

Broadcasting



Policy Development and Technical

The Policy Department comprises two Units, namely the Policy and Research and Technical Units. The Policy Unit has a staff complement of seven and the Technical Unit currently has one permanent and one temporary staff member. The Department has experienced a large staff turnover, with seven members having resigned.

Policy Unit

Policies are developed in consultation with industry stakeholders and the general public. The Unit therefore supports and facilitates the process of determining, drafting and evaluating broadcasting regulatory policy, for which the Council of the Authority is ultimately responsible.

Project Teams

Project teams led by a Unit Head or Senior Researcher undertake most of the Policy Unit's work, an Industry Analyst and members of other departments complement this. The duration of major policy projects is approximately 216 days from start to finish. Two or more projects can run simultaneously and projects are usually phased as follows:

- > Background research;
- > Discussion Paper published;
- > Representations received;
- > Hearings held;
- > Further research and deliberation;
- > Findings; and
- > Position Paper and Regulations published.

Appointment of Consultants

As the Policy Unit is currently understaffed, external consultants are appointed to assist on policy projects. Consultants are appointed through Section 27 of the IBA Act, which allows Council to appoint advisors.



Policy Projects

The following policy projects were undertaken during the period under review:

Project	Description	Outcome
South African Content Review	The SA Music and Local Television Content regulations were published in April and May 1997 respectively. Both sets of regulations authorise the Authority to review the regulations by the year 2000. In its 3 Year Plan, published in January 1999, the Authority stated that it would conduct the review during the year 2000. The Authority published a Discussion Paper on the review of the South African Content Quotas in November 2000. Fifty-two (52) written submissions were received and oral hearings were held in May 2001.	Revised local content regulations.
Economic Feasibility	Section 31 of the Broadcasting Act of 1999 requires the Authority to conduct an inquiry in terms of section 28A of the IBA Act, into the economic feasibility of the provision of additional subscription television services. The Authority extended its satellite inquiry of 1999 into this inquiry. A call for proposals was issued and consultants were appointed. The Authority is still waiting for the Broadcasting Act to be amended before it proceeds with the Inquiry into Subscription broadcasting.	To present a view on whether the market can support additional subscription licences. If appropriate, to devise a policy and licensing framework for subscription services.
Sports Rights Inquiry	Preliminary research was done on the issue of sports rights for free to air broadcasters. Section 30(7) of the Broadcasting Act, 1999, stipulates that subscription broadcasting services may not acquire exclusive rights for the broadcast of national sporting events, as identified in the public interest from time to time. ICASA is in consultation with the Minister of Communications and the Minister of Sports and in accordance with the regulations determined by the Authority through a public process.	Regulations are to be published containing a list of national sporting events.

Ad-hoc Projects

In addition to long-term policy projects, policy staff also conducted a range of short-term ad-hoc projects at the request of Council and other departments. These included assistance with the analysis of licence applications and licence amendment applications, and preparing submissions to other organisations such as that on GCIS' proposals on a Media Diversity and Development Agency (MDDA) and writing speeches and policy opinions on various matters.

Stakeholder Interaction

Members of the department meet frequently with broadcasters, researchers and other stakeholders who have queries on broadcasting policies.

Technical

The IBA Act spells out the regulator's mandate with regard to technical matters. Section 2 requires that the Authority promotes the efficient use of the broadcasting services frequency bands, ensures adherence to international technical standards, promotes and conducts technology research, and prepares and annually reviews the national broadcasting frequency assignment plan.

The Technical Unit's work incorporates the following:

- > Compilation of annual frequency plan;
- > Writing of technical reports on licence applications;
- > Issuing of technical specifications;
- > Planning of licence areas for future licensing and maintaining a database;
- > Liaison on ITU and TRASA matters;
- > Participation on the standards committees; and
- > Keeping abreast of new technologies.

The Technical Unit relies on L&S software to carry out many of these functions.

Conferences and International Travel

In its budget, the Department allocates funds to attend three international conferences per annum. The Technical Unit attends two conferences. In addition to this, in terms of the contract with L&S, a technical representative is sponsored to attend the L&S user group meeting once a year in Germany. The only costs to the department are the daily *per diem* and local travel costs.

During the period under review, members of the Department attended the following international conferences:

- > The World Telecommunications Standardisation Assembly in Canada; and
- > The World Summit on Children and the Media held in Greece.

Challenges

The Department is faced with a number of challenges, most of them surrounding the forthcoming restructuring of ICASA. Other challenges include:

- > Lack of capacity in the Department due to staff turnover; and
- > The fact that most positions have not been filled.

Licensing

The Independent Broadcasting Act, no. 153 of 1993, as amended (IBA Act) stipulates that no person shall provide a broadcasting service or distribute a broadcasting signal without a licence issued by the Authority.

The IBA Act further provides for various classes of broadcasting licences - namely, community broadcasting, private/commercial broadcasting and public broadcasting. Further details to these licence categories are contained in The Broadcasting Act which provides for various classes of licence. The Broadcasting Act further sets the framework for the corporatisation of the SABC and for the division of the public broadcaster into public and commercial wings.

The IBA Act also provides for three signal distribution licence categories, viz. common carrier, selective/preferential carrier and individual carrier.

The Licensing Unit is responsible for processing all applications for broadcasting and signal distribution licences that are lodged with the Authority. Once an application has been submitted, it is open for public scrutiny and comment before a decision is taken on the application.

During the period under review, a substantial number of licences were processed (See Appendix B). The Authority's "Reasons for Decision" on decisions made on the applications are available on its web site: (www.icasa.org.za) and at the Authority's library.

Short-term (Special Events) Community Broadcasting Licences

Short-term community broadcasting licences, for both radio and television are issued for a maximum period of 30 days

for the broadcast of special events. Thirty-seven such applications were received during the year under review, one of them being a television broadcasting licence to cover, amongst others, AIDS Awareness Campaigns, Arrive Alive Campaigns, the elections and religious events. Of these applications, thirty-four were granted and two were refused for various reasons including lack of trust and candour while one withdrew its application. (See Appendix B).

Temporary Community Sound Broadcasting Licences

In 1995, the Authority granted one-year temporary community sound broadcasting licences to 104 applicants. Eighty-two of these stations went on air. These stations have been entitled to apply for new licences every year subsequently. (One-year) temporary community sound broadcasting licences are now being phased out and replaced with four-year community sound broadcasting licences.

During the year under review, 39 applications for further temporary community sound broadcasting licences were received. Six of these applications were refused. The Authority will continue to consider applications, in this category, that are submitted in the next financial year.

Four-year Community Sound Broadcasting Licences

During 1997, the Authority invited applications for four-year community sound broadcasting licences. Two hundred and fifty-two applications were received. During the previous financial years, the Authority's predecessor held hearings into the applications in the following six provinces: Free State, Northern Cape, Northern Province, Mpumalanga Province, Northwest Province and Eastern Cape Province. During the year under review, however, the Authority was unable to conduct any hearings or to adjudicate on any applications, due to institutional arrangements surrounding the merger of the IBA and SATRA, the employment of the new CEO and dealing with the backlog left by its predecessors.

The Authority is now concentrating its energies on processing applications received from KwaZulu Natal, Western Cape Province and Gauteng Province. Further, the Authority has decided to deal with the applications in two phases. Phase one entails the adjudication of applications from non-competing applicants, i.e. where there is only one applicant in any given coverage area. These applications may be disposed of without a hearing. Phase two entails the adjudication of applicants who are contesting for frequencies or who whilst not competing for frequencies, propose a similar service to the same audience. Hearings would be held in respect of these applicants.

While many areas of South Africa are still not served by a local station, the number of stations has substantially increased thanks to the introduction of four-year licences, particularly in the rural areas.

Commercial Sound Broadcasting Licences

The Authority received five applications from current private (commercial) sound broadcasting licensees to amend their licence conditions. The applications primarily involved amendment to the shareholding structures and/or permission to increase coverage areas.

The Authority approved two of these applications (Kaya FM (Pty) Ltd and KFM (Pty) Ltd) as they did not adversely affect the control of the licensees by historically disadvantaged groups. At the time of this report, the Authority had not yet made decisions on the other three applications in respect of P4 KwaZulu Natal, P4 Western Cape (Pty) Ltd and Classic FM (Pty) Ltd.

The Authority received numerous expressions of interest from various provinces indicating their intention to establish commercial sound broadcasting services. Feasibility studies into the viability of further private sound broadcasting services in secondary towns are due to be conducted in the following financial year.

Many greenfields licensees cited difficulties in attracting finance as the reason for amendments. The IBA has noted these statements and identified the need to look into the size of coverage areas and into ownership requirements.

Television Broadcasting Licences

The Authority received an application from the SABC to amend its public television broadcasting licences in respect of SABC TV1, 2 and 3, in order to expand their services to reach a majority of the population, as recommended in the Triple Inquiry report. All applications were granted. The Authority also granted applications for Self-Help transmitting stations. One of these amendments, however, also necessitated the amendment of e-tv's television licence, as there would have been interference. The Authority also received an application from e-tv for Self Help Stations. At the time of this report, the Authority had not made a decision thereon.

The Authority received an application from Trinity Broadcasting Network (TBN) in the Eastern Cape to amend its licence conditions, and later an application for a renewal of its community television broadcasting licence. At the time of the report, the Authority had not yet made a decision on the application. However, TBN was on air in accordance with the provisions of section 44 of the IBA Act.

Signal Distribution Licences

The Authority granted test licences to Sentech, Orbicom and M-net for DTT (Digital Terrestrial Television) and DAB (Digital Audio Broadcasting) transmissions.

Satellite Broadcasting Licences

The Authority began the process of developing its policy regarding satellite broadcasting. The process has, however, been delayed, due to lack of clarity on certain sections of the Broadcasting Act. As a result, the Authority could not licence any satellite broadcaster and the delays have created difficulties for the industry.

Public Broadcasting Licences

The Authority received an application from the SABC for the renewal of its public sound broadcasting licences. The Authority is of the view that these applications should be heard together with the applications resulting from the restructuring of the SABC in terms of the Broadcasting Act. The hearing is due to take place in this next financial year. The stations were on air by virtue of the provisions of section 44 of the IBA Act.

Applications to increase the coverage area of SABC TV 1, 2 and 3 were received. The aforementioned applications relate to the establishment of Self-Help relay stations, to increase the footprint or coverage area.

Litigation Matters

The Legal Officer continued to render legal advice to the office of the C.E.O, Council, the BMCC and other departments in the Broadcasting Division. The Unit continued to represent the Authority at the CCMA on Conciliation and Arbitration matters. During the financial year under review, the legal officer handled the following litigation matters, instituted against the Authority:

IBA vs FNB

In the 1999/2000 annual report of the IBA, it was reported that the fraud case of R 215 000.00 that was committed against the IBA was settled out of court. The report incorrectly stated that FNB paid an out of court settlement of R 20 000.00. The actual amount received by the Authority from FNB was R 200 000.00. This error is regretted.

American Express Card

Following a directive from the Department of State Expenditure in June 1999 that all state organs should cancel all credit cards, the then IBA cancelled its credit card facility with American Express. At the time Several amounts, which were incurred prior to the cancellation, were still outstanding. The matter was settled out of court following negotiations with attorneys acting for American Express.

Radio Pretoria

During 1999, Radio Pretoria and Radio Riemland approached the Pretoria High Court for a declaratory order against the Authority. The order required the Authority to allow applicants to be heard in the language of their choice, which, in this case is Afrikaans. Radio Pretoria also required that the Authority bear the costs associated with professional, simultaneous translation at any hearing or proceeding conducted by the Authority.

The Authority initially opposed the application on the basis that it did not have the resources to provide such services. During the year under review an out of court settlement was reached whereby it was agreed that the Authority would provide translation services and Radio Pretoria would translate its applications into English.

Heath Commission Investigation into Certain Ex-IBA Councillors

The Heath Special Investigation Unit resolved this matter, which arose out of an inquiry into the IBA by the Public Protector and the Auditor General in 1997. After these investigations, several allegations regarding some of the ex-IBA Councillors were referred to the Heath Commission for further probing. The Heath Commission cleared those councillors of any wrongdoing. Most of the alleged misuse could not be substantiated but amounts to be refunded to the Authority were determined where the validity of expenses incurred could not be justified. These amounts were paid to the Heath Unit, which in turn paid it over to the Authority.

Capital Radio

In 1999, the Authority refused two applications for Capital Radio from Kingdom Radio (Pty) Limited and Khulisani Investments (Pty) Ltd. Kingdom Radio (Pty) Ltd took the Authority to court to have the decision reviewed and set aside. In deciding the matter in favour of the Authority, the Court held that the Authority's decision was "fair, rational and justifiable in the circumstances".

Community Sound Broadcasting Services

Following the adjudication of four-year licences in the Eastern Cape Province, several unsuccessful applicants brought review proceedings against the Authority, namely Radio Kingfisher, Link Fm Trust and Campus Bay FM. The matters were heard in Court, but as at the end of the year under review, no judgements had yet been delivered.

TEKS FM

Teks FM, a broadcaster stationed in Secunda, did not apply for a four-year broadcasting licence. Following the policy development process on four-year sound broadcasting community licences in 1997, the then IBA took a decision that once the four year licences were issued in a particular

province, one-year temporary licences would be phased out. The broadcaster brought judicial review proceedings to permit it to continue broadcasting despite its failure to apply. The Authority filed its answering affidavit and the broadcaster has yet to file its replying affidavit.

Islamic Unity Convention (RADIO 786)

The Islamic Unity Convention lodged a review application against the Authority's decision to refer a complaint to the Broadcasting Monitoring and Complaints Committee (BMCC) and the BMCC's decision to call a hearing on the complaint. The SA Jewish Board of Deputies had laid a complaint with the Authority about the content of a programme broadcast on Radio 786. Judgement in this matter was delivered, with the Court ruling against the Authority with costs, based on certain procedural matters relating to the manner in which the Authority had handled the complaint by the S.A Jewish Board of Deputies against the Broadcaster. Application for leave to refer the matter to the Constitutional Court has been sought by the broadcaster, to have section 2 of the Code of Conduct, as set out in schedule 1 of the IBA Act, set aside as being unconstitutional, as it infringes on the freedom of expression right, which is guaranteed under the 1996 Constitution.

Vanderbijlpark Park Estate Company (ISCORIAN FM)

The broadcaster brought an urgent application against the Authority to compel it to furnish reasons for its decision to refuse a one-year temporary broadcasting licence. The matter was settled out of court.

Monitoring and Complaints (MCU)

ICASA has to monitor all broadcasters to ensure that they comply with their licence conditions and the policies of the Authority. Members of the public also have the right to complain about a station if they feel that it is not meeting its obligations.

In addition, during the year under review, the Authority had to monitor equitable treatment of political parties by broadcasters during the local government election period.

The Monitoring and Complaints Unit (MCU) of the Authority is responsible for ensuring that licensed broadcasting and signal distribution services adhere to licence conditions, the various codes, obligations and regulations, as well as certain provisions of the IBA Act, together with the Broadcasting Act. The Unit is also responsible for receiving, processing and adjudicating complaints.

Content Monitoring

A major component of the Authority's work has been the preparation of assessment reports on each licensee. This involves an analysis of the licensee's compliance with its

licence conditions during its licence period. During the period under review the MCU issued 44 assessment reports.

The Authority constantly monitors sound broadcasters' compliance with the Regulations on South African Music Content. ICASA's review of the content quota during the first half of 2001 lead the MCU to compile a status report on broadcasters' compliance with the regulations at the end of the reporting period.

Due to the complexity of monitoring all the licensees and their compliance with regulations such as South African Music Content, the Authority's monitoring capacity is extremely ill-equipped - both in terms of human and technical resources. The processes and equipment, put in place in 1995, are now outdated and can no longer service the workload, which continues to increase as more stations are licensed. As a result, the MCU has initiated an assessment process to establish its needs and to realign itself with the requirements. This process will continue into the next financial year, subject to the availability of funds.

With four-year community sound broadcasting licences having been issued in six of the nine provinces, the MCU undertook to review its Monitoring Requirements for community sound broadcasters. This included a revamp of the pro-forma log sheets that are supplied to broadcasters. Visits will be conducted to these broadcasters in the next financial year.

General Complaints

Although the number of complaints received by the Authority was substantially lower than in the previous year, the complexity and nature of complaints increased. The Unit was called upon to consider issues that had a constitutional bias. These related mostly to alleged unfair labour practice, religiously offensive programming and lack of programming information for viewers. The total number of complaints dealt with by the Unit amounted to 151. A breakdown of broadcasters who received two or more complaints is as follows:

E-tv (9); M-Net (6); SABC TV (13); SABC Radio (4); Radio 702 (5); Highveld Stereo (4); Radio Phoenix (5); Radio 786 (3); Radio Pretoria (2) and Radio Rosestad (2).

The above complaints exclude those which fell outside the jurisdiction of ICASA. These related mostly to alleged unfair labour practice, contractual disputes, internal managerial issues and advertising. A full report on all complaints received by the Authority during the period will be made available on the ICASA website.

Broadcasting Monitoring and Complaints Committee (BMCC)

The Broadcasting Monitoring and Complaints Committee (BMCC) is appointed by Council to adjudicate complaints against broadcasters, submitted by the public or by the Authority itself. The BMCC is a part-time body, which convenes only to adjudicate complaints and to discuss policy matters pertaining to monitoring and complaints. This Committee consists of Jules Browde SC (Chairperson), Keneiloe Mohafa, Tina Uys, Irene Menell, and Devi Rajab. In terms of the IBA Act, a Council representative also sits on the BMCC. During the period under review, Council appointed Councillor Libby Lloyd, to the committee.

During the year, the BMCC initiated a process to review its constitution and the procedures for appointing BMCC members. This process will be concluded in the next financial year and the constitution, together with its procedures, will be published as regulations.

Complaints from the public are lodged with the Complaints Officers of the MCU. In most cases, the Authority itself attempts to resolve the complaint. Those complaints that cannot be resolved are referred to the BMCC for adjudication.

During the period under review, the BMCC held regular meetings and called three hearings. Two of these hearings involved an alleged contravention by e-tv.

- > In the first hearing, e-tv had to answer to allegations of possible contravention of its quota for information programming as stipulated in its licence conditions. The BMCC ruled in favour of the broadcaster due to the lack of a proper definition for information programming.
- > In the second matter, e-tv was found not to have complied with licence conditions requiring prior approval by the Authority for any ownership and/or control changes. The hearing rested on the definition of 'control' of a licensee. The BMCC recommended to the Council that e-tv be fined and ordered to apply for an amendment of its broadcasting licence. At the time of this report, the discussions on the appropriate penalty had not been concluded.
- > The third hearing dealt with the coverage of the 2000 Local Government Elections. The PAC lodged a complaint, alleging bias by the SABC in its coverage of a PAC election event. The BMCC ruled in favour of the PAC and ordered the SABC to broadcast the details of the finding in its main news bulletins.

During the period under review, the MCU received 122 written complaints from the public. Seven of these were received via e-mail and the remainder by mail or fax.

Approximately 56 telephonic queries were also processed during this period. In addition to the above, the MCU also elevated 35 investigations to the status of full complaints. Two complaints were carried over from the previous year due to delays caused by court proceedings.

At the time of this report, 8 of the 122 written complaints were still being processed. The MCU has processed 14 of the complaints initiated by it. The two complaints delayed by court proceedings were still outstanding. All telephonic queries had been processed.

Elections 2000

In terms of the IBA Act, ICASA is mandated, inter alia, to monitor coverage of elections during an election period. This mandate is set out in sections 58 to 62 of the IBA Act. The IBA Act refers to the Electoral Act of 1993, which specifically excludes local government from the definition of an election. The 1993 Electoral Act was repealed by the Electoral Act of 1998 that included local government elections in the definitions of elections. Since there was uncertainty surrounding the mandate of the Authority due to these changes, legal advice was sought on the matter. After careful consideration, it was decided that the local government elections did indeed fall within the Authority's mandate.

As part of this responsibility, the Authority is required to ensure that broadcasters treat all political parties equitably. The Authority has interpreted this to mean that broadcasters must provide enough information to enable voters to make an informed choice in the elections. Taking this into account, ICASA embarked on a monitoring exercise to assess the information relating to the different parties contesting the elections broadcasts. This included both quantitative and qualitative monitoring aimed at assessing fairness and balance in the coverage of competing candidates and parties at a national level.

Monitoring Election Coverage

ICASA endeavoured to monitor a sample of broadcasters in the country: the Public Broadcasting Service, Private Broadcasting services and the Community Broadcasting sector. All these were monitored in line with their varying public service obligations, as required by the IBA Act. A total of 15 community radio stations, six private radio stations, 12 SABC radio stations, three SABC television channels and e-tv were monitored. Little focus was placed on monitoring M-Net, since little election related coverage was found on actuality programming. It also has no news bulletins.

Monitoring focused on news bulletins and actuality programmes. The analysis of these programmes was both quantitative and qualitative. As part of the qualitative analysis, the MCU looked at the good or bad publicity

accorded political parties. The key area of this analysis was to gauge whether the broadcaster could reasonably be said to have shown bias in favour of or against a political party.

Since bias is more often subtle, an analysis of potential bias was undertaken to determine if reporting would create a distorted judgement of any particular political party. In the majority of instances, where potential bias was recorded, analysis showed that "un-replied-to" allegations made by one party against another were insignificant.

Quantitative analysis involved the calculation of actual time spent on the coverage of election items during news and actuality programmes. Since elections are of national significance, it was envisaged that broadcasters would endeavour to spend a substantial time covering such issues. Based on this premise, the MCU undertook to conduct quantitative analyses of coverage by broadcasters. It must be noted, however, that the Authority did not want this to be undertaken too rigorously, since it does not wish to encourage stopwatch journalism.

Complaints Regarding Election Coverage

Realising the need for a speedy process to resolve election-related complaints, the Authority decided to establish an internal process of mediation. This was led by Councillor Libby Lloyd and entailed the mediation of complaints that the MCU could not resolve.

All unresolved complaints were forwarded to Councillor Lloyd for mediation between the complainant and the broadcaster. If a complaint was mediated successfully, it was considered to be resolved and the file was closed. Complaints that could not be mediated were passed back to the Complaints Officers with the recommendation that a formal hearing of the BMCC should be called.

All unresolved and unmediated complaints were forwarded for consideration to the Chairperson of the BMCC who decided whether a formal hearing of the BMCC was necessary or not. This proved very successful, as only one BMCC hearing was required. This was the matter between the PAC and the SABC, where the BMCC found in favour of the PAC. All other complaints were resolved through mediation.

A late complaint alleging bias by the SABC was received from the DA, this complaint was lodged with the BCCSA in November 2000. The BCCSA ruled, in February 2001, that the matter did not fall within its jurisdiction and referred it to the BMCC. The MCU received the complaint early in March and forwarded it to the SABC for a response. The SABC questioned the jurisdiction of ICASA over the complaint and ICASA's jurisdiction over the local government elections. At the time of this report, the matter had not been resolved.