

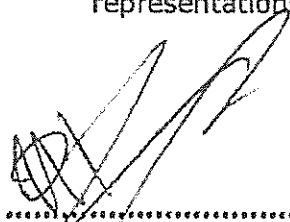
INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA  
NOTICE 170 OF 2017

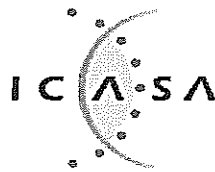


**DISCUSSION DOCUMENT ON REGULATORY FRAMEWORK FOR COMMUNITY  
BROADCASTING SERVICES**

1. The Authority hereby extends an invitation to interested parties to submit their written representations on the Discussion Document. A copy of the Discussion Document will be made available on the Authority's website at <http://www.icasa.org.za> and in the Authority's Library at No. 164 Katherine Street, Pinmill Farm, (Ground Floor at Block D), Sandton between 09h00 and 16h00, Monday to Friday.
2. Written representations with regard to the Discussion Document must be submitted to the Authority by no later than 10 May 2017 by post, hand delivery or electronically (in Microsoft Word) and marked specifically for attention: Mamedupe Kgatshe. Delivery address: Block A, Pinmill Farm, 164 Katherine Street, Sandton. Where possible, written representations should also be e-mailed to [communityreview2017@icasa.org.za](mailto:communityreview2017@icasa.org.za) or sent by facsimile: +27115663260. Enquiries should be directed to Mamedupe Kgatshe; between 10h00 and 16h00, Monday to Friday.

3. Written representation(s) received by the Authority pursuant to this notice, will be made available for inspection by interested persons at the Authority's library and copies of these will be obtainable upon payment of the prescribed fee. They will also be availed on the Authority's website. At the request of a person who submits written representations pursuant to this notice, the Authority may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be allowed to withdraw such representations.
4. Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral representations.

  
.....**MR RUBBEN MOHLALOGA****ACTING CHAIRPERSON**DATE: 21/02/2017  
.....



**Independent Communications Authority of South Africa**

Pinmill Farm, 164 Katherine Street, Sandton

Private Bag X10002, Sandton, 2146

## DISCUSSION DOCUMENT

### **Regulatory Framework for Community Broadcasting Services**

FEBRUARY 2017

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**Abbreviations**

ACMA	Australian Communications and Media Authority
AGM	Annual General Meeting
AMPS	All Media and Products Survey
BAI	The Broadcasting Authority of Ireland
BRACS	Broadcasting for Remote Aboriginal Scheme
BRC	Broadcasting Research Council of South Africa
BSA	The Austrian Broadcasting Services Act No. 110 of 1992 as amended
CRFC	The Community Radio Fund of Canada
CRTC	Canadian Radio-television and Telecommunications Commission
DCMS	Department for Culture, Media and Sport
DoC	Department of Communications
DTT	Digital Terrestrial Television
GCIS	Government Communication and Information System
ECNS	Electronic Communications Network Service
ITA	Invitation to Apply
LSM	Living Standard Measure
MDDA	Media Development and Diversity Agency
NEMISA	National Electronic Media Institute of South Africa.
Ofcom	The Office of Communications
PBS	Public Broadcasting Services
RAMS	Radio Audience Measurement Survey
SAARF	South African Audience Research Foundation
TBN	Trinity Broadcasting Network

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## SECTION A: INTRODUCTION AND BACKGROUND

### 1. Introduction

#### 1.1 Aims of the Discussion Document

The Authority is commencing an inquiry into the review of the existing community broadcasting regulatory framework in accordance with Section 4B of the Independent Communications Authority of South Africa Act No 13 of 2000 ("the ICASA Act"). Prior to the current process, the Authority undertook inquiries into Community Broadcasting as articulated in the Authority's Position Paper and Regulations on *Review of Community Sound Broadcasting Policy* published in 2006 (Gazette No. 28919) and the *Position Paper on Community Television* published in 2004 (Gazette No 27036), and related regulations.

The purpose of this Discussion Document is to facilitate participation by stakeholders in *The Review of the Community Broadcasting Regulatory Framework* by the Independent Communications Authority of South Africa ("the Authority"). The Discussion Document is structured in the form of questions supported by explanatory and contextual discussion. Questions posed are all encompassing and submitters should feel free to provide additional information and or research they feel necessary to substantiate their responses. The Discussion Document is divided into five sections.

- Section A provides background into the review and provides the rationale for undertaking it,
- Section B profiles the South African community broadcasting market and its operational challenges;
- Section C examines the legislative framework underlying the licensing and regulation of community broadcasting services in South Africa;
- Section D investigates community broadcasting services in relation to factors impacting on this sector's sustainability, including; governance; management and operational capacity; as well as programming issues.

## 1.2 Background into the regulation of community broadcasting in South Africa

The history of community media in South Africa dates back to the pre-democracy era. This sector emerged as a response to a lack of opportunities and access to mainstream media, which at the time was largely dominated by the state broadcaster - the South African Broadcasting Corporation (SABC). Its development was largely influenced by political struggles of the time and it became a voice for the disenfranchised majority.

Community broadcasting services were only formalised in 1994 with the new democratic dispensation, when the Independent Broadcasting Authority (IBA) issued one year licences. The Authority subsequently finalised the regulatory policy for the sector in various phases. The framework for community radio was first completed in 1996<sup>1</sup> and reviewed in 2006<sup>2</sup>. The framework for community television was developed separately and only came into effect in 2004<sup>3</sup>. With the promulgation of the Electronic Communications Act, 36 of 2005 (The EC Act) a simpler class licensing process for community radio was introduced. To facilitate implementation, the Authority also developed various regulations including *The Process and Procedure Regulations for Class Licences*<sup>4</sup>. These and regulations were subsequently amended in 2010 and 2015.

## 1.3 Rationale for the review

The Authority has initiated this process to address the following shortcomings in the regulatory and operational environment of the community broadcasting sector.

- **Disparate regulatory policies.** The regulatory framework for community radio and television is mainly contained in community broadcasting related

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<sup>1</sup> The IBA, 1997, Community Sound Broadcasting Services Position Paper on Four-Year Licences

<sup>2</sup> ICASA, 2006, Community Sound Broadcasting Policy Position Paper

<sup>3</sup> ICASA, 2004, Community Television Broadcasting Services Position paper

<sup>4</sup> ICASA, Process and Procedure Regulations for Class Licence, published in Government Gazette No 397 of 2008 (amendments published in Government Gazette No 33297 of 2010)

position papers, including The Position Papers and Regulations on Review of Community Sound Broadcasting Policy published in 2006 (Government Gazette No. 28919) and the Position Paper on Community Television published in 2004 (Government Gazette No 27036). However, developments in the market have resulted in the promulgation and intermittent amendment of regulations to facilitate licensing and other operational requirements of this sector.

Examples of these include;

- The Processes and Procedures Regulations for Class Licences published in 2010 (Government Gazette No. 33297);
- Moratorium in terms of applications for class community sound broadcasting service licensees and applications for frequency spectrum for purposes of providing a community broadcasting service, published in 2015 (Government Gazette 39226); and
- Notice of amendment to the Regulations on Processes and Procedures Regulations for Class Licences published in 2016 (Government Gazette 39874).

There is thus a need to consolidate and streamline regulations governing the community broadcasting sector in order to improve regulation and by default operation in this sector.

- **The community television licensing** preceded completion of the above mentioned regulatory framework for community television. Initially only Trinity Broadcasting Network (TBN)<sup>5</sup> was licensed by the former Ciskei government prior to the establishment of the IBA. It was granted permission to continue broadcasting on the terms of its license by the predecessor to Authority, the Independent Broadcasting Authority (the IBA) in 1994<sup>6</sup>. The rest of community

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<sup>5</sup> With the inception of the IBA in 1994 Trinity Broadcasting Network (TBN) was the only licensed community television service. It began broadcasting pre-1994 in the former homeland of Ciskei and "grand-fathered" by the IBA in 1994

<sup>6</sup> ICASA, Community Television Broadcasting Services Position Paper. 30 November 2004.

broadcasting licensees operated using event licenses<sup>7</sup>. These licensees, including Soweto TV, Tshwane TV and Cape TV were only formally licensed in 2007.

Broadly, the framework for community television is similar to that of community radio and both are regulated along similar lines. However, given the higher financial and operational requirements, the community television sector may warrant a different approach.

- **The class registration process used to license community broadcasting services has had unintended consequences**, including proliferation of services, duplication, fragmentation of audiences, which could adversely affect sustainability of the community broadcasting sector. In order to address these the Authority developed new regulations, mentioned above. Specifically, the Authority in 2015 amended the Processes and Procedures Regulations for Class Licences<sup>8</sup>, with the intention to facilitate a more orderly licensing process for community broadcasting services.

These amendments make provision for two window periods for applications for community broadcasting service licences - which can only be done with an Invitation to Apply (ITA) for spectrum licence<sup>9</sup>. The Authority also issued a moratorium on applications for community sound broadcasting services and radio spectrum licences to address congestion in this band<sup>10</sup>. It may be necessary for the Authority to examine the legal basis and to consolidate these into a single framework. This in turn will facilitate an orderly strategic licensing approach to licensing community broadcasting services.

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7 ICASA, Community Television Broadcasting Services Position Paper, 30 November 2004.

8 ICASA, Notice of amendment to the Regulations on Processes and Procedures Regulations for Class Licences, Government Gazette 39874, Government Notice 157 of 2016.

9 ICASA, Notice of amendment to the Regulations on Processes and Procedures Regulations for Class Licences, Government Gazette 39874, Government Notice 157 of 2016.

10 ICASA Notice of moratorium in terms of applications for class community sound broadcasting service licensees and applications for frequency spectrum for purposes of providing a community broadcasting service, Government Gazette 39226, Government Notice 918 of 2015.

- **Governance and operational deficiencies** in this sector which appear to arise from lack of capacity, resourcing strategies and concerted support mechanisms for community broadcasting services. It might be necessary for the Authority to consider additional regulatory mechanisms to strengthen corporate governance and management practices in the community sector.
- **Financial sustainability** is one of the above deficiencies and is characterized by overreliance on advertising revenue. This necessitates sustainable funding and revenue diversification strategies by the sector. However, in the long term this may also warrant a revision of policy to avail alternative sources of funding and to streamline and coordinate support mechanisms for community broadcasting services.

#### **1.4 The Broadcasting policy review process**

It is anticipated that the outcome of the review will result in consolidated regulations, reviewed licensing framework and operational guidelines for the community broadcasting sector. It is possible that the review might also identify policy and/or legislative challenges. In such instance the Authority, in line with its Constitutional and public interest mandate<sup>11</sup>, will adopt section 4(3) (a) of the ICASA Act<sup>12</sup> to make recommendations to the Minister. According to this mandate the Authority is empowered to:

- conduct inquiries into any matter with regard to the objects of the ICASA Act or the underlying statutes; <sup>13</sup>
- conduct research on all matters affecting broadcasting, electronic transactions, postal and electronic communications sectors in order to exercise its powers and perform its duties; <sup>14</sup>

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<sup>11</sup> Section 2 of the Independent Communications Authority of South Africa Act No.13 of 2000. In seeking to promote the public interest in the community broadcasting sector the Authority is also guided by the objects enunciated in section 2 of the ECA and section 2 of the Broadcasting Act.

<sup>12</sup> Independent Communications Authority of South Africa Act No.13 of 2000

<sup>13</sup> Section 4B of the ICASA Act.

<sup>14</sup> Section 4(3)(h) of the ICASA Act

- make recommendations to the Minister of Communications (the Minister) on policy matters and amendments to the ICASA Act and the underlying statutes which accords to the objects of the ICASA Act and the underlying statutes to promote development in the broadcasting, electronic transactions, postal and electronic communications sectors.<sup>15</sup>

It is in this context that the Authority is seeking stakeholders input on the following policy related issues.

- The scope/definition of community broadcasting services;
- The funding and operational models for broadcasting services; and
- Capacity building and institutional support for community broadcasting services

**Question 1**

Are there any other issues that the Authority should consider in instituting this review?

**1.5 Research Methodology**

The research underlying the review was conducted using the following sets of methods.

- A desktop research study providing a situational analysis of community broadcasting sector's status quo. The research conducted considered the challenges faced by the sector, institutional support mechanisms and international best practice in terms of the regulatory, licensing and enforcement framework applied in international jurisdictions.
- An analysis of the community broadcasting market and revenue, based on industry research databases (including South African Audience Research

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<sup>15</sup> Section 4(3)(a) of the ICASA Act

Foundation (SAARF) and AC Nielsen) as well as licensees' financial information obtained from internal ICASA monitoring reports.<sup>16</sup>

- Stakeholder interviews with community broadcasters, academia, associations and advocacy bodies. These interviews were based on the above mentioned desktop research, and focused on obtaining the stakeholders views on the framework and mechanisms of addressing issues and operational challenges identified in the desktop research.

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<sup>16</sup> Limitations in respect to the availability of financial and operational records from the licensees under considerations within the Authority provided challenge. This obstacle was overcome by using industry research databases.

## SECTION B: THE SOUTH AFRICAN COMMUNITY BROADCASTING LANDSCAPE

### 2. The community broadcasting market

#### 2.1 Introduction

In order to effectively regulate the community broadcasting sector, the Authority needs to have a comprehensive view of this sector and the factors that contribute to its success. Conventionally in the broadcasting sector these are considered in relation to broadcasting service's reach, audience size and share of advertising revenue. This section therefore considers this in relation to the community sector, but also takes into account the fact that this sector has a diversity and developmental mandate.

#### 2.2 The size of the community broadcasting market in South Africa

There are currently 280 community broadcasting services (275 community sound and 5 community television services). According to AC Nielsen and All Media and Products Survey (AMPS) data, community broadcasting services collectively take up an audience share of 6.3 million people in South Africa. However, this has not necessarily translated into advertising revenue, for example Community TV has a 9.5%<sup>17</sup> reach but only yield an advertising spend less than 1%. Likewise, Community radio reaches 25%<sup>18</sup> of the population but only receives 2% of the advertising spend.

##### *2.2.1 Licensed Broadcasting services in South Africa*

The EC Act recognizes three tiers of broadcasting, namely, public, commercial and community broadcasting. The table below summarised the number of services that are licensed in South Africa.

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<sup>17</sup> Television Audience Measurement Survey (TAMS)

<sup>18</sup> All Media and Products Study (AMPS) 2015 AB. the exact number of viewers / listeners vary depending on the research: RAMS vs AMPS)



<i>License Category</i>	<i>Radio</i>		<i>Television</i>	<i>Total</i>
<i>Subscription</i>	<b>0</b>		<b>9</b>	<b>9</b>
<i>Commercial</i>	<b>25</b>		<b>2</b>	<b>27</b>
<i>Public</i>	<b>15</b>		<b>2</b>	<b>17</b>
<i>Community</i>	<b>275</b>		<b>5</b>	<b>280</b>
<i>Total</i>	<b>315</b>		<b>18</b>	<b>333</b>

*Table 1 Licensed broadcasters in South Africa*

As stated above, there are currently 280 community broadcasting services, comprising of 275 community sound and 5 community television services, namely Soweto TV, Cape TV, 1KZN TV, Tshwane TV and Trinity Broadcasting Network (TBN). Community television services are broadcast on the DStv bouquet as well as on their licensed terrestrial regions also. In addition to these services a new regional (Gauteng) TV channel, GAUTV started broadcasting on DStv, in October 2016, and there are an estimated 31 radio stations that only broadcast on the internet.

### *2.2.3 Community Broadcasting audiences*

Audiences numbers and reach are an indicator of popularity of community broadcasting services.

#### **Community Television broadcasting audiences**

Comparatively, total television increased its penetration from 76.5% in 2000 to 91.5 % in 2012, since then growth has slowed and was recorded to be 91.8% in 2015.<sup>19</sup> Comparatively, community television broadcasting services indicated varying audience trends. This is depicted below indicating audience reach of the five community television licensees in South Africa.<sup>20</sup> This indicates that Soweto TV grew until 2012, but has seen a steady decline in audience since then. Similarly, Cape TV lost audience in 2012/13 but has shown growth in the following years. The other channels are still relatively new, but appear to be increasing in audience.

<sup>19</sup> AMPS 1997 – AMPS 2015AB19

<sup>20</sup> It is not possible to provide a provincial summary; however, the majority of reach can be assumed to be achieved within the broadcast province. A small portion can be allocated to national viewing via the DStv platform.

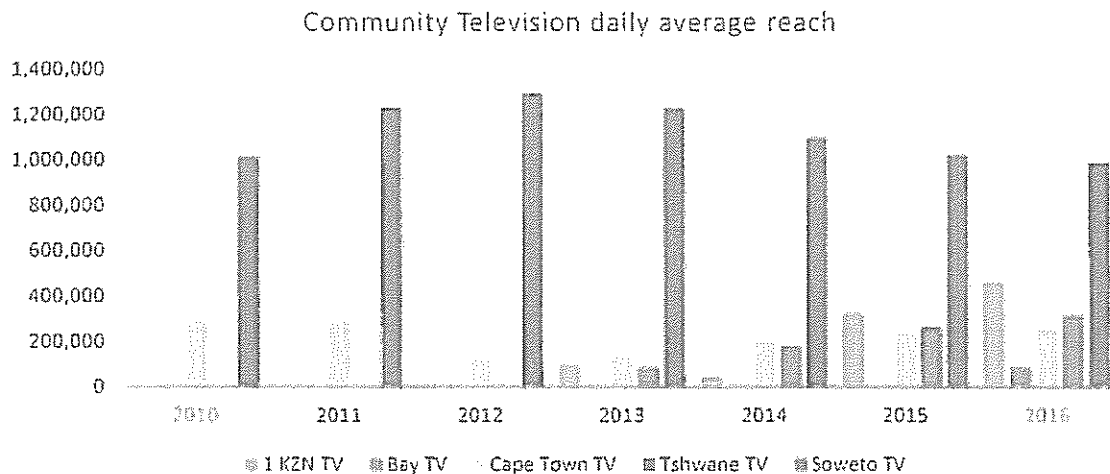


Figure 1 Community television daily average reach Source: TAMS 2010 -2016 Jan-Dec

### Community Sound broadcasting audiences

Despite a slight decline (from 92.2% in 2000 to 91.5% in 2014), radio is reported to have maintained its high penetration over the past 5 years, consistently reaching over 90%. There has been an increase in the community radio market in terms of audience numbers and reach. As indicated in the figure below Community Radio grew from 8% in 1997 to 25.3% in 2015. This indicates that there is a potential market for community radio going forward.

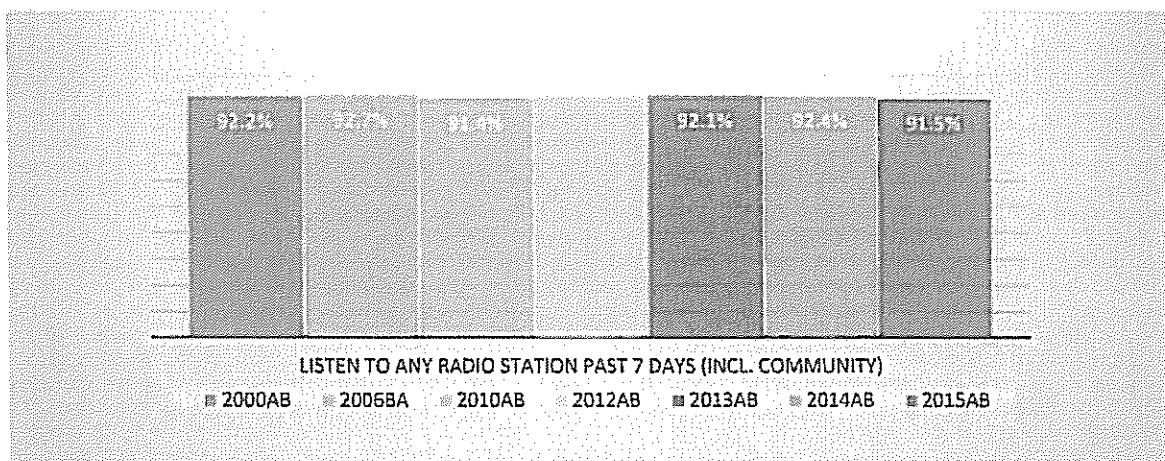


Figure 2 Community radio audiences Source; AMPS 2000AB – AMPS 2015 AB

**Question 2**

- a) Do you agree with the way in which community broadcasting market has been described?
- b) If not provide details of how the market should be viewed including the reasons behind such descriptions?

**2.3 Community broadcasting share of advertising spend**

It also important to demonstrate advertising spend by community broadcasting services, comparatively to other mediums, and to provide an analysis on this sector's comparative performance to other broadcasting service. Advertising revenue trends between 2013 and 2016 are indicated below in figure 3.

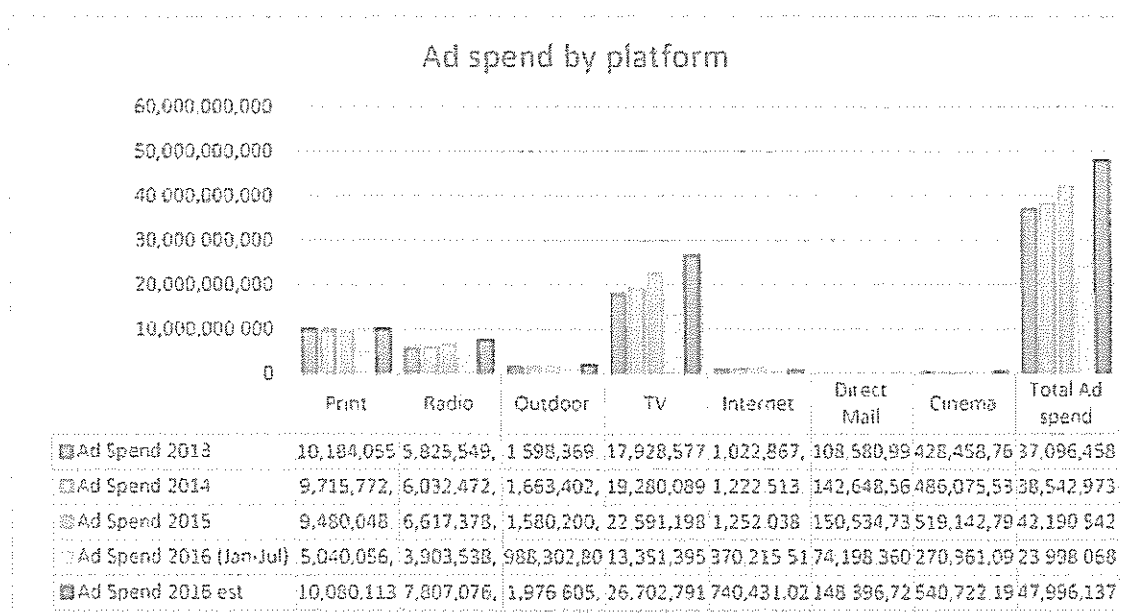


Figure 3 Ad spend by platform Source: ACNielsen Adex

This indicates that over the past 3 years' total television has received the largest share of advertising revenue and that this trend is still increasing. In comparison, print has shown a steady decline, with most of the money moving to television. For

example, the total advertising spends in 2014 was R 38 542 973 864. There was a decline of R 468,282,623 in print advertising and an increase by about R1,351,511,728 predominantly in television. Print readership has been declining over the past few years, primarily due to the increase in access to the internet and the high cover cost of magazine titles. A small amount of the print money has shifted to radio and the internet, but this is not significant. Comparatively, radio is still a growing medium and listeners have close and loyal relationships with their favourite stations. The Internet is growing rapidly; albeit off a small base.

Community broadcasting service receive a much lower share of revenue than would be expected when taking their reach into account. This is illustrated in tables 1 and 2 below, *comparing community services share of revenue to commercial television and commercial radio, respectively.*

	2010	2011	2012	2013	2014	2015	2016 (Jan-Jul)
<b>Total TV</b>	13 437 570 550	14 692 710 977	16 174 725 434	17 928 577 503	19 280 089 231	22 591 198 896	13 351 395 548
<i>Soweto TV</i>	no data	71 504 855	46 618 859	52 937 814	52 406 250	33 876 360	19 266 020
<i>Commercial TV</i>	13 437 570 550	14 621 206 122	16 128 106 575	17 875 639 689	19 227 682 981	22 557 322 536	13 332 129 528
<i>Soweto TV</i>		0.5%	0.3%	0.3%	0.3%	0.1%	0.1%
<i>Commercial TV</i>	100%	99.5%	99.7%	99.7%	99.7%	99.9%	99.9%

Table 2 Advertising Spend (Share of Revenue: Commercial vs Community Television) Source: AC Nielsen Adex

	2010	2011	2012	2013	2014	2015	2016 (Jan-Jul)
<b>Total</b>	<b>3 547 040</b>	<b>4 473 192</b>	<b>5 212 709</b>	<b>5 825 549</b>	<b>6 032 472</b>	<b>6 617 378</b>	<b>3 903</b>
<b>Radio</b>	<b>728</b>	<b>614</b>	<b>461</b>	<b>805</b>	<b>346</b>	<b>489</b>	<b>538 375</b>
<i>Community</i>	37 185	92 609	122 649	124 637	119 750	140 083	74 877
<i>Radio</i>	211	748	709	322	630	878	579
<i>Commercial</i>	3 509 855	4 380 582	5 090 059	5 700 912	5 912 721	6 477 294	3 828
<i>Radio</i>	517	866	752	483	716	611	660 796
<i>Community</i>	1.0%	2.1%	2.4%	2.1%	2.0%	2.1%	1.9%
<i>Radio</i>							
<i>Commercial</i>	99.0%	97.9%	97.6%	97.9%	98.0%	97.9%	98.1%
<i>Radio</i>							

Table 3 Advertising Spend (Share of Revenue: Commercial vs Community Radio) Source: AC Nielsen Adex

In summary, the two table indicate that an estimated 9.5%<sup>21</sup> of South African adults watch community TV compared to an advertising of spend less than 1%. Community radio is listened to by 25% of South African adults and receives about 2% of the advertising spend.

## 2.4 Community Broadcasting Audience profile

Commercial free-to-air (e.tv), DSTV, public (SABC 1, 2 and 3) are more attractive to advertisers and therefore derive more advertising spend than community broadcasting services.

### 2.4.1 Profile of Community Television Audiences

When considering spend, advertising share and reach of television services in South Africa DSTV has the largest share of the ad spend, followed by SABC 1, e.tv, and SABC 2. This is despite having a lower reach at 43.4% as compared to these channels at 81% for SABC 1; 77.6 % for SABC 2; 70.7% for e.tv; and 59.6% for SABC 3.

<sup>21</sup> The exact number of viewers / listeners vary depending on the research: RAMS vs AMPS)

	2015 Advertising Spend	% Share of Spend	Reach in '000	Reach %	INDEX
DSTV	R 11 008 085 983	48.7%	15 191	43.4%	112
SABC 1	R 3 672 076 843	16.3%	28 621	81.8%	20
E-TV	R 3 251 458 726	14.4%	24 721	70.7%	20
SABC 2	R 2 550 828 200	11.3%	27 128	77.6%	15
SABC 3	R 2 074 872 784	9.2%	20 834	59.6%	15
Soweto TV	R 33 876 360	0.1%	2 761	7.9%	2
Tshwane TV	No Data		551	1.6%	
KZNTV			783	2.2%	
Bay TV			489	1.4%	
CTV (Cape Town TV)			295	0.8%	
Total	R 22 591 198 896	100.0%	34 969	347.1%	
				Note: Duplication of viewers	

Table 4 Community Television share of ad spend Source: ACNielsen Adex, BRC RAMS 2016 (Q1+Q2) All Respondents

This can largely be attributed to the profile/ quality of the channels' audience as can be seen by a comparison of audience profiles below. However, other factors also contribute to the individual channels' success.

#### LSM Profile of Television

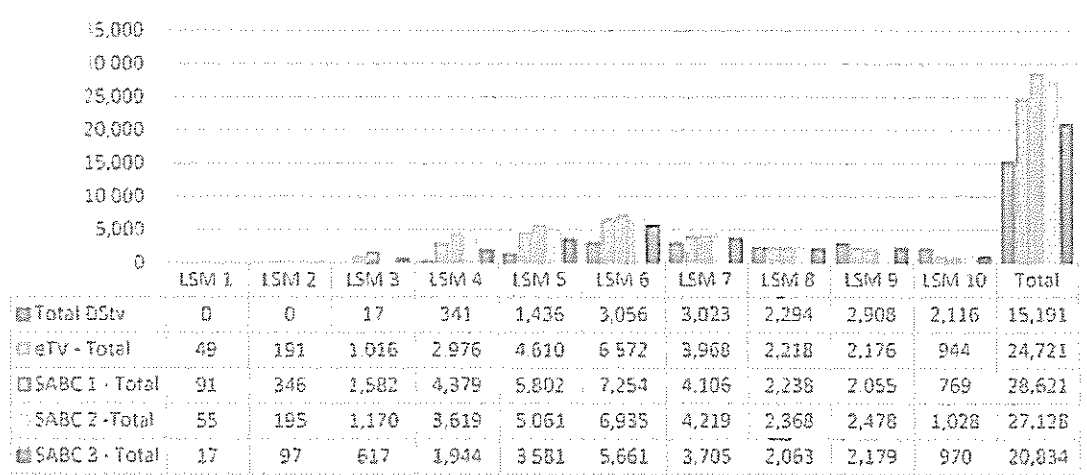


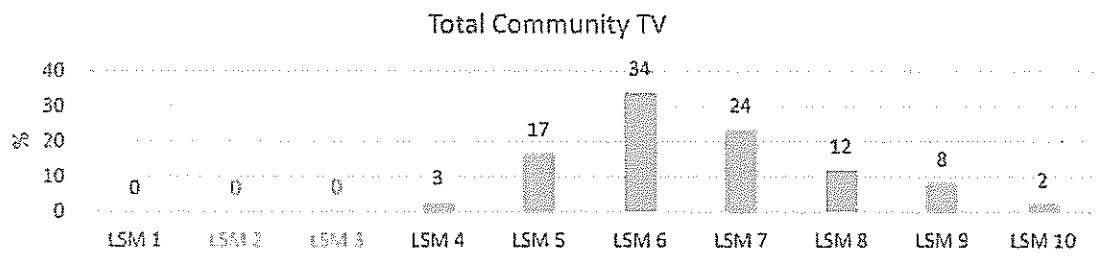
Figure 4 Television Audience Profile Source: AMPS 2015 Six Months (Jan 2015 - Jun 2015)

DSTV derived the highest advertising revenue, R 11 008 085 983 in 2015. As indicated above DSTV targets the middle to upper LSMs and is the only broadcaster to deliver LSM9 and LSM10 in significant numbers. However, this can also be attributed to its ability to group its channels and sell them as an individual unit that makes them a viable advertising option. The individual smaller channels on the DSTV platform would probably not receive any advertising investment if they were only sold as individual channels.

At R 3 251 458 726 e.tv is the third largest in terms of advertising spend. This can also be attributed to its audiences, a large proportion of which falls between LSMs 5 and 7.

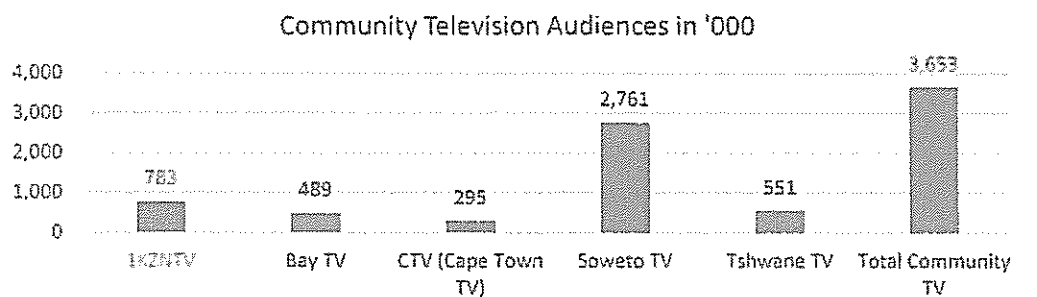
In line with its public broadcasting mandate SABC channels, besides for SABC 3, caters for a wide range of audiences, across all LSMs. SABC 3 is an exception in the sense that it focuses more on the upper LSMs with its programming offering. This enables it to deliver a good advertising revenue. SABC 1 is the largest channel in South Africa and receives the largest individual advertising spend, at R 3 672 076 843. It focuses on the lower to middle LSMs and delivers these audiences in large numbers (82% of all TV viewers watch SABC 1 and 75% of South African adults watch SABC1). SABC 2 has a similar LSM profile to SABC 1. It generates an ad revenue of R 2 550 828 200 with a slightly higher delivery in the upper LSMs (78% of TV viewers, 71% of SA adults). It is a channel that targets multiple sectors of the population with its programming so while appealing to multiple groups it sees a variation in investment at a program level.

In comparison, the majority of community television stations service the middle LSMs (LSM 5-7). This is the largest and fastest growing market sector in South Africa, so there is potential for revenue. However, it is also the key focus for the big commercial stations, resulting in a high level of competition. This is depicted below.



**Figure 5 Total Community TV Audience Profile** Source: AMPS 2015 Six Months (Jan 2015 - Jun 2015)

There are however slight variations in audience profile which are also reflected in the advertising revenue generated by community television stations. As indicated in figure 6 below, of all the community television channels, only Soweto TV delivers a significant size audience to be of consideration to national advertisers. Local marketers and retailers would find the smaller, more relevant footprints attractive. However, they have limited budgets so will not be able to contribute large spend.



**Figure 6 Community television audience share** Source: AMPS 2015 Six Months (Jan 2015 - Jun 2015)

#### 2.4.2 Profile of Community Radio Audience

Radio is the most widely accessible medium with 91% of the population listening to one or more station in a week. 84.9% of South African adults listen to a commercial or public broadcasting services (PBS) station. According to the BRC RAMS 2016 (Q1+Q2) All Respondents Community Radio reaches 16.7% of the population.



Further that in terms of weekly audiences, there is almost no difference in the profiles of Adults, Total Radio, Commercial/PBS and Community radio listeners.<sup>22</sup>

In terms of advertising spend and audience for the community stations there is a relationship between the size of the audience and the amount of money that marketers are prepared to spend on the station. When considering the relationship between audience size and the amount of advertising revenue a station receives, one would expect to see a correlation between the two (see the tables 5 and 6 below).

#	Stations	Total Audience	Metro of Small		Rural	
		Audience (000)	Audience (000)	%Rw	Audience (000)	%Rw
1	GT Jozi FM	456	417	91.4	39	8.6
2	WC Radio Tygerberg 104 FM	236	230	97.5	6	2.5
3	WC Radio Zibonele	228	212	92.9	16	7.1
4	GT Kasie FM 97.1	151	144	95.5	7	4.5
5	GT Thetha FM 100.6	177	144	81.4	33	18.6
6	GT Voice of Tembisa FM	142	142	100	0	0
7	WC Voice of the Cape	122	122	100	0	0
8	NW Moretele Community Radio 106.6 FM	155	112	72	43	28
9	NW Star FM 102.9	124	111	89.4	13	10.6
10	WC CCFM 107.5	112	110	97.9	2	2.1

Table 5 Top 10 Metro versus rural audiences Source: ACNielsen Adex, BRC RAMS 2016 (Q1+Q2) All Respondents

22 : BRC RAMS 2016 (Q1+Q2) All Respondents

#	Stations	Total Audience	Metro of Small		Rural	
		Audience (000)	Audience (000)	%Reach	Audience (000)	%Reach
60	LP Mela FM 101	95	9.9	85	90.1	60
61	EC Alfred Nzo Community Radio 98.3/93.8 FM	136	6.8	127	93.2	61
62	MP Moutse Community Radio Station (MCRS 96.3)	82	8.6	75	91.4	62
63	LP Moletsi Community Media	74	9.5	67	90.5	63
64	LP Sekgosese Community Radio	131	4.6	125	95.4	64
65	LP Giyani Community Radio (GCR)	94	4	90	96	65
66	LP Sekhukhune Community Radio (SKFM)	61	5.1	58	94.9	66
67	EC Inkongane 100.5 FM	125	2.5	122	97.5	67
68	NW Modiri FM	65	4	63	96	68
69	MP Nkomazi FM	80	0	80	100	69

Table 6 Bottom 10 Metro versus rural audiences Source: ACNielsen Adex, BRC RAMS 2016 (Q1+Q2)  
All Respondents

For community radio this is the case to a certain extent, with 5 of the top ten stations being ranked among the top ten stations for receiving advertising spend. Jozi FM is a highly competitive station, ranked number 1 for both audience and advertising spend. Its reach is large enough to justify including in on most schedules that target the Gauteng market.

However, there are exceptions. One of the stations that do not fit the pattern is the second ranked in audience, Unitra FM, which is ranked number 10 in advertising spend. Vukani FM, an Eastern Cape station, is ranked 5<sup>th</sup> in audience, but only

receives R247 031 (ranked 87). Alex FM, on the other hand, is ranked 5<sup>th</sup> in advertising revenue, but only has 44 000 listeners (ranked 63).

This can be attributed to the location of these services. Gauteng generally receives more of the advertising spend, as compared to other provinces. This can be ascribed to a number of things, including lack of exposure about the community radio stations among media planners, perceptions of poor reliability, lack of professionalism and no consistent audiences.

**Question 3**

- c) Do you agree with the way in which the analysis of the community share of advertising revenue is described above?
- d) If not provide details of how community broadcasting advertising revenue should be characterized, including the reasons behind such descriptions?

**2.5 Economic profile of markets served by community broadcasting services**

Economic viability is an important consideration in determining the sustainability of community broadcasting services. It may be useful to consider the economic profile of markets served by community broadcasting services. The concept of primary and secondary market was developed to consider economic viability of commercial sound broadcasting services, but can also be applied in considering economic viability of community sound services. Primary markets are defined to exhibit high population density, a low unemployment rate and high levels of urbanization. Gauteng, Kwazulu-Natal and Western Cape are considered primary markets. Secondary markets refer to those situated outside of the primary markets, that is, Eastern Cape, Free State, Limpopo, Mpumalanga, North West and Northern Cape.<sup>23</sup>

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<sup>23</sup> ICASA, Position Paper on Ownership and Control

### 2.5.1 Performance of community sound services in primary versus secondary markets

Approximately 45% of the licensed community sound broadcasting services were licensed to operate in the primary markets. However, the largest number of licensees is Limpopo; which falls in the secondary market category.

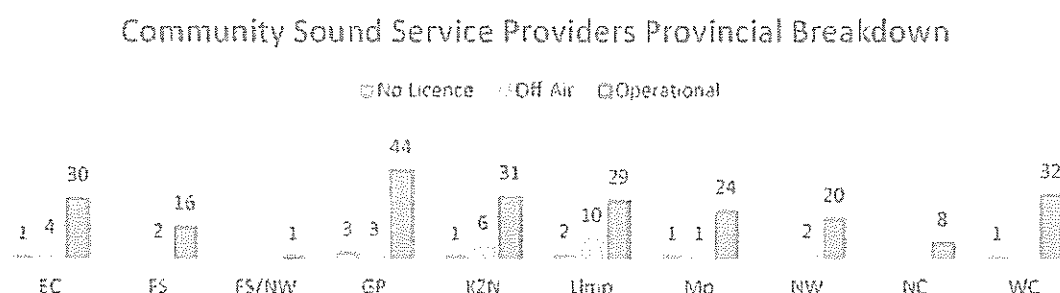


Figure 7 community sound services provincial breakdown Source: ICASA Internal Reports/ database

Measured in terms of licensed versus operational community sound licensees, there is 10% failure rate in the secondary market as compared to 8% in the primary markets. In terms of primary markets - KZN accounts for approximate 18.5% of failed stations. In secondary markets, Limpopo accounts for 26%, Eastern Cape 14%, and Northern Cape has a zero failure rate.

### 2.5.2 Economic Profile (Primary vs Secondary Markets)

Factors contributing to the success of the community broadcasting sector are more complex. Success derives from an interaction of a number of factors, including the economic profile of the areas serviced by community broadcasting services (primary versus secondary markets), licence category (geographic versus community of interests), services format (whether predominantly talk or music) and audiences serviced (whether youth, religious etc.). This is illustrated in the table below, sampling success rate and influencing factors for community sound broadcasting services provincially.

PROVINCE	LICENSING
<b>Gauteng (most lucrative)</b>	<ul style="list-style-type: none"> <li>• Diverse stations licensed</li> <li>• No coverage overlap of geographic licensees</li> </ul>
<b>KZN</b>	<ul style="list-style-type: none"> <li>• 1 to 3 licensees per district; eThekweni has the highest concentration of licensees, but all operate successfully</li> <li>• uThungulu has the highest failure rate (66.67 %) - licensing stations with a similar format</li> </ul>
<b>Western Cape</b>	<ul style="list-style-type: none"> <li>• 4 to 6 licensees per district; Cape Town Metropolitan has the highest concentration, stations coverage overlap but are distinguished by the Interest group served.</li> <li>• No licensees in the Central Karoo</li> </ul>
<b>Eastern Cape</b>	<ul style="list-style-type: none"> <li>• Alfred Nzo, Chris Hani and Sara Baartman districts have a lower number of licensees</li> <li>• OR Tambo district has a failure rate of 50% due to duplication (a new station licensed within the same coverage areas with 2 established stations-serving the same profile audience)</li> <li>• Religious services concentrated in metros (Buffalo City has 2 religious community of interest within an overlapping geographic area; NMB does not have a geographic community)</li> </ul>
<b>Free State</b>	<ul style="list-style-type: none"> <li>• Stations in the province have a talk format bias (e.g. 3:1 in the</li> </ul>
<b>Limpopo</b>	<ul style="list-style-type: none"> <li>• Stations in the province have a talk format bias</li> <li>• Mostly geographic stations are Failing (only 1 community of Waterberg)</li> <li>• 2 of the failed stations in the Vhembe region offer identical</li> </ul>
<b>Mpumalanga</b>	<ul style="list-style-type: none"> <li>• Stations evenly dispersed across districts</li> </ul>
<b>Northern Cape</b>	<ul style="list-style-type: none"> <li>• Low overlap- where there is distinguished by differentiation in programming format- low population density</li> </ul>

Table 7 Factors influencing licensing success Source: ICASA Internal Databases<sup>24</sup>

<sup>24</sup> The community broadcaster's licensee specific data is based on the gazetted list of licensees on March 2016, lower power broadcaster are excluded, licensees that have a license that overlap two provinces are excluded. Discrepancies are expected as the data is not current. Regardless of data limitations; unavailable records and time constraints; the Authority was able to undertake its research and analysis of the community broadcasting tier.

**Question 4**

The above analysis considered the impact of Economic profile of markets served by community broadcasting services on their success. In your opinion, what factors should be considered in characterizing the economic profile of markets served by community broadcasting services?

**3. Operational challenges in community broadcasting**

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

Although the principles of community broadcasting should apply equally to both radio and television there are slight differences in the nature of the challenges experienced by these two sectors. They are thus considered separately in the sections below.

**3.1 Community Radio****3.1.1 Corporate Governance**

The corporate governance is a major challenge in community radio. This takes many forms but can mainly be attributed to lack of management and technical capacity as well as community contestation for resources, and often finds expression in compliance challenges. Examples include;

- Disregard of stations' community participation mandate, founding principles, Constitutions, regulations and conditions of license;

- Exclusion of community members from ownership and community participation in the affairs of stations; and
- Lack of understanding of the roles and responsibilities that separate board members and management teams, which has led to antagonistic relations between management, boards and community members<sup>25</sup>.

### *3.1.2 Financial Management*

Financial mismanagement at stations can be attributed to poor corporate governance as well as limited financial management skills and systems. However, the lack of financial management and reporting systems can also be as a result of intentional concealment of corrupt activities. This together with inability to attract sufficient advertising are key factors that threaten viability and sustainability of community radio station. In the past the Media Development and Diversity Agency<sup>26</sup> (MDDA) and the Government Communication and Information System (GCIS) have attempted to resolve this by channelling government advertising towards community media. However, these initiatives have been met with limited success<sup>27</sup>.

Further, mainstream advertising agencies are reluctant to invest in community radio, mainly due to perceptions of inadequate operational systems, lack professionalism and accountability in this sector<sup>28</sup>. Community radio stations do not have sector specific in-depth research platforms that provide stable and consistent insight into audience trends, a factor that is critical to solicit media buyers. Thus advertisers do not want to build relations with a sector that is unlikely to deliver return on their investment<sup>29</sup>. However, stations must also develop strategies to access other forms

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<sup>25</sup> ICASA Internal Compliance Reports 2013 and 2014

<sup>26</sup> The Media Development and Diversity Agency (MDDA) was set up by an Act of Parliament (Act 14 of 2002) to enable "historically disadvantaged communities and persons not adequately served by the media" to gain access to the media. The primary beneficiaries were established as community media and small commercial media in South Africa.

<sup>27</sup> Farber, T. and Daniel, J. "The challenge of balancing community media and-spend" retrieved in <http://themediainline.co.za/2012/03/the-challenge-of-balancing-community-media-ad-spen/>. 2012.

<sup>28</sup> Pather, J. The state and fate of community media: Prospects for enhancing media diversity. Paper for the Alternative Information Development Centre (AIDC) and Freedom of Expression Institute (FXI). JUNE 2012.

<sup>29</sup> *ibid.* page 37.

of revenue other than advertising to remain sustainable. This requires that they develop capacity and skills to do so.

### *3.1.3 Compliance*

Community radio stations still find it difficult to comply with regulations and their conditions of licence, which has sometimes led to compliance hearings instituted by the Authority. This intervention by the Authority has had mixed results with some improvements. However, some have not improved and compliance problems appear endemic in this sector and must be researched further to establish their origin that is, whether they are purely administrative or require regulatory or legislative changes.

The following are the most prevalent compliance challenges:

- 1) Community Participation-This is particularly prevalent in academic institutions. Licence conditions for community broadcasters provide for community participation through at least one Annual General Meeting (AGM) and two meetings that will address programming and programme related matters. However, stations fail to conduct AGMs, with the effect of there being no community participation for those periods. Without these AGMs it means the stations do not report back on operational and financial issues. In some cases, community participation is confined to Advisory Board meetings that do not extend to broader community members within the coverage area. These kind of board meetings are related to strategic matters of the stations and do not extend to coordinating structures that represent different community groups<sup>30</sup>.
- 2) Coverage area- This manifests in two ways, either extending beyond their coverage areas to extend their audience reach of insufficient coverage limited to primary coverage areas<sup>31</sup>.

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<sup>30</sup> ICASA Radio Annual Compliance Report 2014.

<sup>31</sup> *ibid*



- 3) Compliance with the Code for people living with disability (the Code)- The majority of community radio stations still find it difficult to comply with the code, which requires all licensees to ensure that their services are available and accessible to people with disability. In many instances, non-compliance relates to lack of physical access to buildings for people with disability.
- 4) Programming- Community broadcasters are intended to cater for specific broadcast needs and interest limited by community interest or geographic area. However, over time various radio stations appear not to cater for specific needs of their community. Evidence points out that the broadcast language as outlined in licence conditions does not correlate with the actual broadcast language used by many community broadcasters. This is largely because radio stations do not update their research on community language developments. It also shows the importance of hosting regular AGMs, where community members can influence programming and broadcast language.

### **3.2 Community television**

#### *3.2.1 Governance Arrangements*

Similar to community radio, community television sector is experiencing governance challenges that borders on undermining community broadcast mandate of being community owned and managerially run. A majority of the licensed community television stations do not embrace sufficient community involvement in their affairs, be it in content creation or in determining programming. This is primarily because of the outsourced management contracts that many partake in. These are commercial agreements entered into by community television stations and independent external companies. These contracts include amongst others, agreement to manage operational costs and revenue, to employ studio capacity, equipment and expertise

that will manage advertising<sup>32</sup>. Content is predominantly determined and produced by staff employed by outsourced management companies.

These contract arrangements are not by themselves a challenge, what is not conventional is the nature of the agreements which have replaced the community in community broadcasting.

### *3.2.2 Funding*

Funding for community media is a general challenge for community mediums. Community television is not immune from advertising deficiencies experienced by community radio. For community television, the matter of consistent funding and revenue generating avenues is more difficult when considering start-up costs and expenditure needed to ensure consistent broadcasting.

The cost of starting and managing a community television demands operational budget bigger than what is needed for community radio and as such the funding needs of the latter cannot be used to measure what the former needs. The funding needs of community television are higher because of the level of expertise and more human capacity needed for specific roles in managing finances and content production<sup>33</sup>. Whereas for a community radio station, though production roles need experts as well, they can train and use less volunteers on a comparative basis.

In addition to the challenge of sourcing funding needed for start-up and operational costs, community television licensees must compete with public, commercial and other community mediums for limited advertising and sponsorship share available. Stations compete from a disadvantaged position when considering that they are fairly new, while competitors have long-standing relations with advertisers. With regards to national broadcasters, the competition is even more pronounced, since they cater for a more diverse audience than community broadcasters. The fact that a majority of community television stations are available on national platform using the Dstv

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32 Howard, T. AND Mavhungu, J, and Can community television go the distance? Retrieved from <http://themedialonline.co.za/2012/10/can-community-television-go-the-distance/>

33 Investigating the appropriate model for Implementing community TV in South Africa. Report prepared by Sol Plaatje Institute for Media Leadership at Rhodes University for the Department of Communications. 30 January 2012

subscription network, is not a factor since only subscribers and not general public access the station.

Other than advertising and sponsorship, donations and government grants are an additional funding mechanism legally permissible and available to be exploited by the sector. Government grants are essential and beneficial for all parties. Government has a responsibility to communicate with citizens and community television offers localized and focused communities<sup>34</sup>. Through government's grants, community television stations will have less commercial influence that has the potential to dilute the community mandate.

Though funding challenges are widely acknowledged, the vast potential for the sector has not gone unnoticed and is seen to be the primary reason for the involvement of external management services. The expertise brought in by private entities is geared towards maximizing advertising and other funding mechanism potential. Among the many reasons given by Urban Brew for their involvement in the sector, they are quoted affirming that they view the community licensees they manage as "long term profitable investment".<sup>35</sup>

The anticipated profit potential of community television station is behind the calls to regulate the sector differently from community radio. It has been proposed that the Authority must "...develop and publish regulations that will formally enable Community Television Broadcasting Service licensee to request and receive funding from private investors and local government. The Regulations shall outline the terms of reference for the Investment".<sup>36</sup> The proposal is geared towards normalising management contracts through developing regulatory framework that speaks to existing community television model alongside that envisaged by legislation and prevailing regulatory framework.

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<sup>34</sup> *ibid*

<sup>35</sup> Investigating the appropriate model for implementing community TV in South Africa. Report prepared by Sol Plaatje Institute for Media Leadership at Rhodes University for the Department of Communications. 30 January 2012, page 11

<sup>36</sup> Tshwane TV submission on Issues Paper on the Review of the Broadcasting Regulatory Framework towards a Digitally Converged Environment. April 2012.

### 3.3 Institutional support for community stations

Financial sustainability and technical capacity are the major challenges facing the community broadcasting sector. A range of organizations and agencies play an important role in promoting and facilitating community radio in South Africa. These include sector organizations, training institutions and production organizations. From a government perspective three key programmes, the Community Radio Support Programme, by the Department of Communications (DoC), the MDDA funding, capacity building and technical support and The National Electronic Media Institute of South Africa (NEMISA) teaching radio productions skills for community radio practitioners<sup>37</sup>. The scheme focuses on the following areas of support;

- 1) Broadcasting infrastructure rollout to provide technical equipment to stations. Newly licensed and existing stations who have expressed interest at accessing the support programme are provided with new on-air and studio equipment or an upgrade of existing equipment. The equipment is installed by a DoC appointed service provider.
- 2) Signal distribution subsidy. The signal distribution subsidy offsets Sentech signal distribution signal fees for selected radio stations. Only radio stations that use Sentech's broadcasting signal distribution services qualify for subsidy. Self-providing radio stations do not qualify for the subsidy.
- 3) Programme production support on specific areas. Through the MDDA, the DoC supports the production of quality programming for community broadcasters. This support area has experienced various challenges that once halted the programme. The solution included outsourcing it to be project managed by the MDDA.
- 4) Capacity building and training. The DoC provides capacity building projects to upskill community radio practitioners. These projects are provided directly by the

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<sup>37</sup> Impact of the Department of Communications' Community Radio Support Programme. 13 December 2011. Report by the Department of Communications'

DoC. Through the DoC, NEMISA also provides radio productions skills training to community radio practitioners.

- 5) Satellite network infrastructure. In this area of support, Community radio stations have been provided satellite equipment to uplink programmes. This was primarily to enable community radio broadcasters to have access to programmes from Parliament and GCIS. It was also meant to allow community radio stations to share programmes with each other<sup>38</sup>.

At the time of this research the DoC was reviewing the Community Radio Support Scheme through the publication of Draft Community Broadcasting Support, in order to amongst others, include Community Television and "provide clarity regarding the objective, nature and criteria for the support, including a clear value proposition for public funding".<sup>39</sup> Although funding models do not fall within the ambit of ICASA's mandate, the results of the review can be used to make recommendations to the Minister to consider in reviewing the scheme.

### 3.4 Conclusion

Many of the challenges facing the community broadcasting tier appear to be related to a lack of stringent governance, financial management and operational policies. The Authority also does not provide stations with guidelines on how to approach the issues of governance, community participation and programming, as these areas remain unregulated and pertain to the licensees' business practices. The areas requiring intervention include the following:

- 1) Governance arrangements – regulations informing the expected sound corporate governance arrangements in line with legislation, regulatory policies and license conditions. These must clarify roles and responsibilities of the board/trustees/committees and management, and provide guidelines on management, financial and technical operations.

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<sup>38</sup> *ibid*

<sup>39</sup> Scheme published on 01 July 2015 in Government Gazette 38947, General Notice 676.

- 2) Community participation - Detailed regulations/ guidelines on mechanisms to enable active participation by community members in management, programming, language policy and operations.
- 3) Volunteers - at the core of community participation is volunteers. Without the services of volunteers, community participation will be restricted. Volunteers play a critical role in the community broadcast sector, mostly for licensees that do not have financial clout to attract skilled employees. Therefore, it is important to have regulatory policy that will give direction on the principles of volunteering and the protection of their rights. Licensees need to be administered like business enterprises, with a sense of professionalism and accountability. They should have human resources policies and such policies should deal with the remuneration of staff members, management policy for volunteers to deal with time management, scope of work and other pertinent issues.
- 4) Internal conflict resolution/complaints process frequent conflicts that compromise the operations of community broadcast services can be contained by legal requirements detailing internal conflict resolution/complaints process. The Authority must have regulations that will make it compulsory for community broadcast licensees to have policies and procedures which outline mechanisms to facilitate internal conflict resolution and how to handle public complaints.
- 5) The Authority needs to emphasize localness in community broadcasting which is the core mandate for the sector. This implies that part of the content broadcast should be sourced from the geographic area or community of interest.

**Question 6**

Given the time and resources that the Authority expends in addressing compliance problems arising from the above operational challenges in the community sectors, what mechanisms/tools should the Authority consider?

## SECTION C: POLICY PRINCIPLES AND LEGISLATIVE FRAMEWORK

### 4 Community Broadcasting Regulatory Framework

#### 4.1 Underlying Policy Principles

This review of community broadcasting must be in line with the guiding principles of broadcasting as set out in the Broadcasting Policy documents such as the Triple Inquiry Report<sup>40</sup> and the 1998 White Paper on Broadcasting (The White Paper), as well as related legislation. It is therefore necessary to explore the overarching policy principles and legislative framework that provide guidance to the Authority in approaching this review, as well as consider previous policy positions that have informed regulation and licensing of community broadcasting in South Africa.

The Triple Inquiry and the White paper set out policy goals around community broadcasting. In the main the developmental role that community broadcasting services should play in relation to the two other tiers of broadcasting, namely, the commercial and public. The Triple Inquiry contemplates community broadcasting services as playing a complementary role with the other tiers towards the attainment of public interest that is, providing maximum diversity and choice of quality entertaining, educative and informative services. On the converse, the Authority is expected to create conditions where commercial and community services are incentivised to participate in the broadcasting environment and are provided with reasonable conditions for their success.<sup>41</sup>

The White Paper on Broadcasting indicates that community broadcasting services should "provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by other broadcasting services covering the area in question. It will be informational, educational, educative and entertaining. It will focus on the provision of programmes that highlight grass-roots community issues, including developmental issues, health care, basic information and general

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40 Triple Inquiry Report. (Report on the protection and viability of public broadcasting services; cross-media control of broadcasting services; and local television content and South African music).

41 *ibid*, page 17.

education, environmental affairs, local interest matters and the reflection of local culture.”<sup>42</sup>

The legislative basis for regulating community broadcasting is in turn captured in the Broadcasting Act no 4 of 1999 (The Broadcasting Act) and the EC Act, respectively, defining the parameters of what constitutes community broadcasting and outlining the class registration process for community broadcasting, and more importantly, emphasising the Authority’s public interest mandate.

Accordingly, the Authority is engendered to regulate broadcasting in the public interest as well as to encourage and create conditions for public, commercial and community broadcasting to be licensed and thrive. Amongst others, the Authority is guided by section 2 of the EC Act, which requires it to ensure the promotion of a diverse range of sound and television broadcasting services on a national, regional and local level which, when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information<sup>43</sup>.

Section 2 of the EC Act further enjoins the Authority with promoting the development of public, commercial and community broadcasting services which are responsive to the needs of the public<sup>44</sup>. It also obliges the Authority to ensure that, in the provision of public broadcasting services the needs of language, cultural and religious groups, and the needs of the constituent regions of the Republic and local communities, and the need for educational programmes are duly taken into account<sup>45</sup>. In doing so, the Authority must ensure that the integrity and viability of the public broadcaster is protected, investment in the industry is encouraged and fair competition between broadcasting licensees is secured<sup>46</sup>.

The broad parameters set out in legislation are in turn amplified in, amongst others, the following Position Papers and Regulations by the Authority.

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<sup>42</sup> The Department of Communications, 1998, White Paper on Broadcasting Policy

<sup>43</sup> Section 2 (s) of the Electronic Communications Act, 156 of 2005

<sup>44</sup> Section 2 (r) of the Electronic Communications Act, 156 of 2005

<sup>45</sup> Section 2 (u) of the Electronic Communications Act, 156 of 2005

<sup>46</sup> Section 2 (t) of the Electronic Communications Act, 156 of 2005



- The Position Papers and Regulations on Review of Community Sound Broadcasting Policy published in 2006 (Government Gazette No. 28919);
- The Position Paper on Community Television published in 2004 (Government Gazette No 27036); and
- The Processes and Procedures Regulations - Class Licences published in 2010 (Government Gazette No. 33297).

The implications of these regulation to the current review are explored in detail in the sections below.

#### **4.2 Scope of community broadcasting services**

The scope of community broadcasting is defined in legislation and expanded in regulations. The legislative framework provides for geographically based or community of interest radio and television stations. Therefore, community broadcasting services are licensed to cater, respectively, for the needs of persons or a community whose communality is determined principally by their residing in a particular geographic area, and for the needs of a community with ascertainable common interest. The distinctive feature of the service is the common interest that makes such a group of persons or sector of the public an identifiable community<sup>47</sup>.

Legislation further highlights the following principles underlying community broadcasting.

- 1) *Community Participation* - which is seen as the active participation of the community. In this instance the service is expected to, amongst others, encourage "members of the community served by it or persons associated with or promoting the interests of such a community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service".<sup>48</sup>

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<sup>47</sup> Section 1 of the Electronic Communications Act, 156 of 2005

<sup>48</sup> Section 1 of the Broadcasting Act, 4 of 1999

2) *Non-Profit Making* – the spirit in which the station operates is focused on serving the community. As such community broadcasting services may be funded by donations, advertising, sponsorships, grants and membership fees or a combination thereof. Furthermore, stations should be fully controlled by a non-profit making entity and carried out for non-profitable purposes.<sup>49</sup>

3) *Community ownership and control* – Section 50 (c) The EC Act specify that applicants for community broadcasting services should demonstrate support of the relevant community or those associated with the promotion of the interest of such a community, “*which support must be measured according to such criteria as may be prescribed*”.<sup>50</sup> Accordingly the criteria for community participation is articulated in Regulation 7 of the amended Regulations regarding Standard Terms and Conditions for Class Licences as including the following:

- Ownership by community members with the Board of Directors as custodian of the licence.
- Encouraging of the community within its coverage area to participate in ownership, management of television station or radio station.
- Management by person(s) tasked by the Board of Directors to ensure the licensee’s daily operation. However, given its non-profit status, this excludes engagement of private companies.<sup>51</sup>

#### **Question 7**

In your opinion, other than the principles outlined above, what other factors should the Authority consider in defining features of a community broadcasting service?

<sup>49</sup> *ibid*

<sup>50</sup> Section 50 (c) of the EC Act.

<sup>51</sup> The amended Regulations regarding Standard Terms and Conditions for Class Licences under Chapter 3 of the ECA, published in Government Gazette No 39872, dated 30 March 2016.

These principles were also canvassed in interviews with stakeholder. A number of the stakeholders interviewed were of the opinion that the Authority should consider strengthening these elements. They also proposed that the limited footprint of community broadcasting services, as contemplated in section 16(1) of the EC Act read with section 5(3) of the EC Act, should be expanded. Stakeholders advanced a number of proposals in this regard, including consolidating the existing stations into provincial based entities, and linking stations to local and provincial government structures. They argued that this would increase station's audience base and thus advertisement revenue share; also that linking stations to local and provincial structures will make them more accountable. Further, some stakeholders are advocating for a national community of interest station, given the fact that some interest communities are nationally based.

It should however, be noted that expanding the stations footprint could have an intended consequence of increasing transmission costs, and might not yield the anticipated audience figures. Therefore, suggestions of expanding stations' coverage should be balanced against costs and wider impact they would have on the other tiers of broadcasting.

**Question 8**

Stakeholders suggest that the Authority should consider expanding the footprint of community broadcasters by either consolidating the existing stations into provincial based ones. The argument that is advanced is that expanding their footprint would increase their audience and thus advertisement revenue share. Does this argument hold in light of additional transmission costs associated with expanding the footprint?

**Question 9**

Some have advocated for a national community of interest station, given the fact that the interest communities are nationally based, what considerations should the Authority bear in mind in approaching these proposals?

### 4.3 Geographically based versus community of interest

The current community broadcasting licensing framework makes provision for geographic based and community of interest based stations. The former broadcasting services are meant to cater for the needs of persons or a community whose communality is determined principally by them residing in a particular geographic area, and the latter broadcasting services caters for the needs of a community with ascertainable common interest. The distinctive feature of the service is the common interest that makes such a group of persons or sector of the public an identifiable community. In essence, these services cater for institutional communities, e.g. academic campuses, or companies, cultural communities, religious interest groups/communities, or any other identifiable community.

There are indications based on stakeholder interviews that the Authority might need to develop different rules for the respective sectors. Some stakeholders held the view that the two are operationally different and that regulating these categories has cost impacts on the latter as additional costs are incurred in implementing regulations that were more suited to geographic community stations. They were of opinion that the rules were too stringent and did not account for the nuances of community of interest stations. Campus stations were used as an example to indicate the complexity of regulating community of interest stations, and why some of the requirements for community stations would be difficult to apply.

Firstly, the transient nature of the student community means that the stations footprint cannot be limited to campuses as they must serve the student needs beyond the parameters of their institutions. Campus stations also served the broader community as result of their public service mandate and therefore collaborated with other institutions outside campuses. Additionally, there are differences within the campus station category, and a distinction must be drawn between campus based community radio station and a campus community radio station. The former is a community station which happens to be located on campus, as such the rules applicable to a geographic community should be applicable to it. Whereas the latter is a community of interest, and therefore members of the broader community have

little or no say on the station. Secondly, stations tend to operate according to the school calendar. Therefore, during vacations, stations either do not operate or are taken over by the broader community when the university closes.

**Question 10**

As indicated above ICASA's approach is mainly directed by the legislation in light of new developments is there a need to propose revisions to legislation or are these sufficient?

**Question 11**

In your opinion is this a good approach given the profile of this sector?

#### **4.4 Community Television**

Community television services initially operated on the basis of events licenses, which meant their operation preceded a proper regulatory and licensing framework. From a legislative perspective, community television shares similar traits with community radio. The legislation also does not distinguish between the two categories. The current framework for community television is limited to the Position Paper on Community Television<sup>52</sup>, complemented by other community related regulations, and license conditions. The position paper enunciates the principles underlying community television, including governance, management, administration, operations and programming requirements.

Community television broadcasting services have adopted a pragmatic operating and funding models due to the level of investment and resources required to operate a community television station. Currently there are two main categories, operating in South Africa, namely, a fully community controlled non-profit organisation and a commercialised model operating mainly on the basis of a management agreement or partnership with commercial entities.

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<sup>52</sup> Position Paper on Community Television Broadcasting Services 2004, published in Government Gazette No 27036 of 30 November 2004.

According to the research conducted by the Sol Plaatjie Institute for Media Leadership in 2012, the NGO model is remains in a financially precarious situation as it relies on external funding and there is a lack of strategy with regards to funding especially from local government. The commercial model on the other hand tends to be financed and controlled by the commercial partner<sup>53</sup>. This relationship is managed through management agreements which include amongst others, agreement to manage operational costs and revenue, to employ studio capacity, equipment and expertise that will manage advertising.

The major issue in relation to these agreements is their implications for licensees operational and editorial independence. The recent amendment to the standard terms and conditions for class licenses, explicitly preclude the engagement of private companies in the management of community broadcasting services.<sup>54</sup> Furthermore, regulations 12 and 13 require that if a licensee intends into entering into a management agreement with another entity, the details of such an agreement, including the nature and timelines, be availed to the Authority, and if and when renewed, the renewal must first be lodged with the Authority.<sup>55</sup>

A number of industry stakeholders argue that there is merit in community stations entering into partnerships provided that the mandate and objectives of community broadcasting are not diluted. They even went to an extent of advocating that the Authority provide guidance in the form that these agreements should take. This might be difficult to implement given that the Authority's regulations are not in favour of management agreements between commercial entities and community stations. Specifically, the Authority has stipulated that any management agreement entered into between a station and a management company must be approved by the Authority before it becomes operational<sup>56</sup>.

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<sup>53</sup> Sol Plaatjie Institute on behalf of the Department of Communications. Investigating the appropriate model for implementing community TV in South Africa, 2012

<sup>54</sup> Regulations regarding Standard Terms and Conditions for Class Licences under Chapter 3 of the ECA, published in Government Gazette No 33296, dated 14 June 2010, pages 9 -10

<sup>55</sup> Ibid, page 11

<sup>56</sup> Ibid

**Question 13**

Other than the measures contained in the standard terms and conditions what measures can the Authority adopt to mitigate against commercial imperatives diluting community broadcasting mandate and objectives as well as to ensure that stations retain editorial control. What mechanisms should the Authority consider to counter-balance management companies' undue influence over licensees operational and editorial control?

Similar principles for community television are applied internationally, although in some countries stations operate on a commercial basis, since this is determined by the stations commercial imperatives, that is, depending to a greater or lesser extent upon revenues from commercial advertising and sponsorship, based on the income/revenue streams at their disposal. Similar to the Authority's Position Paper of Community Television<sup>57</sup>, a report prepared by TimeScape Productions on behalf of the Canadian Radio-television and Telecommunications Commission (CRTC), highlight the following as significant features of a community television station;

- a) *Local origination: production that is generated within a relatively restricted geographic area.*
- b) *Access: significant participation by non-professionals on a voluntary basis (in order to distinguish "community TV" from traditional local broadcasting).*
- c) *Regular distribution: to distinguish "community TV channels" from video co-operatives, which often enable production, but not distribution. In offering a regularly distributed programming service, community TV channels build an on-going relationship with the local viewing audience that feeds back to their program offerings. The method of distribution (cablecast, broadcast, webcast, screenings) varies by locale.<sup>58</sup>*

<sup>57</sup> ICASA, Community Television Broadcasting Services, 2004

<sup>58</sup> Community Television policies and practices around the world, CRTC, 2009

This is to a varying extent reflected in the benchmarked countries operating and funding models, summarised in the table below, indicating their license categories, distribution platforms, funding/revenue models and implementation challenges.

Country	License Category/ Distribution platform	Funding/ revenue model	Implementation challenges
AUSTRALIA	Community/national satellite  Free to Air analogue UHF/satellite/some internet	Membership fees  Advertising Revenue  Federal funding through the Broadcasting for Remote Aboriginal Scheme (BRACS) scheme for Aboriginal community television)	Reliable sources of revenue to be sustained beyond urban centers.  Failure by regulator to allocate digital spectrum for community television services.
CANADA	Community cable, low- power  Cable/ Fee to Air analogue(UHF/VHF)	Cable subscriptions,  Provincial government funding (Quebec)	Decline in provision of public access programming, as a result of cable companies consolidating their production facilities  Regionalisation of cable companies at the expense of localised programming

Table 8 community television operating model

#### Question 14

Countries' approach to community television and funding is determined by their regulatory and licensing framework. Which of the above elements can be applied to South Africa?



**Question 15**

Are there any additional elements that the Authority should consider in crafting the operational and funding model for community television in South Africa?

Stakeholders have differing views with regards to the Authority's approach to community sound and community television. Some felt that both had the same regulatory imperatives and access to diverse revenue streams. The alternative view cited high costs of operating television as either warranting more relaxed requirements, or more concerted government funding.

In licensing community broadcasting services, the Australian Communications and Media Authority (ACMA) recognizes operational differences between community television and community radio. Therefore, while the licensing process is largely similar for both community radio and community television, section 84A of the Australian Broadcasting Services Act No. 110 of 1992 as amended (BSA), provides for designated community radio broadcasting licences to provide analogue or digital services, and section 87A of the BSA makes provision for additional licence conditions specifically for community television licensees. These separations acknowledge that though they are both meant to fulfil a community mandate, community radio and community television are not necessarily the same. They require different resources and skills and also require unique legal requirements in some cases.<sup>59</sup>

Additionally, stakeholders advocated that broadcasting policy should make provision for a special fund for community broadcasting services. This proposal is dealt with in detail under chapter 9.

**Question 16**

Given the higher set up and operational cost associated with community television, should the Authority apply similar regulatory requirements and obligations to both community radio and community television?

<sup>59</sup> Broadcasting Services Act 1992 Act No. 110 of 1992 as amended.

## 5 Licensing

### 5.1 Class registration process

Registrations for the provision of community sound broadcasting licences is provided for in terms of section 5.2, 5.5 (b), 5.8 (b) read with subsections 16, 17, 18 (refusal) and 19 (renewal) of the EC Act and the Processes and Procedure Regulations<sup>60</sup>. The pre-amble elaborates on the process for submission of registrations. Specifying the initial administrative requirements as outlined in the preamble as well as the analysis of registrations. Furthermore, Regulation 7.2 of the Processes and Procedures Regulations sets out the requirements and documentation to be provided as part of a registration.

In considering any registration for a community broadcasting licence, the Authority is required, with due regard to the objects and principles as enunciated in section 2 of the Act and this particular regulation, to inter alia take into account;

- whether the applicant is fully controlled by a non-profit entity and carried on or to be carried on for non-profitable purposes;
- whether the applicant proposes to serve the interests of the relevant community and the nature of the community whether it is a geographic or community of interest;
- whether, as regards the provision of the proposed broadcasting service, the applicant has the support of the relevant community or those associated with or promoting the interests of such community, which support shall be measured according to such criteria as shall be prescribed; and
- whether the applicant proposes to encourage members of the relevant community or those associated with or promoting the interests of such community to participate in the selection and provision of programmes in the course of such broadcasting service; and whether the members of the controlling entity reside within the coverage area.

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<sup>60</sup> Gazette No 33297 of 2010 as amended

However, the clauses of the EC Act on their own do not afford the Authority leeway to refuse or revoke licenses and also does not empower the Authority to refuse renewal especially if the licensee has a history of non-compliance, and the licence is tend to be renewed as is' despite non-compliance<sup>61</sup>.

- Section 17(3) requires that, subject to section 18, class licenses be issued within 30 days. It has to be noted that the 30-days period can be interrupted or delayed when the registrant has not submitted all the required information/clarification of issues, therefore in line with section 17(4) of the EC Act the Authority must give a notice for the delay. The hurdle in the processes is the delay caused by the latter as registrants would have to submit and clarify certain information and most can go beyond 90 days.<sup>62</sup>
- Section 18(1) only grants the Authority the right to refuse a license if the registration does not contain prescribed information, contains misleading information or the registrant is in contravention of the EC Act or other legislation in relation to other licenses issued.
- Section 18(2) further requires that the Authority notifies the applicant of this refusal within 60 days, stating reasons for such and provides the registrant an opportunity to correct and resubmit the application.
- Similarly, in terms of section 19 of the EC Act, the Authority does not have leeway to refuse a license renewal in the sense this section only requires the Authority to update its register upon receiving an intention to do so from the licensee.

The above shortcomings are to a certain extent addressed by the Processes and Procedure Regulations and the relevant amendments<sup>63,64</sup>, in addition to outlining the

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<sup>61</sup> Non-renewal and revocation of licenses are only possible if tested at Complaints and Compliance Committee (CCC) level whereby sanctions are stringent and recommend refusal or suspension for a certain time if certain conditions have not been fulfilled.

<sup>62</sup> These challenges remain despite section 16 (2) of the Amended EC Act providing that registration for a class licence may be submitted in the manner prescribed by the Authority, and this process being outlined in Processes and Procedures Regulations for Class Licences, however, the Regulations have been amended in terms of Government Gazette 39874 Notice 157 of 2016 ("the amended Regulations")

<sup>63</sup> Regulations regarding Standard Terms and Conditions for Class Licences under Chapter 3 of the ECA, published in Government Gazette No 33296, dated 14 June 2010.

<sup>64</sup> Regulation 7 (1) of the amended Regulations states that registration for a class community broadcasting licence in terms of sections 16 and 17 of the Amendment Act may only be submitted during the months of February and October, further, regulation

application processes and requirements. Accordingly, the Authority has a discretion to hold public hearings in respect of the registration process or licence renewal. Registrants are also required to demonstrate the need, demand, capability, and expertise. They are also required to submit proof of funding and a business plan for the first term of the broadcasting licence and required to demonstrate the technical quality of the proposed services. The latter is also in line with regulation 15 of the Processes and Procedure Regulations, whereby it requires technical specifications and coordinates to be submitted by the registrant.

## 5.2 Radio Frequency Spectrum Licence

In addition to the class broadcasting licence, community broadcaster requires a class electronic communications network service licence (which is generally valid for a period of 10 years), as well as a spectrum licence (renewable on an annual basis). The broadcasting frequency spectrum applications are lodged in line with Radio Frequency Spectrum Regulations, 2015 as amended. Alternatively, the broadcasting service licensee can appoint any Electronic Communications Network Service (ECNS) licensee to provide broadcasting signal distribution on its behalf. In this instance the applicant has to indicate to the Authority if it will self-provide or use the licensed signal distributor who is in possession of the valid class or individual ECNS licence. The Authority can also request from the applicant the copy of the ECNS Licence or a confirmation letter from the appointed ECNS licensee.

The 2016 amendment to the Processes and Procedures Regulations for Class Licences also leverage the requirements for spectrum and service licenses to enable the Authority to determine the timing of applications and consideration of community broadcasting services registration. The regulations provide for two window periods for applications for community broadcasting service licences - which can only be done with the ITA for spectrum licence<sup>65</sup>.

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7 (2) states that notwithstanding the window period set out above applications for class broadcasting registrations may only be submitted to the Authority if the Authority has Issued an Invitation to apply ("ITA") for a radio frequency spectrum licence

65 ICASA, Notice of amendment to the Regulations on Processes and Procedures Regulations for Class Licences, Government Gazette 39874, Government Notice 157 of 2016.

### 5.3 Moratorium on licensing community broadcasting services

The registration process applies equally to both community television and community radio. The relaxed licensing process has led to a proliferation of stations, and since community broadcasting services are assigned frequencies on a first come first served basis, this has resulted in congestion in this band. As a result, the Authority issued a moratorium on applications for community sound broadcasting services and radio spectrum licences.<sup>66</sup>

It maybe that the above amendments and moratorium are too recent to ascertain the impact. However, there is perception amongst stakeholders that the licensing process remains uncoordinated and that some of the measures adopted, for example the Moratorium, have no basis in legislation.<sup>67</sup>

**Question 17**

The revised regulations make provision for two window periods for the submission of class registration applications. They also allow for Authority to issue an ITA. Are these measures sufficient to address the concerns raised by stakeholders?

**Question 18**

Given the amendments to regulations, would a revision of sections 16, 17 and 18 of the EC Act be necessary to facilitate orderly and strategic licensing of community broadcasting service?

**Question 19**

What is your opinion of the contention that the Moratorium on licensing of community radio services spectrum has no legal basis, as it is in contradiction to

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<sup>66</sup> ICASA Notice of moratorium in terms of applications for class community sound broadcasting service licensees and applications for frequency spectrum for purposes of providing a community broadcasting service, Government Gazette 39226, Government Notice 918 of 2015. The reasons for issuing the moratorium are:

- Scarcity of analogue radio frequencies;
- The current review of licensing processes and procedure regulations wherein the Authority intends to process registrations for community sound broadcasting services in two (2) intervals per year; and
- The Authority's intention to develop a new regulatory framework for community broadcasting

<sup>67</sup> Stakeholder Interviews

the EC Act licensing processes, which only makes provision for a registration process.?

Experience from the following jurisdictions might be useful to the Authority in considering a more strategic approach to licensing community broadcasting services. In this jurisdictions licensing community is based on an overarching licensing strategy (taking into account demand and supply of broadcasting services), employ competitive licensing mechanisms and considers overall performance of the licensees upon renewal.

- a) *Australia* – ACMA 's approach is based on a competitive licensing process, initiated and controlled by the regulator, and as such:
  - Licensing and renewal criteria, approach and timing determined by ACMA.
  - Renewal based on compliance and performance.
- b) *Canada* – CRTC's licensing process is competitive and is based on a phased/ pilot licensing to determine the feasibility of licensees.
- c) *Ireland* - The Broadcasting Authority of Ireland (BAI) adopts a similar approach, based on an overall licensing strategy, which takes into account the impact that new licensees would have on the overall broadcasting landscape, accordingly;
  - Licensing is at the discretion of BAI.
  - BAI issues licensing strategy and plans to determine the number and categories of licenses (across all licensing categories) – therefore considers feasibility and diversity of the broadcasting system in its totality.
  - Adopts a competitive licensing process.
  - Implements phased/ pilot licensing to determine the feasibility of licensees.

#### Question 20

In the light of challenges raised by some stakeholders regarding lack of rigour of class registration process, how do you propose the Authority remedies this?

#### 5.4 Signal distribution costs

The White Paper on Broadcasting conceives regulation of signal distribution costs as a means of achieving “universal access to service and facilities”<sup>68</sup>. With regards to community broadcasting regulation is intended to ensure that signal distribution reflects the needs of the broadcasting community and end users. As such, signal distribution tariffs should be affordable and flexible, and that they should be determined by the regulator.<sup>69</sup>

These principles were carried through into legislation where the EC Act makes provision in section 63(2)(a) for a common carrier to “provide broadcasting signal distribution to broadcasting licensees upon their request on an equitable, reasonable, non-preferential and non-discriminatory basis”<sup>70</sup>. Furthermore, section 62(3)(b) of the EC Act says that in determining its tariffs the common carrier must “...take into account.... the different categories of broadcasting service...with a view to ensuring that the different tariffs are appropriate to and commensurate with the various broadcasting services to which they relate. However, this condition has not been imposed on Sentech, as the Authority has not initiated a process of declaring Sentech to be a common carrier”.

Signal distribution costs account for the bulk of community broadcasting services. The majority of community stations rely on Sentech to provide their signal distribution, the rest, approximately 53 stations self-provide their signal distribution. The only other licensee providing broadcasting signal distribution is Orbicom. However, this commercial service is owned by subscription television provider, Multichoice, and does not generally provide signal distribution services to other broadcasters.

The issue of signal distribution tariffs has long been a controversial one, with Sentech contenting that its tariffs are set fairly,<sup>71</sup> and the community broadcasting sector

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68 White Paper on Broadcasting, page 27

69 White Paper on Broadcasting, page 30

70 Section 63(2)(a) of the Electronic Communications Act, 29 of 2006

71 The signal distributor argued that four elements determined its fees:

seeking more affordable tariffs. While the policy and legislative framework encourages the regulator to set affordable and flexible tariffs, especially in relation to community broadcasters, based on the processes required above the Authority has implemented a regulatory framework for signal distribution. Signal distribution costs will be even more pronounced in the Digital Terrestrial Television (DTT) environment. It is thus even more important that the Authority considers mechanisms of reducing these cost for the community broadcasting sector to complement the existing support provided by the DoC's community broadcasting support scheme.

**Question 21**

The Authority currently does not regulate signal distribution tariffs; what mechanisms can be applied to ease the burden of signal distribution on community broadcasting services?

**6 Monitoring and Enforcement**

Monitoring and enforcement are a key component of ensuring sustainability of community broadcasters. Beyond just setting the rules and monitoring compliance these processes provide the Authority with feedback on the efficiency of its regulations. The community broadcasting sector has experienced compliance challenges, which calls for an evaluation of the tools and processes including regulations, license conditions and requirements that the Authority employs.

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- Capital cost of dedicated equipment (e.g. transmitter)
  - Capital cost of shared equipment (e.g. mast & antenna system)
  - Capital cost of accommodation of equipment
  - Service fee comprising call-out and maintenance costs



### **6.1 Standard Terms and Conditions**

The Standard Terms and Conditions for Class Licences regulate the service and network aspects of community broadcasters, largely detailing services to be provided, coverage area of different community broadcasters and licence duration. Some of the standard conditions associated with Community Radio and Low Power Radio licences (Class licences) include that they:

- are valid for 5 years (increased from four years for Community Radio and three years for Low Power).
- shall only be awarded to natural persons who are citizens of the Republic or juristic persons who are, or will be, registered under the laws of the Republic and whose principal place of business is, or will be, located in the Republic.
- Can only be issued to entities that are non-profit and that any profits made must be ploughed back into the station or into community project.<sup>72</sup>

The regulations also speak to commencement of operations, hours of operations and the process to be followed in providing information whenever there is a change in licensee details.

### **6.2 Compliance Procedure Manual Regulations**

In addition, licensees are required by the Authority to keep records to facilitate monitoring of compliance with conditions. These records are outlined in Compliance Procedure Manual Regulations of 2011, and amongst others, includes logs of programmes, records of sponsorship and advertising as well as details of all funds received. Licensees are required to keep recordings of all programmes for three months but do not need to submit these to the Authority unless requested. The monitoring and enforcement approach adopted in Australia is very similar to the one applied in South Africa.

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<sup>72</sup> Regulations regarding Standard Terms and Conditions for Class Licences under Chapter 3 of the ECA, published in Government Gazette No 33296, dated 14 June 2010.

Stakeholders consulted have raised an issue with the Authority's efficiency and internal processes including the wording and accessibility of the regulations and licensing conditions, the licensing process and the monitoring and compliance processes.

**Question 22**

Taking into account the challenges raised by stakeholders, how can the Authority improve the existing standard terms and conditions as well as its internal processes to ensure efficient licensing and effective monitoring and enforcement of the regulations?

## SECTION D: COMMUNITY BROADCASTING SUSTAINABILITY STRATEGIES

### **7. Governance, management and operational capacity**

#### **7.1 Corporate Governance**

Both the desktop research and stakeholder's interviews raised corporate governance and management challenges experienced by stations. This takes various forms including lack of community of participation, political interference, contestation for resources, role confusion between board members and management, lack of strategic planning and foresight. This area falls into stations' business practices and is thus not regulated. Save for intervention relating to management agreements, the Authority provides limited guidance to community licensee on corporate governance and management issues. Given the effort and resources expended in addressing related compliance challenges the Authority should consider guidelines in this regard.

The approach adopted in Australia highlights a number of strategies adopted internationally to provide such guidance. ACMA provides detailed licensing conditions outlining acceptable practices by licensees. Additionally, there are Community Radio Broadcasting and Community Television Broadcasting Codes of Practice which cover corporate governance related practices and guidelines, and specific ACMA's 'Community Broadcasting Participation Guidelines.

In terms of the legal constitution Australian community broadcasting services are not for profit making initiatives, they must serve media needs and interest of their respective communities. This is done without any shareholder structure that allows individuals or an entity to accrue monetary return of investment as a reward for participations in licensees' structures. "Community radio licensees must be a company, including an incorporated association, while community television

licensees must be a company limited by guarantee within the meaning of the Corporations Act 2001.”<sup>73</sup>

All community television licensees must, under section 81 of the BSA, be licensed as a company limited by guarantee as stated in Corporations Act 2001. The governance structure must be along the professional lines of commercial broadcasting, without compromising the not-for-profit mandate. They must have guiding documents or constitution which provides clear and distinct roles for all layers of governance. This must include directors, volunteers and community members and the ACMA’S Community Broadcasting Participation Guidelines extensive explanation of what is expected on each layers of governance.<sup>74</sup>

Australian Community radio licenses are not expected to have rigid and extensive governance as compared to community television. This is because of slightly lower expenses that are needed to start and operate a community radio licence. However, stable and formal governance structure are still a necessity to ensure the licensee delivers on community mandate. Code 1.1 of the Radio Code succinctly states that “[e]ach community radio station will be controlled and operated by an independent body that represents its community interest”. The responsible body can only deliver on community mandate if within its structures it ensures that community and stakeholders views are given a platform among various layers of governance.<sup>75</sup>

### Question 23

The ACMA’S Community Broadcasting Participation Guidelines has extensive explanation of what is expected on each layers of governance, how can a similar arrangement be implemented in South Africa?

73 Meeting the ACMA Standard: The ACMA’s Community Broadcasting and Safeguards Section. Retrieved from, [http://www.acma.gov.au/webwr/case%20studies%20b/The\\_ACMA’s\\_Community\\_Broadcasting\\_Section\\_Case\\_Study.docx](http://www.acma.gov.au/webwr/case%20studies%20b/The_ACMA’s_Community_Broadcasting_Section_Case_Study.docx).

74 Broadcasting Services Act 1992 – Enforcement Guidelines of the ACMA. Retrieved from, <http://www.acma.gov.au/theACMA/media-regulation-enforcement>.

75 Community Radio Broadcasting: Codes of Practice. 23 October 2008. Page 4.

## 7.2 Community participation and accountability

The Authority views community participation and ownership as key component of corporate governance within the community broadcasting sector, and uses various methods to encourage participation including, annual general meetings, board elections, selection and provision of programming, and volunteering. Furthermore, regulation 14 of the amended Regulations regarding Standard Terms and Conditions explicitly prohibit political office bearers from holding board and management positions within stations.<sup>76</sup> However, the continued power dynamics in the stations such as contestation for resources, political interference and station hijacking indicate that these might not be as effective, and therefore the Authority must consider mechanisms to further define what community participation entails.

Other jurisdictions have attempted to facilitate community participation and have adopted the following strategies.

- 1) Australia – ACMA has developed Community Broadcasting Participation Guidelines.<sup>77</sup>
- 2) Canada – CRTC requires community broadcasters, as with other tiers, to comply with ownership and control requirements, which stipulate that stations should be controlled by Canadian, at least 80% of the directors (including those involved in the daily operations of the station) should be Canadian. To ensure that this is adhered to, they are required to submit annual updates on the composition of the board of directors either “at the time of submission of annual returns; following annual board of directors’ elections; or at any other time.”<sup>78</sup> Additionally stations are required to consult community members to understand their media needs and interest in order to provide relevant local programming.

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<sup>76</sup> The amended Regulations regarding Standard Terms and Conditions for Class Licences under Chapter 3 of the ECA, published in Government Gazette No 39872, dated 30 March 2016, page 14

<sup>77</sup> ACMA, 2010, Community Broadcasting Participation Guidelines

<sup>78</sup> CRTC, 2010, Broadcasting Regulatory Policy CRTC 2010 -622 -1; *Community Television Policy*

- 3) *Ireland* – BAI provides a detailed definition of community participation and ownership.

**Question 24**

In your view what are the major characteristics of community participation in community broadcasting?

**Question 25**

Other than what is mentioned above, what strategies could stations adopt to encourage community participation?

**Question 26**

Does legislation need to go further in facilitating or supporting community ownership of community services, if so what mechanisms should be utilised in this regard?

### 7.3 Non- profit status

Non-profit is a fundamental principle underling the mandate of community broadcasting. While stations are required to reinvests their proceeds into their communities, many are experiencing financial problems. These are attributed to a number of factors including their inability to diversify their revenue. Stakeholders highlighted the need for the Authority to provide guidance on stations' non-profit status as well as the manner in which profits can be reinvested into their communities.

**Question 27**

In your opinion what guidance should the Authority afford community broadcasters with regards to reinvesting their proceeds into the communities?

### *7.3.1 Legal constitution of community broadcasting licensees*

In South Africa, community broadcasters must also be controlled or administered by non-profit organisation and also be set-up for non-profit making broadcast initiatives in the interest of the community. There are various ways of registering these non-profit entities. The more popular ways of doing it is as a Non-Profit Company (NPC) with the Companies and Intellectual Property Commission (CIPC), while others are registered as non-profit organisation (NPO) under the Non-Profit Organizations Act of 1997. The management and financial structure of these non-profit entities must then be reflected in the Constitution of these broadcasters and be overseen by the Authority.

However, there have recently been challenges with the proliferation of entities now registered as Trusts and these should be looked into by the Authority. At the same time one such licensee's Trust model challenges the Authority not to be rigid as long as such an entity could demonstrate and meets the requirements of a community radio station or broadcaster. In this regard the Authority must make a clear determination of what standard/ entity is acceptable or not.

The stakeholders are of the view that ICASA should give clear directive of the kind of entities to be licenced, as it would seem that with the latest trend of 'Trust' registering, ICASA is not sure of how to handle certain legal aspects. Requirements should be streamlined and aligned with principles of community broadcasting no matter what the legal entity is or it should restrict them so as to have consistency and compliance.

### **7.4 Financial Management and Revenue Diversification**

A related challenge is the lack of financial systems and revenue reification strategies. The sector relies too much on advertising revenue competes with established commercial and public broadcasting services. However, stations are struggling to access such revenue based on negative perceptions of lacking professionalism and accountability.

**Question 28**

Community radio's long term sustainability depends on the ability to diversify revenue streams and what revenue diversification strategies, over and above the ones mentioned in legislation should the sector consider?

**7.5 Management Agreements**

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

Internationally the community television model is mainly based on public access and as such, as is the example in Canada, commercial entities can run stations provided that they meet public access requirements. Stakeholders have also indicated that there might be value in entering into management agreements with commercial entities. The challenge was in ensuring that commercial imperatives do not adversely affect community participation, mandate and editorial independence of community broadcasters, in particular television stations who have had to resort to such partnerships to survive financially. Based on these concerns the Authority passed regulation which prohibited such practices.

**Question 29**

Should the Authority revisit its position on management agreement? If so how can it mitigate that the investors commercial imperatives do not dilute the mandate and objectives community broadcasting, and that the stations retain editorial control?



## 7.6 Technical Competency

Technical capability and the cost of signal distribution were highlighted as impacting on stations' operations. Most stations have dealt with these challenges by outsourcing technical competencies, and rely on the DoC's subsidy to cover signal distribution costs. Recently this subsidy has been discontinued and this poses a challenge for stations to sustain themselves.

Stakeholders are of the view that outsourcing, while it had its shortcomings, was the best way to ensure that stations can meet their technical and signal distribution requirements/ obligations, as the station had limited technical skills. They however indicated that this was conditional to credibility of services, affordability of the services, the station's ability to monitor and the Authority's support and guidance. They have also expressed a concern with the limited support received from the Authority.

### **Question 30**

In your opinion, how should the Authority provide guidance or support to community broadcasters in relation to the technical requirements and challenges associated with signal distribution?

## 7.7 Programming and content development/ acquisition

Community broadcasting forms one of the three tiers of broadcasting, the other two being commercial and public broadcasting. Collectively these three tiers must contribute to the public interest with commercial, public and community broadcasting services complementing each other within the South African broadcasting system. The community and public broadcasting services are seen as contributing towards educational and development programming, cultural and language plurality. Commercial broadcasting services are meant to contribute to competition, economic empowerment and plurality in ownership. This implies that public interest

programming requirements would be weighted more towards community broadcasting<sup>79</sup>.

#### *7.7.1 Local Content*

Community radio stations are expected to contribute more towards local content (80% -At least 20% of music quota must be sourced from the coverage area- as compared with 70% and 35% for public and commercial broadcasting services, respectively)<sup>80</sup>. In relation to community television, similar to public television, the quota is 65%, compared to 45% for commercial free-to-air and 15% for subscription. Additionally, community television stations are expected to ensure that 30% of this programming is produced within its coverage area. This figure must increase by 10% annually until it reaches 50%<sup>81</sup>.

#### *7.7.2 Language*

Community broadcasting services are also expected to promote and broadcast in languages used in the communities where these stations are based. These requirements are captured amongst others conditions which specify requirements for news, actuality, educational programming, and locally originated programming.

#### *7.7.3 Content Acquisition*

The position paper on Community television broadcasting services stipulates that community television services will be expected to broadcast programming that supports and promotes sustainable development, participatory democracy and human rights as well as the educational objectives, information needs, language, culture and entertainment interests of participating groups such as women, youth, civic and sport interest group.<sup>82</sup>

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79 The IBA, 1995, Triple Inquiry Report. (Report on the protection and viability of public broadcasting services; cross-media control of broadcasting services; and local television content and South African music).

80 Regulations on South African Music content, published in Government Gazette No 39844 of 24 March 2016.

81 Regulations on local television content, published in Government Gazette No 39844 of 24 March 2016.

82 ICASA, Community Television Broadcasting Services Position Paper. 30 November 2004.

To this effect the position paper in line with local content regulations encourages community television services to source their content locally and from independent production companies, and set the quota for independent television production for community television services at 40%.<sup>83</sup>

This should be distinct from commercial and public broadcasting and intended to be an alternative source of information, education and entertainment for local communities. As such stations should have strategies and mechanisms of sourcing such content, ensuring that it is distinct and serves their communities in terms of good quality locally sourced programming using local language in their diversity.

Three areas were highlighted as key to securing community programming, these are local origination, availability of programming resources and content acquisition strategies for community television.

**Question 31**

In your opinion what strategies can be used to secure these three requirements in light of resource and capacity constraints in the community broadcasting sector?

**8. Funding, Support and Capacity building**

Given the stations capacity and other challenges and in spite of having multiple sources of funding, stations must be funded or supported by government in order to be sustainable in the long run. However, there was no concerted funding and capacity building strategy for this sector. This was cited by many of the stakeholders as the reason why the sector support programmes met with limited success.

Adequate and strong institutional and capacity support are the converse side of the funding coin, the two are mutually supportive. This point was also noted by many of the stakeholders interviewed. A range of organizations and agencies play an important role in promoting and facilitating community broadcasting in South Africa.

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<sup>83</sup> Ibid, page 22.

These include sector organizations, training institutions and production organizations. An analysis of other jurisdictions' approach to funding and capacity building indicates similarities to the programmes currently being implemented in South Africa that is, covering elements of infrastructure and technical support, programming production, and capacity building and training.

However, in the context of this review, it is important to consider the adequacy of programmes being implemented in South Africa, addressing associated challenges and aligning these programmes to an overarching funding and capacity building strategy for this sector.

### **8.1 Community Broadcasting Funding**

The current policy and legislative environment does not consider the funding of community broadcasters through government funds. Instead community broadcasters are allowed to access funding through a number of means including donations, advertising revenue and subscriptions. In addition, there are no limitations of stipulation in relation to the amount of advertising revenue that community broadcasters can access. Despite this, the research conducted indicates that stations are struggling to sustain themselves financially and generally lack revenue diversification strategies, relying on one source of revenue.<sup>84</sup>

Stakeholders specifically noted that remote rural broadcasters struggled to access funding in any form, whether it be donor, Media Development and Diversity Agency (MDDA) funding or advertising revenue. Furthermore, stakeholders were of the view that advertisers prioritized stations with larger audiences mainly based in metropolitan areas. Stations' inability to attract sufficient advertising revenue can be attributed to lack of professionalism, noting the following key impediments:

- Lack of value proposition, beyond the normal rate card method;
- Inability of stations to demonstrate return on investment for entities that they are approaching to advertise;

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<sup>84</sup> See Chapter 2 above

- Lack of systems and financial accountability; and
- Restrictive regulations and license conditions which limit stations' ability to use relevant content, which is attractive to advertisers.

**Question 32**

Given the stations capacity and other challenges and in spite of having multiple sources of funding, how should community broadcasting stations be funded or supported by government in order to be sustainable in the long run?

**Question 33**

Does this warrant a special fund for community television, if so which elements should be covered in this fund, and how should it be administered?

**Question 34**

This would require a legislative amendment; how should it be factored into the broadcasting policy development process underway?

## **8.2 Community Broadcasting Institutional Support**

A range of organizations and agencies play an important role in promoting and facilitating community broadcasting in South Africa. These include sector organizations, training institutions and production organizations

An analysis of other jurisdictions' approach to funding and capacity building indicates similarities to the programmes currently being implemented in South Africa that is, covering elements of infrastructure and technical support, programming production, and capacity building and training. These are illustrated in the table below.

Country	Form of Funding	Responsible Body
Australia	Initial capital injection for Aboriginal community TV through the federal government via the Broadcasting for Remote Aboriginal Scheme (BRACS) scheme	Community Broadcasting Foundation – Independent Funding Body  Northern Aboriginal Broadcasting Programme
Canada	Community Radio Fund of Canada (CRFC) focuses on four priority funding areas, namely, local news, community music, emerging distribution technology, and sustainability and capacity building  DCH focus on minority communities and covers start-up costs, equipment replacement and special projects	The Canadian Heritage Department CRTC Community Radio Fund of Canada Quebec government funding for Francophone stations.
United Kingdom	Community Broadcasting Fund, mainly for funding operational funding (funding for running stations)	Department for Culture, Media and Sport (DCMS) Community Broadcasting Foundation (CBF) based within Ofcom

Table 4 Funding and support framework

However, in the context of this review, it is important to consider the adequacy of programmes being implemented in South Africa, addressing associated challenges and aligning these programmes to an overarching funding and capacity building strategy for this sector. Some of the suggestions made by the stakeholders include:

- Having a centralized and structured approach to funding;
- Using funding programmes to incentivize compliance and facilitate stations sustainability;
- An annual subsidy applied consistently and transparently across all stations based on their needs;
- A graded subsidy structure to incentivize compliance and proper constitution of the governance and management structures; and

- Strategic partnerships between regional commercial and public broadcasters to mentor, upskill and assist with technical maintenance for non-functional community stations.

At the time of this research the Department of Communications was reviewing its Community Radio Support Scheme. The Draft Community Broadcasting Support Discussion document indicates that this was in order to amongst others, include Community Television and "provide clarity regarding the objective, nature and criteria for the support, including a clear value proposition for public funding".<sup>85</sup>

This provides an opportunity to consider some of the suggestion that were made by stakeholders in relation to funding and institutional support. Although funding models do not fall within the ambit of the Authority's mandate, the results of the current review can be used to make recommendations to the Minister of Communications to consider in reviewing the scheme.

**Question 35**

Stakeholders have consistently highlighted lack of capacity as the major source of problems experienced by the community broadcasting sector, they further proposed a number of interventions including joint initiatives, accredited courses and mentorship.

- a) What role should the Authority have in encouraging training standards in the community broadcasting sector?
- b) What role should the Department of Communications, state owned enterprises and agencies involved in support programmes for community stations (such as the MDDA, Nemisa and Sentech) play in defining training/ capacity building strategies for the community broadcasting sector?
- c) What role should the public and commercial broadcasting service play in community broadcasting sector capacity building?

<sup>85</sup> Scheme published on 01 July 2015 in Government Gazette 38947, General Notice 676.

**Question 36**

How should the government and statutory bodies such as MDDA and the Authority work together to develop a funding strategy for the community broadcasting sector, and which departments should be directly responsible for such support?

**9. Conclusion**

The discussion document is based on a research conducted by the Authority into community broadcasting in South Africa. The findings of this research highlight the fact that this sector's challenges emanate from lack of corporate governance, management capacity and revenue diversification strategies. The research also points out lack of a concerted institutional support, capacity building and funding strategy for community broadcasting in South Africa. These are exacerbated by lack of regulatory guidelines relating to corporate governance, financial accountability and community participation.

There is thus a need to review the current framework to address these concerns. Specifically, the new framework must provide remedial actions in order to address the above regulatory, licensing and operational deficiencies identified in the research. Given the time and resources that the Authority expends in addressing compliance challenges associated with this sector, it may be necessary for the Authority to consider regulations or guidelines in this regard.



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