could be uplifted and the DTT, which introduces a multi-channel environment, could be fully rolled-out; there will be a need for

[49] Kagiso Media: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 3-4
[50] Ibid, p 5-6
[51] Ibid, p 5

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the Authority to expand its capacity base to carry out the monitoring and licensing function of all broadcasting services.[52]

5.24 Sentech would like the Authority to review the broadcasting application process, especially with regards to determining accuracy of information supplied. They suggest that it is important to address the issue where applications submitted illustrates business plans highlighting sustainability in the absence of bailout and mainly based on expected advertising revenue. Yet, within the first year some broadcasters are seeking bailouts and complaining about signal distribution fees.[53]

5.25 South TV cautions that the two window periods for receiving applications is not ideal, as it could be somehow exclusionary as not everyone can access ICASA pronouncements. They suggest that the Authority should also consider online application system.[54]

5.26 Furthermore, South TV submits that it is premature to seek to be rigorous in class licensing process.[55]

5.27 Cape TV urges ICASA to apply a strict caution before licensing more players into the sector. they state that the current amount of bandwidth allocated to the community broadcasters and proposals by the DoC's Community Broadcasting Support Scheme suggest that there will be a limited space for the new entrants in this sector.[56]

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[52] SABC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5

[53] Sentech: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 8

[54] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5

[55] Ibid, p 4

[56] Cape TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 16

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5.28 The Inkonjane Community Radio illustrates that ICASA's licensing processes are too relaxed thus exacerbating the proliferation of the already congested broadcasting sector. ICASA has granted licenses to three community broadcasters in the surrounding local communities but only one of these is still in operation. Inkonjane Community Radio claims that the failure of the other two community broadcasters is largely due to ICASA's failure to conduct a proper economic viability of the three community broadcasters. Based on its rural small vicinity and radius, it was always going to be impossible for three community broadcasters to survive and succeed.[57]

5.29 Inkonjane Community Radio advises that, it would be best that ICASA enquires from already existing incumbents as to the prospects of success of the new entrants before it allocates and grants new licenses. It further states that the increase of stand-alone community broadcasters in rural areas does not augur well for the meagre advertising profits, thus it is recommended that a satellite station be considered instead.[58]

5.30 Act-SA submits that Community Television Services be formally allowed to be licensed through free-to-air or subscription, as envisaged in section 5 of the ECA, to be provided through satellite, cable or any other technology. Act-SA is of the view that Community Television Services should be allowed to have a local, regional, national and provincial footprint as outlined in page 43 of the Discussion Document. It further states that as Community Television Services are allowed to self-provide their signal, the issue of cost must not hinder the Authority to allow the increase of the footprint.[59]

[57] Inkonjane: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 10 May 20172017, p 3
[58] Ibid, p 3
[59] Act-SA: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, May 2017, p 3-4

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5.31 Capricorn Community Concepts is of the view that the proposed two window periods for interested parties to apply for licences through an ITA published in the March 2016 Regulations is against the Authority's previous policies. This, according to Capricorn Community Concepts is in contravention of the universal access objective as set out in section 2 of the ECA. It further perceives the process as unconstitutional, not in the public interest and not in line with the ECA, ICASA Act and the Broadcasting Act.[60]

5.32 According to Capricorn Community Concepts all provinces must be allowed to introduce new community sound broadcasters at any time as provided in section 16(2) of the ECA. If further states that the ITA process will remove transparency from the process and open the process to manipulation. The discretion to apply for available frequencies must be retained by an interested registrant.[61]

5.33 WECODEC is of the view that the revised regulations making provision for two window periods for the submission of class registration application should not be implemented. WECODEC further states that the ITA approach is discriminative to those community initiatives that are not ready at the deadline and it will also marginalize communities that are already marginalized (in respect of funding/resources).[62]

5.34 NAB reminds the Authority that one of the reasons a moratorium was issued on the licensing of community broadcasting services was due to the scarcity of frequencies. Therefore, NAB suggests that a consideration for a national community of interest station should be carefully thought

[60] Capricorn Community Concepts: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 2
[61] Ibid, p 2
[62] WECODEC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 11

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through against community broadcasting policy objectives as currently couched in legislation.[63]

5.35 WECODEC echoes similar sentiments as Capricorn Community Concepts that the moratorium must be lifted with immediate effect, as the Authority is acting ultra vires in having published the moratorium. The moratorium is in violation of the objectives of the ECA.[64]

5.36 WECODEC submits that the Community Television's business plan must be conclusive and demonstrate sustainability.[65]

Section 16(1) of the ECA empowers the Authority to register class licences upon receipt of a written registration in the manner prescribed. Gathered from written inputs, it appears that there are challenges in the registration of community broadcasting services. The Authority intends to streamline the process of registration to provide predictability

In line with the Processes and Procedure Regulations, the Authority will maintain the two window period for the registration of a community broadcasting license. The benefits of a window period are that it allows the Authority to do a feasibility and needs assessment in specific areas and to prevent licensing of many similar services in one geographic space. This will also allow proper planning and management of the spectrum and carrying out an audit of existing licensee's and determining levels of compliance.

[63] NAB: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 10
[64] WECODEC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 11
[65] Ibid, p 9

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The Authority will further require that a community broadcasting applicant submits a notice for pre-registration, whereby the applicant will submit the necessary qualification information before a registration is submitted. This will allow the Authority to among others assess and ensure the sustainability of the applicant.

The Authority requires that an applicant for community broadcasting licence must have been in operation for 2 years and carried out activities for 2 years as an NPO before application to develop on areas such as corporate governance and financial planning before applying for a community broadcasting license. Furthermore, the Authority encourage applicants to start operations for community broadcasting anytime within the 2 years that it is operating as an NPO before submission of a pre-registration notice. This will allow the applicant to garner support from the community and do background work before deciding on issues such as the languages the radio station will broadcast in and the programming plan.

The Authority has challenges with community broadcasting licensees which are registered as Trusts with regards to:

- **the appointment of their Board of Directors/Trustees;**
- **their financial management of the station;**
- **community participation;**
- **founding documents; and**
- **the manner in which they conduct their AGMs.**

The Authority is of the view that Trustees or Board of Directors of the NPO must be nominated and elected by the community in an Annual General Meeting. The proof of the meeting must be submitted to the Authority. In a trust, Board of Directors elected in the AGM must be registered as trustees.

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It is the Authority's view that campus community broadcasting services should account separately from the institution of learning.

The Authority also requires that an applicant submit pre-registration information that will enable the Authority to consider sustainability. The Authority has to satisfy itself that the service being registered becomes sustainable.

The pre-registration requirements are:

- **An applicant must have been an NPO in operation and carried out activities for at least 2 years before application.**
- **An applicant fully completed application form as prescribed by the Process and Procedure Regulations**
- **Proof that the applicant is a registered NPO;**
- **The applicant must summit its founding documents[66], e.g Constitution, Articles of Association, etc;**
- **An applicant must not assume the scope or coverage of an individual licence;**
- **Whether a geographic community licence exists with a similar mandate or service;**
- **3-5 years financial plan to ensure sustainability (feasibility study showing the possibility of funding);**

The Authority may hold public hearings upon the notice for registration where there is a need to collect more information or get clarity before taking a decision to register a class license. This will also assist when there are competing interests in the license area such as the existence of a community broadcasting service in the area providing a similar

[66] The Authority have provided an example of what should be included in the Founding Document, attached as Annexure A

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service. In some instances the Authority would need to verify that an applicant has support in the license area it proposes to serve.

After assessing whether the applicant meets the requirement for registration the Authority will inform the applicant of the outcome. Successful applicants will submit a notice for registration whilst those not successful will be guided in terms of areas of improvement to meet the requirements for registering as a class license.

Renewal of a class license

The licensee has to satisfy the conditions for renewal before the renewal is granted. The Authority prescribe the terms of renewal of a class license in line with section 19 (3) of the ECA.

A licensee should submit, as conditions for renewal of a class license:

- **Feasibility / financial sustainability;**
- **A historical 5-year financial statement revealing how it has been performing;**
- **Community support detailing how community members have been given access to the airwaves. Community participation refers to mechanisms to ensure community participation in the running of the operations, policy making, and programming of the licensee, and representation of the different sectors of the community in influencing the direction the licensee should take;**
- **On or off air status;**

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- **Legality of office bearers in order to ensure that persons not allowed, in terms of legislation and regulations, to be in the licensee's Board, Management, and staff are not in such positions;**

- **An indication of the existence of another community broadcasting licensee in the same geographical area. The Authority will assess the effects of close proximity of radio stations on the community and the sustainability of the station. In order to get clarity on this, the Authority might call the stations in proximity to convince the Authority in terms of sustainability and the difference in their mandate. The Authority might request the licensees to come with plans of ensuring that they do not have similar programming and they are able to create revenue; and**

- **Non-compliance.**

The Authority may hold public hearings upon the notice to renew a class license where there is a need to collect more information or get clarity before taking a decision to register a class license. This will also assist when there are competing interests in the license area such as the existence of a community broadcasting service in the area providing a similar service. In some instances the Authority would need to verify that the licensee has support in the license area it serves.

The Authority will update the register for community broadcasting licensees by either deletion or renewing the license. A licensee that fails to comply with the regulations and the relevant legislation will be afforded an opportunity to improve compliance by renewing the license for a shorter period of time. Thereafter the Authority will assess the license over that period and make a determination whether to renew or not. Licensees who repeatedly fail to comply with the legislation and

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the regulations will forfeit their license and the Authority will update the register by removing the licensee.

6. FUNDING

6.1 In terms of the ECA,[67] community broadcasters may derive funding through a number of means including donations, advertising revenue and subscriptions. In addition, there are no limitations in relation to the amount of advertising revenue that community broadcasters can access. Despite this, the research conducted indicates that stations are struggling to sustain themselves financially and generally lack revenue diversification strategies, relying on one source of revenue.

6.2 The NAB encourages the Authority to harmonise its efforts and possible restrictions on the funding of community television with proposals made in the DoC Subsidy Scheme. The NAB further recognises that sustainable funding has always been an issue for community broadcasting services, whether radio or television.[68] It is precisely for this reason that the DoC has had to review its subsidy scheme to bridge the funding gap. Community television broadcasting services must continue to receive funding from donations, grants, sponsorships and advertising or membership fees. This is in line with what is envisaged by section 2 of the ECA[69] and the Broadcasting Act.[70]

6.3 The SABC is of the view that if government grants are to be open to community broadcasters, there should be transparency and

[67] Section 1 of the Electronic Communications Act (36/2005)
[68] NAB: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017– p 11-12
[69] Electronic Communications Act (36/2005)
[70] The Broadcasting (4/1999):

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accountability for such funds and they should benefit the communities serviced by community broadcasters[71].

6.4 Pulpit Media Group submits that the role of the MDDA ought to be refocused on promoting the financial sustainability of existing community broadcasting services rather than constantly promoting the development of new services. Pulpit Media Group is of the view that constantly promoting the development of new services is not in keeping with the ECA and request ICASA to engage with the MDDA to ensure equitable funding of all types of community broadcasting services.[72]

6.5 Furthermore, Pulpit Media Group would like the Government to play a commercially responsive role in supporting the sustainability of the community broadcasting sector through offering government advertising via the Government Communication and Information Service (GCIS). The advertisements must spread evenly across community broadcasting services, whether geographic or community of interest[73]. It further suggests that government's support ought to itself be more sustainable and dependable and gives the example that in 2014, the DoC promised an ongoing grant to the community broadcasting sector to help cover Sentech's signal distribution costs. Within two years the DoC had run out of funds to continue to pay the ongoing grant with the result that some community broadcasting services were suddenly confronted with lawyers' letters from Sentech advising them that they were in arrears in respect of the signal distribution costs. Pulpit Media Group states that such "on-again off-again" support is of little long-term help in bringing about an environment of sustainability for community broadcasters. Lack of steady government support is also evidenced in the case with infrastructure roll-

[71] SABC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p8-9
[72] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 6
[73] ibid, p22

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out provided by the DoC through the MDDA. This kind of support is not distributed equally and fairly and it requires a properly-undertaken, transparent needs study.[74]

6.6 Pulpit Media Group has made two additional suggestions that could help ease funding challenges, namely that:

- public and commercial broadcasting services engage in community station "adoptions" within their particular coverage areas. These would consist of mentorships and training and would certainly assist in skills development which would contribute to the long-term viability and sustainability of community broadcasting services; and

- public and commercial broadcasting services actively seek out community stations within the coverage areas to whom donations of old equipment (including studio equipment, CDs and other programming material) can be made.[75]

6.7 In addition, Pulpit Media Group is of the view that it would be helpful if ICASA could establish an initiative to twin SABC stations and commercial broadcasters with community radio stations properly to facilitate such support, particularly at the start of a community broadcaster's operations[76].

6.8 South TV submits that revenue generation is both a skill and a creative process. It further states that a blanket approach to regulate revenue

[74] Ibid, p 9
[75] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 8
[76] Ibid, p21

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model's disadvantages entrepreneurs and dries up the government purse, thus defeating the purpose for stations and micro economies.[77]

6.9 South TV adds that a percentage of advertising and TV license revenue from the public broadcaster together with a community station levy collected from commercial and subscription broadcasters should be considered.[78]

6.10 Furthermore, South TV suggests that entrepreneurship, innovation and creativity should be encouraged in Community Broadcasting, with unique revenue models.[79] In terms of administration of the special fund and elements to be covered by the fund, South TV proposes that the fund should cover technical, signal distribution, production, HR, Finance, marketing and sales. For the funding to be factored in to the broadcasting policy development process underway, there should be a funding campaign similar to Mzansi's Golden Economy by the Department of Arts and Culture (DAC)[80]. Mzansi's Golden Economy is a project/strategy engaging government with a view of creating jobs, economic sustainability etc. In addition, the role of the Media, Information and Communication Technologies Sector Education and Training Authority (MICT SETA) should be explored and DAC must be brought on board.[81]

6.11 Cape TV submits that although the summary on community broadcasting is reasonable, the government departments such as GCIS are not responding in a positive manner towards its own policy directive in relation to the role that community broadcasters can play. Cape TV is of the view that the GCIS report on the advertisement expenditure through

[77] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 2
[78] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4
[79] Ibid, 5
[80] ibid, p 23, p34
[81] Ibid, p 5

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the community broadcasting is incorrect as only less than R1million was spent for this sector in one year.[82] The community broadcasters cannot survive due to the government's failure to honor its commitment towards advertising on this platform.

6.12 Additionally, Cape TV submits that the issues around funding, governance and support are not properly captured. For instance, the fact that community broadcasters are hosted by subscription network, it does not necessarily indicate that they are being exposed to the whole country as they are restricted to their specific geographic areas of broadcast[83]. Community broadcasters can benefit from advertising revenue, donations, government grants and programme sponsorships. ICASA and relevant government departments should assist in training the community broadcasters. However, this can happen if the sector gains experience operating sustainable NGOs and skills to manage fund raising campaigns.

6.13 The Cape TV funding model is distinct which advocates for the review of the role and interpretation of community broadcasting in their respective country. The funding model Cape TV applies is one that is similar to that of Canada which relies on deriving financial resources such as programme sponsorships, grants, donations, advertising and membership fees[84].

6.14 In its supplementary submission, Cape TV submits that one proposal mooted by the DoC in its Public Service Broadcasting Bill (2009) was the formation of a Public Services Broadcasting Fund ("PSBF"), which was to draw revenue from several sources including taxation.[85]

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[82] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5-6
[83] Cape TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 6
[84] Ibid, p 15
[85] Cape TV: Supplementary Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 10 August 2017, p 4

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6.15 Cape TV further alludes that this latter aspect of the PSBF became a sore point in the Public Service Broadcasting Bill for it crossed the boundary of other legislation which devolves powers around taxation to the Minister of Finance and the South African Revenue Services (SARS), and hence was unenforceable; nevertheless, the basic premise of a special fund to finance public service television deserves attention. Another complication in the provisions of the PSBF was that it was to service both the public service broadcaster, the SABC, as well as community broadcasters, thus diluting its contribution across a wide spectrum including the resource-hungry, high-tech operations of the SABC.[86]

6.16 Cape TV does not have confidence in the MDDA's capacity to manage the allocation of funds effectively. It asserts that the public programming fund cannot be the only means of funding public programming but more of a 'top up' to support programming that is also financed by other mechanisms.[87]

6.17 Furthermore, Cape TV posits that government is a significant partner and needs to be engaged to ensure that support is unlocked through policy alignment from the GCIS, DTI, DoC and NFVF among other government institutions[88]. In terms of these sources of revenue, Cape TV is of the view that ideally no one source of revenue should dominate thereby exerting undue influence on the station.

6.18 Inkonjane Community Radio is of the view that the DoC's recommendation that community broadcasters should sustain themselves, is impractical because most of these broadcasters rely on thin advertising pie, sponsors and donations to survive. Inkonjane

[86] Cape TV: Supplementary Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 10 August 2017, p 4
[87] Ibid page 4
[88] Ibid, p 21

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Community Radio also states that all community broadcasters rely on MDDA funding which is not guaranteed and fails to cater for all their basic needs. Such MDDA funding for community broadcasting sector is also on a short rather than long term basis. In addition, Inkonjane Community Radio states that DoC seems to ignore the fact that community broadcasters still have training needs, infrastructure services, capacity building, stipend payments and programming production to cater for their daily management and survival. DoC believes that the budget allocation should be a direct one but not one based on the advertising placements.[89]

6.19 Furthermore, Inkonjane Community Radio suggests that community broadcasters should receive funding from local municipalities. The District Municipalities should be obligated to finance the local community broadcasters through binding legal inscriptions. It believes that such sound budget allocation will assist the stations to be sustainable and viable. The allocated budgets should be monitored by a committee formed from community broadcasters' and respective municipal officials.[90]

6.20 Act-SA submits that community television broadcasting services should continue to receive funding from donations, grants, sponsorships and advertising or membership fees, as envisaged by section 2 of the ECA and the Broadcasting Act.

6.21 In respect of what revenue diversification strategies should the sector consider, Act-SA believes there are four basic revenue streams being government, commercial, listener and NGO. Community broadcasters should, according to Act-SA try to tap all four basic revenue streams. Act-SA suggests that more training should be provided in this area and that community television broadcasting services should be allowed to source

[89] Inkonjane Community Radio: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 10 May 20172017, p 4
[90] Ibid, p 4

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and receive funding from local government, state owned entities, public entities and other Non-Profit entities. Act-SA also proposes that the Authority must develop and publish separate Funding Model Regulations for Community Television Services as suggested in page 34 of the Discussion Document.[91]

6.22 Act-SA recommends that MDDA, NEMISA and the DoC pro-actively provide funding/training for local content productions across all community television services and that a memorandum of understanding between the stakeholders and Community Television Services be put in place.[92]

6.23 On failures of Public Private Partnership (PPP) Act-SA submits that the factors that can be attributed to the failures of PPP are:

- unrealistic traffic forecasts and undefined community;
- contribution of funds;
- poor legal framework and enforcement;
- weak institutional capacity and PPP strategy;
- unrealistic revenue and cost estimations;
- lack of competitive procurement; and
- inappropriate sharing of risks and community resistance[93].

Further, Act-SA identifies that PPP's have key success factors such as:

- careful planning of PPP project;
- solid revenue and cost estimations;
- user willingness to pay and communication plan;
- extensive feasibility study with use of PPP experts;

[91] Act-SA: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, May 2017, p 3
[92] Ibid, p 2
[93] ACT-SA: Presentation at Public Hearing; 19 July 2017.

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- compliance with contractual agreement; and
- appropriate legal and regulatory framework.[94]

6.24 Capricorn Community Concepts proposes that a funding regulation must be developed and enacted for the community broadcasting tier. Community broadcasters must be allowed to receive funding from non-profit entities, local government, SOEs and other government departments. Service providers in rural areas have little access to advertising, sponsorship, donations and government grants. According to Capricorn Community Concepts, by expanding the funding model, the Authority will promote the sustainability of the community tier of broadcasting.[95]

6.25 WECODEC posits that in the scope of community broadcasting in relation to their non-profit nature, the stations must function like profitable companies in terms of business efficiency to warrant financial sustainability and a high quality of content and service delivery to their community.[96]

6.26 WECODEC is of the view that MDDA's portfolio should be extended to cater for community broadcasting initiatives that are not licenced[97]. This will assist the MDDA in respect of planning appropriately in respect to budget. WECODEC also points out that the funding model for community broadcasting allow that community broadcasters are given money without compensation and this does not motivate stations to produce quality programs that will benefit their audiences.[98] Funding is necessary

[94] ACT-SA: Presentation at Public Hearing; 19 July 2017.

[95] Capricorn Community Concepts: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5 and 7

[96] WECODEC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 7

[97] WECODEC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 17

[98] ibid

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at start-up but should not become a permanent obligation to funding institutions whose budget would then also be reduced to help new initiatives.

6.27 Additionally, WECODEC advocates for mixed funding with exceptions for very specific initiatives such as national community of interest stations for the blind as they would require extra support that may not derive from their self-generated revenues. As community broadcasters are non-profit organizations they do not need to financially satisfy shareholders as in the case of commercial broadcasters where such shareholders would have invested their capital and expect a return-on-investment. Revenue generated by the community broadcaster will flow straight into their communities resulting in direct empowerment of people or organizations within the communities. WECODEC adds that community broadcasters and affiliated enterprise development (for example, catering, make-up artists, content production companies, among others) are potential employers that address the issues of unemployment in those communities. WECODEC believes that appropriately paid staff will lead to a healthy working environment and higher quality content which can ultimately attract higher audiences.[99]

6.28 WECODEC states that community broadcasters should not be severely limited in their efforts of revenue generation. Their ideal income mix will include elements that are common with commercial broadcasters, such as advertising, promotions, program sponsoring, merchandising, cross-branding, events and others[100]. Wecodec is of the view that community broadcasting needs to be incentivized by the relevant government departments to ensure appropriate quotas based on appropriate rate

[99] WECODEC: Presentation at Public Hearing; 19 July 2017.

[100] WECODEC: Supplementary Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, August 2017, p 6

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cards within the advertising industry. This has been subject to many discussions but unfortunately until today without satisfactory results.[101]

6.29 Cape TV proposes that the MDDA should be accentuated to a more important role in advocating for the funding of community broadcasting sector. This, according to Cape TV, should in turn shape policy alignment that enhances the contributions of other co-related stakeholders such as the NFVF, MICT Seta, Lottery and IDC.[102]

6.30 Although it did not delve deeper into the issues, Inkonjane Community Radio raised concerns around the funding models of community broadcasting services as well as the negative impact of relaxed licensing procedures on the economic their economic viability of community broadcasters. The submission argues that this has led to a proliferation of similar services within close proximity of each other, who in turn cannot sustain themselves on the limited advertising revenues, particularly for those based in rural communities.[103].

6.31 ACM indicates that the analysis seems to focus entirely on commercial aspects of community broadcasting. ACM alludes that the MDDA has been set up to provide funding and the Authority should focus on monitoring and compliance, and the processing of new license applications. Such funding is covered in more detail in the DoC Subsidy Scheme document. ACM further states that sector organizations like the NAB, ACM and NCRF should be able to raise concerns affecting the Community Broadcast sector.[104]

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[101] Ibid, p 6

[102] Cape TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 23

[103] Inkonjane Community Radio: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 10 May 2017, p 5

[104] ACM: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 12

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The Broadcasting Act[105] and the ECA[106] make provision that community broadcasting service may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned.

The Authority has placed no restrictions or caps on the number of minutes per hour for advertising by community sound broadcasting licensees. Many community sound broadcasting licensees have and continue to encounter great difficulty in acquiring sufficient income to meet the financial needs of the stations. Some of the problems identified include:

- **the inability of stations to properly market themselves;**
- **lack of knowledge of potential advertisers that could be approached within their areas;**
- **lack of adequate audience profiles of the community sound broadcasting sector that could be used by advertisers; and**
- **expressed dependence on one form of revenue stream.**

Some community sound broadcasting licensees have been raising substantial amounts of money through pledges by community members. It is believed that communities would not mind making pledges if they felt that the radio station was there for the advancement and development of the said community and that the community owned the radio station. The community can only have a sense of ownership if community groups or sectors participate meaningfully in the running of the radio station.

[105] Section 1 of The Broadcasting Act (4/199)
[106] Section 1 of the Electronic Communications Act (36/2005)

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7. MANAGEMENT CONTRACTS

7.1 Community television stations have entered into management agreements with commercial entities in order to access the funding and resources required to run the stations. The challenge with these arrangements is that they threaten key community broadcasting principles including community participation and ownership, localized content and the non-profit (non-commercialized) nature of community broadcasting services. They further threaten the stations editorial independence.

7.2 South TV is of the opinion that it will be acceptable, on a pro bono basis, to counter-balance management agreements to make up for scarce skills and resources. It would like the Authority to reconsider the position on management agreement by revisiting penalties and disincentives to ensure that investors do not dilute the mandate and objectives of community broadcasting.[107]

7.3 Cape TV indicates that the suggestion to allow private investments into the community broadcasting will lead to problems. This is because it contradicts the ECA that urges the community broadcasters to operate within the non-profit basis. The relationship between private investors and religious groups is also a concern as this could happen at the expense of other religious denominations.[108]

7.4 Cape TV states that management contracts with private companies should only be allowed under special circumstances. It further suggests that the management agreement must be well motivated and detail the nature of the contracting company, what the parameters of the contract

[107] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4

[108] Cape TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 7

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will be and how revenue is shared between the parties. Such agreements must be ratified by ICASA and if ICASA does not approve the management contract, then it cannot be implemented by the station.[109]

7.5 Furthermore, Cape TV is of the view that community broadcasters can still be allowed to enter beneficial contracts with well-established incumbent public and commercial broadcasters if the community broadcasters have the power to cancel or terminate such contracts when the NGO deems it necessary or desirable to do so. The contractual agreements between the private partners on video and television production should be drafted in such a manner that, both the community broadcaster and the local community have commanding decision making powers.[110] According to Cape TV, ICASA should set a clear set of criteria for measuring community ownership and control of community broadcasters, in order to ensure that their respective communities to assume full control of their broadcasting, financial, social and funding services.[111]

7.6 Cape TV seeks to retain the traditional areas of governance which include, fiduciary responsibility, hiring and firing of management and staff, making policy decisions, and having management and staff who are accountable to the board. In Cape TV's opinion, there can be no shareholding by a commercial partner in a non-profit entity and nor can profits accrue to individuals, whether they reside within the NGO or the private partner.[112]

7.7 In addition, Cape TV submits that management contracts must have a time limit to them and that the board of the non-profit entity must have the ability to disengage from the commercial partner when the station

[109] ibid, p 9
[110] ibid
[111] Cape TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 10
[112] Ibid, p 9

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can stand alone. The objective for the commercial partner must be to build capacity at local level. The station must never lose its editorial independence. Thus, in Cape TV's view, management agreements must be transparent and open to scrutiny by the Authority on an annual basis and the Authority must always keep an eye on how much money is being made and how much goes back to the station. Cape TV indicates that, this approach would ensure that the management contracts have taken root in an environment where licenses have not been granted to opportunistic individuals who have no expertise, track record or community development orientation.[113]

7.8 Furthermore, Cape TV argues that the need for management contracts will be largely nullified if the Authority does away with the Class License framework and only gives licenses through an ITA to operators who have demonstrated their capacity and expertise to set up and run a non-profit community broadcaster.[114]

7.9 Act-SA submits that community television services must be formally allowed to enter into management agreements with private production companies, business management companies and broadcast infrastructure companies. Act-SA would like the Authority to enact regulations in this regard or amend the Standard Terms and Conditions Regulations for Class Licenses published in March 2016. According to Act-SA, these regulations will ensure that independence of the commercial television services is maintained and the interests of both parties are protected. In addition, Act-SA thinks that the regulatory intervention by the Authority shall enable private partners to assist in the development and growth of community television services through investing in infrastructure, content production and skills development. Act-SA

[113] Ibid, p 9

[114] Cape TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 9

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submits that this in the context of the Authority admission in pages 12 and 34 of the Discussion Document, that community television business model requires higher financial costs.[115]

7.10 Elaborating further on management agreements, Act-SA argues that private partnerships shall enable private funding to reduce community television services reliance on advertising, as community television access to advertising is declining over a period. Act-SA agrees that private funding shall be a sustainable business model as suggested in page 13 of the Discussion Document. Such private funding shall be formal funding model in addition to sponsorship, advertising, government grant, donations and membership fees. Act-SA further proposes that Community Television Services be formally allowed to introduce internship programmes that provide training in different areas of broadcasting, media, journalism, marketing and advertising. The internship programmes envisaged by Act-SA would be funded by private partners. Act-SA would like to source advertising, sponsorships and funding to cover operational expenses and invest in broadcast infrastructure from the private partnerships. Act-SA further suggests that private partners should also assist in the governance, management, operations and strategy development of the broadcasting services as this will allow skills transfer and development.[116]

7.11 In addition, ACT-SA submits that, management contracts, are individual channel contracts and they differ from station to station of which some have a legal obligation to hold most being technical support, signal agreements, rentals, salaries together with programming and content agreements. If management contracts are put in the public space, it could create unfair exposure to parties concerned unless otherwise agreed.

[115] Act-SA: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, May 2017, p 2
[116] Ibid, p 2

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7.12 Capricorn Community Concepts argues that management agreements be allowed as this helps in skills development and access to financial and human resources. It further argues that the Authority should allow community broadcasters to partner with private entities to improve the sustainability that will improve the sourcing ability of advertising, sponsorship and training.[117]

Regulation 7 (12) in the Regulations on Standard Terms and Conditions in Terms of the Electronic Communications Act, (No. 36 of 2005) states that "if a licensee intends on entering into a management agreement with another entity, it should attach details and nature of the agreement, including timelines. Should a management agreement's time line lapse, if and when renewed, such must first be lodged with the Authority."

All management contracts must be lodged for approval with the Authority. The approval criteria will only deal with aspects that pertain to regulatory matters. The Authority will always be guided and consider section 2 (y) of the ECA in interrogating management contracts.

Management agreements with another entity are allowed for skills transfer, but not to exert control of the broadcasting service. The agreement should clearly state the method of reimbursement and the duration of the agreement. The licensee must at all times retain editorial and programming control and independence. The licensee should not cede powers of the board of directors and management to another entity nor should another entity be the shareholder of a licensee. Fiduciary duties are the responsibility of the board of the licensee.

[117] Capricorn Community Concepts: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5 - 6

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8. RADIO FREQUENCY SPECTRUM

8.1 The broadcasting frequency spectrum applications are lodged in line with the Radio Frequency Spectrum Regulations, 2015[118]. The Processes and Procedures Regulations for Class Licenses enable the Authority to determine the timing of applications and consideration of community broadcasting services registration. The regulations provide for two window periods for applications for community broadcasting service licenses, which can only be done with the ITA for spectrum licence.

8.2 ACM argues that it is not clear what motivates the issuing of a Spectrum License ITA by the Authority, and questions the manner in which this ITA is published. ACM asks the following questions:

- Will the Spectrum License ITA be issued on the granting of a service license if spectrum is available?
- Does the Authority intend to be specific in where it invites applications? What will inform the Authority in this process?
- Will these invitations take cognizance of communities of interest?[119]

8.3 ACM argues that expanding the footprint will compound the management and governance challenges and reduce diversity. It would make the communities less defined, and reduce community ownership. ACM mentions that FM, a line-of-sight distribution medium is very economical in a small foot-print. Expanding the footprint would also further blur the distinction between Commercial and Community radio. However, larger footprint may make sense in the digital environment (such as for DTT,

[118] Published under General Notice 279 in Government Gazette 38641 of 30 March 2015 amended in;

a. Radio Frequency Spectrum Amendment Regulations, 2015, Government Gazette 38754 (Notice 386 of 2015)
b. Amendment to the Radio Frequency Spectrum Regulations,2015, Government Gazette 40436 (Notice 781 of 2016)

[119] ACM: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 6

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DRM and DAB+) because more stations can be broadcast in the same bandwidth.[120]

8.4 Furthermore, ACM submits that competent signal distribution requires skills beyond the scope of nearly all Community Broadcasters. People with these skills are not available and not needed all the time, in ACM's view and ECNS licenses should only be granted to competent applicants.[121]

8.5 The SABC is of the view that signal interference should be addressed as and when it crops up. The SABC has noted with concern that some community radio broadcasters who self-provide signal distribution, intentionally inflict interference by increasing their maximum effective radiated power ("ERP") to the detriment of surrounding broadcasters. This inference has a damaging effect on some SABC services and has resulted in audience loss in other cases. Therefore, the SABC suggests that there is a need for the Authority to strengthen the monitoring of signal interference in line with provisions of the law and licence conditions. The SABC also suggests that the Authority should introduce higher penalties in order to deter further and future contraventions.[122]

8.6 Pulpit Media Group alludes that there are two broad responses that can be made on the issue of signal distribution costs, namely:

- either ICASA regulates the signal distribution tariffs such that they are affordable for the community broadcasting sector as a whole and do not continue to pose a risk to long-term financial viability and sustainability of community broadcasters; or

[120] Ibid, p 4
[121] Ibid, p10
[122] SABC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 7

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- Government steps in as the funder of signal distribution costs. However, such government funding would need to be reliable and dependable to avoid the problems regarding on and off funding and, importantly, would need to be equitable for all community broadcasters, recognising that signal distribution costs of different types of community broadcasters are different. Hence it would be unjust, for example, to fund AM licences to the same extent as FM licences given the much higher signal distribution costs associated with AM than is the case with FM.[123]

8.7 Pulpit Media Group would like the coverage of community of interest sound broadcasting services to expand as they do not rely on a particular geographic coverage for their community coherence. ICASA's insistence that community of interest stations also be geographically based is a matter of micro-policy that finds no legal or textual support in the ECA or any other broadcasting-related statute.[124]

8.8 Pulpit Media Group supports expanding the footprint of community stations including by way of consolidating a number of existing community stations into a regional or national station for community of interest broadcasters where the community of interest being served is the same.[125]

8.9 In addition, Pulpit Media Group submits that an additional option would be to have a number of relay stations, that is, a single service broadcasting on a number of different frequencies.[126] This is in fact already happening through a single licensee providing programming on a network of frequencies to a large audience spread across six provinces.

[123] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 8
[124] Ibid, p 14
[125] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 14
[126] Ibid, p 14

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8.10 Act-SA would like the Authority to develop and publish regulations that provide a separate framework for Electronic Communications Network Service license for Community Television Broadcasting Services, with an affordable registration fee, as according to Act-SA, the current registration fee of R10 878 is unaffordable. Act-SA proposes a registration fee of R 3500 capped for the next years and believe that this intervention will enable Community Television broadcasting services to distribute their own signals.[127]

8.11 WECODEC submits that the current dispensation of signal distribution is a violation of section 2 (g) of the ECA. It considers spectrum requirements for coverage to have insufficient signal coverage and improper calculation. In addition, WECODEC views the DTT regulation as insufficient for community television and affects the operations of services of licensees in the community broadcasting tier of advertising. There is inappropriate spectrum planning and no individual footprints covered for.[128]

8.12 WECODEC argues that the Authority should promote other signal distributors. Some broadcasters make use of third-party signal distributors, not Sentech or Orbicom. Therefore, WECODEC is of the view that ICASA must regulate and ensure that self-provisioning and/or free choice of a third-party signal does not lead to loss of subsidies.[129] It notes that Sentech has effectively been granted a monopoly that have automatically led to high and not market related pricing. WECODEC requests the Authority not to allow the consolidation of stations in respect to their coverage area as in a DTT environment there will be plenty of

[127] Act-SA: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, May 2017, p 3
[128] WECODEC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 6
[129] Ibid, p 13

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opportunity of expanding the footprints of stations at lower transmission costs. WECODEC therefore suggests that the Authority should recognize and invite more service providers for signal distribution, specifically SMME's from communities.

8.13 Capricorn Community Concepts would like the Authority to introduce a special ECNS licence that is affordable with a lower Registration fee of at least R2000. This, according to Capricorn Community Concepts will improve the sustainability of community sound broadcasting service providers, promote self-provision of signal distribution and reduce reliance on Sentech.[130]

9. SIGNAL DISTRIBUTION COSTS

9.1 The ECA makes provision in section 63(2)(a) for a common carrier to" provide broadcasting signal distribution to broadcasting licensees upon their request on an equitable, reasonable, non-preferential and non-discriminatory basis". Section 62(3)(b) of the ECA states that in determining its tariffs the common carrier must "...take into account .... the different categories of broadcasting service...with a view to ensuring that the different tariffs are appropriate to and commensurate with the various broadcasting services to which they relate. However, this condition has not been imposed on Sentech, as the Authority has not initiated a process of declaring Sentech be a common carrier".

9.2 Act-SA submits that signal distribution costs have long been a sore point for the community broadcasting sector, which started out in South Africa under unduly onerous conditions vis-à-vis transmission costs as the national carrier, Sentech, was then charging the same traffic structure across all broadcasting clients. Through the intervention of ICASA and the

[130] Capricorn Community Concepts: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5

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actions of Sentech, the situation has changed and a more enabling environment now prevails.[131]

9.3 NAB states that the review into community broadcasting is timely as South Africa moves from analogue to digital broadcasting. Furthermore, signal distribution fees are considered as a barrier to entry for both TV and Radio – a policy and clear tariff regime is necessary for this tier of Broadcasting[132]. Moreover, NAB recommends that ICASA conduct an enquiry to explore the feasibility of prescribing signal distribution tariffs.[133]

9.4 Cape TV concurs with ACT-SA and moves to advise ICASA to take steps and declare Sentech a national carrier as this will then empower ICASA to regulate signal distribution tariffs. Cape TV further highlights the need to localise DTT transmissions to enable *'specifically local TV stations'.* In Cape TV's view, technically, this is feasible however the obstacle will be the architecture of the DTT multiplexes, hence architecture re-examination is required.[134]

9.5 Radio Pulpit and Cape Pulpit (collectively "RPCP") states in its submission that the most significant cost for most community broadcasters is the monthly signal distribution cost. It supports the view held by Cape TV, that ICASA regulates the signal distribution tariffs such that prices are at price level that would be practically affordable for the community broadcasting sector and do not pose a risk to the long-term financial viability and sustainability of community broadcasting.[135]

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[131] ACT-SA: Submission on the National Integrated ICT Policy Green Paper.
[132] NAB: Presentation at Public Hearing; 19th July 2017.
[133] NAB: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 14 - 15.
[134] Cape TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 18.
[135] RPCP: Supplementary Submissions on the Discussion Document on Regulatory Framework for Community Broadcasting Services; 10th August 2017.

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9.6 SABC acknowledges that the current inquiry focusses on the regulatory framework of community broadcasting services. As such, the concerns related to signal distribution pricing can at best be addressed in a separate inquiry with a view of promoting uniformity, standardisation and transparency. SABC moves further in its submission and states that broadcasters who self-provide signal distribution services, pay much less than what other broadcasters pay the common carrier. The SABC states that regulatory intervention on signal distribution tariffs is necessary and would be beneficial to the sector, drawing similarities with interconnection.[136]

9.7 ACM submits that the urban setting require lower signal power and tariffs are lower. However, ACM has found that in rural settings, more power is needed to reach the people due to the sparse nature of population density in those areas. Thus, considering the cost implications, rural station bare higher signal distribution costs regardless of the lower potential advertising revenue. ACM therefore moves to advance that a regulatory approach should be considered and advises ICASA to conduct an inquiry to the market.[137]

9.8 Sentech refers ICASA to the Discussion paper on Regulatory Framework for Broadcasting Transmission Services published on the 15 June 2011 in Gazette no. 34371 "*transmission discussion document*". In the said document, according to Sentech, ICASA conceded the need to comply with the Chapter 10 of the ECA. Sentech argues that it is only through a

[136] SABC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 7

[137] ACM: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 8.

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Chapter 10 process that can ICASA determine as to whether tariffs must be regulated or not.[138]

9.9 Sentech further submits that the statement indicating that the Authority needs to consider "*mechanism of reducing tariffs"* alludes to a pre-determined view that is contrary to Chapter 10 of the ECA and the process undertaken during the transmission discussion document, leading to procedural unfairness.[139]

9.10 Act-SA submits that while local single-frequency networks ("SFNs") have the potential to expand the local transmission reach across multiple transmitter sites, Sentech's 'gap filler' DTH service, FreeVision, will convey all DTT-enabled channels nationally, enabling all community TV channels to be available on a free-to-air basis across the country. Act-SA believes that such an expansion will be a boon for community.[140]

9.11 Act-SA further submits that the Universal Service and Access Agency of South Africa ("USAASA") subsidizes signal distribution costs. In addition, the architecture of the national multiplexes will force community channels outside of Johannesburg to incur significant additional costs to convey their signal from the point of origin to the multiplex uplink facility in Johannesburg.

9.12 Considering the above about Sentech's DTH service, Cape TV advises ICASA that another way to achieve wide broadcast coverage is to use satellite-based DTH as a delivery mechanism for community TV. Cape TV goes on to state that ICASA could permit community channels to achieve a provisional or an even more localised footprint using the DTH satellite

[138] Sentech: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017.
[139]Sentech: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4
[140] ACT-SA: Submission on the National Integrated ICT Policy Green Paper.

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alone. It advances the argument that their approach is commercially sensible as community channels would then only pay for coverage on the satellite.[141]

9.13 Cape TV submits illustrations in the form of diagrams demonstrating that the switch from analogue to DTT will move their number of transmitter from one to 12 and then finally 34. It argues that, the corresponding increase in potential audience numbers and relevant cost implications are not commercially justifiable.[142]

9.14 South TV advances an alternative view in that signal distribution costs for community broadcasters should be subsidised until certain revenue levels are reached or loan packages.[143]

9.15 Sentech emphasises that there is a need for the company to be run efficiently and effectively and that its tariffs are cost-oriented. Referring to the "*transmission discussion document"*, Sentech submits that it takes into consideration s62(3)(b) of the EC Act whilst ensuring that a differential tariff structure would not be contrary to the requirements of Section 62(3)(a) which require that a common carrier must provide broadcasting signal distribution on "*an equitable, reasonable, non-preferential and non-discriminatory basis*".[144]

9.16 Sentech submits its interpretation of "*equitable, reasonable, non-preferential and non-discriminatory basis*" as:

[141] Cape TV: Supplementary Submission to the Discussion Document 'Regulatory Framework for Community Broadcasting Services; 10th August 2017.
[142] Cape TV: Further Submission to the Discussion Document 'Regulatory Framework for Community Broadcasting Services; 10th August 2017.
[143] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017.
[144] Sentech: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4

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- Fair terms that are not anti-competitive and that would not be considered unlawful if imposed by a dominant player in their relative market;

- Reasonable rates that are charged on services which would not result in an unreasonable aggregate rate if all licensees were a similar rate;

- A commitment to treat all licensees in a similar manner; and

- Abstaining from practices that may result in some licensees given an edge in the market that has nothing to do with their superior efficiency.[145]

9.17 Furthermore, Sentech submits that section 62 of the EC Act does not prescribe or require ICASA to determine signal distribution tariffs. Instead, section 62 of the EC Act enjoins a common-carriers when determining its tariffs to, amongst others, consider the different categories of broadcasting service licensees. Moreover, Sentech adds that section 62 empowers ICASA to impose any condition on the common carrier.

9.18 Sentech refers ICASA to its frequency plan where ICASA dictates coverage size for terrestrial broadcasting licensees. The signal distributor further submits that Chapter 10 of the ECA is instructive of mechanism for reducing signal distribution costs for the community broadcasting sector. Sentech would like ICASA to consider the impact of the ICASA Terrestrial Broadcasting Frequency Plan of 2013 as amended in September 2014 ("TBFP-13") on community broadcasters, further highlighting and guiding ICASA to **Annexure D, G and J** of the TBFP-13.[146]

[145] Sentech: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4
[146] Ibid, p 7

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The Authority notes the concern regarding the costs of signal distribution, specifically the cost of Sentech in relation to self-provision. These assertions require further investigation to assess, amongst others, why self-provision is not a viable option for licensees.

10. COMMUNITY PARTICIPATION

10.1 The Authority views community participation and ownership as key components of corporate governance within the community broadcasting sector. Community broadcasters use various methods to encourage participation including, annual general meetings, board elections, selection and provision of programming, and volunteering.

10.2 The SABC submits that the old style of involving community participation through phone-in and talk shows, dedications, greetings and song dedications should not be the only mechanism of assessing the needs and interests of community members. SABC further submits that the Community Broadcasters should consider community mapping exercises in order to unearth the pertinent grassroots matters that should be aired on these platforms because community broadcasting should be by the community and for the community. Thus, according to SABC, it is also advisable for community broadcasters to foster a sense of ownership amongst community members as this will result in communities supporting the broadcasters financially and otherwise[147].

10.3 Pulpit Media Group believes that ICASA does not take cultural differences with regard to the nature of community participation into account. Community members are far more likely to put forward their views via

[147] SABC Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5

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social media such as Twitter, Facebook, Email, Whatsapp or by leaving comments on a broadcaster's website[148].

10.4 Pulpit Media Group reasons that the provisions of section 50(d) of the ECA in relation to community participation were drafted prior to the social media revolution and respectfully submit that these need to be updated such that proven direct social, online and mobile media interaction can be taken into account in assessing whether or not a community station is engaging sufficiently with its audience community[149]. Pulpit Media Group observed that at the hearing, it was clear that members of the ICASA panel were concerned that this may isolate members of the community of interest served by Pulpit Media Group that are not at an LSM level to afford internet connectivity. Pulpit Media Group are extremely sympathetic to these concerns and reassure ICASA that its community members also communicate via SMS (which does not require data or an internet connection), email, as well as by postal services. Pulpit Media Group also states that it frequently engages with its audiences through direct face to face listener development initiatives which involve visiting communities and obtaining direct responses to listenership questionnaires and programme input[150].

10.5 Pulpit Media Group reiterates the assurances given at the hearing that it would be incumbent upon a station to provide sufficient evidence of community involvement and participation to ICASA. This would continue to be the case irrespective of the medium (meetings, letters, emails, Facebook posts, tweets, SMSs, Whatsapp messages etc) as has always been[151].

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[148] Radio Pulpit and Cape Pulpit: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 31 May 2017. Section 10.1

[149] Radio Pulpit and Cape Pulpit Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 31 May 2017. Section 10.2

[150] Radio Pulpit and Cape Pulpit: Presentation at Public Hearing; 19 July 2017.

[151] Radio Pulpit and Cape Pulpit: Presentation at Public Hearing; 19 July 2017.

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10.6 Pulpit Media Group alerts the Authority that volunteering as part of community participation works particularly well with an extremely close-knit community. Whereas, in other circumstances, relying on volunteers can be disastrous for a community broadcasting station where volunteers arrive late or not at all for hosting programs or are otherwise unreliable. In Pulpit Media Group view, this level of unreliability would have a negative impact on the sustainability of a broadcasting service which relies on volunteers[152].

10.7 South TV argues that the major characteristics of community participation in community broadcasting is having a sense of ownership, relevance and benefit[153].

10.8 Cape TV submits that they have a daily slot titled, "Open Studio" through which it encourages the community audience to participate and host the talk show[154]. An invite is also given to the local producers of which 28 of them conduct regular programming contributions[155]. In some instances, the Cape TV solicits user generated content ranging from music videos, newspapers, home based information and local news. The communities are also invited to submit their local productions of films, dramas, documentaries and theatre productions[156].

10.9 In order to promote community participation, WECODEC suggests that NCRF and the MDDA should facilitate and encourage social media integration[157]. It further states that there should be a more flexible short-

[152] Radio Pulpit and Cape Pulpit: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017. Section 10.3
[153] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017. Point no:2
[154] Cape TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017. Point no: 2.24.1.
[155] Ibid, Point no: 2.24.2.
[156] Ibid, Point no: 2.24.3.
[157] WECODEC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 15

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term programming whereby the community members can produce content.[158]

10.10 Kagiso Media is of the view that community involvement in the running of a community station (whether sound or television) and in the choice of programmes, is an essential feature of the community broadcasting sector and so management, on its own, ought not to be entirely responsible, for programming or indeed any other decisions[159].

The community broadcasting operating model challenges the traditional division between broadcasters on one side and listeners on the other side. In community sound broadcasting the listener becomes the broadcaster. Listeners get access to the airwaves. Community participation means availing mechanisms that ensure the participation by members of the community served, in the running of the operations, policy making, and programming of the licensee, and representation of the different sectors of the community in influencing the direction the licensee should take. This in turn results in the equitable representation of the linguistic, cultural and religious diversity within the geographical boundaries of the area.

Affording community members who are experts in various fields such as community health, education, culture, language, customs, environment, science, etc, an opportunity to host programmes in their respective fields, is one of the means of ensuring community access to the airwaves.

The community must get involved in the production and management of communication systems and in the ownership and control of the means of communication. As far as community participation in the

[158] ibid
[159] Kagiso Media: Presentation at Public Hearing; 19 July 2017.

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selection and provision of programmes is concerned, community television broadcasters should establish programming councils/committees. These councils/committees should be representative of different sectors within the community served.

Without community participation, community broadcasting ceases being for the community and by the community. Community broadcasting licensees must continue submitting proof of community participation in annual general meetings, and all other forms that require community participation.

Community broadcasters should strive to understand the community they are serving. Also, they should know what is available in terms of skills, revenue streams and build on the strengths of their community. They should build relationships and partnerships with common interest to realize vision and meet goals of the community.

The method of participation must not disadvantage part of the community that is already disadvantaged in terms of social media access and knowledge to clearly voice their views timeously, be understood and be able to engage with issues thoroughly. The broadcaster should realise a difference between a discussion and a once off comment. However, social media can be used to enhance community participation, although not as a primary method for community participation.

11. PROGRAMMING OBLIGATIONS

11.1 Community broadcasting programming must be distinct from commercial and public broadcasting and it is specifically intended to provide cultural and language plurality, it is an alternative source of information, education and entertainment for local communities.

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11.2 The SABC submits that the extended reach or footprint of community broadcasting services through online and satellite services encourage community broadcasters to offer content that is not necessarily relevant to the community within their licensed area, offering content that appeals to persons outside their community and in turn disadvantaging the community they are supposed to serve. Community broadcasting services can be encouraged to remain relevant to the community within their licence area and prioritise their programming needs despite their service expansions in other digital platforms[160]. Thus, it is crucial for the Authority to ensure that community broadcasting services adhere to their licence obligations and uphold the principles of community broadcasting services.

11.3 Pulpit Media Group complains that licensing predominantly music format stations is an example of regulatory failure by ICASA. Being a predominantly music station is incompatible with the objectives of the community broadcasting sector as set out in the ECA, in particular with the emphasis on serving the needs of that particular community [161]unless: the music being played is directly related to the "specific, ascertainable common interest" being served by a community of interest station; or the music not only constitutes South African music content but is sourced within the geographical area serviced by the geographically-founded community station in question. The Group is doubtful that all of the predominantly music-formatted stations are indeed so complying and whether or not ICASA is genuinely independently monitoring community sound broadcasters' compliance with the applicable local content regulations[162].

[160] SABC Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5-6.
[161] Radio Pulpit and Cape Pulpit: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017Section 8.1.
[162] Ibid, Section 8.4.

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11.4 ACM indicates that TV content is far more expensive than radio content[163]. Quality TV content requires financial resources as well as talent. TV without quality content will not attract listeners or advertising revenue. More discussion is required to formulate a workable strategy to fund quality content on a shared DTT Community TV platform[164].

11.5 WECODEC urges the Authority to allow a small percentage of international content programs under the service licence terms and conditions in order to bring the world to the communities which have a low international culture exposure[165]. They request the Authority to lower the local content quota on Community Broadcasters as the quality of local content will continue to suffer if this quota is not amended[166].

11.6 Capricorn Community Concepts would like the Authority to encourage that new registrants are dominated by news and current affairs from local communities in line with Section 2(s) of the ECA[167]. It suggests that the Authority must introduce more community services in African languages particularly, Tshivenda, Xitsonga, IsiNdebele and Isiswati. This recommendation will remove the dominance of English and promote diversity[168].

11.7 Capricorn Community Concepts submits that it is a fact that the Authority has licensed a lot of music dominated stations that mostly play music and ignore local issues either in terms of news and current affairs[169]. It

[163] ACM: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017. Point no:13
[164] Ibid, point no::31 ANS
[165] WECODEC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017. p7.
[166] WECODEC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017. p16.
[167] Capricorn Community Concepts: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, Point no:28.
[168] Ibid, Point no:18.
[169] Ibid, Point no:17.

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recommends that the Authority must encourage promotion of music from local communities[170].

The majority of programmes broadcast by a community broadcasting service, news bulletins and current affairs shows in particular, are supposed to be produced and sourced locally. Community broadcasting applicants/licensees should submit their proposed programming format with majority of programmes produced and sourced locally. Programme syndication/networking and programme sharing between broadcasting licensees shall not exceed 20% of the community licensee's programming.

The Authority still holds a position that programming must reflect community needs and interests in accordance with legislation, to ensure that programming provided reflects the needs of the people in the community which must include amongst others cultural, religious, language and geographic needs and must:

- **provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by the broadcasting service covering the same area;**

- **be informational, educational and entertaining;**

- **focus on the provision of programmes that highlight grassroots community issues, including, but not limited to, developmental issues, health care, basic information and general education, environmental affairs, local and international, and the reflection of local culture; and**

[170] Ibid, Point no:27.

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- **promote the development of a sense of common purpose with democracy and improve quality of life**

Community broadcasting Licensees must broadcast programming that supports and promotes sustainable development, participatory democracy and human rights as well as the educational objectives, information needs, language, culture and entertainment interests of different groups such as women, youth, civic and sport interest groups. Licensees must have policies dealing with programming matters that include, amongst others:

- **mechanisms for community participation;**
- **programming format;**
- **language policy;**
- **the provision of access to views/opinions under-represented by the mainstream media;**
- **the accurate presentation of factual material and ensuring that reasonable efforts are made to correct substantial errors of fact at the earliest possible opportunity;**
- **clear distinction between factual material, commentary and analysis;**
- **avoiding the misrepresentation of viewpoints by giving misleading information;**
- **editing out of context or withholding relevant available facts;**

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- **respect for different cultures, customs and religions;**

- **seeking appropriate advice on how to best respect different cultures, customs and religions; and**

- **the promotion and development of local musicians and other artists.**

Whilst taking advantage of other platforms such as online broadcasting and social media, the programming content should be relevant to the community being served within the license area. The other platforms should be a means to share the local experience or stories but not to dilute the localness of the community broadcaster. Broadcasting of local music and programming is important for community broadcasting due to its grassroots mandate of servicing and reflecting the communities served so that they can relate to and promote the community broadcasting service.

12. DIVERSITY OF SERVICES

12.1 The SABC is concerned that the Authority has not defined radio formats and as such, there will be instances where broadcasters are sounding the same because other licensees would have moved from their initial radio formats to profitable ones. The SABC is of the view that in the absence of defined radio formats, it will be difficult for the Authority to enforce diversity of services for cases wherein services are sounding the same. Thus, the starting point would be to define radio formats in order to have a yardstick with which compliance will be measurable[171].

[171] SABC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 6

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12.2 WECODEC cautions the Authority that a forceful consolidation of stations with the aim to increase the total listenership will be at the cost of media diversity. It further states that community radio stations have to deal with specific issued related to their communities and by consolidating communities it will lose focus on individual matters in the communities as well as cultural diversity. However, if community radio stations decide on their own to consolidate/merge, the regulator should ensure that the license conditions of the new license will meet the demands of the involved communities in a fair manner. Sustainability can be achieved by optimizing the performance indicators of the stations (and thereby increasing the audience within the target area) rather than increasing the targeted audience[172].

The Authority believes that the new regulatory framework for community broadcasting services, and the introduction of more community broadcasting services in underserviced areas will result in enhanced diversity of services. Further to that this will lead to growth and development of the sector, the development of communities served, and job creation.

Broadcasters, using their expertise in scheduling their programming according to relevant formats, should provide the Authority with suggestion of formats that are implementable for community broadcasting. The Authority will then make a decision based on the views of the primary stakeholders. The Authority cannot make a decision on formats without input from the affected parties.

[172] WECODEC: Presentation at Public Hearing; 19 July 2017.

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13. GOVERNANCE, MANAGEMENT AND OPERATIONAL CAPACITY

13.1 The community broadcasting sector has experienced operational and sustainability challenges since its inception in 1994. Many of these challenges persist despite numerous support measures implemented by government agencies and industry bodies. Although there are some exceptions, governance, capacity, financial sustainability and compliance challenges are prevalent in the majority of community stations.

13.2 With regards to governance, management and operations issues, as well as sustainability strategies, the NAB proposes that the Authority liaises with the DoC, as these are policy issues and are addressed in the DoC Subsidy Scheme. The DoC hosted a Corporate Governance Indaba in September 2012, with the objective to capacitate community radio stations on governance issues and promote adherence to corporate governance and regulatory compliance. The NAB is of the view that five years later, there is still a need to provide corporate governance skills, as the lack thereof has led to the demise of most community radio stations. To this end the NAB recommended that specially packaged and affordable training be arranged regionally, to fast-track the training of station board members on the principles of governance and fiduciary duties of boards[173].

13.3 The SABC supports the element of "non-profit entity" as a principle for community broadcasting services. However, on the issue of community broadcasting services that are registered as Trusts, SABC states that it is imperative to retain substantial control and management of such Trusts in the hands of community members. There should be systems in place that ensures that the board and management thereof are fully

[173] NAB: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 15

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representative of community members in their licence area and above all community members should be the major beneficiaries of these Trusts[174].

13.4 Pulpit Media Group support ICASA's suggestion of developing ACMA-type corporate governance rules for each level of governance for community broadcasters[175]. Such rules would need to be appropriate for all types of community broadcasters, whether community of interest or geographically founded community broadcasting services. Part of the ongoing problem with corporate governance at the community broadcasting level is ICASA's apparent refusal to in fact revoke or suspend any community broadcaster's licences no matter how obvious or egregious the corporate governance failures have been. The wrong message about the importance of corporate governance to the sustainability of community broadcasters is being sent by ICASA's refusal to revoke licences of community broadcasters that consistently fail to comply with basic corporate governance requirements[176].

13.5 In terms of governance and consideration for case study to determine failure to uphold governance Sentech notes that there are a number of broadcasters who initially struggled but eventually managed to put in place measures for recovery. Some broadcasters were self-sufficient before the bailout funds paid for same services. There were a number of situations where MDDA funding and DoC bailout funds were paid out for same services[177].

[174] SABC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 7
[175] Radio Pulpit and Cape Pulpit: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017. Section 12.1.
[176] Ibid, Section 12.3.
[177] Sentech: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p8

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13.6 South TV suggest that the Authority can encourage broadcasters to re-invest proceeds/surplus into communities by introducing incentives and rewards[178].

13.7 Regarding what guidance should the Authority afford regarding reinvesting proceeds into the communities, ACM suggests that the use of funds is not well understood by boards and management[179].

13.8 WECODEC advocates for verification of stations' constitutions, editorial policies and practices by proof reading and make recommendation amendments and edits as this will assist with compliance with the standard terms and conditions[180].

13.9 They further suggest that a subsidy scheme be set up to remote and empower stations in terms of corporate governance. Stations will be empowered in respect of corporate governance and this will reduce the number of non-compliant stations. The Authority should appoint provincial compliance officers to assist and work with station managers and compliance officers/administrators and provide training to assist licensees with awareness and compliance to licence conditions and applicable regulations.

13.10 Capricorn Community Concepts highlights that a memorandum of understanding must be entered into between community broadcasters, ICASA, SETAS, Accreditation Institutions and training providers. This will incapacitate community broadcasters with accredited necessary skills in respect of the operational aspect of these organisations[181].

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[178] South TV: Presentation at Public Hearing; 19 July 2017.
[179] ACM: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p10.
[180] WECODEC: Presentation at Public Hearing; 19 July 2017.
[181] Capricorn Community Concepts: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, Point no:30.

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13.11 Kagiso Media has concerns that certain stations are, in reality, entirely run by a management team with little or no input from the relevant "community" the station is supposed to serve. This is particularly true of the so-called quasi-commercial stations about which Kagiso Media has made submissions previously[182].

13.12 Kagiso Media believes that it is imperative for ICASA to be able, on an ongoing basis, independently (that is without relying on the say so of the station involved) to monitor and verify compliance with the community involvement requirements of the relevant legislation, regulations and licence conditions. Unless ICASA is in a position to do so, licensees will be able to get away with the lack of governance and management practices that are better suited to commercial stations, as opposed to the community, broadcasting sector[183].

The Authority notes that a large number of non-compliance instances emanate from unclear provisions in the licensees' constitutions. Despite the existing regulatory tools and the monitoring and compliance enforcement in place, there is still a high number of community broadcast licensees that are not compliant.

Community broadcasting licensees must have clearly defined roles of management and the board members in their policies. The Authority has proposed the roles of Board/Trustees, Station manager and Management below.

[182] Kagiso Media: Presentation at Public Hearing; 19 July 2017.
[183] Kagiso Media: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017.

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The Role of the Board / Trustees:

The Board represents the community and is there to ensure, amongst others, that the interests of community are served. Board members are not employees of the radio station. The Board is not supposed to run the station on a daily basis. It is also responsible for the employment of the station manager, to assist with the formulation and updating of the legal / founding documents, policy documents and the overall oversight of the licensee's operations.

In addition to the above, the Authority is of the view that the role of the Board includes, but is not limited to, the following:

- **monitoring of management in respect of implementation of the Board's plans;**
- **ensuring compliance with all relevant laws, regulations and codes of good practice;**
- **giving strategic direction to the licensee;**
- **development of a corporate code of conduct; and**
- **identification of risk areas and performance indicators.**

Role of the Station Manager

The station manager oversees the administrative, financial, technical responsibilities and business functions of a community licensee.

The Station Manager has the responsibility to put the over-all strategic objectives into action through:

- **Plan of Action (Development of projects to fulfil the mandate);**

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- **Recruitment of staff and volunteers (Drafting of contracts with clear and detailed job descriptions, and recruitment of the right people for the job);**

- **Direct as well as train management staff for sound human relations and operational skills;**

- **Management (Manage operations and delegate control of other departments), e.g. Programming, Sales and Marketing, News, Music, Finance, Technical and Administration;**

- **Instil discipline (Through documented and adopted policies that detail correct actions and procedures); and**

- **Network (Meet potential clients, funders and donors, and affiliate / sign the licensee with relevant forums such as NAB, NCRF, etc.)**

<u>The Role of Management</u>

The management is made up of the station manager and other departmental managers who report to the station manager. The station manager must serve as ex-officio of the board and report to the board. Management below the station manager must report to the station manager on the operations of their respective departments. Management is accountable to the Board and runs the station on a daily basis.

Corporate governance policies should consist of:

1. Constitution
2. Memorandum of incorporation

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3. Management

4. Technical operations

6. Human resource

7. Financial

8. Day to day operations

9. Editorial policy template

The Authority encourages the community broadcasters' associations to play an active role in ensuring that all licensees comply with regulations.

14. COMPLIANCE

14.1 Community radio stations still find it difficult to comply with regulations and their conditions of licence, which has sometimes led to compliance hearings instituted by the Authority. The intervention by the Authority has had mixed results with some improvements. However, some have not improved and compliance problems appear endemic in the sector.

14.2 The SABC has noted with concern that the Authority is unable to revoke community broadcasting licences in stances of repeated non-compliance. The SABC proposed that in such instances the Authority could revoke such a licence in accordance with section 4 (3) (e) of the ICASA Act and give an opportunity to community members within the same licence area to apply for the community broadcasting licence. Such community broadcasters should be willing to uphold the principles of community broadcasting services. Alternatively, the ECA should be amended to empower the Authority to revoke licences of repeated offenders.[184]

[184] SABC: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 8

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14.3 Pulpit Media Group submits that ICASA correctly recognises the need to ensure that proceeds derived from community broadcasting are ploughed back into the community via the community broadcasting service but believe that ICASA is not monitoring this issue sufficiently. It is concerned that some community broadcasters distribute excessive amounts of revenue to internal stakeholders such as management, trustees and Board members rather than distributing these to the community via the broadcasting service that is rendered. Such practices require ICASA's attention.[185]

14.4 Pulpit Media Group complains that ICASA sadly spends little time assessing its own ability to engage in ongoing monitoring and enforcement with regard to issues such as:

- Compliance with the technical specifications of a broadcaster's spectrum licence to guard against coverage area creep;

- Compliance with the requirements to hold an AGM to provide for community participation and, in particular, to be able to make a determination as to whether or not a community broadcasting service has in fact been hijacked by people with little or no relationship to the community broadcasting service, being bussed in to a particular AGM to, in effect, take over the station. ICASA has long been aware that this is a reality, particularly in respect of geographically founded stations, but there is little evidence of the courses willingness or ability to assist community broadcasters in tackling this problem; and

- Programming problems. ICASA notes that various stations appear not to cater for the specific needs of their particular community but it appears

[185] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 12

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that ICASA does little to in fact enforce compliance with these kinds of requirements.[186]

14.5 Pulpit Media Group suggest that ICASA consider moving to electronic, that is, online, methods of compliance reporting by licensed community broadcasters. The mountains of paper required to be submitted by licensed community broadcasters does not in fact aid ICASA in undertaking monitoring and enforcement.

14.6 South TV proposes that the Authority foster compliance through;

- Training and developing of staff/volunteers to avert non-compliance;
- Appreciating the medium and value of the expected promotion of local content; and
- Different levels of compliance should be incentivised.[187]

14.7 South TV believes that compliance can be met by securing skilled professionals, so, government must provide funding and skills and training.

14.8 ACM believes that ICASA could improve compliance through more consistent monitoring and much stricter enforcement. Despite much ICASA time and resources being expended, failed stations do not lose licenses – they just continue to fail. The consequences of poor governance should be clearly spelled out, and enforced.[188]

[186] Ibid, p 12
[187] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 5
[188] ACM: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 3

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14.9 In respect of how the Authority can improve the existing standard terms and conditions as well as its internal processes to ensure efficient licensing and effective monitoring and enforcement of the regulations, ACM is of the view that reporting forms are cumbersome and tedious. On-line reporting that asks exactly what is required should be considered. Reports should be acknowledged within a week, with problem and follow-up areas highlighted. Stations that do not comply should release their licenses to free spectrum for other applicants. ACM reiterates that what we need here is improved monitoring, feed-back and enforcement.

14.10 Capricorn Community Concepts propose that the Compliance Committee be fully resourced to discharge its mandate regularly and impose harsh sanctions to serve as a deterrence and prevent contravention of licence conditions. The Authority must introduce a mechanism wherein community broadcasters are requested to send monthly reports detailing how community members are encouraged to participate. The current regulatory framework is sufficient (Section 50, 53, 54 and 2 in particular); what is lacking is an effective compliance monitoring strategy from the Authority.[189]

14.11 Kagiso Media submits that all broadcasters, whether sound or television, public, commercial or community, must strictly adhere to all legislative requirements, all regulations and all licence conditions and must report thereon fully and timeously. However, according to Kagiso Media having such an obligation is not a sufficient guarantee that compliance will in fact happen. Consequently, Kagiso Media is of the view that, in line with the various applicable objects of the ICASA Act and the ECA, ICASA must ensure that it has the necessary funding and human and technological resources to be able to engage in independent monitoring and evaluation

[189] Capricorn Community Concepts: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4 and 6

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in order to make objective findings on an ongoing basis, as to whether or not a community broadcaster (indeed any broadcaster) is so complying with and adhering to applicable legislation, regulations and licence conditions.[190]

Licensees must publish their policies on their website or have them at hand for public scrutiny at the station or public space like libraries.

Licensees must report on their funding, profit and the distribution of profit and such must happen at their annual general meetings. The report should include non-monetary donations and sponsorship.

Community broadcasting services funds should be put into an account whereby stations will be able to account for such funds.

The Authority notes the different proposals regarding monitoring system and notes that not all broadcasters have the resources to submit information electronically as proposed. There seems to be various proposals for the Authority to continue doing spot checks or random monitoring on broadcasters. The broadcasters are required currently to submit reports on their compliance with license terms and conditions as well as Regulations. The Authority will endeavor to strengthen and improve monitoring of broadcasters with all license terms and conditions as well as regulations.

15. DIGITAL BROADCASTING

15.1 Pulpit Media Group submits that DAB+ and DRM will be critically important in ensuring that ICASA is in fact able to ensure that sound broadcasting services be available to all language groups throughout the

[190] Kagiso Media: Supplementary Submission on the Discussion Document on Regulatory Framework for Community Broadcasting Services; August 2017 p 5 - 6

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Republic. The final Position Paper specifically includes proposals to fast track the licensing of DAB+ and DRM services, giving existing licensees, including community broadcasters, spectrum to move to digital broadcasting as soon as possible so as to be able to provide South Africans with the programming and language benefits of the digital dividend quicker.[191]

15.2 Sentech is concerned that there is no policy legislative or regulatory framework on how terrestrial community radio will be accommodated in a multichannel digital audio environment – some entities are ready to deploy in line with TBFP-13. Sentech states that the Authority needs to address the impact of provincial single frequency networks (SFNs) on the terrestrial sound broadcasting principles of community of interest and geographic community. With regards to expansion of the footprint and consolidation of existing stations Sentech proposes that the Authority must consider the (TBFP-13) and DAB Frequency plan, the implementation of the latter two may affect community broadcasting footprint.[192]

15.3 ACM is of the view that Community TV and Radio should be regulated differently. Community TV on DTT will be quite different to analogue Community radio, and will have different regulatory requirements. The ACM is concerned that the review framework ignores the current migration of TV to the digital DTT platform[193]. This provides new opportunities and challenges to community TV. ACM believes DTT could allow for new Community TV funding arrangements.

[191] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 2

[192] Sentech: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 7

[193] ACM: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 2

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15.4 Capricorn Community Concepts urges the Authority to commence a Regulatory Framework for the digital broadcasting as per the previous broadcasting review process initiated in 2012 to provide certainty in the community broadcasting tier.

15.5 WECODEC alludes that the Authority must consider the sustainability of the community broadcasting of both TV and Sound, in the digital era.

15.6 On DTT Capacity Act-SA submits that 30% is a fair request to allow capacity for a test channel and also be responsive to new channels and other forms of community broadcasting like Community sports, Community religion and most immortally Community news.[194]

15.7 Cape TV notes that while there may be advantages for the sector in this, the compromise with commercial imperatives must be interrogated in order to ensure that the public interest prevails.

ICASA is anxious that, Sentech's proposal that the Regulator considers the consolidation of existing community radio stations could be detrimental and subsequently lead to their dilution. ICASA seeks to understand what would be the benefits of consolidation to the existing broadcasters.

The Authority has started a process on digital audio broadcasting and will await the Policy direction from the DoC to come up with regulations. Digital audio broadcasting matters will be addressed in that process.

16. DISCUSSION DOCUMENT DATA

16.1 Mnet is of the view that data collected in terms of the audience and revenue is somewhat inaccurate. Furthermore, Mnet submits that this analysis does not assist in deepening the community broadcasting sector.

[194] Act-SA: Presentation at the public hearings, 19 July 2017

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M-Net suggests that a more detailed analysis of reliable data should be undertaken to determine the reasons why some, but presumably not all community media struggle with financial viability. This analysis could include detailed data on local and regional advertising markets.[195]

16.2 Pulpit Media Group queries the accuracy of the figures provided in section 2.5 of the Discussion Document citing that anecdotal evidence would suggest that the rate of failed stations particularly in the secondary markets is much higher than the average 10% suggested in paragraph 2.5.1 of the Discussion Document. It questions why the North-West Province is not dealt with in the table in section 4.5.2 of the Discussion Document as there are often too many community stations in a single geographic area with similar formats, audience profiles and the like. The information contained in the table clearly indicates a problem with ICASA having licensed a number of community stations in the same or overlapping coverage areas offering similar or identical services/formats.[196]

Advertising

16.3 Pulpit Media Group submissions to the DoC on its Draft Community Broadcasting Support Scheme noted the discrepancy between the audience reach of community broadcasting (25%) and advertising spend (2%) as is also noted by ICASA. The DoC considers contributing significantly to the broadcast research Council of South Africa ("the BRC") to enable it to increase the radio audience measurement panel to capture specific information about the community broadcasters being listened to by the public. The expansion of the panel will require significant financial

[195] Mnet: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4

[196] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 7

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resources which the community broadcasting sector does not have currently. They hope that ICASA will support this initiative as increased advertising revenue will make the community broadcasting sector more viable, enabling it, in time, to contribute to the BRC in full.[197]

16.4 Pulpit Media Group mentions that there is no difference in the various profiles of radio listeners as identified by ICASA. It adds that audiences demand the same high quality of programming and listener experience, that is, content and technical expertise from community sound broadcasting services, as they expect of public and commercial radio.[198]

16.5 Pulpit Media Group is of the view that part of what is driving this discrepancy is the lack of appropriate information regarding exact audience figures for different community radio stations. It further states that there are currently no community broadcasters who are individual members of the BRC and therefore none of them contribute directly to meeting the costs of performing the BRC RAM. In its opinion, these costs are significant and run into millions of rands per annum. The costs to increase the size of the RAM panel such that it is able to capture specific information about each community station in a geographic area would be enormous, running into tens of millions of rands.[199]

16.6 Inkonjane Community Radio raises a concern that the RAMS statistics on audience figures continues to be contradictory to most community broadcasters. It trusts that the recently established BRCSA will ensure that the audience figures will be more transparent especially because the community broadcasting delegates will form part of the proceedings.[200]

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[197] Ibid, p 2-3

[198] Pulpit Media Group: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 7

[199] Ibid, p 3

[200] Inkonjane Community Radio: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4

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16.7 WECODEC alerts the Authority that there is an underestimation of Advertising revenue through false rating statistics (SAARF, REMS & etc).[201] WECODEC urges the Authority to find out from the current institutions how they collate their data and explore the feasibility of their methodology. It alludes that the methodology to measure audiences for commercial radio stations using random samples within the coverage area will not provide accurate results for community radio stations that have a more specifically targeted audience. WECODEC states that the results can probably only be established from a complex mixture of various samples such as group evaluations that have to be determined individually for each community radio station. In WECODEC's view, although this will probably result in higher costs, it is still necessary.[202]

17. GENERAL

17.1 In instituting this review, South TV would like the Authority to have a deeper, robust consideration of the role of community media in economic development and entrepreneurship and job creation. The sector has created employment opportunities and 'training ground' for entire broadcasting industry. More could be done in terms of developing and creating stability for this sector.[203]

17.2 South TV suggest that the Authority must play a leading role whilst MDDA, NEMISA and Sentech play a collaborative role and commercial broadcasters play a compulsory role in Community Broadcasting. Some of these suggestions could be explored in licensing processes as promise

[201] WECODED: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 6
[202] WECODED: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 6
[203] South TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 2

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of performance to include collaboration with community sector. However, some commercial broadcasters like Jacaranda are already doing this. If introduced it should be part of the ITA/ regulations and not imposed.[204]

17.3 Act-SA submits that the regulatory framework for Community Radio and Community TV should be different as admitted by the Authority in page 49 of the Discussion Document, in view of different operational costs involved. It recommends that the Authority should review the community television current foot print citing that it is not sustainable for community broadcasting and investments. It further requests the Authority to note infrastructure costs, equipment training skills and development, content production, gathering of news, maintenance staff, and signal costs.[205]

17.4 Cape TV suggests that ICASA should pay attention to previous proposals for the establishment of self-regulating mechanisms for Community Television through a Charter for Community Television in South Africa, or the formation of an Association of Community Television of South Africa. Although both these processes were formulated, through the formation of ACT-SA, Cape TV has since resigned from the Act – SA. It cited reasons for its resignation to include poor administration, unfair practices against other broadcasters, which all culminated into chaos over the discrepancies surrounding the encryption of broadcast signals in Digital Terrestrial Transmission policy process.[206]

17.5 Cape TV urges ICASA to investigate its claims against Act–SA in relation to the stipulations of its Charter, with an intention to mend the situation and implement necessary corrective measures. Cape TV adds that, its

[204] Ibid, p5
[205] Act-SA: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 4
[206] Cape TV: Written Submission on ICASA's Discussion Document on Regulatory Framework for Community Broadcasting Services, 2nd June 2017, p 3

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stance to withdraw from Act–SA as stipulated in the Charter was influenced by the commercial broadcasters' involvement into the sector's affairs and some community broadcasters' intentions to change their non - profit organization status to commercial ones.

The Authority notes the challenges raised with regards to the community television broadcasters' established association and would encourage that the community television broadcasters to work towards a solution that will be beneficial for the sector. The mandate of community broadcasting is enshrined in the legislation, which should be the point of reference for such an association.

18. CONCLUSION

18.1 The Authority would like to thank all stakeholders, interested parties and everyone who made submissions and participated in this inquiry. Written and oral submissions reflected a high level of expertise and knowledge and contributed to a better understanding of the community broadcasting sector. The Authority has been mindful of the need to, amongst others, ensure fair competition between broadcasting licensees, encourage investment in the South African broadcasting industry, and to promote the stability of the broadcasting industry.

18.2 The Authority would like to urge community broadcasting licensees to ensure that they draft and adopt Codes of Good Practice to ensure the professional running and administration of the sector.

18.3 This Findings Document is also available on the Authority's website at www.icasa.org.za

This gazette is also available free online at www.gpwonline.co.za