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15 February 2021

Attention: Acting Director-General

Department of Communications and Digital Technologies
Block A3, IParoll Office Park,
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Pretoria

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Dear Acting Director-General,

**SABC'S SUBMISSION ON THE DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL
CONTENT SERVICES POLICY FRAMEWORK**

Attached hereto for your attention, please find the SABC's submission on the Draft White Paper on Audio and Audio-Visual Content Services Policy Framework.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Philly Moilwa', written over a horizontal line.

**PHILLY MOILWA
GENERAL MANAGER:
POLICY AND REGULATORY AFFAIRS**



THE SABC SUBMISSION ON:
THE DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL
CONTENT SERVICES POLICY FRAMEWORK

15 February 2021

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1. EXECUTIVE SUMMARY

1.1 The South African Broadcasting Corporation (the SABC) would like to thank the Minister of Communications and Digital Technologies (the 'DCDT') for the opportunity to make a written submission on the Draft White Paper on Audio and Audiovisual Content Services (the Draft White Paper), Government Gazette No. 43797 of 09 October 2020. It is further appreciated that the DCDT has acceded to the industry's extension request in order to allow for meaningful engagements with all stakeholders.

1.2 It is acknowledged that this review process is long overdue as there has been a myriad of changes in the ICT sector since 1998. As such the AAVCS Draft White Paper is welcomed as it seeks to comprehensively review broadcasting policy and legislation in light of the fast-changing digital environment.

1.3 Additionally, the SABC commends the DCDT for its consideration of the 4IR imperatives, the impact of new players in the ICT sector, the previous submissions on the 2018 review of public broadcasting services policy and all legislative developments in the industry, for the purpose of this Draft White Paper.

1.4 In this submission, the SABC will focus on the policy proposals with respect to:

- the new licensing framework for audio and audiovisual content services;
- the funding model for the SABC and mechanisms for funding the public broadcaster's unfunded public mandate;
- the proposed repeal of the controversial 'Must Carry' provisions;
- the proposed inquiry on the current share of advertising revenue for Pay TV operators and whether it is appropriate for the viability of free-to-air services;
- a range of other related broadcasting policy issues.

1.5 It is the SABC's submission that public broadcasting services – or to use the language of the Draft White Paper “public audio and audiovisual content services” - still have a huge and important role to play in society. South African society is scarred by extreme income and social inequalities, high rates of unemployment and an economic meltdown exacerbated by the Covid-19 pandemic. We

have seen massive pressure on the education system as remote learning cast an unforgiving spotlight on the digital divide. Artists and the independent content production sector have suffered greatly, with productions delayed, cancelled and many content businesses went out of business. The disturbing proliferation of fake news and misinformation via global social media networks has also undermined trust in public institutions and fueled division through hate speech, racism and xenophobia, across the globe.

1.6 Notwithstanding these serious challenges during the pandemic, the SABC demonstrated emphatically that there is a critical need for a sustainable public broadcasting service which supports our citizens and constitutional democracy. The SABC was able to step up during the pandemic and launched an Education Channel, helped to get television productions going again and provided free-to-air access for critical health and public interest briefings on our national television and radio platforms. Therefore, it is critical for South Africa to reimagine the role of the public broadcasting service, and all its audio and audiovisual content services in the context of major societal challenges and technological developments.

1.7 In the Draft White Paper's new proposed regulatory system, public audio and audiovisual content services - including traditional broadcasting services - must still provide universal access to information, education and entertainment through quality and diverse content reflecting the needs of audiences. However, for public content services to thrive and fulfill the public mandate, the funding of the public broadcaster should be secured and safeguarded through industry policy, legislation and regulation. The SABC therefore supports the call for a financially sustainable, independent and credible public broadcaster which is integral to the health of our constitutional democracy.

2. INTRODUCTON AND BACKGROUND

2.1 The SABC was established in 1936 through Act of Parliament (Act 22 of 1936) following the dissolution of the African Broadcasting Company. In 1937 the SABC introduced a new national radio service which was broadcasting in English and Afrikaans. In 1940 the first direct radio service for African languages was introduced on medium wave¹. However, TV services were only introduced between 1976 and 1985². Over the decades, more SABC radio stations and television services were added and by 1990 the SABC held a hugely dominant position over the airwaves with only a few privately-owned broadcasters being licensed, including M-Net in 1986. Broadcast licensing under apartheid was strictly controlled by the State with those few licensed private radio broadcasters procuring licences via a 'loophole' provided by the Bantustan system.

2.2 The SABC's role as a propaganda arm of the apartheid government has been well documented.³ With the advent of negotiations for a democratic constitution in the 1990s, progressive organisations met with the African National Congress (ANC) in order to shape a new independent public broadcaster for the emerging democratic state.⁴ In 1993 the first independently-appointed SABC Board took office and an independent regulator was established through the Independent Broadcasting Authority Act, 1993.

2.3 The advent of constitutional democracy in 1994 marked the beginning of a period of policy renewal for the SABC, with major changes proposed and implemented through the 1998 White Paper on Broadcasting, the Broadcasting Act of 1999 and regulations from the then Independent Broadcasting Authority (IBA). The Broadcasting Act divided the SABC into two operational divisions, a public service and a commercial service division. The public service division is comprised of fifteen radio stations and two full spectrum multilingual television channels (SABC1 and SABC2). The commercial service division is comprised of three radio stations and one television channel, SABC3, which provides entertainment and information for viewers

¹ Triple Inquiry Report, 1995, paragraph 6.2

² Ibid

³ Media Landscape 2012 – Reflections on South Africa's Media Environment , Fact Sheet 2: A short history of broadcasting, at page 143 (https://www.gov.za/documents/media-landscape-2012-reflections-south-africas-media-environment?gclid=EAlaIQobChMI_8320_Z7glVoejtCh1LXAA9EAAYASAAEgL4K_D_BwE)

⁴ "Jabulani! Freedom of the Airwaves: Towards Democratic Broadcasting in South Africa", Conference Report, Doorn, Netherlands, August 1991.

predominantly in English). In 2005 the IBA completed an 18 month process by issuing new and separate licence conditions for every SABC television and sound broadcasting services, taking into account inter alia, language, news, local content and other key programming obligations.

2.4 In 2016 the SABC's 24 hour News Channel on the Pay TV and DTT platforms was authorised by ICASA as a public service. The SABC also broadcasts the SABC Education Channel and SABC Parliament Channel on the DTT platform and has plans to add other channels in due course to be distributed over DTT, DTH and via a streaming platform. It was anticipated that the full roll-out of digital migration would have enabled widespread access to the SABC's DTT Channels. However, at this point, only 3.5% of television households have access to DTT due to the slow uptake and roll-out of digital migration, including the lack of availability of DTT receiving devices in retail outlets.

2.5. The SABC represents the soul of the nation, its creative potential and remains a bedrock of South African culture. It has also been described as one of the key institutional pillars of our democracy. Therefore it remains the SABC's mission and vision to fulfil a public mandate to provide informative, educational and entertaining content to all South Africans in their preferred language.

2.6 With broadcasting technology being only one distribution platform (as recognised by the draft White Paper), the SABC sees itself as a multiplatform content provider that includes content gathering, creation, commissioning, curation, packaging and distribution of public service content. The SABC's mission is to become a high-performing, financially sustainable, digitised public audio and audiovisual content service that provides compelling informative, educational and entertainment content across multiple platforms.

2.7 The development of high speed broadband and unregulated OTT streaming services in the last decade has seen these services gain increasing audience share at the expense of well-established broadcasters, including the public broadcaster. The SABC's loss of audience was further compounded when it fell behind the technological curve after a period of governance failures and maladministration. This period culminated in the National Assembly adopting Ad Hoc Committee on the SABC Board Inquiry into the Fitness of the SABC Board in February 2017. This report made detailed recommendations on corporate governance and consequence management and marked a major turning point in setting the SABC back on course as a public broadcaster.

2.8 In 2020 the SABC also announced plans to launch its own streaming services platform, to leapfrog the technology gap and to further drive universal access to SABC's content on all devices and platforms.

2.9 The SABC therefore strongly welcomes the core principles of technology neutrality, regulatory parity and fair competition as set out in the draft White Paper. These principles will be expanded on in detail in this submission. But in summary, the SABC supports fundamental policy, statutory and regulatory amendments to be able to fairly compete with other audio and audiovisual content service providers which have light touch regulatory obligations (such as subscription broadcasters) and on demand content services which have no regulatory obligations whatsoever.

2.10 The SABC welcomes the new licensing framework and, apart from some questions of clarity, supports the new definitions which underpin this framework.

2.11 It is the SABC's submission that the current legislative and regulatory framework is outdated and now fails to meet the statutory requirement for "protecting the integrity and viability of public broadcasting services".

3. PARALLEL POLICY AND REGULATORY PROCESSES

3.1 It is noted with concern that the Draft White Paper consultation process coincides with several other ICASA regulation development processes. For example, ICASA is currently proceeding with the review of the Sports Broadcasting Regulations, Must Carry Regulations, Subscription Broadcasting Services Regulations, Disability Regulations and the Elections Regulations, which run parallel and overlap in some instances with the proposals set out in the Draft White Paper.

3.2 Whilst it is acknowledged that ICASA as an independent statutory body could not wait indefinitely for the AAVCS Policy review, it is equally important to note that these parallel processes now bring uncertainty to the sector and impact on planning. In particular the outcome of the Sports Broadcasting, Must Carry and Subscription Broadcasting regulatory reviews will have a direct

bearing on the future sustainability of the SABC, with material financial implications. Furthermore, service providers/licensees invest resources in those processes and ignoring those processes could also disadvantage affected parties/licensees. Ideally, ICASA processes should be halted until the AAVCS Policy is finalised as those final regulations could eventually require amendments and re-alignment. However halting these processes indefinitely may also cause uncertainty, given the length of time it takes to finalise policy and legislation.

3.3 Thus, it is submitted that taking into account ICASA's independence and regulatory autonomy, DCDDT and ICASA could discuss how to deal with the issue in order to foster certainty and avert conflicting policy and regulatory approaches. The SABC further submits that the broadcasting industry should also be consulted on how to deal with the parallel processes.

4. PROVISIONS OF THE DRAFT WHITE PAPER

4.1 Public broadcasting in the new policy framework

4.1.1 The SABC is in full support of the general policy recommendations and approach as set out in Chapter 4 of the Draft White Paper, namely "Public Broadcasting in the New Policy Framework. This includes Key Policy Principles, the Legislative Amendments and the necessary changes to create a Sustainable SABC. In our submission below, we focus on key elements that require further clarification, emphasis and/or that may not have been dealt with adequately

4.1.2 Clause 3.2.2 of the Draft White Paper states that the 3-tiers of broadcasting will be retained. It is acknowledged that the 3-tiers of broadcasting have distinct functions, largely determined by who owns and controls the licensee, that is the public, the private sector or the community. These functions should equally be applicable to audio and audiovisual content services. Public broadcasting services must cater for all sectors of society, all language groups and meet a comprehensive public interest mandate through programming across platforms.

- 4.1.3 The role of public broadcasting therefore cannot be overstated. It is also clear that an ailing SABC prejudices the entire audio and audiovisual content services ecosystem in South Africa. Therefore, it is of paramount importance to reimagine and repurpose the SABC in the context of audio and audiovisual content services, with a view to fostering a strong, sustainable and independently-governed public content services media. The Draft White Paper rightfully acknowledges that there is a need to protect the viability of the SABC through proper policy and legislation frameworks.
- 4.1.4 In terms of the proposed legislative amendments, it is noted that clause 4.2.1 of the Draft White Paper provides that the Broadcasting Act should be renamed into the SABC Act and that all provisions of general application to the industry should be removed from the Act. The Electronic Communications Act, 2005 remains the law of general application to all broadcasters, and as proposed, to all audio and audiovisual content services. The SABC fully supports this proposal as it will ensure that there is one founding statute for all SABC-related legislative obligations. The SABC will accordingly participate in any forthcoming legislative process to amend both the Broadcasting Act and the Electronic Communications Act.
- 4.1.5 Clause 4.2.2 of the Draft White Paper acknowledges that the current Charter and Objectives of the SABC are still highly relevant to enable the SABC as a multiplatform and multichannel public content service provider. In the SABC's previous submission to the DCDT with regards to the Review of Public Broadcasting Policy in 2018, the SABC had proposed that the current public broadcasting objectives are overly broad and should rather be categorized in two sections, namely: high priority objectives and general objectives. The SABC hereby submits that the categorisation should be as follows:

4.1.5.1 High priority mandate

- Provision of universal service;
- Provision of audio and audiovisual content services in all official languages
- Provision of diversity of services and programmes which are educative, informative and entertaining;
- Provision of services targeted at people with disabilities, youth, children and women;
- Provision of international, national , regional and local news and information;
- Development of the creative industry and focus on South African television; content and South African music;
- Provision of national sports programming; and

- Provision and access to archives and content libraries;

4.1.5.2 General mandate

- Provision of ancillary services; and
- Provision of books, magazines, periodicals, etc
- Organise, present, produce, provide or subsidise concerts, shows and events
- Conduct research on innovation
- Provision of international services

4.1.6 Essentially, the re-categorisation of public service mandate will enable the SABC to invest more resources and attention to high priority mandate with the view to drive national development goals and the public interest.

4.1.7 In addition to the proposals set out in the Draft White Paper, the SABC submits that public audio and audio visual content services should have:

- a) a clear, legally defined public mandate;
- b) universality, including nationwide access and maximum interactivity over multiple platforms;
- c) an independently-appointed board of directors with guaranteed independence from political and commercial interests;
- d) Strong adherence to the SABC's 2020 Editorial Policies;
- e) Diversity and choice, including content and programming for all communities, ages, genders, languages, religion and ethnic groups;
- f) Sustainable funding from government and an efficiently collected public broadcasting levy;
- g) Best practice accountability, governance and transparency mechanisms.
- h) Quality programming, including the provision of well researched and professionally produced content to all.

4.2. SABC Governance Structures

4.2.1 The SABC supports the retention of the current Board composition and appointment process as set out in the Broadcasting Act and notes with approval that the Draft White Paper recognises the historic ruling delivered in October 2017, by Justice KE Matojane⁵ in *SOS v Minister of Communication & Others*, which amongst other important findings, reaffirmed the powers of the SABC Board in so far as the appointment of executives are concerned. In essence the executive members of the board are now appointed solely by the non-executive

⁵ *SOS Support Public Broadcasting Coalition vs South African Broadcasting Corporation SOC Limited* (81056/14)[297] ZAGPJHC 289

members of the board and without any requirement for approval by the Minister as was previously the case.

- 4.2.2 The SABC Board's power to independently appoint the Executive Directors is now reflected in the SABC's Memorandum of Incorporation which was amended as a requirement of the judgement. The new SABC Act should also reflect that the Executive Committee (including all Group Executives) should be appointed by the Group Chief Executive, apart from the Chief Financial Officer and Chief Operations Officer who are appointed by the Board.
- 4.2.3 It is submitted that all the key principles underpinning this seminal ruling should be reflected in an SABC Act for consistent application of governance across the public broadcaster.

4.3 SABC Structures in terms of Section 9 of the Broadcasting Act

- 4.3.1 Section 9 (1) of the Broadcasting Act provides that the SABC must consist of two separate operational divisions, namely, a public service division and a commercial service division. Section 9 (2) further provides that the public and commercial service division must be separately administered and a separate set of financial records and accounts agree to be kept in respect of each division.
- 4.3.2 This accounting and organisational separation caused plethora of challenges and structural, reporting and budgeting for the SABC which has, from its establishment been accounted for as a single entity. As a Treasury funding requirement, the SABC was able to produce the separate accounts as required, although the utilisation of shared resources makes calculating the proper allocation of costs a complex exercise.
- 4.3.3 While the rationale for the split into two divisions was to regulate the subsidization of public services by commercial services, in practice it has not served its purpose as some public broadcasting services are profitable and some public commercial stations are currently loss making. This has undercut the rationale for the split.
- 4.3.4 The SABC notes with approval that clause 4.2.5 of the Draft White Paper calls for the removal of the statutory division of SABC services into public and public commercial services

- 4.3.5 The SABC therefore supports that the removal of section 11(1)(d) of the Broadcasting Act and the requirement to separately account for a public service division and commercial service division. The provision should be removed from the statute when the Broadcasting Act is amended as a consequence of this policy process.
- 4.3.6 The SABC supports the proposal that all SABC services and licenses be defined as public broadcasting services, based on the control of these services by a public institution. With respect to the current public commercial services, such as SABC 3, 5FM, MetroFM and Goodhope FM, their more commercially aligned obligations shall be grandfathered into the new licences. This will still ensure that any public funding through government departments or the collection of a public broadcasting levy, will not go to those SABC stations with more commercial licence conditions.

4.4 SABC Funding Model

4.4.1 Background

- 4.4.1.1 Broadcasters globally are undergoing profound transformation caused by changes in the economy, new technologies, a change in audience behavior and media consumption, as well as increasingly complex competitive environment. Sustaining and reinvigorating the SABC is important as we now live in a digital world where information is delivered on increasingly diverse platforms and from increasingly diverse sources. Forces of globalization within media are diluting national and local culture like never before.
- 4.4.1.2 The SABC recognises that in a world of limited resources it must strive to be fit for purpose as an organisation in order to deliver maximum value for money from our content and services and to direct as much of the Corporation's funding as possible into serving the South African audiences.
- 4.4.1.3 As it stands, section 8(b) of the Broadcasting Act, provides that the SABC should be funded through **advertisements, subscription, sponsorship, licence fees or any other means of finance**. This broad provision should be maintained with the addition of "government

grants” which currently accounts for approximately 3% of SABC’s total revenue. Currently the SABC is largely funded by advertising and sponsorship underlining the need for greater protection of the Corporation in the delivery of the public service mandate. The SABC is of the view that the policy and regulatory framework should create an enabling environment which allows the public broadcaster to perform and deliver on its mandate.

4.4.1.4 It is commendable that the Draft White Paper acknowledges carriage fees as an additional funding source for the SABC. This has become a critical revenue source for free-to-air broadcasters around the world, after pressure on advertising and sponsorship revenues. It is further noted that the principle of non-exclusivity on carriage of SABC services is encouraged so as to ensure that these services are widely accessible on other audio and audiovisual platforms.

4.4.1.5 Public broadcasters around the world are funded through various sources of revenue. Most have a mixed revenue base like the SABC but there are those who are funded solely by a licence fee or government allocation.

4.4.2 TV licence fees

4.4.2.1 Breakdown of SABC Funding sources

- a) As at March 2020, the SABC’s funding sources were primarily made up of advertising & sponsorships (76.7%) and television licence fees (14%). Only 3.5% of revenue is currently derived from government grants. The current funding model has shown the following mix over the last seven (7) years:

SABC REVENUE BREAKDOWN (%)	2019	2018	2017	2016	2015	2014	2013
Advertising Revenue	69%	71%	71%	70%	70%	68%	69%
Sponsorship Revenue	6%	6%	5%	6%	6%	7%	6%
Trade Ex changes	2%	1%	1%	2%	2%	2%	2%
Licence Fees	15%	14%	14%	14%	15%	16%	15%
Government Grants	3%	3%	4%	3%	3%	2%	4%
Revenue: Content & Commercial Exploitation	0%	1%	1%	2%	1%	1%	1%
Revenue Websites	0%	0%	0%	0%	0%	0%	0%
Other Revenue	3%	3%	3%	2%	2%	2%	1%
Revenue							
Other Income	1%	1%	1%	2%	1%	3%	2%
Revenue & Other Income	100%	100%	100%	100%	100%	100%	100%

4.4.2.3 From TV Licence Fee to Public Broadcasting Levy

4.4.2.3.1 A new framework

(a) For the SABC to be a sustainable organisation, the TV licence regulations and legislation have to fully support and strengthen the collection system and general compliance. However without addressing the very basis of the system, that is its definition being tied to “a television set”, any attempts to address collection and compliance will immediately be outdated and fall short. It is time to fundamentally review the basis for defining the TV licence fee, or as the SABC now proposes, **a public broadcasting levy**. The Broadcasting Act and the Regulations have to be amended to strengthen both the new definition of a public broadcasting levy as well as the collection system.

(b) Four important principles underly the SABC’s proposal of a public broadcasting levy:

- The financing of public broadcasting is vital to our constitutional democracy;
- The levy should be device-independent and delinked from television sets, other devices and technology;The levy is based on the fact that all households have a realistic ability of accessing public broadcasting content, rather than on the usage of these services; and
- All South African households shall be levied, with exemptions granted for the indigent and discounts for non-indigent pensioners.

(c) Essentially the SABC submits that the public broadcasting levy should become a device-independent levy on all households that have the possibility of access public broadcasting content whether via the internet, mobile, analogue or any digital broadcasting platforms, with

exemptions for indigent households and discounts for pensioners and other designated persons.

- (d) After reviewing a wide variety of licence fee systems across the world⁶, the SABC submits that South Africa follow the device-independent German model, whilst adding our own particular South African market requirements on collection, enforcement and exemptions.
- (e) The German household levy model was implemented in 2013 and reaffirmed as constitutional in 2018 by their Federal Constitutional Court. The court also ruled that given public broadcasting services can be accessed by “television, radio, computer, smartphones and tablets, it was not practical to charge per device”. The court found that the fee was justified by the “broad programming options offered” and was levied “specifically for the financing of public service programming that is fundamental to democracy.” It also found that even if a household does not use public broadcasting, they have a “realistic ability to use” it.⁷ Furthermore “Vice-president of the court Ferdinand Kirchhof said that it was crucial that Germany offers public broadcasting. “The nationwide broadcasting of programmes gives everyone in Germany the realistic chance to take advantage of this service,” Kirchhof said, noting it was not relevant whether a household decided to make use of public broadcasting or not.”⁸
- (f) While the SABC had previously suggested the extension of the definition of TV set with the view to strengthen compliance and optimise on revenue collection, the fact is that linking the levy to devices will be administratively burdensome and cannot be futureproofed. As such, a new model of defining a public broadcasting household levy is suggested to secure a stable revenue source for the SABC’s public service mandate.
- (g) SABC content can currently be accessed over analogue television and radio networks, via DTT, DTH and over the internet on a variety of devices. As with the German model, the issue of the consumption of SABC content will not be relevant to paying a public broadcasting levy. What is important is that every South African household has a reasonable possibility of

⁶ <https://www.statista.com/chart/19154/annual-tv-license-fee-tax-per-household-as-of-january-2019/>

⁷ <https://www.dw.com/en/german-zdf-and-ard-public-broadcasting-household-levy-ruled-constitutional/a-44721576#:~:text=News->

,German%20ZDF%20and%20ARD%20public%20broadcasting%20household%20levy%20ruled%20constitutional,its%20critics%2C%20and%20its%20supporters.

⁸ <https://www.thelocal.de/20180718/compulsory-broadcaster-fee-is-legal-top-court-rules>

accessing public audio and audiovisual content and the recognition that the financing of public service programming is vital to our constitutional democracy.

4.4.2.3.2 Collection and Enforcement

- (a) The SABC reiterates its submission that – as a procompetitive measure and regulatory obligation - the dominant subscription broadcaster should be required to collect the public broadcasting household levy from its subscribers. The SABC proposes that this should apply to dominant subscription broadcasters and to any other on demand service that may become dominant in the future.
- (b) The current dominant subscription broadcasting operator has an existing billing system with over 8m subscribers. Therefore the collection of the licence fee from subscribers, per household, is not an onerous requirement from a systems point of view, noting it amounts to 72c a day based on the current licence fee. It is important to underline again that the collection of the public broadcasting levy by the dominant subscription broadcaster should be viewed by policy makers as a pro-competition measure in favour of supporting the public mandate. This proposed legislative requirement must be seen in the context of decades of prejudicial legislation and regulation against the SABC, despite government and the regulator's legislative obligation to protect "the integrity and viability of the public broadcaster". The unfair laws and regulations include the Must Carry regulations which oblige the SABC to provide all its three top free-to-air channels to subscription broadcasters for free (since 2008), Sports Broadcasting Regulations which did not protect the public broadcaster from anti-competitive bundling of rights and unfair sublicensing criteria (since 2004) and the failure by the regulator to implement any limitations on advertising on subscription broadcasters as intended by the ECA in 2005. These measures have not only had a massively negative impact on the SABC's finances but have also led to SABC's freely provided channels and programming being used to build a competitor's subscription base.
- (c) In the new proposed public household levy system, the SABC will be responsible for collecting from the balance of households and will – in addition to current collection methods- utilise a more efficient digital collection method, using the SABC's digital broadcasting and OTT services. It should be noted that the SABC's proposed move from a primarily TV retailer collection method to a public broadcasting household levy is conditional on the dominant

subscription broadcaster being required by law to collect this levy, in addition to SABC's own collection methods.

- (d) The SABC's Television licence fee of R265 has remained unchanged since 2013 (see the table below). While the current law says TV licence fees may increase once every 5 years, the licence fee has grown by only R58 over the last 19 years. TV licence revenue still remains the second largest source of revenue for the SABC and therefore there is a need to fundamentally change the definition (as proposed above) and to strengthen the collection of this revenue for purposes of funding the public service mandate increases of TV licence fees.

TV licence pricing																		
2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	%2018 VS 2017	%Overall
R208	R208	R225	R225	R225	R225	R225	R250	R250	R250	R250	R265	R265	R265	R265	R265	R265	0%	27%

- (e) The SABC proposes stronger enforcement mechanisms and penalties for non-compliance to be stipulated in the proposed SABC Act and further submissions will be made on this during the legislative process.
- (f) Lastly, it should be noted that the proposed public broadcasting levy is only part of the solution to fund the public broadcasting mandate. As submitted by the SABC below, a new approach is required to fund the gap.

4.5 Unfunded Public Broadcasting Mandate

4.5.1 Background

- 4.5.1.1 The SABC's mandate derives from the South African Constitution, the Broadcasting Act, the ECA, ICASA regulations and licence conditions in a financially challenging regulatory regime. As the public broadcaster, the SABC embraces its mandate but also has to

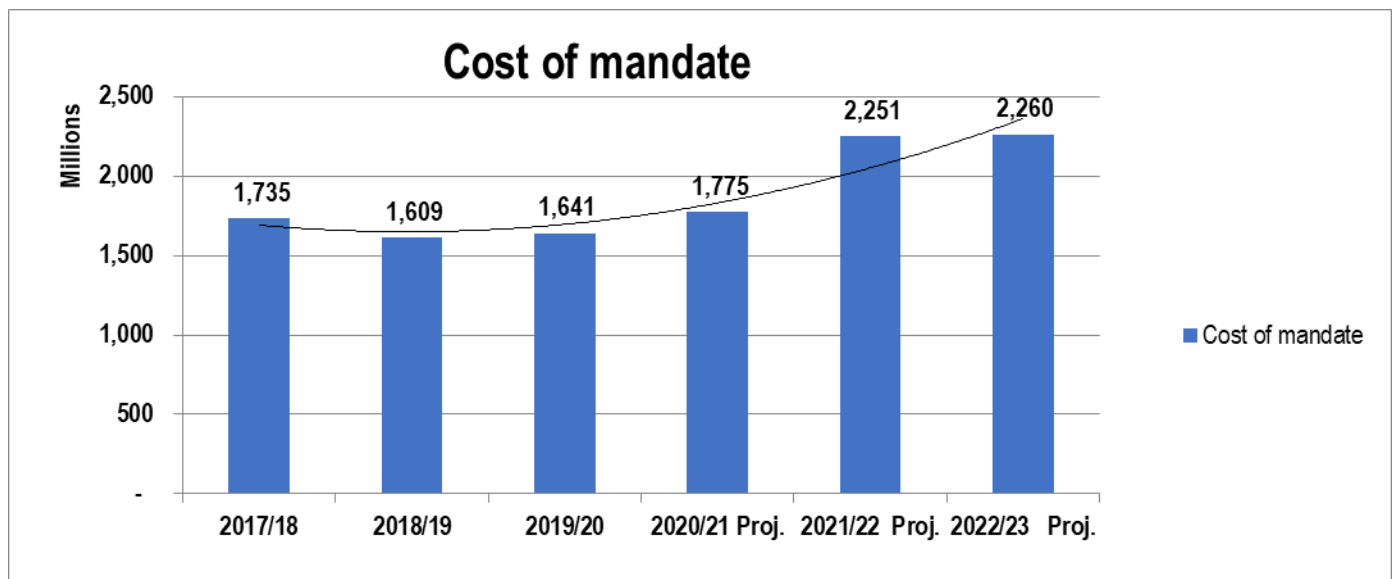
operate within the capacity constraints of its funding model. This requires discretion in evaluating the extent to which any particular mandate should be pursued. Additional and/or surplus funding generated by the SABC is and will be ploughed back into mandate requirements in order to educate, inform and entertain the South African public.

- 4.5.1.2 As a public broadcaster largely dependent on commercial advertising revenue to fund its operations, the SABC is particularly susceptible to adverse changes in the international and South African economic environment.
- 4.5.1.3 The SABC earns most of its commercial revenue through the sale of airtime across SABC television, radio, and digital platforms. Taking into account the highly competitive media industry in which the SABC operates, innovative trading models for radio, television and digital media sales are being devised and implemented to ensure optimisation of its commercial inventory.
- 4.5.1.4 However, expanded public service delivery obligations outweigh commercial airtime. Many advertisers perceive some public service content to be commercially unattractive and increased expectations for public service delivery reduce commercial revenue margins, particularly in prime time.
- 4.5.1.5 In tough economic condition, advertisers seek to control costs and will have a significant impact on advertising budgets, as these are generally among the first costs to be cut by companies in a downturn. Decreasing retail spend (as evidenced during the pandemic) also leads directly to lower advertising spend.
- 4.5.1.6 The SABC also faces competition for the best content and talent. The increasing number of licensed radio and television channels has increased the cost of keeping talent, driven up the cost of local production and the acquisition of content rights, particularly sports rights.
- 4.5.1.7 Sports rights continue to increase above inflation leading to increased funding risks. Fluctuating exchange rates have also led to increased costs of sports rights and foreign programming.

- 4.5.1.8 Television licence revenue potential has declined due to an outdated framework, legacy collection systems and a severe economic downturn as a result of the pandemic.
- 4.5.1.9 The question of how to finance the SABC's unfunded public mandate has long been a focus of political and public discourse in South Africa. Resolving this question is critical to the SABC's long term sustainability.
- 4.5.1.10 As far back as 2007, the issue of the SABC's funding model was a concern to the governing party. The ANC had resolved at the Polokwane Conference in 2007 to increase state funding of the SABC by 60% in 2010. In 201 this matter was discussed again during the 53rd ANC National Conference in Mangaung, where it was resolved that the SABC must be restructured to prioritise public services in the digital age. The SABC supports the view that government should increase its funding of the SABC but this should be implemented progressively over a reasonable period.
- 4.5.1.11 The SABC submits that that government funding must be ring fenced and targeted towards funding the public mandate such as indigenous language content, developmental programming, educational programming and events of national importance.
- 4.5.1.12 As such, the SABC supports clause 4.2.4 of the White Paper which proposes that the unfunded mandate should have ring-fenced funding via government grants in addition to any funding raised from the public broadcasting levy.
- 4.5.1.13 It should be noted that, notwithstanding the absence of funding for the public mandate, the SABC is still committed to breaking even and turning the organisation around. However, it will become more difficult to properly meet the public mandate in all respects without additional funding over and above the public broadcasting household levy.

4.5.2 Cost of Mandate

In 2019 the SABC projected its costs of mandate as follows:



Source : SABC Finance

4.5.2.1 As part of the process to bring more granularity and policy certainty to calculating the unfunded mandate, SABC has defined public mandate programming as all programming that the SABC is required to broadcast in terms of legislation, ICASA regulations, licence conditions and/or the SABC's Editorial Policies: Provided that programming that is carried by the SABC's public commercial television and sound broadcasting services (as currently licensed) shall not be counted towards the cost of the public mandate unless such programming:

- (a) Is national sports programming as well as developmental and minority sports programming as required by section 10(1)(i) of the Broadcasting Act and/or listed in ICASA's Sports Broadcasting Regulations as a national sporting event;
- (b) Is any form of educational programming;
- (c) are events of National Importance as defined in 5.15.1-5.15.2 of the SABC's 2020 Editorial policies and may include "the opening of Parliament, the budget speech, state occasions such as visits by foreign dignitaries and category-designated funerals; major commemorative occasions, and the proceedings of commissions of inquiry. major Parliamentary debates, the opening of provincial legislatures, and significant conferences of the major political parties".

4.5.2.2 The SABC is fully cognisant of the fiscal pressure on government and that it may not be immediately possible to fully fund the SABC's unfunded mandate. It is therefore submitted that rather than the allocation of an annual lump sum from the National Treasury to the SABC, relevant governmental departments should allocate and ring-fence a line-item in their budgets for SABC public service content. Such funding shall be provided for programming relevant to the national development mandate of a particular department, without compromising SABC's editorial independence.

4.5.2.3 The SABC suggests the Channel Africa funding Model as the most suitable approach, as it allows governmental departments to fund specific programmes or services which are aligned to their function and national developmental goals. For example, the following departments could fund SABC content and programmes as follows:

Government department	SABC Content
a) Department of Education	Educational Content
b) Department of International Relations (DIRCO)	SABC International Services , Channel Africa and Ubuntu Radio
c) Department of Sports and Culture	Developmental and Minority Sports; Funding for South African television content and South African music content
d) Department of Health	Health-related content
e) DCDT	Programmes related to NDP objectives, including digital migration

4.5.2.4 The SABC will be making further submissions to government in this regard as part of ongoing engagements on the SABC's future sustainability.

4.6 Other SABC Services

4.6.1 On-demand Services

The Draft White Paper submits that the SABC services should extend to all platforms. The extension of this tech-neutral policy recognises what the SABC is already doing with its services across multiple platforms. As it stands, the SABC offers all its 18 radio services online and the SABC News channel over the SABC News mobile app. SABC News also streams key news events over its YouTube channel. With the launch of the SABC's own streaming platform in 2021, most SABC online programming content will gradually be moved off YouTube in favour of SABC's own streaming platform. Currently SABC programming can be accessed via analogue TV and radio networks, via DTT, DTH (OpenView and DStv) and via over-the-top streaming (SABC News app, DStv Now, YouTube).

The SABC has also partnered with Telkom, on a non-exclusive basis, for a new streaming channel, [TelkomONE](#). In terms of this agreement, the mobile operator currently streams the SABC's free-to-air radio and TV channels, including the SABC's Education Channel and Sport Channel. This digital carriage agreement will showcase South Africa's most-watched TV programmes and most listened to radio platforms, on one online platform.

4.6.2 International satellite television, radio and internet service

In terms of clause 4.3.4 the Draft White Paper it is proposed that the SABC should operate International Broadcast Service or SABC Foreign Broadcasting Service. This unitary service will constitute of Channel Africa and Ubuntu Radio. Additionally, the purpose is to provide domestic, international news, information and a variety of programming (24/7) to the world and to provide various African perspectives, making the best use of public broadcaster and its international partner networks. It is submitted that the SABC International Services should be fully funded by Government.

4.6.3 Parliamentary Channel

- (a) In terms of clause 4.3.3 of the Draft White Paper, the SABC will be required to carry the Parliamentary Channel in multiplex 1 which is to be accessed by all South Africans on a free-to-air platform. It is understood that this proposal is made in the spirit of promotion of universal access

of SABC services and making Parliamentary activities more accessible to the masses. It should be noted that the Parliamentary Channel has been on DTT for over a year.

- (b) That being said, there is a challenge with the current availability of SABC DTT channels as the DTT network is currently only used by 3.5% of TV households. In order to realise the universal access requirements of this platform, there would need to be a massive take-up and installation of DTT boxes. It should be noted that while there are only 500,000 households that access DTT, over 10m television households have access to DTH or digital satellite broadcasting.
- (c) It is submitted that the roll-out of digital migration project be prioritised and fast-tracked in the interest of universal services and access of public broadcasting services to enable maximum consumption of SABC's audiovisual channels and audio services. However, the SABC will ensure that a critical mass of audience in any particular transmitter coverage area has access to digital broadcasting before any such transmitters can be switched off.

4.7 Licensing Framework and threshold for AAVCS

4.7.1 Proposed Licensing Framework for the SABC

- 4.7.1.1 It is the SABC's long-standing view that there is a need to review the licensing model of the public broadcaster in order to enhance its delivery on the public service mandate in a multichannel digital environment. The current licensing model must be amended as it was designed for the analogue environment. The regulator should be required to amend the SABC broadcasting licences and impose collective television and radio obligations rather than individual channel obligations.
- 4.7.1.2 Clause 5.2.8.7 of the Draft White Paper states that the current ICASA approach on local content can continue to apply to analogue channels, however, after Analogue Switch Off (ASO), the practice of issuing separate public service broadcasting licenses must be changed to issuing a single tech-neutral public service broadcasting licence.

- 4.7.1.3 Ideally the licensing framework should enable SABC television to operate as a multi-channel offering rather than as individual channels with individual quotas. Individual channel quotas are rigid, lack programming flexibility across channels and do not enhance delivery of service in terms of audience needs. Furthermore, the channel quotas may not be practical in instances where there are genre channels such as SABC Sport, Parliament Channel etc.
- 4.7.1.4 During the ICASA's DTT Regulations development process, the SABC proposed a framework that provides for wholistic quotas for television rather than channel based quotas. That is, television as a whole would still be obliged to deliver on its mandate across channels. For instance, the television network is licensed to provide X number of children's programming rather than prescribing them for individual channels as in the current regulated process. This would allow flexibility in scheduling and assist the SABC to reposition the channels, incubate new channels and allow them space to grow on the DTT, DTH and OTT platforms.
- 4.7.1.5 The SABC also notes and supports the 2016 ICASA Local Content Position Paper and Regulation Findings Document which stated that the 2016 Regulations will apply per bouquet but in practise the SABC still applies channel based targets or quotas.

4.7.2 Grey areas on the proposed licensing framework

- 4.7.2.1 The SABC supports the approach that says associated broadcasting services, like, catch-up services and internet services should be subjected to an industry code of conduct. It is further submitted that the code of conduct should also be applied through self-regulatory bodies, such as the BCCSA, in consultation with ICASA. Currently, the section 54(3) of the ECA, in section 54(3) permits self-regulatory bodies to administer the ICASA Code of Conduct.
- 4.7.2.2 The SABC further notes that the table on page 73, in figure 8, propose that services like, audio broadcasting services available on the internet, on demand audio-content services available on the internet and on demand audio-visual content services with

annual turnover less than R50m, will not require licences. It is submitted that clarity be provided on whether services like vodcasts will require licences.

4.7.2.3 Further clarity is sought with respect to existing SABC Radio services which have less than R100mil annual turnover as to whether their licences will be converted into class licences. The SABC requires clarity on whether turnover be calculated on each individual service or the group that provides such services. The SABC submits that, whatever policy course is followed, existing licensees should not have less favourable terms during the conversion of existing licences to audio and audio-visual content service licenses.

4.7.2.4 The SABC recommends, for the avoidance of doubt, that online news services that are subject to the jurisdiction of the Press Code (but may fall under new licensing framework) should be exempted from any licensing under the new legislative framework.

4.8 Sports Broadcasting Services Regulations

4.8.1 The SABC has expressed concern about the publication of the ICASA Draft Sports Broadcasting Services Amendment Regulations on 05 November 2020, which fail to address the persisting competition barriers and will not create a regulatory environment which enables free-to-air services and the public to access listed national sporting events. In essence, these regulations could mean that lower income households or the indigent will only be able to access listed national sporting events if they are prepared to pay a subscription fee – an outcome that prejudices 50% of television households.

4.8.2 Section 192 of the Constitution of the Republic enjoins the ICASA to regulate the broadcasting sector in the public interest. Meaning, ICASA has the responsibility to ensure that the public is not short-changed by regulations. Thus, there is an urgent need for regulations which ensures that the public accesses listed sporting events.

4.8.3 It is worth noting that Competition Commission (“the Commission”) has ably reached a conclusion that there is a need for sector-specific regulations to address the persisting

competition barriers in the broadcasting sector. In the main the Commission resolved to drop MultiChoice and SuperSport case, which looked at the various complaints of abuse of dominance because there was no reasonable prospect of success and concluded that a regulatory intervention by ICASA would be more effective. Additionally, the Commission reported that there is potential market failure in the broadcasting sector because of:

- a) "A high concentrated nature of subscription broadcasting market;
- b) High barriers to effectively enter the market and the inability of existing broadcasters to expand in the market ;
- c) limited credible alternative buyers of premium sports rights other than MultiChoice;
- d) Limited credible alternatives to which individual consumers can turn to should they require to switch away from MultiChoice; and
- e) Overly long and extensive contracts between the incumbent (MultiChoice) some which content suppliers."⁹

4.8.4 To this end, ICASA has not dealt with competition in the pay-tv market which gravely affects the financial sustainability of the SABC and the free-to-air market. For example, in the ICASA processes, the SABC raised the following arguments:

- a) The unbundling of sports rights (Just like unbundled FIFA rights, the SABC suggested that the winner-takes-it- all approach should be prohibited, instead rights should be categorised into FTA rights, Pay-TV rights, Radio Rights and Digital Rights) ;
- b) Exclusivity for the category of rights and platform as per the licensed service (The SABC suggested exclusivity to categories of sports or platform which permits a broadcaster to have exclusivity for a licensed service e.g. Pay-TV should only be allowed to acquire rights Pay-tv rights);
- c) Consideration of capacity by the SABC for sports content in a digital multichannel/multiplatform environment (SABC indicated that it will have more capacity to broadcast listed sporting events in the digital environment);
- d) Accessibility of sports rights by FTA broadcasters for the benefit of all South Africans irrespective of their economic status (the majority of the public should access listed sporting events from free-to-air services in line with the spirit of section 60(1) of the Electronic Communications Act);

⁹ <http://www.compcom.co.za/wp-content/uploads/2019/01/COMMISSION-DECIDES-NOT-TO-PROSECUTE-MULTICHOICE-003.pdf> (visited on 17 November 2020)

- e) A fair and transparent sub-licensing framework (the SABC suggested that ICASA should develop guidelines/framework for sub-licensing in order to deal with anti-competitive behaviours); and
- f) Fair competition in the broadcasting sector (The SABC suggested that the Findings of Competition Commission should be addressed and proactive regulations should be developed).

4.8.5 In the main, ICASA has failed to safeguard the public interest in so far as their Draft Regulations are concerned. Ideally, the regulations should ensure that free-to-air services, such as the SABC, access listed sporting events at a reasonable cost and through a fair and transparent sub-licensing regulatory framework. Thus, it is submitted that legislation should be crafted in such a way that the needs of the public are secured in this area. National teams are national assets and their games/matches should be able accessible to the public on a free-to-air basis.

4.9 National events or programming of national interest

4.9.1 The SABC supports the view that the following events should be listed as events of national importance and recognised as part of the unfunded mandate. The 2020 SABC Editorial Policies, defines events of national importance as including:

- the opening of Parliament,
- the budget speech,
- state occasions such as visits by foreign dignitaries and category-designated funerals;
- major commemorative occasions,
- the proceedings of commissions of inquiry
- major Parliamentary debates,
- the opening of provincial legislatures,
- and significant conferences of the major political parties.

4.9.2 It is worth noting that coverage of these events, in most cases, do not yield revenue for the SABC but they do serve a higher public mandate of informing and educating the public. On the

other hand, in covering these events, the SABC has to displace certain programming which yields advertising and sponsorship revenue. Therefore, events of national importance are a significant part of the unfunded public mandate.

- 4.9.3 Normally ICASA requires the SABC to apply for exemption or permission to deviate from its normal licensed programming prior the broadcast of programming of national importance. This provision is counter intuitive as it removes the SABC's agility to commit to broadcasting events of national importance because of regulatory reporting requirements. It is therefore recommended that the SABC should only be required to report to ICASA about any deviations post the broadcast of events of national importance.

4.10 Must Carry Obligations

Removal of must carry rules

- 4.10.1 The SABC supports clause 5.2.7.12 of the Draft White Paper which proposes that the Must Carry provision in section 60(3) of the ECA, requiring public broadcasters to offer their channels to subscription broadcasters who "must carry", should be repealed. It further provides that subscription broadcasters will no longer be required by law to carry public broadcasting but may do so only after agreeing commercial terms of carriage or transmission with the SABC.
- 4.10.2 It is the SABC's view that the carriage agreements or *transmission consents* will contribute significantly to the public broadcaster's revenues. As submitted to ICASA during the current regulatory review of Must Carry regulations, the public broadcaster has been prejudiced by the regulatory requirement to offer its channels for free.
- 4.10.3 The SABC welcomes the White Paper's proposal to scrap the Must Carry legislative provision which will give the SABC an opportunity to fully and commercially exploit its content, whilst achieving universal service and access to its services at the same time.

4.11 Advertising restrictions

4.11.1 With the ever increasing cost of its public service mandate and nearly 80% of its revenue coming mainly from advertising and sponsorship, the SABC's financial sustainability is compromised with its advertising revenues under threat. On the other hand subscription broadcasters have an extra layer of revenue – subscriptions revenue – in addition to nearly half of television advertising revenue in the South African market.

4.11.2 Section 60(4) of the ECA provides that:

Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorships, however, in no event may advertising or sponsorship, or a combination thereof, be the largest source of annual revenue.

4.11.3 The intention of the legislature was to cap advertising and sponsorship revenue for subscription broadcasters and therefore protect free-to-air broadcasting services that depend on the same advertising and sponsorship revenue for their survival and financial sustainability. Unfortunately, the “advertising cap” envisioned in this section 60(4) has become totally ineffective in that MultiChoice's subscription revenue is so high that it is not possible for advertising or sponsorship revenue “or a combination thereof” to exceed subscriptions. Therefore, there is no effective legislative cap on advertising and sponsorship revenue and the intention of the legislature – since 2005 – has been completely thwarted.

4.11.4 The SABC hereby proposes that the legislation be amended to allow the Regulator (ICASA) to prescribe regulations on the permitted advertising and sponsorship revenue on subscription broadcasters. The current provision no longer provides a solution to the problem it sought to originally solve.

4.11.5 The SABC supports the proposal in the Draft White Paper that ICASA should conduct an inquiry before prescribing regulations in this regard. In particular, the SABC strongly supports the recommendation in clause 5.4.4.5 that:

“section 60(4) of the ECA which focuses on traditional television be replaced with a requirement that the regulator hold an inquiry into whether the current share of advertising revenue by subscription services is appropriate and what the impact of online advertising

will be on the TV advertising market in the short and long term. If it is detrimental to the survival and viability of free-to-air services, the regulator must make regulations to protect the sustainability and viability of free-to-air services in South Africa taking into consideration the expansion of the regulatory licencing framework to include all AAVCS”

4.11.6 A review of the current share of advertising revenue for subscription services is necessary to ensure the financial viability of free-to-air services. The DCDT should set timeframes within which ICASA must complete this inquiry and prescribe regulations as the financial viability of FTA services could hinge on an effective regulatory intervention.

4.11.7 The policy maker and ICASA could consider various options, such as, an advertising cap, reduction of advertising minutes per hour for subscription services, restrictions on the rate card discounts and any other necessary regulatory intervention.

4.12 Signal Distribution/Sentech

4.12.1 The SABC notes with concern clause 3.5.8 of the Draft White Paper which provides that:

“In the post-ASO environment Sentech will be the only provider of ECNS for the public broadcaster on the DTT and satellite platforms.”

4.12.2. The SABC strongly opposes this proposal. The public broadcaster submits that the proposed policy to create a protected monopoly for Sentech is in conflict with the definition and role of the common carrier which is set out in section 62(3) of the Electronic Communications Act, 2005. While Sentech is required to carry public broadcasting services, no requirement exists for the SABC to exclusively utilise Sentech for signal distribution where competitive options exist. The SABC must retain the freedom to choose the best platforms for the SABC, noting that the SABC Board and management are required to act in the best interests of the SABC and not in the interests of the common carrier.

4.12.3 It should be noted that Sentech, in any event, currently has a monopoly of the following three forms of distribution and transmission: a) analogue terrestrial radio transmission b) analogue terrestrial television transmission and c) DTT transmission. The tariffs in these categories must

be regulated in line with section 62(3)(b) of the Electronic Communications Act and failure by the regulator to do so has exposed the public broadcaster to monopoly pricing.

4.13 Digital Sound Broadcasting (DSB)

4.13.1 Clause 3.5.17 of the Draft White Paper indicates that government will play developmental role supporting the common standards for digital radio. It further indicates that government will not switch off FM and AM as they will play a complimentary role to digital radio/digital sound broadcasting (DSB).

4.13.2 The SABC supports the introduction of DSB services in South Africa as the current analogue platforms specifically, the FM network, has limitations on the availability of spectrum especially in the metropolitan areas. This has prevented the expansion of existing services as well as the introduction of new services in the affected areas. DSB, on the other hand, makes efficient and optimum use of spectrum – the DAB+ for example can be rolled out on a single frequency network (SFN) and extending the footprint to a larger area.

4.13.3 The DSB offers other features that enhance the relevance of radio to listeners - the easy tuning abilities, availability of more channel choices, better listening quality, early warning systems, slide shows etc. The SABC has a legislated mandate to achieve universal services and access. The current platform limits the Corporation's ability to achieve this mandate and will therefore welcome the introduction of DSB.

4.13.4 DSB transmitters also utilise less energy in comparison with the analogue transmitters. This not only implies reduction in the cost of signal distribution but also it is safer on the environment.

4.13.5 Unlike DTT which has to replace analogue TV, the DSB has to co-exist with the analogue transmissions for a very long time. The receiver standard therefore must have all the analogue and digital systems together in one unit – that is a digital radio receiver must have a DAB+, FM, AM and DRM standards all in one unit. So a multi-standard receiver must be ideal for DSB radio.

4.13.6 Clause 3.5.17 of the Draft White Paper states that digital radio will run alongside FM and AM Radio and it further states that the policy maker will not switch-off FM and AM Radio. However, Draft Regulation 4(5) of ICASA's Draft Digital Sound Broadcasting Services Regulations implies ASO for DSB. Thus, a synergy between the policy and the regulation is required to foster certainty.

4.14 Accessibility of AAVCS by Persons of Disabilities

4.14.1 Clause 5.5 of the Draft White Paper calls for a greater protection for persons with disabilities to ensure access to AAVCS services. It further states that the Digital Development Fund must grant funding to accessibility services for persons with disabilities. It is submitted that the SABC should have access to this fund for the purpose of expanding its services to persons with disabilities.

4.14.2 It is noted that sign language will soon be the 12th official language. The SABC submits that ICASA was in the process of developing regulations which prescribe accessibility services targets, such as, close captioning, audio description, subtitling and sign languages. Some of these audience assistance services (i.e. closed captioning and audio description) are technology-enabled, as such, they can be fully implemented through digital broadcasting.

4.14.3 Currently, the SABC contributes more than R9million per annum towards universal service and access to MDDA in accordance with the Universal Service and Access Fund ("USAF") Regulations. Conversely, the SABC does not have access to this funding when it needs to expand its services to persons with disabilities. Thus, it is submitted that the SABC should be granted funding from both USAF and Digital Development Fund to enhance accessibility services for persons with disabilities.

4.15 Broadcasting Digital Migration

DTT and DTH

- 4.15.1 Clause 3.5.4 of the Draft White Paper indicates that the focus of the Broadcast Digital Migration (BDM) Policy was to ensure migration of existing terrestrial broadcasting services from analogue services to digital services on terrestrial radio frequency transmission networks in the broadcasting spectrum band. The Draft White Paper further indicates that the BDM policy did not consider digital broadcasting post-ASO. This has created a policy vacuum and threatens the financial viability of the public broadcaster.
- 4.15.2 The SABC is in the process of migrating its analogue television services to the DTT and DTH platforms. The ASO process has already commenced though very slowly with the intention that no one will be left behind without an alternative to receiving public broadcasting services.
- 4.15.3 Noting that the BDM Policy was developed in 2008, the DTT technology upon which the BDM Policy was based on has become outdated and the market (the viewers and audience) have moved in a direction which is different from the intentions of the Policy.
- 4.15.4 The coverage stipulations in the Policy and the Regulations have led to a large number of DTT transmitters which has translated into a very high signal distribution cost for the SABC.
- 4.15.5 The submission below outlines the financial, technological and governance imperatives that have impeded the implementation of the BDM process and propose an alternative approach that will help to expedite the BDM implementation process.

Governance Imperatives

The Broadcasting Act (“the Act”) and Electronic Communications Act

4.15.6 *Section 8 of the Broadcasting Act of 1999 (as amended) whilst enlisting the objectives of the SABC under the Charter of Corporation provided the following in sub-section (b): “to provide sound and television broadcasting services, whether by analogue or digital means.....”. This provision implies that the Corporation can chose the digital platforms on which to transmit its programmes. The Act did not restrict the SABC to the digital terrestrial platform or the digital satellite platform for its transmissions, let alone specifying the various percentages of terrestrial and satellite.*

4.15.7 Section 2(a) of the ECA, read with section 2(b), requires that regulations leading to the licensing of services must be technologically neutral. Thus, it is submitted that the technology–neutral principle should also apply to SABC services.

The Broadcast Digital Migration Policy of 2008 as amended (the “BDM Policy”) and The ICASA Digital Migration Regulations of 2012 (the “Regulations”)

4.15.8 Clause 7.2 of the Policy states that “the transmission facilities of Mux 1, or any Multiplex allocated to the Public Broadcaster, shall aim to achieve 84% population coverage by 31st March 2014. The remaining 16% shall be covered by the DTH satellite network which shall have a footprint covering the entire geography of South Africa”.

4.15.9 Regulation 10(1)(a)(b) of the Regulations also demands that “An electronic communications network service licensee appointed to provide signal distribution services to the SABC must ensure that the digital broadcast signal for the SABC's DTT services reaches: -

- a) seventy-four per cent (74%) of the population of the Republic, within six (6) months after the commencement of the dual illumination period; and
- b) ninety-five per cent (95%) of the population of the Republic by the end of the dual illumination period”.

4.15.10 In an attempt to meet the requirements of the Policy and the Regulations, the number of SABC's DTT transmitters had to be increased to 182 - more than any of the terrestrial transmitters in the country – and this translates into a population coverage of 87%. The policy has therefore resulted in an excessive high number of DTT transmitters. The Policy requirements have been achieved, but at a very high and unsustainable operational cost to the Corporation, noting it will be impractical to achieve the 95% stipulations of the Regulations.

4.15.11 Regulation 15(1) further states that the Authority will levy a R500 000 penalty for each day that the SABC's DTT services do not reach 95% at the end of the Performance period.

4.15.12 It would seem that in creating the above Policy and Regulations for digital migration, the sustainability of the Corporation as stipulated in the Broadcasting Act has been affected. Technology specifications have also found their way into regulations against the technology neutral requirements of the primary legislation, the Broadcasting Act and the ECA.

Technological Imperatives

4.15.13 Unlike DTH, DTT networks comprise of several terrestrial transmitters each covering an area of approximately 200km radius from the transmitter. While the SABC remains committed to DTT, the current DTT signal distribution cost is unsustainable and the SABC has recommended tariff regulation on this network and other monopoly networks run by Sentech.

4.15.14 On the other hand, DTH platform covers the entire geography of South Africa as provided by the BDM Policy meaning that the SABC's digital signal can be received in any part of the country. The DTT network only achieves 87% population coverage at an extremely high signal distribution cost whereas the DTH network achieves 100% population coverage at an optimised cost.

4.15.15 The DTT network has 182 DTT transmission sites at a cost of almost R387m per annum whereas the SABC pays R25m per annum for the current DTH network.

4.15.16 As more and more households migrate to DTH platform, the cost per viewer of the DTT network becomes more and more expensive as the network serve fewer viewers.

Recommendation

4.15.17 As indicated earlier, the SABC supports the proposed principle of technology neutrality. Thus, the SABC continues to implement DTH whilst at the same time driving down the costs of DTT either through negotiation or regulatory intervention. Taking all this into account, the SABC submits that the population coverage stipulated in clause 7. 2 of the BDM policy and clause 10 (1)(a)(b) of the DTT Regulations should also be removed.

4.16 Institutional Arrangements

4.16.1 Clause 8.3.5.1 of the Presidential Commission of the Fourth Industrial Revolution (“the 4IR Report”) calls for one content regulator and the merger of POPIA Regulator, ICASA, Cyber security and Films and Publication Board for ease of coordination and centralization benefits¹⁰. Whilst it is acknowledged that an overhaul of the new regulator is required, it is equally important to retain the principle of independence for broadcasting regulation which was conceived through section 192 of the Constitution.

4.16.2 The democratically elected South African government, in recognition of the oppressive nature of the society and further structural divisions created by the pre-1994 ruling Nationalist Party government, considered that in order to establish institutions which would fundamentally support the constitutional reforms developed by the “constitutional negotiators” at the dawn of democracy, created a constitutional provision specifically tailored for the protection of the independent regulation of broadcasters in the interests of the South African public.

¹⁰ Summary Report and Recommendations - Presidential Commission of the Fourth Industrial Revolution, Government Gazette 43834, 20 October 2020, page 101

4.16.3 Section 192 of the Constitution of the Republic of South Africa provides that an independent authority be established to regulate the broadcasting sector in the public interest and to ensure fairness and diversity of views broadly representing South African Society.¹¹

4.16.4 The drafters considered the following key responsibilities which the formed independent entities would need to vehemently uphold:

- a) The restoration of the credibility of the state and its institutions in the eyes of the majority of its citizens.
- b) To ensure that the democracy and the values associated with human rights and democracy flourished in the new dispensation;
- c) Assuring the successful re-establishment of, and continued respect for, the rule of law; and
- d) Ensuring that the state became more open and responsive to the needs of its citizens and more respectful of their rights.¹²

4.16.5 These fundamental elements which were considered in the creation of the constitution seek to empower the majority of the South African citizenry, the majority of whom live in rural communities and are excluded from the wealth-creation opportunities available in the South African economy and who are marginalised based on the historic and economic factors.

4.16.6 Furthermore the report sheds light on the political history of South Africa and that there is a requirement that the regulator give meaning to various rights entrenched in the Bill of Rights.

These include; the right to freedom of expression, access to information and language rights. Independent Communications Authority of South Africa Act 13 of 2000 established a single regulator in recognition of the convergence of broadcasting and telecommunications. There was an increasing need for the regulation of technological platforms which have a great deal of influence and synergy in the administration of functions and duties. The element which is most pronounced is the development of technological platforms which spans across the media landscape and has resulted in the increase in the use of gadgets or technology as these

¹¹ Constitution of the Republic of South Africa of 1996.

¹² Parliament of the Republic of South Africa (2007). Report of the ad-hoc committee on the review of Chapter 9 and Associated Institutions. A report to the National Assembly of the Parliament of South Africa, Cape Town, South Africa (Page 3)

became available for commercial use. Important technologies which gave effect to this was the innovation of mobile telephony and personal computer.

4.16.7 It is noted that ICASA is given a myriad of responsibilities however the Draft White Paper is silent about the capacitation of the regulator.

4.16.8 Therefore it is submitted that the independence of the broadcasting regulator as prescribed in section 192 of the Constitution should be retained if the existing regulators are merged for optimisation and efficiency.

4.17 Content Standards and Protection of Children

4.17.1 Clause of 5.3.5 of the Draft White Paper calls for the amendment of legislation with the view to provide a code of conduct for OCS, additionally, it proposes that the existing code of conduct for broadcasters should be extended to associated services of broadcasters, i.e. internet and catch-up services.

4.17.2 Currently, section 54 of the ECA, requires ICASA to develop a Code of Conduct for broadcasters through a public process and stipulates that broadcasting licensees must adhere to this unless they are “a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a code of conduct enforced by that body”. Such a self-regulatory code and the mechanisms to enforce compliance to it have to be approved by ICASA in terms of the law.

4.17.3 Section 55 stipulates that advertising falls under the Code determined by the newly-formed Advertising Regulatory Board (“the ARB”). It is worth noting that the ARB Code sufficiently covers the interests’ children in so far as advertising content is concerned. For example, one of the underpinning principles of the ARB Code, states that the advertisements should not exploit the credulity and lack of experience of children, particularly for adverts targeted at children ¹³.

4.17.4 The BCCSA is a self-regulatory body created in line with section 54(4) of the ECA. At this point, the BCCSA’s jurisdiction is confined to adjudication of broadcast complaints. The Draft

¹³ ARB Code, Section II General Principles, clause 14

White Paper and legislation should outline the role of self-regulatory bodies like the BCCSA in the new AAVCS sector.

4.17.5 On the protection of children, the existing Codes developed by both ICASA and the self-regulatory bodies such as the BCCSA and the Press Council are very similar in that they both focus on protection of children and providing viewers and listeners with sufficient information about programme content to make decisions about what to watch or listen to through advisories. They also both set a watershed period (from 9pm to 5am for FTA broadcasters and 8pm to 5am for pay operators) during which 'adult' programming can be aired. Such programmes (including violence and sexually explicit material) cannot be aired outside of the watershed when children are most likely to form part of the audience.

4.17.6 Generally, the SABC content transmitted through traditional platforms (which is regulated by ICASA and BCCSA) is normally exported (or streamed) to other platforms which are regulated by the FPB and the Press Council. It is submitted that the future of regulators dealing with audio and audio-visual content needs to be clarified in the final policy to avoid duplication of roles. This is to make sure that licensees do not suffer double jeopardy.

4.17.7 On alcohol and unhealthy foods regulation, it is submitted that the current self-regulatory systems are sufficient to address any required regulation. If there is to be a ban of alcohol and unhealthy foods, the SABC could lose revenue to the tune of over R1billion. Therefore, it is submitted rather that the existing self-regulatory bodies should strengthen restrictions on the advertising of alcohol and unhealthy foods.

4.18 Signal piracy

4.18.1 Clause 5.6.9 of the Draft White Paper proposes that legislative and regulatory mechanisms should be employed to strengthen protection against signal piracy. The SABC fully supports this approach as it will curb signal piracy

4.18.2 Signal Piracy is one of the biggest risks for the SABC as it impacts on many levels of the Corporation, including the ability to generate revenue and to protect its intellectual property

rights. The only effective way to protect one's signal/content is to have smart technological measures that are constantly updated.

4.18.3 Thus, the SABC supports the proposal of smart technological protection measures and the inclusion of these measures in legislation. It is noted that the Draft White Paper proposed that the Electronic Communications and Transactions Act No.25 of 2002 will be amended to give effect to smart technological protection measures.

4.19 Conclusion

The SABC thanks the DCDT for the opportunity to submit written representations and looks forward to further engagement with the DCDT with regards to the finalisation of the AAVCS policy and the development of industry legislation. Additionally, the SABC anticipates that the DCDT will fast-track this policy development process in order to foster policy certainty and to level the playing field for all players in the AAVCS sector.