

- 46.21.1.1 The applicant indicated that it would charge a subscription fee of R1.00 per month per subscriber to meet regulatory requirements. However, based on this model, the applicant would, in the Authority's assessment, contravene section 60(4) of the Act to the extent that it would draw its largest source of annual revenue from advertising or sponsorship, or a combination thereof, and not from subscriptions. The applicant subsequently revised its subscription fee model and, at the public hearings, presented a new approach which included subscription fees of approximately R5000 per year payable by provincial education departments. This new approach differed from what was originally presented by the applicant, but the applicant did not conduct an impact assessment in respect of these changes. The applicant also did not submit any proof that there was demand or support for such a subscription fee structure within education departments, and the Authority is accordingly not satisfied, even on this revised business plan, that the applicant will comply with section 60(4) of the Act. Further, even though this new approach proposes that the various provincial education departments pay a "subscription fee", this would likely, in the Authority's assessment, still not be the largest source of annual revenue for the applicant and the applicant would still, accordingly, be in contravention of section 60(4) of the Act. On this basis, the Authority is also not satisfied that the applicant's business model will be commercially viable as a subscription broadcasting service.
- 46.21.1.2 Further, while the applicant indicated that it believed that it would continue to receive donations and sponsorship to fund its venture, in the Authority's assessment, the applicant did not provide any clear commitment in this regard from any of its current sponsors or donors. As such, in the Authority's assessment, the applicant's proposed reliance on sponsorships as a means to sustain its operations is of concern as the reliability of such "funding" may not be guaranteed. The Authority is accordingly not satisfied that the applicant demonstrated that it would obtain sufficient funding in order to provide a subscription broadcasting service.
- 46.21.1.3 The Authority also noted the applicant's supplementary subscription model to derive its income from learners' families and financial projections in this regard. However, the Authority was not satisfied with the applicant's subscription model in the absence of primary research, which demonstrates the willingness of learners' families to subscribe to the service at the indicated subscription fee. The Authority was therefore unable to assess the willingness of consumers to subscribe to the intended service.
- 46.21.1.4 The applicant did not submit any primary research as required in terms of the ITA, but

instead attached research conducted by MultiChoice. The Authority considered the applicant's supplementary submission in relation to its primary research and notes that despite the Authority's request for the applicant to submit primary research, it has failed to do so. The applicant failed to provide primary research, which demonstrates consumer willingness to subscribe to the intended service as a separate service and to pay for the service independently from the current carrier, which is the Multichoice platform. The Authority found it difficult to ascertain whether the applicant's service would yield the same results as indicated in the research reports prepared by DSTV, that were attached to the application, particularly as the applicant's proposed service (i.e. a dedicated subscription broadcasting service) was not canvassed with a sample group. The applicant also did not address the issue of whether, to the extent that it is granted a broadcasting service licence, its content would continue to be provided on the DSTV and TopTV platforms and, if so, whether it would still have sufficient demand, need and support to offer its content independently. It was further not clear to the Authority that the applicant's target market would subscribe for its proposed service, or whether subscribers to existing broadcasting services would be willing churn to the applicant's proposed service.

- 46.21.1.5 In short, based on its assessment of the application, the Authority is not satisfied that the applicant demonstrated that there would be sufficient demand, need, and support for the applicant's proposed service for it to be a sustainable and viable commercial entity. The Authority was also not in a position to adequately assess demand, need and support for the applicant's proposed service without any primary research conducted by the applicant.

47. MobileTV (Pty) Ltd (TV4U)

47.1 Introduction

47.1.1 The Authority received an application in terms of the ITA from TV4U (Pty) Ltd for an individual commercial subscription broadcasting service licence.

47.1.2 The applicant intends operating a service under the name of "TV4U". <sup>260</sup>

47.1.3 The applicant indicated that it intends providing a composite sound and television multi-channel mobile broadcasting subscription service on a national scale. The proposed service will be a digital, multimedia and multi service channel with a convergent mobile television, video on demand and visual radio offering. <sup>261</sup>

47.1.4 The Authority received written submissions on the applicant's application from Kagiso TV. In its written submission, Kagiso TV noted that the applicant appears to indicate that it will provide both a subscription broadcasting service and a free-to-air broadcasting service, despite the ITA only being for subscription broadcasting services. <sup>262</sup> During the public hearings, the applicant clarified this position and indicated that it intends on providing a commercial subscription broadcasting services with some programme content procured from existing free-to-air broadcasting licensees. <sup>263</sup> The Authority has considered Kagiso TV's other submissions and the applicant's responses to the various submissions and, where relevant, Kagiso TV's submissions and the applicant's responses to those submissions have been addressed in this Reasons Document.

47.2 Corporate structure

47.2.1 The applicant is a private company registered and incorporated in South Africa under registration number 2009/005179/07. <sup>264</sup> The applicant provided the Authority with copies of its certificate of incorporation, articles of association and its memorandum of incorporation, as required in terms of section 2 of the ITA. <sup>265</sup> The Authority is satisfied that the applicant is a juristic person duly registered and incorporated in South Africa.

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<sup>260</sup> TV4U application: p 1.

<sup>261</sup> Ibid.

<sup>262</sup> Kagiso TV written submission, p 7.

<sup>263</sup> Public hearings transcript, 26 July 2013, p 8.

<sup>264</sup> TV4U application: p 2.

<sup>265</sup> TV4U application: Appendix 6.1, pp 4-12.

47.2.2 The applicant also submitted a valid resolution authorising Andrew Mutloatse to sign the application on behalf of the applicant and to represent the applicant during the public hearings.<sup>266</sup>

47.2.3 In its application, the Applicant indicated that its shareholding structure is as follows:<sup>267</sup>

Shareholder	Shareholding (%)
Moloko Investment Group (Pty) Ltd	51%
NAFCOC Free State Investment Holding (Pty) Ltd	10%
Narevest (Pty) Ltd	2.05%
Communication Workers Financial Services (Pty) Ltd	6.18%
Lumka and Associates CC	0.48%
Afrogirls Trading and Projects (Pty) Ltd	0.08%
Black Wealth Corporation (Pty) Ltd	0.53%
P T Tyobeka	0.71%
J D Tyobeka	5.80%
G R Kesten	2.35%
S M Sibeko	1.19%
T C Hanratty	0.28%
S Sello	4.75%
T E Tyobeka	0.48%

<sup>266</sup> TV4U application; Appendix 6.3, p 15.

<sup>267</sup> TV4U post hearing submission, 20 August 2013.

T Lujabe-Rankoe	0.16%
M Veyi	3.32%
I Darsot	2.00%
Milani kaBanzi Partnership	0.60%
NAFCOC Western Cape	1.00%
NAFCOC Gauteng	1.78%
Estate Late L Phooko	0.04%
Still to be allocated	5.22%
<b>TOTAL</b>	<b>100%</b>

47.2.4 The applicant did not provide any further information in respect of any of its shareholders, although it did submit a BEE certificate to the Authority after the public hearings. On the basis of this BEE certificate, the applicant is a level 3 contributor with 100% ownership by black people.

47.2.5 The Authority is satisfied that the applicant complied with the requirements of the ITA in relation to shareholding and with the requirements contained in section 2, paragraph 6 of the ITA.

#### 47.3 Empowerment of HDPs

47.3.1 The applicant submitted that it had met the 30% equity ownership requirement contained in the ITA, and that it is wholly owned by black persons.<sup>268</sup>

47.3.2 In its written submission, Kagiso TV submitted that there was insufficient evidence regarding the applicant's BEE status.<sup>269</sup> The applicant responded by stating that its black shareholders hold 100% of its shares and that the ITA did not request applicants to provide

<sup>268</sup> TV4U post-hearing submission, 20 August 2013.

<sup>269</sup> Kagiso TV written submission, p 7.

their BEE certificates or to provide any specific information regarding their BEE status <sup>270</sup> However, as indicated above, the applicant submitted a BEE certificate to the Authority after the public hearings. In terms of this BEE certificate, the applicant is a level 3 contributor with 100% black ownership.

- 47.3.3 The Authority is satisfied that the applicant complied with the requirements set out in section 5(9)(b) and 9(2) of the Act as well as section 2, paragraph 6 of the ITA, and that the applicant provided a means by which its equity ownership was calculated as required by the ITA.

#### 47.4 Section 64 of the Act

Based on the information provided by the applicant to the Authority, the Authority is satisfied that the applicant does not have any foreign directors or shareholders. The applicant further stated that it will not be relying on any foreign entities for funding. <sup>271</sup> The Authority is therefore satisfied that the applicant has complied with the limitations set out in section 64 of the Act.

#### 47.5 Section 65 of the Act

The applicant indicated that neither it nor its shareholders hold any interest in other broadcasting services (including radio, television, satellite and cable broadcasting, and allied activities). <sup>272</sup> The Authority is satisfied that the applicant complies with the requirements of section 65 of the Act.

#### 47.6 Section 66 of the Act

The applicant indicated that neither it nor its shareholders hold any interest in any newspaper (including holdings in a group having substantial control over one or more newspaper). <sup>273</sup> The Authority is satisfied that the applicant complies with the requirements of section 66 of the Act.

#### 47.7 Management and Human Resources

- 47.7.1 The applicant's proposed directors include the following individuals: Khathutshelo Seth Netshisaulu, Jennifer Daphne Tyobeka, Gregory Roland Kesten, Richard Thabo Moloko, Mandla Veyi, Menzi Manuel Nkosi, Ntsietso Matilda Mofokeng, Jeremiah Nkeli, Sekola Sello, and Thandi Lujabe-Rankoe. <sup>274</sup> The Authority granted the applicant confidentiality in

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<sup>270</sup> TV4U written response, pp 2 and 6.

<sup>271</sup> TV4U application: Appendix 18, p 166.

<sup>272</sup> TV4U application: Appendix 11.4, p 64.

<sup>273</sup> TV4U application: Appendix 11.3, p 63.

<sup>274</sup> TV4U application: pp 19-22.

respect of its senior management.

47.7.2 Based on the Authority's analysis of the submitted curricula vitae, the Authority is satisfied that the proposed executive management has the requisite experience and capabilities to operate the proposed service in accordance with requirements set out in section 51(d) of the Act and section 2, paragraph 7.1 of the ITA.

47.7.3 The Authority is satisfied that the applicant complied with the requirements set out in sections 51(d), (f), (g), (h) and (i) and section 52 of the Act as well as section 2, paragraph 7 of the ITA.

47.7.4 The applicant also provided the Authority with a staff organisational chart indicating that 36 full-time employees and two external consultants would be employed.<sup>275</sup> The Authority granted the applicant's request for confidentiality in respect of the details relating to staff competencies and qualifications.

#### 47.8 Finance

47.8.1 The Authority granted the applicant confidentiality in respect of the following financial information: the applicant's business plan, pro-forma financial statements, projected income statements, predicted annual operating expenses, balance sheets and financial requirements and sources. A summary of the Authority's assessment of the applicant's financial information is included below.

##### 47.8.2 Business Plan and Financial Projections

In the Authority's assessment, the applicant undertook limited research in respect of the expected subscriber uptake of its proposed services, which will likely have implications for the applicant's business plan and financial projections and expectations. The Authority is further of the view that the applicant would face stiff competition from incumbent operators who have not, as yet, been able to fully monetise their investment in mobile television offerings but have found other means of promoting their offering (e.g. as a complementary service to their existing services), which would also affect the applicant's business plan and financial projections. Further, in the Authority's assessment, the expected roll-out of the applicant's service will also be subject to the availability and/or allocation of suitable spectrum to the applicant by the Authority, which has not been factored into the applicant's

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<sup>275</sup> TV4U application: Appendix 8.1, p 50.

financial projections. The soundness and viability of the business plans depend, amongst others, on how realistic the subscriber projections are. Subscriber uptake as provided by the applicant appear optimistic and given concerns regarding the submitted market research these are therefore of concern.

#### 47.8.3 Funding and Methods of Raising Capital

The applicant had indicated that it would be funded through a combination of both debt and equity funding. As indicated above, the Authority granted the applicant confidentiality in respect of this information. In the Authority's assessment, and based on the Authority's analysis of the information submitted by the applicant, the letters provided by the applicant to demonstrate proof of funding were merely an expression of interest, and the Authority was accordingly not satisfied that the applicant had demonstrated that it had sufficient funding for the venture.

#### 47.9 Demand, Need and Support for the Proposed Service

47.9.1 The applicant submitted that its proposed programme content is based on the findings of the market research it commissioned.<sup>276</sup> The applicant submitted that its findings indicated a high demand for South African news, music, comedy and films.<sup>277</sup> The youth in particular showed a high demand for music, male consumers wanted sports as their primary interest, while female consumers expressed their interest in drama.

47.9.2 The applicant indicated that it would provide its target market with an initial eight channels on which it would broadcast its proposed programme content.<sup>278</sup> The applicant's proposed programme content includes, amongst other things, the following content: SABC 1 mobile, sport, 24-hour news – both local and foreign, entertainment, and SABC radio channels.<sup>279</sup> The applicant submitted that, subject to the Authority's approval, it would include these channels prior to the release of the digital dividend plan in December 2013.<sup>280</sup>

47.9.3 The applicant submitted that its proposed service is targeted at individuals between the ages of 16 – 65, in the LSM 1-10 range, which the applicant believed would most likely have access to mobile telephones.<sup>281</sup>

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<sup>276</sup> TV4U application: p 171.

<sup>277</sup> Ibid.

<sup>278</sup> Ibid.

<sup>279</sup> Ibid.

<sup>280</sup> TV4U application: p 172.

<sup>281</sup> TV4U application: p 152.



- 47.9.4 The applicant submitted an extract from the 2011 Mobility research conducted by World Wide Worx and research conducted by Research Link as its primary research to indicate demand, need and support for its proposed broadcasting services.<sup>282</sup>
- 47.9.5 The 2011 Mobility research estimated that 10% of South Africans are eager to take up TV4U.<sup>283</sup> The applicant, based on the findings of the Mobility research and the 2010 South African statistics for mid-year population estimates, estimated that 3.3 million South Africans between the ages of 16 and 65 years would support its proposed broadcasting services.<sup>284</sup>
- 47.9.6 The applicant's market survey conducted by Research Link was aimed at gathering responses from potential customers in respect of the applicant's proposed digital, mobile, multimedia television, visual radio and video-on-demand offerings in Gauteng.<sup>285</sup> The focus of the market survey was the consumer behaviour, preferences and willingness to pay for the services proposed by the applicant.<sup>286</sup> The research sample used in the market survey consisted of 100 participants predominantly in the LSM 4-6 and 8-10 demographic groups located around four shopping malls in Gauteng.<sup>287</sup> The applicant submitted that this research revealed that its target audience anticipated a reliable service that would be user friendly with a clear picture and quality sound settings with an affordable pricing system.
- 47.9.7 Based on its research, the applicant indicated that, on a monthly average, it expected at least 162 750 subscribers in its first year of operation while this number was expected to increase by approximately 88% in the 5<sup>th</sup> year of operation.<sup>288</sup>
- 47.9.8 The applicant submitted two letters, one from Capital Radio and the other from the Southern African Disabled Musicians Association (SADMA), and a media extract as details of support for its proposed services, which, in the Authority's assessment, did not demonstrate particularly comprehensive support for the applicant's proposed services.<sup>289</sup> In this regard –
- 47.9.8.1 the letter from Capital Radio was an acceptance by Capital Radio to be one of the audio

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<sup>282</sup> TV4U application: pp 176-178.

<sup>283</sup> TV4U application: p 252.

<sup>284</sup> TV4U application: pp 252-253.

<sup>285</sup> TV4U application: p 178.

<sup>286</sup> TV4U application: p 230.

<sup>287</sup> TV4U application: p 234.

<sup>288</sup> TV4U application: Section 4, p 160.

<sup>289</sup> TV4U application: Appendix 27, pp 183-185.

providers of the applicant's proposed services;

47.9.8.2 the letter from the SADMA raised concerns of people with disabilities regarding mobile television in general and provided solutions that should be considered by the applicant;, and

47.9.8.3 the media extract dealt with the investment made by NAFCOC on the applicant.

47.9.9 In its written submission, Kagiso TV expressed its concerns regarding the applicant's research with emphasis on projections made on the up-take of services and the demand for such services.<sup>290</sup> In response, the applicant submitted that it had conducted quantitative research on its offering and demand for its services was established by its research, and that its research included determination of pricing and package offerings including pay-per-view services.<sup>291</sup>

47.9.10 The Authority was not satisfied that the research relied upon by the applicant constituted primary research relating to the applicant's proposed offering within its target market and audience –

47.9.10.1 The applicant's target market consisted of individuals between the ages of 16 and 65 years from LSM 1-10. However, the research sample used in the market survey conducted by Research Link consisted of respondents mainly above the age of 18 years in LSM 4-6 and LSM 8-10. The views and preferences of individuals below the age of 18 and individuals in LSM 1-3 and LSM 7 appear not to have been considered.

47.9.10.2 The Authority further regarded the applicant's market survey conducted by Research Link to be insufficient when considered in the context of the applicant's overall target audience. The research sample used in the market survey consisted of 100 participants located around four shopping malls based mainly in Johannesburg, while the applicant's overall target market is located nationally. The market survey research was also conducted in 2011 and, in the Authority's assessment, was not specific and did not directly respond to the questions raised in the ITA (i.e. the market research survey was generic and dealt with issues such as consumer behaviour, preference, and willingness to pay for a generic mobile service).

47.9.10.3 Further, in the Authority's assessment, the applicant's Mobility research did not

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<sup>290</sup> Kagiso TV written submission, 24 January 2013, p 7-8.

<sup>291</sup> Public hearing transcript, 26 July 2013, p 9.

constitute primary market research as required in terms of the ITA given that it was merely an extract of the research conducted. While this research was used for the purpose of estimating national demand for the proposed broadcasting services, the complete research report was not submitted to the Authority and the reliability of the applicant's estimated national demand could accordingly not be assessed.

47.9.10.4 During the public hearings, the Authority questioned the applicant about the relevance of the Mobility research as its primary research taking into account developments in the market and the fact that statistics in the research had changed since 2011. The applicant submitted that the Mobility study was very relevant and provided the information that it needed at the time that it submitted its application.<sup>292</sup>

47.9.11 In the Authority's assessment, the applicant did not provide primary market research as required in terms of the ITA; instead, the applicant only submitted an extract from the Mobility research as well as its market survey conducted by Research Link, which did not respond to the question of need, demand, and support. The Authority was not satisfied, and could not in the absence of primary research, determine demand, need and support for the applicant's proposed services.

#### 47.10 Complaints and Codes of Operation

47.10.1 The applicant indicated that it would employ the services of a chief marketing and customer services officer who would head up the designated unit, and who would be tasked with supporting the applicant's staff in handling complaints.<sup>293</sup> The applicant also indicated that it would utilise its interactive functionality to gather real-time feedback from customers using its service, and would use a mobi-portal for customer feedback.<sup>294</sup>

47.10.2 The applicant also indicated that, once issued with a licence, it would become a member of the NAB.<sup>295</sup>

47.10.3 The applicant indicated that all of its staff would attend an orientation programme on the applicable legislation, licensing conditions and code of conduct applicable in respect of its proposed broadcasting service. In addition, the applicant submitted that its legal consultant will act as the risk manager to report on a quarterly basis to the chairman of the board and

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<sup>292</sup> Public hearings transcript, 26 July 2013, p 14.

<sup>293</sup> TV4U application: Appendix 28.1, p 186.

<sup>294</sup> Ibid.

<sup>295</sup> Ibid.

the chief executive officer in relation to the necessary compliance in the applicant.<sup>296</sup>

**47.11 Programming**

**47.12** The applicant indicated that its proposed programming would include the following channels:

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**47.12.1** SABC 1 mobile: a version of SABC 1 edited for mobile television (i.e. South Africa's most popular channel with over 24 million viewers);

**47.12.2** News4U: a mix of regional, national, and international news from South African newsrooms and other international brands, which will also carry weather and traffic updates;

**47.12.3** Sports and Extreme 4U;

**47.12.4** Music4U: a channel with a mixture of music genres on video;

**47.12.5** Movies4U: a channel dedicated to national and international movies;

**47.12.6** Comedy4U: a channel with a mix of local comedy and international comedy content; and

**47.12.7** Series4U: a channel with locally packaged top series from international content suppliers.

**47.13** The applicant submitted agreements it has concluded with various content providers for the acquisition of programme content for its proposed services. The Authority granted the applicant confidentiality in respect of this information. The Authority, after analysing the programme content agreements, was not satisfied that these agreements provided any commitment to supply the applicant with programme content for its proposed services. One of the agreements was only signed by the applicant, while the other agreement related to the applicant's trial-test in 2011 and not the current licence application. As such, the Authority was not satisfied that the applicant had met the requirements of section 6, paragraphs 29, 32, and 33 of the ITA.

**47.14 Compliance with the Content Regulations**

The applicant did not provide any details of how its proposed service would comply with the Content Regulations. As such, the Authority is not satisfied that the applicant complied with or

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<sup>296</sup> Ibid.

<sup>297</sup> TV4U application: Section 6, pp 167-170.

would comply with the Content Regulations.

#### 47.15 Technical

- 47.15.1 The applicant indicated that Sentech would provide the signal distribution for its service.<sup>298</sup> The applicant indicated further that it had concluded an agreement with Sentech to distribute its signal during its trial-test and that this agreement could be extended once it was awarded the licence.<sup>299</sup> The applicant did not include any document indicating any negotiations or agreement it has entered into or concluded with Sentech in respect of the provision of signal distribution services once the licence has been awarded. As such, the Authority was concerned about the lack of evidence indicating that Sentech would provide signal distribution to the applicant if the applicant were awarded the licence.
- 47.15.2 In its application and during the public hearings, the applicant submitted that its proposed service requires the use of a specific bandwidth to support its proposed service, i.e. on the VHF Band III. In this regard, the applicant indicated that it intends launching a multimedia digital standard TV4U that delivers both digital radio and TV4U through the Digital Multimedia Broadcasting (DMB), which is an evolution of Digital Audio Broadcasting (DAB) technology developed in Korea.<sup>300</sup> The applicant submitted that, when it was testing its technology, it conducted a test-trial on 1 December 2011 when it broadcast SABC 1, SABC 2, 5FM, and Metro FM test content to cell phones and portable multimedia devices. The applicant conducted its test trial on the 247.13 MHz frequency (channel 13) in band III (i.e. 174-238 MHz and 246-254 MHz, with a total of 13 channels). By way of background –
- 47.15.3 The Final Terrestrial Broadcasting Frequency Plan 2008<sup>301</sup> (2008 Plan) provides a guideline for TV4U. The 2008 Plan does not impose a specific technology for use by mobile broadcasters, and provides that TV4U broadcasting would be implemented on a technology-neutral basis. In terms of the 2008 Plan, the designated frequency band for these services is on the UHF TV broadcasting band (band IV/V).<sup>302</sup> The 2008 Plan provides that the utilisation of band III by analogue TV broadcasting limits the introduction of DAB in the short term, but provides further that DAB will be introduced in band III after some of the analogue TV broadcasters currently using this bandwidth have been moved to other bands.<sup>303</sup>

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<sup>298</sup> TV4U application: Appendix 34, p 218.

<sup>299</sup> TV4U application: p 98.

<sup>300</sup> TV4U application: p 73.

<sup>301</sup> Published under GN 1538 in *Government Gazette* 32728 of 18 November 2009.

<sup>302</sup> 2008 Plan, p 10.

<sup>303</sup> 2008 Plan, pp 23 and 29.

47.15.3.1 The current Draft Terrestrial Broadcasting Frequency Plan 2013 <sup>304</sup> (2013 Plan) makes provision for consideration to be given to the use of DMB technology on channel 9 and channel 10 of band III (i.e. from 216-230 MHz) in South Africa, even though the SADC proposal was to reserve those channels for DAB. <sup>305</sup> However, these channels will only be available for DMB after the digital migration process has begun and some of the analogue television broadcasters currently using these channels have been moved to other bands. <sup>306</sup> As such, the use of band III for digital services can only be introduced when the current analogue services have migrated to DTT.

47.16 Additional information by TV4U received on 24 July 2014

47.16.1 TV4U was requested to submit the following information:

47.16.1.1 Firm proof of funding for its proposed services from a financial institution(s);

47.16.1.2 Primary research relating to its proposed offering within its target market and audience which adequately demonstrates a need, demand and support for the proposed service;

47.16.1.3 Details of how TV4U's proposed service will comply with the South African Television Content Regulations published under GN 154 in Government Gazette 28454 of 31 January 2006; and

47.16.1.4 Provide relevant programme content agreements for its proposed services or demonstrate that it will acquire content for purposes of this venture; which agreements must be properly signed.

47.16.2 Analysis of additional information by TV4U

47.16.2.1 Firm proof of funding

47.16.2.1.1 TV4U submitted a letter indicating a non-binding expression of interest from Arkein Capital Partners ("Arkein Capital") which does not indicate firm proof of funding. It is also not explicitly stated how much Arkein Capital is willing to fund this project. Letters, from the Industrial Development Corporation (IDC) and the National Empowerment Fund (NEF) (submitted during the application process) reflect the

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<sup>304</sup> Published under GN 298 in *Government Gazette* 36321 of 2 April 2013.

<sup>305</sup> 2013 Plan, pp 16, 20, and 39.

<sup>306</sup> 2013 Plan, pp 16 and 20.

same sentiment of a non-binding expression of interest.

47.16.2.1.2 After receiving the Authority's letter of conditionally granting TV4U with a licence, TV4U requested a meeting with the Authority to clarify what was required to be issued with a licence. The meeting took place on 28 May 2014 at the ICASA offices. Regarding the issue of proof of funding, TV4U indicated that they have signed a new agreement and would be making a presentation to the NEF to request firm proof of funding. TV4U assured the Authority that all the questions asked in the Authority's letter of 23 April 2014 have been addressed and that the information would be formally handed over to the Authority.

47.16.2.1.3 On 24 July 2014, TV4U submitted the requested information requesting confidentiality on the following information pertaining to Funding:

47.16.2.1.3.1 Non-binding expression of interest letter from Arkein Capital Partners;

47.16.2.1.3.2 A letter from IDC;

47.16.2.1.3.3 A letter from NEF;

47.16.2.1.3.4 A letter from MIT Capital;

47.16.2.1.3.5 A letter from Nedbank;

47.16.2.1.3.6 A letter from Alliaz Global Corporate; and

47.16.2.1.3.7 A rental agreement between TV4U (Pty) Ltd and Schward Middle East Africa FZ-LLC.

47.16.2.1.4 On 29 August 2014, the Authority granted confidentiality on all the information above. On 01 September 2014, the Authority received a letter from TV4U abiding to the Authority decision on confidentiality.

47.16.2.1.5 The Authority is not convinced by the information provided by TV4U regarding whether or not it has indicated firm proof of funding. The letters provided merely indicate an expression of interest and not firm proof of funding coupled with the fact that there were no specific amounts detailed to be advanced for this venture.

47.16.2.1.6 Therefore, the Authority is of the considered view that the applicant did not demonstrate firm proof of funding for its proposed venture.

47.16.2.2 Primary research

47.16.2.2.1 TV4U submitted additional information regarding its primary research for the proposed service offering. TV4U requested confidentiality on same, however, the

Authority refused confidentiality as the information was initially refused confidentiality during the application process and as such the Authority's position had remained consistent. On 29 August 2014, a letter was sent to TV4U advising it of the Authority's decision on its confidentiality request.

47.16.2.2.2 The Authority informed TV4U on the same letter that it was placed with the responsibility to decide whether to withdraw or allow the said information to be subjected to public scrutiny. TV4U was required to inform the Authority of its decision within fourteen (14) days of receipt of this correspondence. On 01 September 2014, TV4U sent a letter to the Authority abiding by the Authority's decision on confidentiality.

47.16.2.2.3 TV4U provided a PowerPoint presentation on its primary research commissioned by Freshly Grounds Insights (FGI) to conduct a dipstick research project to test the demand, need and support for its proposed service. The objective of the research was as follows:

47.16.2.2.3.1 understand the current awareness of TV4U vs DSTV Mobile;

47.16.2.2.3.2 understand current cellphone usage and feature importance in order to understand whether the market has the ability to receive TV4U;

47.16.2.2.3.3 understand current video downloading and video watching trends of the market with the use of cellphones;

47.16.2.2.3.4 test the appeal and potential uptake of a service such as TV4U; and

47.16.2.2.3.5 Identify the appeal of current bundles to be offered by TV4U, as well as price points.

47.16.2.2.4 FGI conducted face-to-face interviews on hand-held tablets. The research was conducted between 22 and 23 May 2014. FGI collected a sample of 210 interviews in three provinces, namely Gauteng, KwaZulu-Natal and the Western Cape. Interviews were conducted in both metropolitans and outlying areas.

47.16.2.2.5 TV4U presented their research results as sample distribution and demographics. Their sample distributions were performed in Johannesburg, Orange Farm, Durban, Umlazi, Cape Town and Khayelitsha. Their demographics were both male and female from African, Coloured, Indian and White communities from age 18 to 56+



years earning from less than R5000.00 to R30 000.00 plus per month ranging from LSM5 to LSM10.

- 47.16.2.2.6 The research results were based on brand awareness on TV4U and DSTV Mobile. On TV4U, 69% respondent indicated that they heard about TV4U and 31% did not hear about it. When asked where have they heard about TV4U, 57% responded that they heard about TV4U on TV, 47% word of mouth, 29% print media, 11% radio and 1% other. On DSTV Mobile, 53% respondent indicated that they heard about DSTV Mobile and 47% did not hear about it. When asked where have they heard about DSTV Mobile, 64% responded that they heard about TV4U on TV, 45% word of mouth, 27% print media, 13% radio and 2% other.
- 47.16.2.2.7 The results were also based on cellphone usage. Respondent were asked to provide answers on what they use their mobile phone for, other than making/receiving calls and messages. 75% indicated that they surf the internet, 59% listen to the music, 40% access their e-mails, 35% listen to the radio, 25% downloading videos, 25% watching movies and 5% others. Respondents were asked the types of videos they download. 58% indicated that they download comedy movies, 50% You Tube Videos, 38% Drama, 33% Series, 25% Action, 21% sports and 21 % news.
- 47.16.2.2.8 Respondents were asked about the most appealing bundle if TV4U has to be issued with TV4U licence. 44% of the respondents choose to pay a basic price of R59.00 p/m and 3% selected Movielicious platinum and VOD services. The acceptable price point and payment options range from basic of R57.48 to a Movielicious: Platinum + video of R209.93. On the payment options, 41% wanted once-off payment, 37% subscription, 27% pay per view and 22% wanted free services. Respondents were also asked about the attractiveness and non-attractiveness of TV4U packages. On attractiveness, 55% liked variety of packages, 52% affordable prices, and 29% attractiveness of the device.
- 47.16.2.2.9 Respondents were also asked open-ended question about what is not attractive on TV4U bundles and what changes would they suggest? 25% of the sample said that they would not change anything. For the remaining 75% the main issues included not recognising most of the channels and therefore the content was not appealing, lack of choice and not being able to select you own channels (tailor-make your own bundle). Others said that the price seemed high for the amount of options you get and wanted SABC channels to be included. The programmes that the respondents want to access are 59% News4U, 48% Music4U, 46% Generations, 34% Government 4U, 33% Gospel, 28% 7delaan and 26% other. The preferred devices to watch are 40%

of mobile phone with dongle, 26% laptop with a dongle, 25% tabled with a dongle, 4% in a public bus with dongle, 3% PC with a dongle and 1% navigation.

47.16.2.2.10 TV4U has further indicated that the respondents are already set-up for MobileTV with regard to device (cell phone) capabilities; therefore the primary focus for TV4U would be on making minor improvements on content/channel offerings and marketing the concept to the market.

47.16.2.2.11 The Authority is of the view that TV4U's submission demonstrates a need, demand and support for the proposed service.

#### 47.16.2.3 **Compliance with South African Television content regulations**

47.16.2.3.1 TV4U indicated that a minimum of 10% of its channel acquisition budget is already spent on channels with South African television content.

47.16.2.3.2 The applicant's attempts in this regard are evidenced by the signed agreements that the applicant has with local content providers. TV4U's request to have these agreements treated with confidentiality was granted.

47.16.2.3.3 The applicant has demonstrated a commitment to comply with the requirements of the local content regulations.

#### 47.16.2.4 **Signed content agreement**

TV4U has provided an extensive list of signed local content agreements with their content providers, which was part of the confidentiality request. TV4U and the content providers duly signed all contractual agreements between TV4U and content providers.

47.16.2.4.1 The Authority has granted confidentiality on content agreements.

#### 47.17 **Additional information by TV4U received on 31 December 2014**

47.17.1 On 27 November 2014, the Authority received further submission from TV4U.

47.17.2 **TV4U submitted the following information:**

47.17.2.1 A formal binding commitment from NAFCOC National to provide the required funding for the entity's business venture;

A letter from Allianz Global Corporate and Speciality SA Limited.

47.17.2.2 A substantial document from Sentech SOC 2006 being an agreement regarding the DMB phase roll-out commencing with the Western Cape, Kwa-Zulu Natal, Limpopo and Mpumalanga to be followed by Eastern Cape, Free State, North West and Gauteng;

47.17.2.3 A letter from IDC. ; and

47.17.2.4 A letter from Reliance Life committing itself to providing funeral insurance as part of TV4U's subscription bundle.

**47.17.3 Firm proof of funding**

47.17.3.1 TV4U submitted a letter from NAFCOC National indicating that NAFCOC shall provide financial resource to capitalise the commercial activities of TV4U which does not indicate firm proof of funding. It is also not explicitly stated how much NAFCOC is willing to fund this project. Letters, from the IDC and the NEF (submitted during the application process) reflect the same sentiment of a non-binding expression of interest. Letters from Allianz Global Corporate and Speciality SA Limited stating that they will be providing insurances to TV4U and a letter from Reliance Alliance committing to provide funeral insurance as part of TV4U subscription bundle.

47.17.3.2 The Authority is not convinced by the information provided by TV4U regarding whether or not it has indicated firm proof of funding. The letters provided merely indicate an expression of interest and not firm proof of funding coupled with the fact that there were no specific amounts detailed to be advanced for this venture.

47.17.3.3 On 10 February 2015, the Authority sent a letter to TV4U advising that the information submitted in relation to the proof of funding is inadequate as it is merely an expression of interest and not a firm proof of funding as requested by the Authority. The letter also stated that the Authority has noted that TV4U has resubmitted same letters, which the Authority had found to be inadequate; hence the Authority has decided to grant but not issue the licence for the same reason.

47.17.3.4 TV4U was requested to provide a firm proof of funding (i.e. letter/s from financial institution/s or funder/s indicating the exact amount of funding that will be provided to TV4U for purposes of its proposed broadcasting service) on or before 10 March 2015.

**47.18 Additional information by TV4U received on 25 February 2015**

- 47.18.1 On the 25 February 2015, TV4U submitted the proof of funding.
- 47.18.2 The following letters were submitted as proof of funding by TV4U:
- 47.18.2.1 letter of investment from Louis Pasteur Holding;
  - 47.18.2.2 letter of investment from Phumelela Gaming;
  - 47.18.2.3 letter from Kraft Insurance Broker; and
  - 47.18.2.4 Letters of investment from Sentech.
- 47.18.3 TV4U submitted similar information on their application submitted on 2012, which indicated that it would need start-up capital of four hundred and seventy-eight and five hundred million rand<sup>307</sup> (R478.5M). This capital comprises of two components namely, 3.5 million of owner equity and 475 million of shareholders loans repayable in five (5) years term.
- 47.18.4 However, TV4U did not include the letters from Nafcoc National and IDC, which were included in their previous submissions. Consequently, TV4U did not provide the reasons as to why the letters were excluded. The Authority assume that the aforementioned investors might have been pull out of the project.
- 47.18.5 The letter from Kraft Insurance Brokers stated that they have been appointed by Allianz and TV4U to provide value added short term insurance products to the potential customer. This letter is irrelevant for this process, therefore, will be excluded from this process.
- 47.18.6 Letters of investment from Sentech dated 11 February 2015 confirm that it has provided TV4U with a proposal of R 149, 348 000 ( One hundred and forty nine million rands) to cover all TV4U network based on the condition that TV4U has signed terms of transmission services agreement. The letter further indicated that Sentech investment infrastructure, will raise efficiency and sustainability and will also provide a significant positive to the operations of the business.
- 47.18.7 It should be noted that TV4U on its financial projections indicated that the financial costs in relation to Sentech is from the first year to the fifth year of broadcasting.<sup>308</sup> What is not clear

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<sup>307</sup> <sup>307</sup> Page 113 of the application, financial requirements and sources.

<sup>308</sup> Appendix 23, page 150 of the application, (revenue from sponsorship co-founding for or other sources).

from the business transaction, is whether this transaction means that Sentech and TV4U would be partners in controlling the network to be used by TV4U or whether Sentech would provide the network services only. It is also not clear whether the amount of R149 348 000 is only required for the start-up of the business or it is split over years. This deal is not yet finalised as the letter from Sentech indicates that the issuance of these funds is subject to capital approval.

47.18.8 The letter of investment from Louis Pasteur Holding confirms that it will invest in the TV4U for the equity of R25 million on the conditions:

47.18.8.1 If TV4U is awarded with a Commercial Subscription Broadcasting Services licence.

47.18.8.2 The conclusion of due diligence investigation on the financial and technical feasibility of the MTV business plan to be conducted by experts appointed by LPH. Owing to this condition, TV4U should advise the Authority on the conclusion date of this investigation. However, if the investigation is concluded already, We recommend that the report should be submitted to the authority for further analysis as the result could bear the significant consequences such as the commencement of the business.

47.18.8.3 The conclusion of a shareholders agreement between the shareholder of TV4U and LPH on terms acceptable to LPH. This condition indicates that there is formal agreement in place between the two entities. However, the Authority need to understand what is the status of the shareholder agreement between two, meaning is it concluded or it is going to be concluded upon the issue of the license. The Authority further require an understanding of the LPH acceptable terms. Therefore, based on the above condition it is clear that the letter is not binding.

47.18.8.4 The Authority is of the considered view that this transaction might go through or it could be declined by the Board of LPH as point number 4 of the LPH suggests that the LPH board shall at its discretion have the right to waive, to the extent determined by its Board of directors, any one or more of the above suspensive conditions.

47.18.9 The letter of investment from Phumelela Gaming Ltd (PGL) indicated its interest to acquire 26% stake (R119 Million which has been calculated from the initial amount that TV4U indicated it would require to start its business which is R478.5M) in TV4U in a non-binding offer subject to issuance of a Commercial Subscription Broadcasting Services licence. Phumelela Gaming's annual financial statement note 15. Indicates that company cash equivalent has grown from 38 million to 81, million in 2014 at company

level, their strong asset shows that it has financial muscle to invest in TV4U. Phumelela Gaming and Leisure Limited has calculated this 26% stake as follows: the purchase price will be R8M but PGL will also supply working capital in an amount of R5M at the date of the transaction. According to PGL all these monies would be paid in cash which is R8 million and 5 million. The total amount to be offered by PGL is R13 million. Providing of these monies is also subject to the conclusion of a shareholders' agreement between PGL and the other shareholders of TV4U and the transaction being approved by the PGL board.

47.18.10 Again the letter from Phumelela Gaming was valid until 7 March 2015. As a result, It is not clear whether this offer still stands or not. It is clear though that PGL could be new shareholder of TV4U provided the above-mentioned conditions are met. However, the Authority could not be able to accept this letter as proof of funding since this offer is non-binding and the offer was valid until the 7<sup>th</sup> of March 2015, which has passed.

47.18.11 TV4U failed to submit the proof of funding from NEF, only submitted the trail of emails, which are not demonstrating proof of funding.

47.18.12 Based on the proof of funding received from TV4U, the Authority has found that the total equity partner loan is R196 million. The breakdown is as follows:

47.18.12.1 26% (R13 million) from Phumelele Gaming;

47.18.12.2 R25 million from LPH; and

47.18.12.3 R147 million from Sentech.

47.18.13 TV4U start-up capital requirement was R478.5 million in its initial application. TV4U managed to secure an amount of R185 million, which is not sufficient for its venture. TV4U is required to raise an amount of R293.5 million to be able to commence its business. Therefore, it is concluded that TV4U should not be granted licence due to its financial position. Even if the Authority were to consider issuing a licence to TV4U, it would face challenges starting its business based on a shortfall of R293.5 million. TV4U is not consistent in providing the Authority with the exact financial providers that are committed to fund them, each time proof of funding is required a new funder is introduced and all these funders' transactions are not finalised. TV4U was granted a licence by the Authority, some of the conditions that was found in some of their funders which state that the funds would be provided once TV4U has been issued with a licence or the fact that it was subject to Board's

approval were not relevant at this latest stage. TV4U was in a better position to secure funding based on the fact that the licence has been granted although it has not yet been issued.

47.18.14 On 22 May 2015, TV4U held a meeting with the Authority to enquire on the status of the its application for subscription broadcasting service licence.

47.18.15 The Authority provided TV4U with the background of what transpired since all the applications for subscription broadcasting services licence were lodged with the Authority. In April 2014 all applicants where informed by letters that it has granted but will not issue the licences until outstanding information have been submitted. In May 2014, the Authority met with TV4U to clarify the requested information. In November 2014, the Authority informed TV4U that the information submitted was inadequate. In February 2015, the Authority informed TV4U that the information that was submitted was still inadequate. TV4U has since submitted information which the Committee on Subscription Project still needed to determine if it is adequate and make recommendations to Council. Council will make a decision before the end of May 2015.

47.18.16 TV4U informed the Authority of the developments in relation to the NAB's DAB+ trial which is being carried on TV4U's platform and inquired on how long it will take the Authority to issue the licence after its decision.

47.18.17 The Authority indicated to TV4U that after the decision, the issuance of the licences is an administrative issue were the successful applicants will be afforded with an opportunity to comment on the draft licence conditions and thereafter the licences be issued. TV4U was also informed that the Authority will make the decision based on the totality of the information submitted by the applicant in compliance with the ITA.

47.19 Additional information by TV4U received on 24 July 2015

47.19.1 On its letter dated 10 June 2015, TV4U was requested to submit to the Authority sufficient proof of funding for R478.5 million. The proof of funding must not change the shareholding of TV4U, as contained in its application.

47.19.2 TV4U (Firm proof of funding)

47.19.2.1 On 24 July 2015, the Authority received a response from TV4U wherein the applicant amongst other things indicated that its funding has since been revised as follows:

47.19.2.1.1 One hundred and six million (R106 000 000) for the first year;

47.19.2.1.2 Seventy and six million (R70.6 000 000) for the second year; and

- 47.19.2.1.3           Thirty six million (R36 000 000) for the third year.
- 47.19.2.1.4           The Authority was not informed of these developments prior to receiving the response.
- 47.19.2.1.5           TV4U submitted a letter from the National African Federated Chamber of Commerce and Industry ("NAFCOC") confirming that NAFCOC shall provide financial resources and play the role of lead arranger with two development funding agencies namely the National Empowerment Fund ("NEF") and the Independent Development Agency ("IDC") as previously indicated by the applicant.
- 47.19.2.1.6           The Authority is of the view that as the letter dated 06 July from NAFCOC does not provide the specific amount to be provided to TV4U, it should be rejected.
- 47.19.2.1.7           The content of the letter from the IDC is similar to previous letters sent by TV4U and considered by the Authority to be insufficient. There is no specific amount mentioned as the funds to be borrowed to TV4U. TV4U was advised to provide proof from IDC as to how much is IDC willing to loan to the applicant. That proof is not available and therefore, the letter from IDC should be rejected.
- 47.19.2.1.8           The e-mail attached as proof of funding from NEF indicates that TV4U still needs to submit an application for an amount of Twenty Five Million Rands (R25 000 000) to the NEF. There is no guarantee that the funds will be made available to the applicant, and therefore this e-mail has no substance and must be rejected.
- 47.19.2.1.9           TV4U submitted a Non-disclosure agreement between TV4U and Chinese Novel-Super TV (NSTV). Novel-Super TV indicates that it has secured an overseas investment fund of over one hundred million dollars (\$100 000 000) which is dedicated for broadcasters such as TV4U beyond the Chinese domestic market. Additionally, they are able to bring on board other valuable financial and operational partners to help TV4U. There is also mention of a potential joint venture to be established between TV4U, NSTV, and other valuable parties. This letter is an indication that TV4U would be funded by NSTV although the exact amount is not mentioned. The agreement has not been finalised as yet. This type of agreement is not substantive and should be rejected.
- 47.19.2.1.10          The letter from Sentech indicates that it will be the signal distributor and has provided TV4U with a written proposal that covers TV4U's network requirements. The expected investment by Sentech amounts to one hundred and forty nine million,



three hundred and forty eight thousand Rand (R149 348 000.00) and is subject to capital approval. Sentech will insure and maintain TV4U's network infrastructure. The Authority should accept this letter from Sentech as firm proof of funding as there is a clear indication of how much Sentech will provide TV4U.

47.19.2.1.11 The letter from Phumelela Gaming and Leisure indicates that Tellytrack - a subsidiary of Phumelela Gaming and Leisure - has entered into an exclusive content agreement to initially provide two original horseracing and sports betting channels, with the option of a third overflow racing channel. This information is not relevant as proof of funding since there are no financial agreements involved except that Tellytrack would be a content provider. TV4U failed to provide proof of funding from Phumelela Gaming and Leisure.

47.19.2.1.12 TV4U also provided its budgetary requirements which indicates that the items budgeted for in the first year amount to R106 000 000, second year budget is R70 600 000 and the third year budget is R36 000 000. This information serves as proof of why TV4U's financial projections have since changed. The Authority should accept this information submitted by TV4U.

47.19.2.1.13 When TV4U submitted its application in 2012, its projected start-up cost was four hundred and seventy-eight million, five hundred thousand (478.5M). This has since changed as indicated in 47.19.2.1.12 above. Although the funding requirements have decreased TV4U, still needs to prove to the Authority's satisfaction that the requisite funding is available. The Authority suggested to TV4U in previous correspondence that it should approach its funders - IDC and NEF - and inform them that the Authority has granted a licence but will only issue it once the Authority is satisfied that their funders have made a firm financial commitment in the amount that is required to cover the start-up costs.

47.19.2.2 The Authority has considered TV4U's submission and noted the following:

47.19.2.2.1 NEF – TV4U has yet to make an application for the R25m funding;

47.19.2.2.2 IDC – TV4U has resubmitted the letter which the authority indicated is not sufficient proof of funding as there is no indication of amount;

47.19.2.2.3 Chinese 'Nova Super TV' (sp) – The letter does not indicate the exact amount to be made available to TV4U. Further, the Authority notes that this is likely to raise issues in relation to foreign control;

- 47.19.2.2.4 Sentech – The letter provided is in relation to transmitter capital expenditure and not to TV4U's operational expenses which will, in any event, be required to be offset by TV4U's budget;
- 47.19.2.2.5 Phumelele Gaming and Leisure – There are no financial commitments made. Even if a financial commitment were to be made, such would translate to R30m being the 26% shareholding. However, the Authority previously advised TV4U that in providing proof of funding, it should not change its shareholding; and
- 47.19.2.2.6 The Authority was not satisfied that TV4U has submitted sufficient proof of funding to cover the start-up related costs.

#### 47.20 Decision

- 47.20.1 The Authority has decided not to issue the applicant an individual commercial subscription broadcasting service licence for the following reasons:
- 47.20.2 The applicant indicated that it would be funded through a combination of both debt and equity funding. In the Authority's assessment, and based on the Authority's analysis of the information submitted by the applicant, the letters, including supplementary letters provided by the applicant to demonstrate proof of funding were merely an expression of interest, and the Authority was accordingly not satisfied that the applicant had demonstrated that it had sufficient funding for the venture.

#### 48. Siyaya Free to Air (Pty) Ltd (Siyaya TV)

##### 48.1 Introduction

- 48.1.1 The Authority received an application in terms of the ITA from Siyaya Free to Air TV (Pty) Ltd for an individual commercial subscription broadcasting service licence.
- 48.1.2 The applicant's proposed station name is "Siyaya TV".<sup>309</sup>
- 48.1.3 The applicant indicated that it intends providing a composite sound and television multi-channel broadcasting subscription service on a national scale.<sup>310</sup>

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<sup>309</sup> Siyaya TV application: vol 1, p 1.

<sup>310</sup> Siyaya TV application, vol 1, p 1.

48.1.4 The Authority received written submissions on the applicant's application from Kagiso TV. On 22 February 2013, the applicant submitted its written responses to the Authority in response to Kagiso TV's written submissions. The Authority has considered Kagiso TV's submissions and the applicant's responses to the various submissions and, where relevant, Kagiso TV's submissions and the applicant's responses to those submissions, have been referred to in this Reasons Document.

48.1.4.1 In Kagiso TV's written submission, Kagiso TV submitted that the applicant clearly intends providing free-to-air broadcasting services in addition to a subscription broadcasting service, which was not contemplated in terms of the ITA, particularly given its name, i.e. Siyaya Free-to-Air (Pty) Ltd.<sup>311</sup>

48.1.4.2 In response, the applicant stated that it intended on offering "free extra view" for its subscribers as a value-added component, and that any reference to "free-to-air services" and "free-to-air proposition" refers to the inclusion of other free-to-air services and public broadcasting services as part of its bouquet.<sup>312</sup> The applicant also indicated that its registered name was not relevant, given that it would be operating under the name of Siyaya TV, and given that it would, in practice, be providing subscription broadcasting services only, as indicated in its application.<sup>313</sup> The Authority is satisfied with the applicant's responses in this regard.

## 48.2 Corporate Structure

48.2.1 The applicant is a private company incorporated in South Africa under registration number 2010/018674/07.<sup>314</sup> The applicant submitted its founding documents with its application including its certificate of incorporation, memorandum and articles of association, and the applicant's name change documentation (i.e. from Blue Sign Trading (Pty) Ltd to Siyaya Free to Air TV (Pty) Ltd), as required by section 2 of the ITA.<sup>315</sup> The Authority is satisfied that the applicant is a juristic person duly registered and incorporated in South Africa. The applicant also submitted a valid resolution authorising Dr Vuyokazi Felicity Mahlati to sign the application on behalf of the applicant.<sup>316</sup>

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<sup>311</sup> Kagiso TV written submission, p 4, para 5.

<sup>312</sup> Siyaya TV written response, p 5, para 2.18.

<sup>313</sup> Ibid.

<sup>314</sup> Siyaya TV application: vol 1, section 2, p 3 and Appendix 6.2, p 105.

<sup>315</sup> Siyaya TV application: vol 1, pp 66-99.

<sup>316</sup> Siyaya TV application: vol 1, p 3, para 6.3 and Appendix 6.3, pp 106-107.

48.2.2 In its application, the applicant indicated, in a pie-chart diagram, that its shareholding structure is as follows:<sup>317</sup>

Bakgatla Ba Kgafela	40%
Liseko Trust	10%
Buyelwa Mabani Trading (Pty) Ltd	10%
MYTelevision (Pty) Ltd	16%
Jikijela Lorraine Ramathesele	10%
The Phithikeza Trust	6%
Kgaogelo Joseph Malebana	4%
CorpActive (Pty) Ltd	4%

48.2.3 The applicant submitted the following information in respect of each of its shareholders –

48.2.3.1 A letter of designation indicating that Mr Molefe John Pilane is the “kgosi” of the Bakgatla Ba Kgafela, a rural community in the North West Province, with effect from 1 January 1996, as recognised and designated in terms of the Traditional Authorities Act 23 of 1978.<sup>318</sup>

48.2.3.2 The deed of trust for the Liseko Trust, entered into between Eulicia Nomiyuyiseko Ralo (the donor), and Gilimamba Sylvester Mahlati, Vuyokazi Felicity Mahlati and ABSA Trust Limited (the trustees), the purpose of which is for the benefit of the income and capital beneficiaries of the trust.<sup>319</sup> The capital beneficiaries of the Liseko Trust are: Gilimamba Sylvester Mahlati, Vuyokazi Felicity Mahlati, Lilitha Mahlati, and Siseko Mahlati, and the income beneficiaries of the Liseko Trust include “any person, to be selected from the ranks of the capital beneficiaries and their blood relations only, who may, in terms of the trustees’ discretionary powers, benefit from the trust”.<sup>320</sup>

48.2.3.3 The certificate of confirmation issued by the CIPC in respect of MyTelevision (Pty) Ltd, in terms of which Mr Aubrey Tau is indicated to be the sole director.<sup>321</sup> In terms of this certificate of confirmation, MyTelevision (Pty) Ltd appears to be in the process of deregistration. However, in its written response to Kagiso TV’s written submissions, the applicant confirmed that the listing of MyTelevision (Pty) Ltd as in the “Deregistration Process” was only linked to the filing of annual returns and the applicant confirmed that

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<sup>317</sup> Siyaya TV application: vol 1, Appendix 6.4, p 109 and vol 3, p 5.

<sup>318</sup> Siyaya TV application: vol 1, p 4.

<sup>319</sup> Siyaya TV application: vol 1, pp 7-23; see also p 10, clause 2.

<sup>320</sup> Siyaya TV application: vol 1, pp 9-10, clause 1.

<sup>321</sup> Siyaya TV application: vol 1, pp 27-28.

MyTelevision (Pty) Ltd's annual returns are currently up-to-date. <sup>322</sup> The applicant indicated that MyTelevision (Pty) Ltd is 100% black-owned.

48.2.3.4 A reservation of name, registration certificate, and certificate and memorandum of incorporation in respect of Buyelwa Mabani Trading (Pty) Ltd, which is indicated to be 100% black-owned. <sup>323</sup> Medi Moira Mokuena was indicated to be the sole director of Buyelwa Mabani Trading (Pty) Ltd.

48.2.3.5 A notarially certified copy of the trust deed for the Phithikeza Trust in terms of which Faith Jabulisiwe Ethany Gama is indicated to be the donor. <sup>324</sup> The trustees include Siyabonga Innocent Gama (the donor's son), Queeneth Fikile Gama (the donor's son's spouse), and Elizabeth Ntshingila. The beneficiaries include Xolani Jackie Gama, Vuyiswa Lindelwa Gama, Lusanda Yoliswa Molefe, Phumlani Gama, Nompilo Aphelele Nomonde Gama, and any other children of the donor's son born after the execution of the trust deed. <sup>325</sup> In terms of paragraph 2.5 of the trust deed, the beneficiaries are indicated to mean the donor's son, the donor's son's spouse, the beneficiaries, and the descendants of the beneficiaries.

48.2.3.6 A certificate of incorporation, and a certificate to commence business, in respect of CorpActive (Pty) Ltd, which is indicated to be 100% black-owned. <sup>326</sup>

48.2.3.7 Jikijela Lorraine Ramathesele, who is indicated to be a black woman.

48.2.3.8 Kgaogelo Joseph Malebana, who is indicated to be a youth. <sup>327</sup>

48.2.4 The applicant indicated that no person is in a position to appoint or veto the appointment of at least half the directors of the applicant or in any other way direct or restrain the applicant on substantial management or other issues. <sup>328</sup> The applicant submitted a copy of its shareholders' agreement with its application. The Authority granted confidentiality in respect of this agreement. <sup>329</sup> In terms of clause 8.1 of the shareholders' agreement relating to the appointment of directors, <sup>330</sup> which was separately submitted by the applicant there shall

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<sup>322</sup> Siyaya TV written response, p 6, para 2.21 and Annexure 2; see also Kagiso TV written submission, p 5, para 6.1.2.

<sup>323</sup> Siyaya TV application: vol 1, pp 29-40.

<sup>324</sup> Siyaya TV application: vol 1, pp 43-65.

<sup>325</sup> Siyaya TV application: vol 1, p 47, para 2.4 of the Trust Deed of the Phithikeza Trust.

<sup>326</sup> Siyaya TV application: vol 1, pp 100-101.

<sup>327</sup> Siyaya TV application: vol 1, p 103.

<sup>328</sup> Siyaya TV application: vol 1, Appendix 6.5, pp 110-111.

<sup>329</sup> Siyaya TV application: vol, Appendix 17.1

<sup>330</sup> Siyaya TV application: vol 1, p 3, para 6.5 and Appendix 6.5, p 111.

be a minimum of three directors and a maximum of ten directors at all times. Clause 8.2 of the shareholders' agreement provides that each shareholder or group of shareholders holding a minimum of 10% of the equity shall be entitled to appoint a director. As such, each of Bakgatla Ba Kgafela, Liseko Trust, Buyelwa Mabani Trading (Pty) Ltd, MY Television (Pty) Ltd and Jikijela Lorraine Ramathesele are entitled to appoint a director, although there are currently indicated to be only four directors (Vuyokazi Felicity Mahlati, Itumeleng Aubrey Tau, Molefe John Pilane, and Jikijela Lorraine Ramathesele).

48.2.5 The Authority is satisfied that the applicant complied with the requirements of the ITA in relation to shareholding and with the requirements contained in section 2 of the ITA.

#### 48.3 Empowerment of HDPs

48.3.1 The applicant indicated that it is 100% owned by HDPs, split as follows: 40% held by Bakgatla Ba Kgalefa, 30% held by women, 4% held by youth, and 26% held by black-owned and controlled promoters, namely MyTelevision (Pty) Ltd, Corpactive (Pty) Ltd, and Phithikeza Trust.<sup>331</sup>

48.3.2 Kagiso TV, in its written submission, questioned the applicant's BEE and general shareholding structure.<sup>332</sup>

48.3.3 However, the Authority is satisfied that the applicant met the equity requirement for HDPs set in the ITA, given that it was wholly owned by black shareholders.<sup>333</sup>

48.3.4 The Authority is further satisfied that the applicant complied with the requirements set out in section 5(9)(b) and 9(2) of the Act as well as with the requirements set out in section 2, paragraph 6 of the ITA and that the applicant has provided details of the means by which such equity ownership was calculated as required by the ITA.

#### 48.4 Section 64 of the Act

48.4.1 The directors of the applicant are: Vuyokazi Felicity Mahlati, Itumeleng Aubrey Tau, Molefe John Pilane, and Jikijela Lorraine Ramathesele.<sup>334</sup> The applicant indicated further that an independent director is yet to be appointed. The Authority has not been provided with any information in respect of this independent director.

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<sup>331</sup> Siyaya TV application: vol 1, p 3, para 6.4 and Appendix 6.4, p 108.

<sup>332</sup> Kagiso TV written submission, para 5.

<sup>333</sup> Siyaya TV written response, paras 2.19-2.21.

<sup>334</sup> Siyaya TV application: vol 3, p 5.

48.4.2 Based on the information provided in the application, the Authority is satisfied that the applicant does not have any direct or indirect foreign shareholders, and does not have any foreign directors, and the Authority is accordingly satisfied that the applicant does not contravene section 64 of the Act.

48.5 Section 66(2) and (3) of the Act

The applicant indicated that its directors do not hold any interest, either directly or indirectly, in any newspaper. The Authority is satisfied that the applicant does not contravene sections 66(2) and (3) of the Act.

48.6 Section 65(1) of the Act

48.6.1 The applicant indicated that it does not have any ownership interests in the broadcasting sector.

48.6.2 The applicant indicated that Ms Ramathesele has an interest in advertising through a subsidiary company, Izwi Advertising and Airtime Sales, and that Abe Mogashoa is currently involved in a publicly funded body (although he indicated that he would cease this involvement to the extent that a licence was awarded to the applicant).<sup>335</sup> However, these interests are not relevant for the purposes of section 65(1) of the Act.

48.6.3 The Authority is accordingly satisfied that the applicant does not contravene section 65 of the Act.

48.7 Management and Human Resources

48.7.1 The applicant provided the identity documents and curriculum vitae for each of its senior management, including: Abraham Tsele Mogashoa (corporate affairs), Kelebogile Annica Manyapelo (manager: business development and strategy), Boitumelo Karabo Motlana, Bongzi Nkosi Petros Mkhize, Dr Vuyokazi Felicity Mahlati, Itumeleng Aubrey Tau (channel director), Kgaogelo Joseph Malebana, Kelebogile Princess Motjale (manager: legal affairs), Kgosi Molefe John Pilane, Lorraine Jikelela Thandi Ramathesele (CEO), Nadine Vasinta Kisten (manager: human resources), Pasipononga Liwewe (head of sports), Walter Ho (financial director) and Zikhethiwe Ngcobo (head of content).<sup>336</sup> The applicant also provided a detailed background for each of the members of the senior management team describing,

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<sup>335</sup> Siyaya TV application, vol 3, pp 25, 34-35.

<sup>336</sup> Siyaya TV application: vol 2, Appendix 7.1, pp 2-69.

amongst other things, previous experience.<sup>337</sup>

48.7.2 Kagiso TV submitted, in its written submissions, that Mr Motlana's CV was included in the application as part of the applicant's management, but that Mr Motlana did not appear in the applicant's organogram, which caused uncertainty regarding his role in the applicant.<sup>338</sup> The applicant indicated that Mr Motlana is a regulatory consultant for the applicant, appointed from 1 May 2012, who assisted in the development, drafting, and compilation of the regulatory aspects contained in the applicant's application.<sup>339</sup>

48.7.3 Based on the Authority's analysis of the submitted curricula vitae, the Authority is satisfied that the proposed senior management for the applicant has the requisite experience and capabilities to operate the proposed service in accordance with requirements set out in section 51(d) of the Act and section 2, paragraph 7.1 of the ITA. The Authority is further satisfied that the applicant complied with the requirements set out in sections 51(d), (f) – (i) and 52 of the Act and in section 2, paragraphs 7.2 to 7.7 of the ITA.

48.7.4 The applicant submitted an organogram for each of its divisions as follows –

48.7.4.1 the division of the Channel Director, with eight members of staff in year 1, and 124 members of staff by year 10;

48.7.4.2 the Business Development Division with no members of staff in year 1, but with 35 members of staff by year 10;

48.7.4.3 the Corporate Affairs Division with six members in year 1 and twelve members of staff by year 10;

48.7.4.4 the Finance Division with four members of staff in year 1 and 67 members of staff by year 10;

48.7.4.5 the Audit and Risk Division with no members of staff in year 1 and 62 members of staff by year 10;

48.7.4.6 the Corporate Affairs: Legal Division with one member of staff in year 1 and in year 10;

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<sup>337</sup> Siyaya TV application: vol 2, Appendix 7.2, pp 70-81.

<sup>338</sup> Kagiso TV written submission, p 7, para 9.1.

<sup>339</sup> Siyaya TV written response, p 9, para 2.30.



- 48.7.4.7 the Corporate Affairs: Regulatory Division with one member of staff in year 1 and in year 10;
- 48.7.4.8 the Corporate Affairs: Human Resources Division with two members of staff in year 1 and 29 members of staff by year 10; and
- 48.7.4.9 the Corporate Affairs Division with one member of staff in year 1 and 49 members of staff by year 10.<sup>340</sup>
- 48.7.5 The applicant did not indicate in its application that any part-time staff members would be appointed, and the Authority has assumed that all staff members appointed will be full-time staff members.
- 48.7.6 Kagiso TV submitted, in its written submissions, that there were no details of the subscriber management function in the applicant's senior management structures.<sup>341</sup> The applicant indicated in this regard that subscriber and customer relationship management and call-centre operations will be outsourced, as indicated in the applicant's shareholders' agreement, the applicant's technical partner Motive's documentation and the applicant's business plan, all of which were included in the confidential section of the applicant's application.<sup>342</sup> The Authority is satisfied with the applicant's response in this regard, and is further satisfied that the applicant has complied with the requirements of section 2, paragraph 8 of the ITA.

## 48.8 Finance

### 48.8.1 Business Plan

The applicant indicated that it intended targeting LSM 4 to LSM 8 income households, and presented a subscription service to be delivered on a DTT platform.<sup>343</sup> The applicant indicated that the majority of its revenue would be based on subscription fees, which was based on R70 per month, growing with inflation, with 100 529 subscribers in the first year, in the context of a high-level marketing approach.<sup>344</sup>

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<sup>340</sup> Siyaya TV application: vol 2, Appendix 8.1 and 8.2, pp 114-128.

<sup>341</sup> Kagiso TV written submission, p 7, para 8.

<sup>342</sup> Siyaya TV written response, p 8, para 2.27.

<sup>343</sup> Siyaya TV application: vol 4.

<sup>344</sup> Siyaya TV application: vol 6, Appendix 22, pp 1-2.

#### 48.8.2 Financial projections and cash flow analysis

The applicant submitted its financial projections and a 10-year cash flow forecast.<sup>345</sup> While the Authority granted the applicant confidentiality in respect of this information, in the Authority's assessment, the applicant's pricing plan appeared to be fairly low and modest, and its projections of subscriber uptake appeared to be overly optimistic. Projected revenues (subscriptions fees and to some extent advertising revenue) are dependent on subscriber numbers and associated pricing. In the Authority's assessment, the applicant's projected subscriber numbers are not informed by sound research and as a result, the Authority is concerned about the viability or prospects of success of the applicant's business plans.

#### 48.8.3 Funding and methods of raising capital

In its application, the applicant proposed various methods of funding and raising capital. The Authority granted the applicant confidentiality in respect of this information.

#### 48.9 Demand, Need and Support for the Proposed Service

48.9.1 The applicant submitted that it intended to offer an original and unique programme service with more local content delivered in the following languages: isiZulu, isiXhosa, Sesotho, Setswana and other languages (including English, although this will constitute the lowest percentage of content).<sup>346</sup>

48.9.2 The applicant submitted that South Africans should receive a network of channels relevant and rooted in their target market to serve as a real, honest, and reliable source of information and great entertainment.<sup>347</sup> The applicant indicated that it intended being a channel for ordinary South Africans who want to see and hear from others like them, and that it would thus feature home-grown stars, celebrations, and tragedies.<sup>348</sup>

48.9.3 The applicant submitted that it would have four platforms providing eight tailor-made channels, including video-on-demand, with high quality local and international content reflecting the taste of the target market, which would educate, inform and entertain its audience through local content and sport with low repeat rates.<sup>349</sup>

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<sup>345</sup> Siyaya TV application, vol4 a, p39 - Confidential.

<sup>346</sup> Siyaya TV application: vol 6, Appendix 24.1, p 5.

<sup>347</sup> Ibid.

<sup>348</sup> Siyaya TV application: vol 7b, Appendix 29, p 12.

<sup>349</sup> Siyaya TV application: vol 6, Appendix 24.3, p 7.

- 48.9.4 While the applicant's proposed market share was not expressly described in its application, the applicant indicated that its target audience lives in township communities. The applicant indicated further that its target audience is a niche market in the lower LSM 5 to 7, between the ages of 24 to 49 years of age, with a spill-over on either side of these LSM groups, with LSM 4-6 constituting approximately 47% of the South African population.<sup>350</sup> However, in the Authority's assessment, the applicant did not elaborate on what this meant for its market size or growth prospects and did not clearly describe the connection between its proposed audience and its proposed service offering (i.e. the applicant did not clearly link its proposed offering with demand and need in its target market).
- 48.9.5 Further, while the applicant's analysis of competition in the market provided an analysis of market trends including market share (audiences and ad revenue) amongst broadcasters, this analysis excluded Top TV.<sup>351</sup> In the Authority's assessment, the applicant should have indicated the effect that this exclusion would have on its market share and growth projections, particularly as it was proposing to compete with Top TV, i.e. one of the incumbents in the subscription broadcasting services sector.
- 48.9.6 Further, while the applicant made reference to research conducted by AC Nielsen (commissioned by the applicant) and AMPS to support its claims. The primary research undertaken by AC Nielsen, which was attached to the application as Appendix 25, appears to have been based specifically and only in Soweto, Johannesburg in the Gauteng Province. It further appears that only three focus-group discussions were conducted with men and women between the ages of 25 and 34, and in the LSM 5-7 range.<sup>352</sup> At least two of the focus group discussions were conducted in isiZulu (it is not clear what language the third focus group was conducted in).<sup>353</sup> In the Authority's assessment, the market research was not representative of the applicant's entire target market, and was restricted to Soweto only. The applicant also did not indicate how many people made up the focus groups that were conducted.
- 48.9.7 The applicant submitted that the findings of its primary research indicated that respondents were very excited about the idea of having new content to watch.<sup>354</sup> The applicant submitted further that its research indicated that younger respondents were concerned about signing a subscription contract, as they are cautious of the long-term costs commitment, while older

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<sup>350</sup> Siyaya TV application: vol 6, Appendix 24.2 and Appendix 26; pp 6 and 52, respectively.

<sup>351</sup> Siyaya TV application: vol 6, Appendix 25.1, p 8.

<sup>352</sup> Siyaya TV application: vol 6, Appendix 25.2, p 9.

<sup>353</sup> See also Siyaya TV written responses, Annexure 3, p 4.

<sup>354</sup> Siyaya TV application: vol 6, Appendix 25.2, p 9.

respondents believed that signing a subscription contract would make their lives easier.<sup>355</sup> Older females were particularly excited about the recording and video-on-demand concepts proposed by the applicant.<sup>356</sup> The applicant submitted that black subscribers are not currently buying subscription services, and that this represents an opportunity for the applicant, especially as the network is targeted at the black market as opposed to all population groups.<sup>357</sup>

48.9.8 Kagiso TV indicated in its written submission that it was concerned that information was not provided by the applicant on the various options tested and the relationship between the proposed pricing and the business plan. Kagiso TV stated further that it is unclear how the options relate to the proposed service offering and how these have been translated into projections on the take-up of the service, particularly in the absence of sufficient quantitative research.<sup>358</sup> Kagiso TV indicated that it was further concerned that the research relied only on qualitative research from three focus groups, which cannot be representative of the target population, and that it was unclear how the applicant was able to extrapolate the conclusions of three qualitative focus groups onto the total potential market.<sup>359</sup> In its written response, the applicant submitted that the applicant's shareholder, My Television (Pty) Ltd, undertook research during the course of a DTT trial broadcast period which included detailed user experience and content tests within 300 households across the country, and which supported the research that was undertaken by AC Nielsen on behalf of the applicant.<sup>360</sup> The applicant also provided a letter from Sentech in which it was confirmed that Sentech had carried out continuous technical tests to evaluate end user experience during the trial period and that random viewer interviews had provided positive feedback.<sup>361</sup> However, the Authority was provided with no information regarding the content that was provided for this purpose, nor was it provided with any primary market research relating to this offering. In the Authority's assessment, the limited information provided by the applicant in relation to demand, need and support for a proposed offering of one of the applicant's shareholders during a trial period, is not relevant for the purposes of the applicant's own application for a subscription broadcasting service licence.

48.9.9 In the Authority's assessment, the applicant should have conducted research with members of the applicant's target audience throughout the entire country or at least in a substantial portion of the country, given that it was proposing to offer a nationwide service. In other

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<sup>355</sup> Siyaya TV application: vol 6, Appendix 25.2, pp 9 and 44.

<sup>356</sup> Siyaya TV application: vol 6, Appendix 25.2, p 49.

<sup>357</sup> Siyaya TV application: vol 6, Appendix 25.1, p 8.

<sup>358</sup> Kagiso TV written submission, pp 5-6, para 7.1.

<sup>359</sup> Kagiso TV written submission, p 6, para 7.1.4.

<sup>360</sup> Siyaya TV written response, p 7, para 2.23.

<sup>361</sup> Siyaya TV written response, Annexure 4, p 55.

words, in the Authority's assessment, the applicant's research did not adequately demonstrate demand or need for its proposed service. Further, only one respondent with pay TV indicated that they would move over to the applicant's offering.<sup>362</sup>

- 48.9.10 While the applicant did submit a few letters of support for its offering, with its application,<sup>363</sup> for the reasons set out above, the Authority is not satisfied that the applicant adequately demonstrated need, demand and support for the proposed service for the purposes of the ITA, read with sections 51(a) and (b) of the Act.

#### 48.10 Complaints and Codes of Operations

- 48.10.1 The applicant submitted that it would become a member of the NAB and that it would abide by the code of conduct of the industry bodies with respect to comments and complaints.<sup>364</sup>
- 48.10.2 The applicant further undertook to develop an internal code that all its employees would adopt and that would be strictly aligned with the Act, applicable regulations, licence conditions and the Code of Conduct for Broadcasting Services.<sup>365</sup> The applicant also endeavoured to empower its human resources, internal audit, and regulatory departments to enforce the internal code.

#### 48.11 Programming

- 48.11.1 The applicant indicated that it intended being a channel for ordinary South Africans who want to see and hear from others like them, and that it would thus feature home-grown stars, celebrations, and tragedies.<sup>366</sup>
- 48.11.2 The applicant submitted that it would adopt a cost-effective approach to programme acquisition including sponsored and advertiser-funded programming from sources such as churches, including Universal Church and the ZCC Church, with a specific focus on local content.<sup>367</sup>
- 48.11.3 The applicant indicated that its programming would consist of the following channel genres: Bana (children's channel), My TV (general entertainment scheduled for evening prime time), Siyaya Soccer TV (soccer channel), Starring TV (action-based entertainment), Eyethu Africa

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<sup>362</sup> Siyaya TV application: vol 6, Appendix 25.2, p 44.

<sup>363</sup> Siyaya TV application: vol 7b, Appendix 27, pp 1-7.

<sup>364</sup> Siyaya TV application: vol 7b, Appendix 28.2, p 10

<sup>365</sup> Siyaya TV application: vol 7b, Appendix 28.3, p 10.

<sup>366</sup> Siyaya TV application: vol 7b, Appendix 29, p 12.

<sup>367</sup> Siyaya TV application: vol 7b, Appendix 29, p 13.

TV (African content), Pulse-Social TV (South African reality, factual and edutainment), Soul TV (spiritual channel), Lerato TV (women focused channel), and free radio services.<sup>368</sup>

48.11.4 The applicant submitted that these channels would be broadcast for six hours per day, except for the “Bana” channel that would be broadcast for four hours per day and the free radio services that would be broadcast for 24 hours per day.<sup>369</sup>

48.11.5 The applicant indicated that it would engage Universal Studios and Warner Brothers for international content, or alternatively use content supplied by World Wide Media, Televista, ITV, E1 Entertainment, Off the Fence and Rainbow Media. The applicant attached letters of commitment and content-acquisition agreements with four content suppliers.

48.11.6 In the Authority’s assessment, the applicant’s proposed programming services would have brought diversity to the market. However, in the absence of any detailed market research from the applicant, the Authority found it difficult to ascertain whether the applicant’s programme demand, packaging, and pricing were informed by any research.

#### 48.12 Compliance with the Content Regulations

The applicant submitted that it intended to provide a programme offering that would grow local content steadily over the licence period. The applicant indicated further that it intended to exceed the requisite minimum weekly average of 10% local content during the television performance period.<sup>370</sup> The Authority is satisfied that this meets the requirements of the Content Regulations.

#### 48.13 Technical

48.13.1 The applicant indicated that Sentech would be responsible for the signal distribution of its DTT service.<sup>371</sup>

48.13.2 The applicant also provided details of its network configuration as required in terms of the ITA, and indicated that the network would be based on DVB-T2 DTT standards for video transmission.<sup>372</sup>

48.13.3 The applicant proposed an initial service of eight video channels nationwide, but the

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<sup>368</sup> Siyaya TV application: vol 7b, Appendix 31, pp 24-26.

<sup>369</sup> Siyaya TV application: vol.7, Appendix 6, p 15.

<sup>370</sup> Siyaya TV application: vol 8, Appendix 33, p 2.

<sup>371</sup> Siyaya TV application: vol 8, Appendix 34, p 3.

<sup>372</sup> Siyaya TV application: vol 8, Appendix 35, p 29.

applicant did not indicate the bandwidth requirements for its proposed multi-channel service.<sup>373</sup>

**48.14 Additional information by Siyaya TV received on 24 July 2014**

**48.14.1 Siyaya TV was requested to submit the following information:**

**48.14.1.1** Primary research in support of Siyaya TV's proposed service, the basis of which is the entire country or a substantial portion thereof and not research based specifically and only in Soweto, Johannesburg, in the Gauteng Province, which research will demonstrate demand, need and support for Siyaya TV's proposed programming; and

**48.14.1.2** Revised pricing plan and projected subscriber numbers which would be informed by sound research and which must positively impact on the viability or prospects of success of Siyaya TV's business plan.

**48.14.1.2.1 Analysis of additional information by Siyaya TV**

**48.14.1.2.2 Primary Research**

**48.14.1.2.2.1** Siyaya TV submitted primary research conducted by Research and Events Consulting Specialists CC. The research methodology involved four (4) focus group sessions in nine (9) provinces with 15 participants in each group. Participants were Black Africans and Coloureds, mostly females. Eighty-seven percent (87%) of the participants were aged between 25 and 49.

**48.14.1.2.2.2** Group sessions took place mostly in the townships, e.g. Botshabelo, Mahikeng, Mahwelereng, Soweto, Umlazi, Galeshewe, Khayelitsha and Bhayi. The languages used in discussion included Setswana, North Sotho, South Sotho, Xhosa, Zulu, Venda, Tsonga Ndebele, English and Afrikaans.

**48.14.1.2.2.3** The research shows that eighty four percent (84%) of the respondents prefer TV over Radio. However, some participants raised frustrations with regard to the number of times shows are repeated on current operators. Others pointed out the failure of television operators to cater for different socio-economic classes. Seventy five percent (75%) of the participants expressed desire for a new Pay TV service.

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<sup>373</sup> Siyaya TV application: vol 4, Appendix 12, p 3.

- 48.14.1.2.2.4 Research shows that the majority of the participants (88%) were interested in the channels/offering proposed by Siyaya TV, especially in North West, Northern Cape and Free State. 72% of the participants thought it is extremely likely that they would use the new service. 75% believed that they would recommend the service to other people. Many participants complained about the affordability of pay relative to number of programming on offer. Many felt that options provided to them by Siyaya TV were better quality and more affordable than current Pay TV options. A number of focus group participants were asked to put together their ideal schedule which was combined to come up with Siyaya TV's proposed scheduling.
- 48.14.1.2.2.5 The Authority is of the view that Siyaya TV's current submission, which is an amplified version of the original submission, demonstrates the need, demand and support for the proposed service.
- 48.14.1.2.3 **Revised pricing plan**
- 48.14.1.2.3.1 Siyaya TV has conducted significant research in terms of pricing their packages. As a result, the recommended price plan for premium, silver and medium seem to be low when compared with their potential competitors which is Multichoice and Top TV, and Siyaya TV's recommended price plan is as follows:
- 48.14.1.2.3.1.1 Premium R70;
- 48.14.1.2.3.1.2 Silver R60; and
- 48.14.1.2.3.1.3 Medium R50.
- 48.14.1.2.3.2 The variation between the price plans is R10, which is significantly low. However, the Authority cannot dispute the revised pricing plan as the pricing is informed by their research and projections that they believe will be viable.
- 48.14.1.2.3.3 Siyaya TV has provided the Authority with thorough research and their subscription fees are informed by its research.



**48.15 Decision**

- 48.15.1** The Authority has decided to grant the applicant an individual commercial subscription broadcasting service licence for the following reasons:
- 48.15.2** In the Authority's assessment, information supplied by the applicant in respect of its financial means and commercial viability, as contemplated in section 51(e) of the Act, demonstrated that the applicant's business operation has reasonably good prospects of success. The applicant commissioned Research and Events Consulting Specialists CC to conduct research in a form of four (4) focus group sessions in nine (9) provinces. The applicant's research shows that the majority of the participants (88%) were interested in the channels/offering proposed by Siyaya TV. In the Authority's assessment, the applicant did present convincing evidence that the proposed target audience would actually use the particular service that the applicant proposed to provide. The applicant has thus complied with the requirements set out in section 51(a) and (b) of the Act, read with the requirements contained in the ITA.
- 48.15.3** The Authority was satisfied that the applicant's pricing plan was informed by research. In the Authority's assessment, the applicant's projected subscriber numbers are informed by sound research and as a result, the Authority is satisfied that there are prospects of success of the applicant's business plans.