

**Submission to Inquiry into subscription television
broadcasting services in South Africa**

From Cape Town TV

1. Introduction

1.1 Cape Town TV submits this document in response to the invitation by ICASA for public comments on the Inquiry into subscription television services.

1.2 Cape Town TV is a licensed community television broadcaster which serves the greater Cape Town metropolitan area. The station began broadcasting in September 2008 and currently operates in terms of a seven-year license granted by ICASA in September 2017.

1.3 We note that the objective of the inquiry is "to determine whether there are competition issues in the sector, which require action to be taken by the Authority through the imposition of pro-competitive conditions on relevant licensees," in order to ensure fair competition in the broadcasting sector. Our intention in this submission is to locate the position of MultiChoice in relation to South Africa's community television sector and to suggest mechanisms to ensure fair competition in this environment.

1.4 In its Discussion Document: Inquiry into subscription television services¹, ICASA notes that MultiChoice enjoys a position of market dominance in the subscription TV sector in that: "South Africa has about 80% television penetration. Approximately 6.39 million households subscribed to a subscription television broadcasting service in 2016... MultiChoice has a 98% share of subscription television broadcasting homes" (p44), and further that "Satellite subscription television broadcasting services are expected to remain the dominant platform into the foreseeable future, although other platforms might gain market share" (p45). Consequently MultiChoice plays a very significant role in the television broadcasting landscape and this position cannot be ignored when considering the issue of the degree of public benefit to be derived from television broadcasting services, in particular those services which have a substantial public benefit mandate including the public service broadcaster and the community television channels.

1.5 All of the licensed community TV channels in South Africa are carried on MultiChoice's DStv platform and rely on this carriage to sustain their audience numbers. Community TV stations are carried on DStv at the pleasure of MultiChoice. In this document we argue that carriage on national pay-TV platforms is essential to the survival of the community TV channels in the current broadcasting environment and consequently there must be a "must carry, must pay" obligation on MultiChoice to carry community channels.

1.6 We note that the Department of Communications has sited European directives that affect content service providers and which "include the Access Directive which allows regulators to impose 'must carry' obligations on radio and TV services if a significant number of viewers use such networks as their principal means to access these channels".² This sets a precedent that could be followed in South Africa with regard to the public benefit community channels.

¹ Government Gazette Vol. 626, August 2017.

² Public Consultation on the Green Paper: The South African Audiovisual and Digital Content Services Policy Review Process, 2016.

2. Community channels' audience share on DStv

2.1 The majority audience share of community TV stations is on DStv. While this carriage gives national reach to channels that have been licensed to serve local audiences, it is also significant to note that because of the dominance of MultiChoice in the country's television environment, it is essential for local channels to be carried on DStv in order to reach the local audiences they are licensed to serve, notwithstanding the additional audiences that are garnered in other parts of the country.

2.2 It seems that while community stations have a mandate to serve specified geographic areas (geographic community), interest in the channel's content offerings extends far beyond the boundaries of such spatially defined populations and what is in fact happening is that the channels reflect communities of interest nationally.

2.3 While it is undoubtedly vital for community stations to produce and source content from their local areas, it is notable that this type of content is of interest to people across the country. This interest is probably heightened by the use of local languages (e.g. Zulu on 1KZN TV), the reflection of local cultures, personalities and events which are of interest to people in other parts of the country and the sharing of other information (e.g. education, informal knowledge-building etc.) which is of use to people everywhere. This is a strong argument for allowing the carriage of locally-based community television channels on national distribution platforms.

2.4 One weakness of the proposed Community Broadcasting Support Scheme is that it seems to suggest that in order for community TV stations to qualify for support they can only be carried on free-to-air and not pay-TV platforms such as DStv. Unfortunately DStv has been allowed to become so dominant in SA today that it is simply not possible for free-to-air broadcasters to survive on free-to-air distribution alone.

2.5 This situation needs to be addressed in policy through the introductions of a must-carry, must-pay (must find) obligation on DStv as the only way to ensure fair competition in the SA TV environment. This mechanism will bring in significant revenue for community TV which will relieve pressure on the public purse to fund the sector.

2.6 Moreover it does not make sense to differentiate free-to-air audiences from pay-TV audiences because these groupings are both fluid in the sense that they transition between platforms and are also to a large extent contiguous because pay-TV audiences watch free-to-air channels on the pay platforms.

2.7 An analysis of TAMS cumulative audience figures across the community television channels in January 2017 gave the following picture:

Table 1

Month	Channel	Bay TV	Cape Town TV	Soweto TV	Tshwane TV	1 KZN TV
January	National (all platforms)	2 836 029	2 723 684	6 587 924	2 902 519	3 832 200
January	DStv	2 696 806	2 188 519	4 168 855	2 520 315	3 489 094
January	Free-to-air	139 223	535 165	2 419 069	382 204	343 106

January	Percentage DStv	95,09%	80,35%	63,28%	86,83%	91,05%
---------	-----------------	--------	--------	--------	--------	--------

2.8 Table 1 shows that all stations gained the majority of their viewership from their presence on DStv, with some channels having over 90% of their audience solely on DStv. It is important to note that in this context, the presence of community channels on the national platform provided by DStv is essential to their survival. Consequently we maintain that there is a clear obligation on DStv to carry the community channels, otherwise they will simply not be viable in terms of audience reach.

3. Interactions between MultiChoice and the community TV sector

3.1 In addition to carrying SA's community TV channels on the DStv platform, MultiChoice has other interactions with the sector. These include CSI projects involving a) funding and building of infrastructure for the community channels; and b) providing sports content from the SuperSport channel for rebroadcast on the community channels.

3.2 MultiChoice has been spending large amounts of money on building infrastructure for the community channels, although this spend has been uneven and some channels have benefited more than others. This spend on the community channels kicked off in 2014 with the provision of a R5 million Final Control Centre for Bay TV when that channel was still licensed as a free-to-air community channel³. Bay TV subsequently lost its terrestrial broadcast license and is now carried only on DStv. MultiChoice has also invested heavily in Zallywood's Tshwane TV and 1KZN-TV; we do not know the extent of its involvement with Soweto TV. MultiChoice has also donated equipment and is funding the development of studio and broadcasting infrastructure at Cape Town TV; and MultiChoice pays for the fibre link which carries Cape Town TV's broadcast signal to Johannesburg for ingest and broadcast on the DStv platform.

3.3 MultiChoice has availed its Diski Challenge soccer matches to community broadcasters as a CSI project. Channels may broadcast these matches at their own discretion. The project entails a training component where MultiChoice trains young interns in video production at the matches and the interns also produce a magazine show around the Diski Challenge series.

3.4 MultiChoice has carried Cape Town TV on DStv since 2012. Cape Town TV began broadcast operations in September 2008 and soon after requested carriage on DStv. This was initially denied although the other community channels, which were in their early years under the management of Urban Brew Studios, were carried on DStv. From 2012 to 2017 the contract between MultiChoice and Cape Town TV carried a clause which prevented Cape Town TV from being carried on any other pay-TV platform; the channel was forced to accede to this provision because it would not be viable for it to lose its DStv audience while the other pay-TV providers occupied such a miniscule segment of the market.

3.5 As at the time of writing this submission, Cape Town TV is in the process of negotiating a new contract with MultiChoice. The latter has offered terms including a) deletion of the exclusivity clause

³ Report in Herald Live, September 2014. <http://www.heraldlive.co.za/news/top-news/2014/09/23/staff-unpaid-bay-tv-air-repeats/>

which prevented carriage of Cape Town TV on other pay-TV platforms; b) at the same time the channel is precluded from advertising that it is carried on other pay-TV or any digital, online platform, should it be so carried, on the DStv platform; c) that MultiChoice will pay Cape Town TV an annual fee of R1 million for its carriage on the DStv platform; and d) MultiChoice will also pay for the fibre link that carries the Cape Town TV signal from Cape Town to Johannesburg. Cape Town TV believes that point b) will have negative consequences for its ability to trade in the online space and is consequently arguing that this clause be altered to allow for cross-channel advertising.

3.6 In addition to the above negotiations around contractual arrangements between MultiChoice and Cape Town TV, MultiChoice has indicated that it intends to standardize its contributions to community television channels. We assume that this means that MultiChoice will spend equal amounts on all of the community channels that it carries.

3.7 The above-mentioned interactions indicate that MultiChoice is both carrying SA's community channels on its DStv platform and paying and/or supporting them through financial and other contributions. We believe this is overall a positive feature of the broadcast environment; however this support is purely at the discretion of MultiChoice and we believe that regulatory enforcement of this situation by ICASA will secure the sustainability of the community channels going forward.

3.8 With regard to monetary contributions from MultiChoice to the community channels, we believe this should be independently regulated by ICASA and not left to the discretion of MultiChoice. ICASA should arrive at a formula for calculating the amount which DStv pays to community channels in exchange for their carriage on the platform, their concomitant appeal to audiences on this platform and their promotion of the DStv platform on the community channels, together with MultiChoice's CSI obligations relative to its position of market dominance and income.

4. Act-SA and the call for "subscription community television services"

4.1 In its 'Submission on ICASA Broadcasting Review for Community Broadcasting Services Discussion Document', May 2017, Act-SA argued 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." The Association advanced the idea that "Private funding shall be a sustainable business model... in addition to sponsorship, advertising, government grant, donations and membership fees". It also suggested that "Community television services shall be formally allowed to enter into management agreements with private production companies". These proposals indicate a pronounced inclination towards the commercialization of the community broadcasting sector which, in our view is an attempt to subvert the fundamental motivation of community broadcasting as a public benefit service.

4.2 It is also concerning that Act-SA called for the licensing of subscription community television services which would be "provided through satellite, cable or any other technology". We believe that this aspect of the Act-SA submission is aimed not only at further commercializing the sector, but that it refers to the initiation of commercial local channels on DStv which compete directly in this same space with the free-

to-air community channels. This is occurring through the channel authorization procedure whereby ICASA is called upon to authorize new channels on the pay-TV platforms. A case in point is that of Gau-TV, a channel owned by the Zallywood company that runs Tshwane TV, and which competes directly with Soweto TV.

4.3 Because DStv occupies such a dominant position in the television broadcast sector, it has the power to determine the nature of the television landscape in South Africa and consequently ICASA must ensure that fair competition between TV channels is established within the scope of the DStv channel bouquet, as well as in the free-to-air space and between free-to-air broadcasters and pay-TV broadcasters. In other words ICASA must pay more attention to its channel authorization process with a view to minimizing unfair competition between local channels on DStv.

5. Conclusion

5.1 To sum up the position of Cape Town TV regarding the competitive environment of community channels on the MultiChoice DStv platform, we can state that:

- a) There should be a must-carry, must-pay obligation on MultiChoice with regard to the carriage of licensed community channels on the DStv platform.
- b) ICASA should determine the fees to be paid by MultiChoice to the community channels that it carries.
- c) ICASA should determine competition issues between channels authorised on the DStv platform and public benefit channels licensed in the free-to-air environment.

5.2 We thank the Authority for the opportunity of contributing to the discussion around competition issues in the subscription television broadcasting environment in South Africa.

5.3 Cape Town TV will be available for oral submissions if public hearings are to be held as a part of the inquiry process.