

# BROADCASTING



ICASA, through its Broadcasting Programme, has a responsibility to develop regulatory rules, issue licences, and monitor the activities of all Broadcasters. The role of the Broadcasting Programme is to give advice and support to the ICASA Council in its legislative function and role as the Regulator of the Broadcasting Sector of the Communications Industry. The regulations take the form, *inter alia*, of granting broadcasting and broadcasting signal distribution licences; monitoring compliance with licence conditions, developing standards for the content of programmes; determining limitations on advertisements; and encouraging programming diversity by Public, Commercial and Community Broadcasters. ICASA's Broadcasting Programme is divided into two business units, namely, the Policy Development and Research; and the Licensing and Monitoring Departments.

## Policy development and research

The Policy Development and Research Department consists of two Units, namely, Policy Development and Projects. The responsibility of the Policy Development Unit is to conceptualise and develop policies for the regulation of the Broadcasting Industry. Since the process of developing policies is underpinned by public participation and consultation as its key features and elements, the Policy Development Unit is responsible for compiling discussion papers, which through the Projects Unit, are put into the public domain for comment and discussion. Once consultations have closed and comments collated, the Policy Development Unit integrates all information into the discussion paper and translates these into a policy instrument for review and approval by the ICASA Council. During the year under review, ICASA has considered and developed the following regulatory policy instruments for the Broadcasting Industry:

### South African Music and Television Content

ICASA has reviewed the South African Music and Television Content regulations; first published in 1997. A discussion paper for this review was published in November 2000 for comment. Hearings took place on 15 May 2001 and the position paper and regulations were gazetted on 20 February 2002. The effective date for the implementation of the new South African Music and Television Content regulations is 22 August 2003. The quotas established in terms of the new rules are:

	Old	New
<b>Television</b>		
Public Broadcasting	50%	55%
Commercial Free-to-Air	20%	35%
Terrestrial	5%	8%
<b>Radio</b>	<b>Old</b>	<b>New</b>
Public Service Radio Stations	20%	40%
Community Radio Stations	20%	40%
Commercial Radio Stations	20%	25%

### Inquiry into Sports Rights

The acquisition of exclusive rights for the broadcasting of national sporting events, as

determined to be in the public interest by ICASA in consultation with the Ministers of Communications and Sports and Recreation, are prohibited by section 30(7) of the Broadcasting Act 4 of 1999 ("the Broadcasting Act"). During the year under review, ICASA began with an inquiry into sports rights for broadcasting to:

- > Determine international trends in sports rights acquisition;
- > Consider any lessons that could be learnt on the international broadcasting landscape; and
- > Encourage investment in the broadcasting sector and examine similar concerns raised by sports rights holders.

Through this process, ICASA will solicit views that will enable it to develop a sustainable sports rights regulatory regime. A discussion paper in this regard has been published for comment.

### Ownership and Control and Existing Sound Broadcasting

The process of reviewing the status of existing private radio licences, as well as regulatory rules pertaining to ownership and control, commenced on 15 January 2002. This review was prompted by the realisation that the current cross-media and ownership rules may be too restrictive and in many cases serve as a disincentive to foreign investment in the sector.

This review will revisit the limitations, set out in sections 48, 49 and 50 of the Independent Broadcasting Act 153 of 1993 ("the IBA Act"), on foreign control of:

- > Private broadcasting services; and
- > Cross-media control of private broadcasting services.

Based on this review, ICASA will publish new ownership and control regulations, which will be followed by the licensing of private radio stations in rural cities and towns. A discussion paper for this purpose will be published in September 2002.



## Licensing and Monitoring

### Licensing

#### Public Broadcasting

Section 6 of the Broadcasting Act entrusts ICASA with the responsibility of monitoring compliance by the SABC with the Charter for Public Broadcasting Services. This charter has yet to be developed and passed by Parliament.

The Broadcasting Act also provides that a public company, namely SABC Limited, has to be registered with the Registrar of Companies. The State will be the sole shareholder of this company. On its incorporation as a public company, it is envisaged that the SABC will be restructured into two separate business units, one public and the other commercial. ICASA will then issue two separate broadcasting licences to the public and commercial wings of the SABC.

In anticipation of the transformation of the SABC into a registered Public Company, ICASA has put together an issues paper to guide it in overseeing the SABC restructuring process and the eventual issue of broadcasting licences for both the Public and Commercial business units of the SABC.

#### Commercial Broadcasting Services

The following commercial sound-broadcasting licensees, prompted by impending changes to their shareholding structures, applied for amendments to their respective licences. The applications were submitted for the purpose of consolidation, as in the case of Jacaranda FM, East Coast Radio and Radio Oranje following the proposed Nail/Kagiso merger, and recapitalisation.

#### P4 Radio (Durban) and P4 Radio (Cape Town)

On 2 February 2001, ICASA held a hearing, after receiving applications for the amendment of licences in relation to the shareholding structure of P4 Radio (Durban) and P4 Radio (Cape Town) in terms of section 52(1)(c) of the IBA Act. The stated purpose of the amendment application was to facilitate the participation of Nail's subsidiary, New Africa Media Holdings ("NAM") as a minority shareholder in the shareholding of Radio P4 (Durban) and Radio P4 (Cape Town). ICASA also held a closed hearing in terms of section 28A(5) of the IBA Act to determine, among others, the empowerment status of NAM.

The applications by both Radio P4 (Durban) and Radio P4 (Cape Town) were presented as one indivisible transaction in that both licensees submitted their respective amendment applications at the same time so that, assuming the applications were granted, NAM could acquire minority shareholder rights in both licensees. As a result, ICASA could not grant or refuse either application; it had to accept or reject both.

ICASA rejected both applications for the following reasons:

- > *The financial arrangements underpinning the transaction - though a minority shareholding in theory - gave NAM control over both Radio P4 (Durban) and Radio P4 (Cape Town).*

- > *Failure on the part of NAM, which owns and controls other commercial sound-broadcasting licensees, to show good cause why it had to be exempted from ownership and control restrictions embodied in section 52 of the IBA Act.*

#### Classic FM

Classic FM made an application, in terms of section 52(1)(c) of the IBA Act, to amend its shareholding structure to enable MoneyWeb Holdings Limited to join the licensee as a minority shareholder. ICASA held a hearing on this application on 1 February 2001.

After considering the application, ICASA approved the changes to the shareholding structure for the following reasons:

- > *Amendments to the shareholding structure would not impact on Classic FM's empowerment credentials as the empowerment groupings would still retain control over the licensee; and*
- > *Increased liquidity and financial viability of the licensee.*

#### Kaya FM (Pty) Ltd

Kaya FM (Pty) Ltd ("Kaya FM") submitted an application to amend its shareholding structure in terms of section 52(1)(c) of the IBA Act. The application was prompted by NAM's decision to acquire a controlling stake over Kaya FM and the desire of both the Communications Workers Union ("CWU") and Independent Newspapers to exit the licensee. ICASA held hearings on the transaction on 16 October 2001.

ICASA approved the amendment for the following reasons:

- > *The amendments to shareholding structure would not impact on Kaya FM's empowerment credentials as the empowerment groupings, namely, Thebe Investment, Makana and Mokgosi, would retain ownership control over the licensee; and*
- > *Re-Capitalisation of Kaya FM and increased liquidity from NAM's investment.*

The amendments were approved on condition that NAM would not use its financial 'muscle' to acquire either direct or indirect control over the licensee.

### Kagiso/NAIL Merger

On 8 August 2001, Jacaranda FM, East Coast Radio and Radio Oranje submitted applications for the amendment of their broadcasting licences to change their respective shareholding structures. These applications were necessitated by the merger and acquisition deal involving NAIL and Kagiso. Kagiso, in terms of this deal, proposed to sell its assets (including shares in East Coast Radio and Radio Oranje) to NAIL. The transaction was indivisible so that ICASA either had to accept or reject both applications, but could not grant one and refuse the other. The application by East Coast Radio included a request for exemption from the section 49(2) ownership limitations, as provided in section 49(6) of the IBA Act. NAIL had a controlling stake in both Jacaranda FM and KFM (Pty) Ltd and a minority stake in Kaya FM (Pty) Ltd. Kagiso, on the other hand, had controlling stakes in East Coast Radio, Jacaranda FM and a minority stake in Radio Oranje.

The hearing into these applications was held on 18 October 2001. The section 49(2) exemption request was refused for the following reasons:

- > *Failure on the part of the applicant to show good cause for its exemption from the ownership limitation rules;*
- > *ICASA's reluctance to look at this case as an exception in view of plans to review the ownership and cross-ownership restrictions for the industry as a whole;*
- > *The concern that the empowerment credentials of Kagiso (which gave the licensees competitive advantage over other applicants when this license was first issued) were likely to be compromised, given the questions raised and a failure by the applicants to provide a satisfactory explanation on the empowerment status of NAIL; and*
- > *Public interest, fairness and diversity.*

### M-Net licence Renewal Application

On 5 December 2001, Electronic Media Network Limited ("M-Net") lodged an application in terms of section 44 of the IBA Act for the renewal of its broadcasting licence expiring on 31 March 2002. The decision to grant or refuse the renewal application was dependent on M-Net's compliance with the terms and conditions of its licence.

As is required by section 41(6) of the IBA Act, ICASA published a notice in Government Gazette 23007 of 3 January 2002, containing the material particulars of M-Net's renewal application. Written representations were received from Midi Television and the SABC. The representations focused on M-Net's Open Window rights. The SABC proposed in this regard that M-Net's licence be amended in terms of section 52(1)(d) of the IBA Act. ICASA, after considering all the relevant factors, decided to proceed with the renewal application.

The hearing in respect of this application was held and the following findings were made:

- > *In terms of its licence conditions, M-Net was obliged to broadcast a weekly average of 20% South African drama, measured annually, during unencoded time. For the period 1 April 1999 to 31 March 2000, M-Net failed to comply with this condition, with its weekly drama programming averaging only 18,8%. Since M-Net had taken the initiative to raise this non-compliance with ICASA and had subsequently been reprimanded by the Broadcasting Monitoring and Complaints Committee ("BMCC"), ICASA took the view that, although it considered this transgression in a serious light, M-Net had responded positively to the BMCC's warning and had rectified its conduct accordingly.*
- > *ICASA noted that M-Net had failed to comply with the licence condition requiring that 35% of positions in its management echelon be occupied by persons from previously disadvantaged communities. ICASA accepted M-Net's explanation that it had put a policy in place to fill vacancies with black South Africans and that deviations from this policy will only be authorised by its CEO, as adequate assurance and commitment.*
- > *M-Net was found to have, on a number of occasions, violated the Broadcasting Complaints Commission of South Africa's ("BCCSA") Code of Conduct for Broadcasters, for broadcasting:*
  - *on two occasions, promotional advertisements for an adult programme during family time viewing;*
  - *a movie on a lower age restriction when in fact a higher age restriction was called for; and*
  - *inaccurate material; or alternatively without a proper balance to the story in one of its current affairs programmes.*

*ICASA decided that in each of these contraventions, M-Net had taken appropriate measures to ensure a non-recurrence of the contraventions and that there was no reason to suspect that M-Net would not, in the future, comply with the BCCSA's Code of Conduct.*

Given the above findings, ICASA was satisfied that M-Net had materially complied with its licence conditions and that it would continue to do likewise. Accordingly, M-Net's broadcasting licence was renewed for a further period of 8 years.

### *Community Broadcasting Services*

During the year under review ICASA has, in terms of section 47 of the IBA Act, granted 26 temporary one year Community Sound Broadcasting Service Licences



(See Appendix A, page 43). A licence on four-year community television broadcasting service, grandfathered in the pre-IBA era, was granted to Trinity Broadcasting Network (TBN). Hearings on four-year community sound broadcasting services were held in KwaZulu-Natal and the Western Cape. Short-term/Special events licences were also considered.

#### Trinity Broadcasting Network (Ciskei)

On 25 April 2001, ICASA held a public hearing on the renewal of Trinity Broadcasting Network's ("TBN") four-year community television broadcasting licence in terms of section 44 of the IBA Act. In its renewal application, TBN also submitted an application for the extension of its coverage area to include the Port Elizabeth and East London metropolitan areas.

On these two issues, ICASA ruled that:

- > *A community television licence for a further four year period be granted to TBN, as is required by section 44 of the IBA Act, for material compliance with its licence conditions; and*
- > *The request for the extension of coverage be rejected on the following grounds: TBN was the only community television service station in the Port Elizabeth/East London area; and a regulatory framework still has to be developed for the community television sector.*

#### KwaZulu-Natal Four Year Community Sound Broadcasting Services Hearings

From 22 to 27 October 2001, ICASA held hearings in KwaZulu-Natal on applications for community radio station licences. These hearings were held in Durban, Newcastle and Richards Bay covering the following Radio Stations: ICORA (Eshowe Development); Radio Kwezi; Radio Noordkus; Radio Maputaland; Radio Drakensberg; Radio Newcastle; Radio Azania; Rainbow Radio; Umbumbulu Community Radio; North Coast FM; CBI Community Radio; Izwi Lomzantsi; Kazimula FM; Radio Boesman Rand; Radio Maritzburg; C-Talk Radio; Durban Youth Radio; Highway Radio; Goodnews Radio; Radio KNI; and Radio Sunny South.

#### *Special Events Licences*

ICASA grants Special Events Licences, from time to time on receiving an application from any person, natural or juristic, for the broadcast - on a non-profit or not-for-gain basis - of special events taking place in communities. These licences are granted for a maximum period of 30 days and are not renewable.

During the year under review, ICASA considered special events and other short-term licences. Eighteen applications for Special Events Licences were granted (See Appendix A, page 43).

#### **Monitoring and Complaints**

ICASA's Monitoring Unit is responsible for: ensuring that licensed broadcasting and signal distribution services adhere to their: licence conditions and obligations, the

various codes, regulations and certain provisions of the IBA Act and the Broadcasting Act; and receiving, processing and adjudicating complaints as well as acting as the registrar of complaints for the BMCC.

#### *Monitoring*

A major part of the Monitoring Unit's work has been the preparation of assessment reports on each licensee. This involves an analysis of a licensee's compliance with licence conditions during its licence period, and the compilation of a report on the performance of licensees to the ICASA Council and the Licensing Unit. During the period under review, the Monitoring Unit has produced and published 72 assessment reports and observed the programming activities of e-tv; M-Net and SABC Television.

ICASA has a responsibility to monitor sound broadcasters' compliance with the South African Music Content regulations. ICASA's review of the content quota during the first half of 2001 and the subsequent publication of the new regulation on South African content will require that a new strategy be developed to measure compliance with the new regulations. The regulations come into effect on 22 August 2003 and ICASA, through its Monitoring Unit, will conduct workshops to ensure that all broadcasters affected by the new music content rules understand the new regime. The importance of the South African content quota became clear during the public hearings when a number of artists, producers and actors indicated that the quotas were definitely contributing to growth in the production industry. The enforcement of these regulations is critical if there is to be any hope of stimulating a vibrant production industry.

Due to the complexity of monitoring all the licensees and their compliance with regulations such as South African Content, ICASA's capacity is inadequate - both in terms of human and technical resources - as the processes and equipment, put in place in 1995, are now outdated. ICASA can no longer cope with the workload, which increases exponentially as more and more broadcasters are licensed. As a result, the Monitoring Unit initiated an assessment process to identify its needs. A review of the process established may take place at any time when new needs are identified such as the entry into the market of a significant number of new broadcasters.

In keeping with the requirements of the Broadcasting Act, the Monitoring Unit has also placed additional emphasis on community participation and democratic processes in the case of community broadcasters. Community participation in the activities of community broadcasters,

to ensure accountability and responsible management, has proven to be very important. This, together with employment equity and training and development, has directed the Monitoring Unit's focus in assessing broadcaster's performance. This method appears to have paid dividends as the level of trained people in the broadcasting industry has increased.

With four-year community sound broadcasting licences having been issued in six of the nine provinces, the Monitoring Unit undertook to review its monitoring requirements for community sound broadcasters. This process was concluded and monitoring visits were conducted to all broadcasters that had been issued with four-year community sound broadcasting licences. As new broadcasters are licensed on a monthly basis, the process continues, but should be concluded by the end of 2002.

### *BMCC*

The BMCC is a statutory body established in terms of the IBA Act and is convened on an ad hoc basis to adjudicate complaints and discuss policy matters relating to the monitoring of broadcasters. The members of the BMCC comprise Advocate Jules Browde, SC (Chairperson); Ms. Keneiloe Mohafa; Prof Tina Uys; Ms. Irene Menell; Dr. Devi Rajab and Ms. Libby Lloyd (representative of the ICASA Council in the BMCC).

The BMCC initiated a process of reviewing its constitution and the procedures for appointing BMCC members. This process was concluded and the constitution and procedures were published as regulations during the year under review. The new constitution of the BMCC allows for additional BMCC members to be appointed, and this will ease the backlog and increase efficiency.

Complaints from the public are lodged with the Complaints Officers in the Monitoring Unit. In most cases ICASA attempts to resolve the complaints itself. Only those complaints that cannot be resolved are referred to the BMCC for adjudication. During the year under review, the BMCC held regular meetings and called four hearings to address the following complaints:

#### Punt Geselsradio

Two hearings addressed alleged contraventions by Punt Geselsradio ("Punt"), in both Gauteng and the Western Cape, broadcasting services. In both hearings, Punt had to answer allegations of possible contravention of its licence conditions by changing its control and ownership structure without the permission of ICASA.

*The BMCC ruled that Punt had contravened its licence conditions and ordered Punt to submit the required amendment application to correct the contraventions.*

*The BMCC further ruled that failure by Punt to submit the amendment application would result in both licences being recommended for revocation.*

Punt failed to submit the required applications and the ICASA Council decided to revoke the licences, in accordance with the BMCC's ruling.

#### Highveld Stereo

Highveld Stereo was called to appear before the BMCC to answer charges of failing to meet the prescribed music quotas in the South African Music Content Regulations.

*Highveld Stereo was found guilty and fined an amount of R5 000, 00 and was further ordered to desist from any such contraventions in the future.*

#### Good Hope FM

Good Hope FM was charged with failure to meet the prescribed minimum quotas for South African Music Content. A hearing was held and the matter was postponed to enable ICASA to revise the charge sheet and the SABC, which is the licensee, to prepare its defence. At the time of writing this report, the second hearing had not been held.

### *Complaints Received*

During the period under review the Monitoring Unit received 102 written complaints from the public. 37 of these were received via e-mail and the remainder by mail or fax. Approximately 156 telephonic queries were also processed during this period. In addition to the above, the Monitoring Unit lodged 18 complaints with the BMCC following investigations into alleged contraventions by Broadcasters. Two complaints were carried over from the previous year due to delays caused by court proceedings.

At the time of writing this report, only seven of the 102 written complaints received were still to be finalised. The Monitoring Unit processed 14 complaints initiated by it. All telephonic queries were processed and finalised.

Although the number of complaints received by ICASA was substantially lower than in the previous year, the nature and complexity of the complaints received was a challenge. As an example, the Monitoring Unit was called upon to consider issues that had constitutional implications. These related mostly to alleged unfair labour practises, religiously offensive programming and lack of programming information for viewers. A breakdown of Broadcasters that received two or more complaints is as follows:

E-tv (12); M-Net (9); SABC TV (23); SABC Radio (14); Radio 702 (8); Highveld Stereo (3) and Community Radio (35).

The above complaints exclude those that fell outside the jurisdiction of ICASA. These related mostly to alleged unfair labour practices, contractual disputes, internal managerial issues and advertising.