

## INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 439

22 MARCH 2019



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## COMMUNITY BROADCASTING SERVICES REGULATIONS

The Independent Communications Authority of South Africa ("the Authority"), in terms of section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), as amended ("ICASA Act") read with sections 4(1) and 5(7) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended ("ECA") hereby prescribes the Community Broadcasting Services Regulations in the schedule.

A handwritten signature in black ink, appearing to read 'RUBBEN MOHLALOGA', written over a horizontal dotted line.

RUBBEN MOHLALOGA  
CHAIRPERSON

## SCHEDULE

### 1. Definitions

In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the ICASA Act and the underlying statutes, the meaning is so assigned:

**“alliance with a political party”** means any cooperation and/or agreement between non-political organisations and political parties;

**“applicant”** means a person applying to the Authority to register for a community broadcasting service licence;

**“community”** has the same meaning as defined in the Broadcasting Act, No.4 of 1999 as amended and the Electronic Communications Act, No.36 of 2005 as amended;

**“community broadcasting services”** has the same meaning as defined in the Broadcasting Act, 1991 (Act No.4 of 1999), as amended and the Electronic Communications Act, 2005 (Act No.36 of 2005) as amended;

**“ECA”** means the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended;

**“licence”** has the same meaning as defined in the Broadcasting Act, 1999 (Act No.4 of 1999), as amended;

**“licensee”** has the same meaning as defined in Electronic Communications Act, 2005 (Act No.36 of 2005) as amended;

**“local origination programmes”** means local programmes sourced from the coverage area:

- (a) produced by a broadcasting service licensee; or
- (b) programmes produced by a resident of the coverage area; or

(c) produced by a juristic person, the majority of directors, or members of whom are residents of the coverage area; or

(d) produced in a co-production in which persons referred above have at least fifty percent financial interest.

**“non-profit entity”** has the same meaning as defined in the Non-Profit Organisations Act, 1997 (Act No. 71 of 1997);

**“Processes and Procedures Regulations”** means the Class Licensing Processes and Procedures Regulations (as amended), 2010 published in Government Gazette No. 33297, Notice No. 526 of 14 June 2010, as amended by Government Gazette No. 39874, Notice No. 157 of 30 March 2016, including any future amendments;

**“political office bearers”** means persons listed in regulation 9 of these Regulations;

**“political party”** has the same meaning as defined in Electronic Communications Act, 2005 (Act No.36 of 2005) as amended;

**“programme sharing/networking”** means programmes produced by one broadcaster and shared amongst different broadcasting licensees;

**“programme syndication”** means programmes produced at a central hub, distributed and broadcast simultaneously by broadcasting licensees;

**“record”** has the same meaning as defined in section 1 of the National Archives and Records Service of South Africa, 1996 (Act No 43 of 1996);

**“Standard Terms and Conditions Regulations”** means Standard Terms and Conditions Regulations (as amended), 2010 published in Government Gazette No. 9311, Notice No. 525 of 14 June 2010, as amended by Government Gazette No. 39872, Notice No. 609 of 30 March 2016, including any future amendments.

## **2. Scope**

These Regulations apply to persons who are intending to register for or holding a community sound or television broadcasting service licence.

## **3. Purpose**

The purpose of these Regulations is to prescribe:

- (a) the framework under which community broadcasting licensees will operate;
- (b) registration, renewal, transfer and amendment process of community broadcasting licences;
- (c) governance and management structures of a community broadcasting licensee; and
- (d) the basic principles of community participation.

## **4. Licence Application**

- (1) An applicant must be registered as a non-profit entity at least two (2) years prior to lodging an application to register as a community broadcasting service licensee.
- (2) Subject to sub-regulation (1), an applicant must demonstrate community development and empowerment with respect to the community located within the coverage area it would like to render community broadcasting services.
- (3) An applicant must submit a pre-registration notice as per the requirements set out in Form B of the Processes and Procedures Regulations, which must be accompanied by the following documents:

- (a) the applicant's founding documents such as the Constitution and Memorandum of Incorporation;
  - (b) Curriculum vitae of board members and management;
  - (c) Disclosure of interest of board members and management;
  - (d) Programming plan;
  - (e) Business plan comprising a 3-5 years' financial plan;
  - (f) Tax clearance certificate;
  - (g) Demand, need and support including profiled community broadcasters in the coverage area and programming format;
  - (h) Projects reporting on management, governance and finances; and
  - (i) Corporate governance and operational policies including, but not limited to:
    - i. Technical operations;
    - ii. Human resource;
    - iii. Financial;
    - iv. Programming policy;
    - v. Editorial policy;
    - vi. Social media policy; and
    - vii. Political branding at the station and affiliation policy.
- (4) The criteria of whether to grant or not to grant a community broadcasting service licence, is based on the following:
- (a) The registration does not contain the information set out in Form B of the Processes and Procedures Regulations;
  - (b) The registration contains false or misleading information or misrepresentation of fact;

- (c) The applicant is in contravention of the Act or the related legislation in relation to other licences that such person may hold;
  - (d) The applicant is fully controlled by a non-profit entity and carried on or is to be carried on for non-profit purposes;
  - (e) The applicant has never been convicted of an offence in terms of this Act or related legislation;
  - (f) The applicant's ability to fulfil the diverse needs of the community within the coverage area;
  - (g) programming to reflect the needs of the community as identified and prioritised by that community in a forum or any other manner to the satisfaction of the Authority;
  - (h) contribution towards the general enrichment of the lives of members of the community within the coverage area;
  - (i) distinction of the applicant from other applicants and/or broadcasters, including individual licensees, serving the same geographical coverage area;
  - (j) application is made where a community licensee exists with similar services within the coverage area; and
  - (k) the demonstration of competency to self-provide, where a licensee chooses to self-provide for signal distribution.
- (5) An applicant must submit a pre-registration notice within the time frames to be prescribed by the Authority through the invitation to pre-register.
- (6) The Authority will inform the applicant of the outcome of the pre-registration notice 90 days after the closing date for submission of the pre-registration notice.

- (7) Where the Authority is satisfied that the applicant meets the requirements for the granting of a licence, the Authority will communicate such decision to the applicant in writing, following which the applicant may lodge the registration notice within 30 days of the Authority's written communication.
- (8) The Authority shall, where frequencies are available, grant a licence.
- (9) Where the Authority deems it necessary, the Authority will conduct public hearings prior to making a decision on the application to register a community broadcasting service.
- (10) The Authority will not consider an incomplete application form with regard to an application to register a community broadcasting service licence.

## **5. Governance and Management**

- (1) The founding documents of an applicant must reflect defined roles of management and the board members.
- (2) The composition of the Board must exclude immediate family members such as: parents; siblings; children connected by birth or adoption; spouses through marriage, civil partnership or cohabitation; grandparents; great-grandparents; grandchildren; great-grandchildren; aunts; uncles; siblings-in-law; half-siblings; cousins; adopted children and step-parents/step-children.
- (3) The role of the Board includes, but not limited to:
  - (a) ensuring compliance with all relevant laws, regulations and codes of good practice;
  - (b) approving policies for the station;
  - (c) giving strategic direction to the licensee;
  - (d) development of a corporate code of conduct;

- (e) identification of risk areas and performance indicators;
  - (f) appointing and supervising the Station Manager;
  - (g) approving the appointment of other senior management of the station;
  - (h) monitor implementation of the Board's plans; and
  - (i) supporting the station management in fundraising activities through its networks.
- (4) The role of the Station Manager includes, but not limited to:
- (a) planning of action such as initiating projects to fulfil the mandate of the licensee;
  - (b) recruiting staff and volunteers including drafting contracts with detailed job descriptions;
  - (c) directing as well as training management for sound human relations and operational skills;
  - (d) managing daily operations and delegating control of other departments such as programming, sales and marketing, news, music, finance, technical and administration;
  - (e) instilling discipline through written and approved policies that detail corrective actions and procedures;
  - (f) networking and meeting potential clients, funders and donors; and
  - (g) ensuring that the licensee affiliates/signs with the relevant forums such as the National Association of Broadcasters and the National Community Radio Forum.

- (5) The Station Manager must serve as *ex-officio* member of the board and report to the board.
- (6) Managers below the Station Manager must report to the Station Manager in respect of the operations in their respective departments.
- (7) Management is responsible for the daily administration duties of a licensee.
- (8) The Board must not interfere in the daily operations of a licensee.

## 6. Licence Amendment

- (1) The Authority shall deal with each licence amendment application based on its own merits.
- (2) In deciding whether to approve or not to approve a licence amendment application, the Authority shall take into account the provisions of regulation 4 of these Regulations.
- (3) A licensee intending to amend its licence must fully comply with the amendment requirements in the Processes and Procedures Regulations.

## 7. Licence Renewal

- (1) A licensee intending to renew its licence must submit an application for renewal as per the requirements in the Processes and Procedures Regulations comprising the following information:
  - (a) feasibility and sustainability report;
  - (b) Five (5) year financial statement revealing how a licensee has been performing;
  - (c) community support detailing how community members have been given access to the airwaves;

- (d) details of whether the broadcaster has been off air;
  - (e) legality of office bearers;
  - (f) the existence of another community broadcasting licensee in the same geographical area; and
  - (g) compliance report in respect of relevant legislation, the Authority's regulations and licence conditions, including instances of non-compliance if any.
- (2) The Authority will not renew a community broadcasting licence if the Authority determines that a licensee has;
- (a) fails to meet the criteria in terms of regulation 4 (4) (a) to (g) of these Regulations; and
  - (b) fails to comply with a decision or ruling of the Authority.
- (3) Where necessary, the Authority will publish a notice to conduct public hearings for community broadcasting licence renewal.
- (4) Where a licensee meets the licence renewal requirements, the Authority will issue a new licence on the same terms and conditions as the expired licence and update the Community Broadcasting licensees register by renewing the period of a licence.
- (5) Where a licensee's licence has not been renewed, the Authority will update the register by removing a licensee from the Community Broadcasting licensees register.

## **8. Licence transfer**

- (1) An intention to transfer of a licence from one entity to the other must be tabled and endorsed by the licensee's constituency either at its annual general meeting or special general meeting.

- (2) Full disclosure of the intended transfer must be tabled and submitted to the community served.
- (3) Subject to sub-regulation 2 above, the licensee must submit the intended transfer to the Authority for consideration.
- (4) The licence transfer application must be lodged in terms of the Processes and Procedures Regulations.
- (5) The criteria of whether to transfer or not to transfer a community broadcasting service licence, is the same as contained in regulation 4 (4) of these regulations.
- (6) Where necessary, the Authority will publish a notice to conduct public hearings for community broadcasting licence transfer.

#### **9. Prohibited Office Bearers**

- (1) The following political office bearers must not play any role in the Board, Management and Staff of a Community Broadcasting Service:
  - (a) Members of the Local Executive Committees of political parties, the youth affiliates and women's affiliates of political parties, and any organisation that is in an alliance with a political party;
  - (b) members of the Regional Executive Committees of political parties, the youth affiliates and women's affiliates of political parties and any organisation that is in an alliance with a political party;
  - (c) members of the Provincial Executive Committees of political parties, the youth affiliates and women's affiliates of political parties and any organisation that is in an alliance with a political party;
  - (d) members of the National Executive Committees of political parties, the youth wings and women's wings of political parties and any organisation that is in an alliance with a political party;

- (e) Councillors;
- (f) Mayors;
- (g) Members of Provincial Legislatures; and
- (h) Members of Parliament.

#### **10. Programming**

- (1) Majority of programmes, news bulletins and current affairs broadcast by a community broadcasting service must be local origination programmes.
- (2) Programme syndication/network and programme sharing shall not exceed 20% of the community broadcasting licensee's programming.
- (3) A licensee must have policies dealing with programming matters that include, amongst others:
  - (a) mechanisms for community participation;
  - (b) programming format; and
  - (c) language policy.

#### **11. Surplus Funds**

- (1) A community broadcasting service licensee must, in the event of a surplus, utilise and/or invest the funds in the community served for the purposes of community development.
- (2) A community broadcasting service licensee must submit annually, a report with supporting documents, detailing how it has utilised or invested the surplus within the financial year.

## 12. Management Contract

- (1) Management contracts must be lodged with the Authority for approval.
- (2) The Authority will consider the following conditions for approval of a management contract:
  - (a) ownership of the community broadcasting licensee remains with the community being served;
  - (b) administrative control in the operations of the community broadcasting licensee remains with the board of directors and management;
  - (c) method of reimbursement and the duration of the management contract;
  - (d) a licensee retains editorial and programming control and independence;
  - (e) Management contract does not render a third-party entity a shareholder/owner of a community broadcasting licensee;
  - (f) fiduciary duties remain the responsibility of the board;
  - (g) The board of directors must be from the coverage area; and
  - (h) The duration of the management contract which must not exceed a period of two (2) years.
- (3) Renewal and amendment of a management contract must be lodged with the Authority for approval. The Authority will consider factors set out in regulation 12(2) for approval.

## 13. Community participation

- (1) A licensee must ensure that ownership of the community broadcasting licensee remains with the community served.

- (2) A licensee must involve the community members in the management of the community broadcasting licensee.
- (3) A licensee must establish programming councils/committees to enable community members to participate in the selection and provision of programmes.
- (4) The programming councils/committees must be representative of different interest groups within the community served, such as youth, women, or people with disabilities.
- (5) A licensee must submit proof of community participation at every annual general meeting, and other forums that require community participation.

#### **14. Code of Conduct**

A licensee must adhere to the Authority's Code of Conduct for Broadcasters, 2009, or to the Broadcasting Complaints Commission of South Africa's Code of Conduct for Broadcasters if the licensee is a member of the National Association of Broadcasters, or any amendment or replacement thereto.

#### **15. Technical Standards and Specifications**

A licensee must adhere to the Authority's regulations relating to technical standards and specifications, this will include regulations speaking to:

- (a) spectrum management;
- (b) licence fees; and
- (c) Standard Terms and Conditions Regulations applicable to Class licences.

#### **16. Record keeping**

- (1) A licensee must in line with the National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996), as amended and any other applicable legislation, keep the following records relating to its broadcasting activities:

- (a) documentation relating to the person or entity who or which is in control of or in a position to exercise control over the licensee concerned including documentation relating to;
  - i. Its legal status including all founding documentation pertaining to the licensed entity and any member organizations of the entity;
  - ii. Details of the board members or trustees including gender, race and address of such person or entity, as the case may be; and
  - iii. Disclosure of interest of Board members in programming and finance.
- (b) a list of capital assets, books of account, financial records and financial statements compiled by an accounting officer;
- (c) a list of donors and details of all financial and non-monetary donations;
- (d) documentation pertaining to the opening, maintenance and changes in the status to banking accounts;
- (e) contracts entered into by or on behalf of the licensee in connection with the daily operational activities of the licensee;
- (f) a log of programmes broadcast in the form acceptable to the Authority;
- (g) a public file for keeping written complaints received by the licensee and correspondence between the licensee and complainant;
- (h) a log of telephonic complaints received by the licensee;
- (i) a log of advertisements broadcast;
- (j) a log of the percentage air-time per hour allocated to advertisements;

- (k) during an election period, a log of party election broadcasts broadcast by the licensee;
  - (l) a log of sponsorship for programmes together with details of payment, financial or otherwise, received for such sponsorship;
  - (m) copies of correspondence with the Authority; and
  - (n) a log of all direct and indirect on-air fundraising activities for the stations.
- (2) A licensee may, by written notice directed to it, be required to produce or furnish to the Authority, at a time and place specified in the notice such records, including documents, accounts, estimates, returns and information as may be specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on the licensee by the Act or these regulations or by the relevant license.
- (3) The logs, statistical forms and records contemplated in regulation 16(1) and (2) must be preserved for the duration of the broadcasting licensee's license period.
- (4) A licensee must publish its policies on its website or have them available for public scrutiny at its premises or public space like libraries.
- (5) A licensee must report on its funding, surplus and the distribution of surplus at its annual general meetings and to the Authority.

#### **17. Contraventions and Penalties**

- (1) Any person that contravenes Regulations 9, 10, 11, 12, 13 and 16 is liable for a fine not exceeding 10% of its annual turnover.

#### **18. Short Title and Commencement**

These regulations are called the Community Broadcasting Services Regulations and will come into force on the date of publication in the Government Gazette.

## 19. Repeal and Amendment of Regulations

- (1) The regulations set out in Schedule 1 are hereby repealed or amended, as the case may be, to the extent specified therein.
- (2) The Authority may further amend or repeal these regulations by notice in the *Gazette*.

## SCHEDULE 1

## REPEALED REGULATIONS

Regulations	Extent of repeal or amendment
<p>Class Licensing Processes and Procedures Regulations (as amended), 2010 published in <i>Government Gazette</i> No. 33297, Notice No. 526 of 14 June 2010, as amended by <i>Government Gazette</i> No. 39874, Notice No. 157 of 30 March 2016.</p>	<ol style="list-style-type: none"> <li>1. Repeal of Regulations 7(1), 7(2), 7(5), 7(6) and 7(8).</li> <li>2. Amendment of regulation 4 by the substitution in subregulation (1)(a) and (1)(b) of the words "(Regulation 7(1))" and "(Regulation 7(2))" with the word "(Regulation 4(5)) of the Community Broadcasting Services Regulations".</li> <li>3. Amendment of Form A by deletion of the words "Regulation 7(1)".</li> <li>4. Amendment of Form B by the deletion of the words "Regulations 7(2)".</li> </ol>
<p>Standard Terms and Conditions Regulations (as amended), 2010 published in <i>Government Gazette</i> No. 9311, Notice No. 525 of 14 June 2010, as amended by <i>Government Gazette</i> No. 39872, Notice No. 609 of 30 March 2016.</p>	<p>Repeal of Regulations 10A(2), 10A(7), 10A(8), 10A(11), 10A (12) and 10A(14).</p>



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**REGULATORY FRAMEWORK FOR COMMUNITY BROADCASTING**

**REASONS DOCUMENT**

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## 1. ACKNOWLEDGEMENTS

1.1 The Independent Communications Authority of South Africa ("the Authority / ICASA") would like to acknowledge all stakeholders who participated in the process aimed at developing a regulatory framework for community broadcasting services: sound and television.

**1.2 The following stakeholders submitted written representations to the Draft regulations on Community Broadcasting Services published on 06 April 2018<sup>1</sup>:**

- (1) Anthony Duke
- (2) Association of Christian Media
- (3) Cape Town Sports Radio
- (4) Cape TV
- (5) Capricorn Community Concepts
- (6) Kagiso Media
- (7) Kasie FM 97.1
- (8) KZN NCRF
- (9) Makhado FM
- (10) NAB
- (11) NCRF
- (12) NCRF Western Cape
- (13) Primedia
- (14) Pulpit Media Group
- (15) South African Community Radio Organization
- (16) Sentech
- (17) Tshepo FM
- (18) Tshwane TV

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<sup>1</sup> Government Gazette 41561 Notice 266 of 6 April 2018

## 2. INTRODUCTION

- 2.1 On 03 March 2017, the Authority published the Discussion Document on Regulatory Framework for Community Broadcasting Services ("the Discussion Document"),<sup>2</sup> in accordance with section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act"). The purpose of the Discussion Document was to generate comments from stakeholders on the review of the Regulatory Framework for Community Broadcasting Services for both television and radio in South Africa.<sup>3</sup>
- 2.2 The closing date for the written representations on the Discussion Document was extended from 10 May 2017 to 02 June 2017 due to requests from stakeholders. The Authority received thirteen (13) written submissions, of which eight (8) made oral representations on 19 and 20 July 2017. Subsequent to that, the Authority published the Findings Document on the Regulatory Framework for Community Broadcasting ("the Findings Document") and the Draft Regulations for Community Broadcasting Services: Radio and Television ("the Draft Regulations") for comments on 06 April 2018 in Government Gazette 41561. Thereafter the Authority conducted extensive workshops in all the provinces from 15 May to 06 June 2018 and held public hearings on 23 July 2018.
- 2.3 The Community Broadcasting tier focuses on addressing grassroots issues that are not addressed by commercial and public broadcasters, due to its proximity to communities. Community broadcasting is not supposed to compete with, but should complement public and commercial broadcasting's role of providing information, entertainment and education. Thus, the Authority needed to come up with a regulatory

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<sup>2</sup> General Notice No 170 of Government Gazette No.40660 of 03 March 2017.

<sup>3</sup> Para 1.1 of the Discussion Document.

framework to support the growth and sustainability of this tier of broadcasting.

- 2.4 The Authority has now finalised the process of reviewing the Regulatory Framework for Community Broadcasting and is satisfied that the new regulations will promote sustainability in the community broadcasting sector. This Reasons Document summarises the views expressed by interested persons with respect to the published Draft Regulations and also provides explanations to provisions in the final Community Broadcasting Services Regulations ("the Regulations").

### **3. PROPOSED DEFINITIONS IN THE REGULATIONS**

- 3.1 The ACM states that the definition of non-profit entity is potentially problematic as it does not harmonize sufficiently with the related legislation dealing with non-profit entities. Specifically, the Income Tax Act, 1962 (Act No. 58 of 1962) definition and provisions of the public benefit organization ("PBO").<sup>4</sup>
- 3.2 The ACM goes on further to highlight that the Income Tax Act permits only 4 types of trading form or legal entity to trade as a PBO. They make reference to a branch established in the Republic by a foreign charitable entity which is exempt from income tax in its country of origin.<sup>5</sup>
- 3.3 ACM furthermore highlights to the Authority that the South African Revenue Services has subsequently removed the mandatory requirement of being registered as a PBO and subsequently being registered as an NPO with the Department of Social Development.<sup>6</sup>

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<sup>4</sup> ACM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 June 2018.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

- 3.4 NCRF Western Cape furthermore submits that Non-Profit Entity should be aligned with the Companies Act on non-profit entities.<sup>7</sup>
- 3.5 SENTECH is of the view that the proposed definition of "licensee" will create confusion as a consequence of a different definition stated in the ECA (as amended). SENTECH proposes that ICASA should rather make use of the term "Community Licensee" for the definition proposed by the Authority.<sup>8</sup>
- 3.6 The NAB states that in accordance to the ECA a "political party" means any registered party defined in section 1 of the Electoral Act, 1998 (Act No. 73 of 1998); or any alliance of such registered parties. The NAB recommends that the definition in the ECA is sufficient.<sup>9</sup>
- 3.7 NCRF Western Cape submits that the definition of "*Alliance with political party*" is too broad and should only extend to political parties. For example, NCRF Western Cape argues that, a community radio or TV station can have a partnership with an organisation such as Rape Crisis (a non-political organisation), in turn Rape Crisis can have a relationship with the ANC Women's League in fighting against rape, and this definition can then stretch to include this relationship. They allude that an organisation such as Afriforum for example has political bearing and should be added as an example that has political allegiance.<sup>10</sup>
- 3.8 NCRF Western Cape is of the view that the definition of "community" needs to be defined within the Draft Regulations instead of referring to it in another regulation.<sup>11</sup>

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<sup>7</sup> NCRF Western Cape, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, p 3.

<sup>8</sup> SENTECH, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 3.

<sup>9</sup> NAB, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018.

<sup>10</sup> NCRF Western Cape, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, p 2.

<sup>11</sup> *Ibid.*

- 3.9 NCRF Western Cape states that the local programmes should be relevant and serve the needs and interests of the broadcasting community.<sup>12</sup>
- 3.10 NCRF Western Cape argues that in terms of the definition of local origination programmes, point (c) referring to juristic person as well as the majority of directors should be removed. They are of the view that juristic person is too broad and the directors producing programmes is a conflict of interest as directors should not be involved in daily operations of the station.<sup>13</sup>
- 3.11 NCRF Western Cape argues that the definition of "Political Office Bearers" should be amended to include that Political office bearers at all levels shall not play any role in the Board, Management and Staff. They recommend that person with political influence or employed in the office of a political party should also be included (e.g. spokespersons of political parties).<sup>14</sup>
- 3.12 **With regard to Alliance with a political party being broad, the Authority refers to section 52 of the ECA which talks to alliance to a political party. Section 52 states that no broadcasting service licensee may be granted to a party, movement, organisation, body or alliance which is of a party-political nature.**
- 3.13 **The Authority has decided not to include the definition of "community" in the Regulations due to the fact that the empowering legislation sufficiently defines the term.**
- 3.14 **Under local origination programming, the Authority is of the view that local origination programming should be produced by a juristic person, the majority of directors, or members of whom are**

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> NCRF Western Cape, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, p 3.

residents of the coverage area. The directors being referred to are the directors producing programmes and does not refer to the directors of the licensee.

- 3.15 Political office bearers are not to play any role in the Board, Management and Staff of a community broadcasting licensee due to the influence they have as a result of the office they hold.

#### **4. LICENSING**

##### **Licence application**

- 4.1 Kagiso Media is concerned that its submission did not find its way into the Findings Document and the Draft Regulation, specifically the issue of quasi commercial broadcasters masquerading as community broadcasters.<sup>15</sup> It goes on to say that regulation 4 of the Draft Regulations does not specifically address the latter matter to state clearly that 'no community broadcasting service licences will be granted to a community stations with a music format service exceeding 20% geographically-based community sound broadcasters or 40% for community of interest'. It further suggest that regulation 2(4)(e) of the Draft Regulations be amended to read as follows: "the format or coverage of an individual licence, it being recorded that no class sound broadcasting service licence will be granted in respect of a community sound broadcasting service where the music constitutes:

4.1.1 20% of the format for a geographically-based sound broadcasting service; or

4.1.2 40% of the format for a community of interest-based sound broadcasting service".<sup>16</sup>

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<sup>15</sup> Kagiso Media, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television.

<sup>16</sup> Ibid.

- 4.2 Kagiso Media submits that, certain stations that ICASA has licensed are problematic and blurring the lines between commercial and community broadcasters. This they state has harmful consequences for competing commercial (and public) broadcasters due to the different regulatory burdens pertaining to the two sectors.<sup>17</sup>
- 4.3 Kagiso Media is of the view that the Authority's Inquiry into Community Broadcasting Services falls within the definition of a public enquiry in terms of section 4(2) of the Promotion of Administrative Justice Act (2000) (PAJA) in respect of administrative action affecting the public and consequently any administrative action resulting therefrom (such as its Findings Document and any subsequent regulations) must ensure that "relevant considerations are taken into account" as required by section 6(2)(a)(e)(iii) of PAJA or risk being judicially reviewed by a court or tribunal as provided for in section 6 of PAJA.<sup>18</sup>
- 4.4 Kasie FM submits that there must be a limit of 2 to 3 community radio station per city or district and 1 community Tv station per city or region to avoid overcrowding and allow opportunity of sustainability. Furthermore they would like the community of interest community radio to be discouraged because in most cases it only serve one part of interest.<sup>19</sup>
- 4.5 NCRF National indicates that there is no justification for the waiting period of 2 years, or even for the empowerment activities to take a period of 2 years prior to the lodgment of the application as a community

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Kasie FM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018.

broadcasting service. The criteria must rather be about deliverables stated on section 2 (3) (a) to (i) of the draft regulations.<sup>20</sup>

- 4.6 In relation to Regulation 2 (6) which states that “the Authority will inform the applicant of the outcome of the pre-registration notice 90 days after the closing date for submission of the pre-registration notice”, the NCRF National submits that if a suitable candidate is not found, a further notice should be given. According to NCRF this is particularly important for communities that do not have access to Community Broadcasting Service.<sup>21</sup>
- 4.7 The NCRF supports Regulation 2 (8) which states that “the Authority shall, where frequencies are available, grant a community broadcasting licence if the applicant satisfies the pre-registration requirements”, and further emphasizes that it must always be read with section Regulation 2 (4) (f) which states that “application is not made where a community licensee exists with similar services”.<sup>22</sup>
- 4.8 South African Community Radio Organization (“SACRO”) submits that the 2 year requirement to be registered as an NPO for purposes of community broadcasting may be seen as unfair as the person/s or entity lodging the application may not have initially considered community broadcasting as a goal but may have been very active and successful in community based-projects. Such applicants will be unfairly penalized with a 2 year waiting period. This requirement epitomizes the type and quality of applicant for a community broadcasting license that the sector needs. This, with the

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<sup>20</sup> NCRF, Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

other license application prerequisites, will result in better service to communities and a stronger community radio sector.<sup>23</sup>

4.9 NCRF National requires clarity on the circumstances where the Authority will or may deem it necessary, to conduct public hearings prior to making a decision on the applicant to register a community broadcasting service as stated in Regulation 2(9).<sup>24</sup>

4.10 The NAB states that in terms of section 17 of the ECA, ICASA is deemed to have granted a licence in the event that a licensee has complied with the requirements for registration and ICASA has failed to give notice of a delay in considering the application within the prescribed thirty (30) day period. The provision brings certainty for applicants in respect of the status of their applications and expedites the application process.<sup>25</sup>

4.11 The NAB highlights to the Authority that the current Draft Regulations don't have a similar deeming provision in respect of the pre-registration notice in regulation 2(6).<sup>26</sup>

4.12 PMG is of the view that one of the most serious problems with the Draft Regulations is the fact that no serious consideration is given to the difference between a geographic community broadcasting service and a community of interest broadcasting service, despite the distinction being made clearly available in the definition of "community" in section 1 of the ECA. The PMG argues all too often, restrictions that are appropriate for geographically-founded community broadcasting services are simply imposed upon community of interest services without the regulatory

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<sup>23</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, P 3.

<sup>24</sup> NCRF, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television.

<sup>25</sup> NAB, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018.

<sup>26</sup> *Ibid.*

nuance required by the provisions of the ECA.<sup>27</sup> Thus they propose the following:

- Regulation 2(3) of the Draft Regulations be amended by the insertion of a new sub-section (j) at the end thereof to read as follows:
  - "(j) A clear and detailed statement of the community of interest or geographic community that is proposed to be served by the broadcasting service which distinction will be contained in the license itself, if such license is granted.";
- Regulation 2(4)(a) of the Draft Regulations be amended to read as follows:
  - (a) The applicant to fulfil the:
    - (i) diverse needs of the community in the coverage area, in the case of a geographically-based community station; or
    - (ii) the particular needs of the community of interest in the coverage area, in the case of a community of interest community station.<sup>28</sup>

4.13 PMG also submits that another thorny issue in the sector, one that was canvassed in the Findings Document at paragraphs 5.7 – 5.15 and at 11.3, is the issue of commercial stations, particularly, music formatted stations masquerading as community stations. This is antithetical to the concept of community radio and yet the issue is barely dealt with in the Draft Regulations.<sup>29</sup>

4.14 Consequently, the PMG propose that regulation 2(4)(e) of the Draft Regulations be amended to read as follows:

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<sup>27</sup> Pulpit Media Group, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 3.

<sup>28</sup> Ibid.

<sup>29</sup> Pulpit Media Group, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 4.

(e) "the format or coverage of an individual license, it being recorded that no class community sound broadcasting service license will be granted in respect of a community sound broadcasting service where music constitutes:

(i) 20% or more of the format for a geographically-based sound broadcasting service; or

(ii) 40% or more of the format for a community of interest-based sound broadcasting service".<sup>30</sup>

4.15 NCRF Western Cape agrees with the 2 years period for new applications or when certain indicators are met after 1 year. These indicators should be 2(3) a – i of the published draft regulations. NCRF Western Cape suggests that new radio stations should undergo training during this period.<sup>31</sup>

4.16 NCRF Western Cape submits that the Authority should add the provision that the applicant needs to be based in the coverage area under the criteria of whether to grant a licence or not. Where stations already exist, no other similar community radio station should be licensed.<sup>32</sup>

4.17 Cape Town Sports Radio submits that it would seem that ICASA is creating an impediment or another form of a hurdle in the acquisition of community broadcasting licence. As prospective role players in the broadcasting space, they feel it is stifling to have a 2 year waiting period in that regard.<sup>33</sup>

4.18 Cape Town Sports Radio further submits that the license application requirement listed in regulation 2 (1) and (3) should be required from

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<sup>30</sup> Ibid.

<sup>31</sup> NCRF Western Cape, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, p 3.

<sup>32</sup> Ibid.

<sup>33</sup> Cape Town Sports Radio, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television.

currently existing Community Broadcasting Licensees who have been in operation and who during their initial license application alluded to the community development they would engage in once they were granted licenses.<sup>34</sup>

- 4.19 SENTECH proposes a review of the wording of the proposed sub-regulation 2(4) (e). The concern is the inclusion of the wording "individual license", as the phrase is defined in section 1 of the ECA. The following substitution is proposed:

*(e) the format or coverage of a **services** license.*<sup>35</sup>

- 4.20 Regulation 2(1) of the Draft Regulations states that an applicant is required to have been registered as a non-profit entity for community broadcasting 2 years prior to the lodgement of the application as a community broadcasting service. ACM states that it is unclear as specifically who the entity is required to be registered as a non-profit entity with and requires clarity.<sup>36</sup>

- 4.21 Regulation 4(a) of the Draft Regulations states the applicant must fulfil the diverse needs of community within the coverage area. The ACM suggests that the diverse needs of a "community of interest" may differ from those of a "geographic community".<sup>37</sup>

- 4.22 With respect to documents submitted for a pre-registration notice SACRO would like the Authority to conduct spot checks on details contained in the CVs. Any act of dishonesty should disqualify a person from holding a position on the board or in the management of the licensee. Furthermore

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<sup>34</sup> Ibid.

<sup>35</sup> SENTECH, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 4.

<sup>36</sup> ACM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 June 2018.

<sup>37</sup> Ibid.

they emphasize that there should be disclosure of interests and not interest for board members and management only.<sup>38</sup>

4.23 SACRO agrees that ICASA is responsible to identify and address programming overlap with other community radio stations in the same area.<sup>39</sup>

4.24 SACRO points out that the purpose of the business plan must be, inter alia, to provide assurances to ICASA that the broadcaster will become self-sustainable. Sustainability infers profitability and any surplus should not be used for self-enrichment and should be channelled into projects serving the community. However, they believe that the submission paint a rosy picture in submitting the business plan, overstating expected income/revenue and understating costs. They allude that the budgets in the business plan are less accurate from years 3 to 5 but rather suggest that monthly budgets should be submitted for years 1 and 2 and quarterly budgets should be submitted for years 3 to 5. Cost budgets should be substantiated by recent, written quotations. Revenue budgets should be substantiated by letters of intent from prospective advertisers and from prospective buyers of airtime from the radio station.<sup>40</sup>

4.25 SACRO cautions the Authority that start-up NPOs have difficulty in obtaining a Tax Clearance Certificate (TCC) as no financial history has been created up to that point. It therefore suggests that the application to SARS for a Tax Clearance Certificate must accompany the licence application to ICASA. The award of the community broadcasting licence

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<sup>38</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 3.

<sup>39</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 4.

<sup>40</sup> Ibid, p 3.

<sup>40</sup> Ibid, p 4.

<sup>40</sup> Ibid.

can then be subject to the submission of the TCC to ICASA when received by the licence applicant.<sup>41</sup>

- 4.26 SACRO is concerned that it may be difficult for an aspiring community radio broadcaster to obtain an accurate profile of an existing community broadcaster in the same coverage area as an incumbent broadcaster might not be willing to share such information with a possible new competitor.<sup>42</sup>
- 4.27 SACRO submits that whilst the intention is clear, it may not be practical to expect a start-up community broadcaster to be in a position to report on matters such as projects reporting on management, governance and finances. This is because most entrepreneurial-type community projects are launched informally and not necessarily with formal processes and formal recordings of activities/performance. SACRO indicates that the Constitution contains Memorandum of incorporation (Regulation 2(3)(i)(a-b)) so they should be required as one. The Code of Conduct of the radio station is an important document and should be included.<sup>43</sup>
- 4.28 SACRO raises a concern that the invitation to pre-register implies that an approach similar to the ITA used for commercial licence applicants is being adopted by ICASA for community licence applicants. This may result in unnecessary delays in the processing and issuing of a community broadcasting service licence. There is also concern that ICASA may be considering a public hearing process which is time consuming and expensive/unaffordable for most applicants for a community licence. It is held that these regulations will be incomplete without the pre-registration notice timeframe being specified in the regulations.<sup>44</sup>

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<sup>41</sup> Ibid.

<sup>42</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 4.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid, p 5.

4.29 SACRO believes that the 90 day period for the Authority to assess the application unnecessarily delays service to the community which the licence applicant is trying to serve. It also implies inefficiency on the part of the Authority and is contrary to the message communicated by the Authority that it is continually striving to improve its internal processes and procedures. They allude that the application for a community broadcasting licence should not be dealt with as an application for a commercial licence where other applicants are given 90 days within which to object to such application. They suggest that the fixed 90 day period be replaced by 'within 45 days as this should provide sufficient time for an efficient Authority to process the application. Similarly, conducting public hearings will delay the granting of a license.<sup>45</sup>

4.30 SACRO indicate that the reference to frequencies availability before granting a licenses suggest that this clause (regulation 2(8)) should refer to the Authority issuing a spectrum licence if frequencies are available.<sup>46</sup>

**4.31 The Authority through licensing promotes plurality of services in licensing community broadcasting services however, it does not advocate for duplication of services within the same coverage area.**

**4.32 The decision on the format of a community broadcasting licensee pertaining to music is part of the licence conditions and is decided on case by case basis depending on the kind of service the community broadcasters provides.**

**4.33 The Authority will further require that a community broadcasting applicant submits a notice for pre-registration, whereby the applicant will submit the necessary qualification information**

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<sup>45</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 5.

<sup>46</sup> Ibid.

before a registration is submitted. This will allow the Authority to among others assess and ensure the sustainability of the applicant.

4.34 The Authority requires that an applicant for community broadcasting licence must have been in operation for 2 years and carried out activities for 2 years as an NPO before application to develop on areas such as corporate governance and financial planning before applying for a community broadcasting license. Furthermore, the Authority encourage applicants to start operations for community broadcasting anytime within the 2 years that it is operating as an NPO before submission of a pre-registration notice. This will allow the applicant to garner support from the community and do background work before deciding on issues such as the languages the radio station will broadcast in and the programming plan.

4.35 The Authority has challenges with community broadcasting licensees which are registered as Trusts with regards to:

- the appointment of their Board of Directors/Trustees;
- their financial management of the station;
- community participation;
- founding documents; and
- the manner in which they conduct their AGMs.

4.36 The Authority is of the view that Trustees or Board of Directors of the NPO must be nominated and elected by the community in an Annual General Meeting. The proof of the meeting must be submitted to the Authority. In a trust, Board of Directors elected in the AGM must be registered as trustees.

**4.37** It is the Authority's view that campus community broadcasting services should account separately from the institution of learning.

**4.38** The Authority also requires that an applicant submit pre-registration information that will enable the Authority to consider sustainability. The Authority has to satisfy itself that the service being registered becomes sustainable.

**4.39** The pre-registration requirements are:

- An applicant must have been an NPO in operation and carried out activities for at least 2 years before application.
- An applicant fully completed application form as prescribed by the Process and Procedure Regulations
- Proof that the applicant is a registered NPO;
- The applicant must submit its founding documents<sup>47</sup>, e.g Constitution, Articles of Association, etc;
- An applicant must not assume the scope or coverage of an individual licence;
- Whether a geographic community licence exists with a similar mandate or service;
- 3-5 years financial plan to ensure sustainability (feasibility study showing the possibility of funding).

**4.40** The Authority may hold public hearings upon the notice for registration where there is a need to collect more information or get clarity before taking a decision to register a class license. This will also assist when there are competing interests in the license area such as the existence of a community broadcasting service in the area providing a similar service. In some instances the

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<sup>47</sup> The Authority have provided an example of what should be included in the Founding Document, attached as Annexure A.

Authority would need to verify that an applicant has support in the license area it proposes to serve.

4.41 After assessing whether the applicant meets the requirement for registration the Authority will inform the applicant of the outcome. Successful applicants will submit a notice for registration whilst those not successful will be guided in terms of areas of improvement to meet the requirements for registering as a class license.

4.42 Increasing footprint for community broadcasters, whether interest or geographic will reduce community ownership and participation and blur the distinction between community and commercial broadcasting. The Authority is not amenable to increasing the maximum coverage area for class licences.

#### **Licence amendment**

4.43 NCRF Western Cape would like licence amendment to be clarified on how the amendment affect the current licence term, whether it start afresh after re-issue of amended licence or continues. NCRF Western Cape proposes that it starts afresh from the amendment date.

4.44 SACRO submits that regulation 4(2) should regulate the approval of licence amendment application and not licence application.<sup>48</sup>

#### **Licence renewal**

4.45 SACRO suggests that in the event that the Authority decides to hold a public hearing during the license renewal process, the Authority should provide the licensee with a temporary broadcast licence so that the

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<sup>48</sup> Ibid, p 7.

licensee may continue to provide service to its community until the outcome of the public hearing and the licence renewal application are known.<sup>49</sup>

4.46 SACRO submits that the Authority is silent on what steps it will take to ensure that the licensee whose licence has not been renewed is no longer broadcasting. There is also no mention of an instruction to the unsuccessful applicant in terms of:

- (a) Notifying the community of such decision by the Authority before ending its broadcasting service.
- (b) Notifying the advertisers of such decision by the Authority before ending its broadcasting service.
- (c) Switching off of the relevant studio and transmitter broadcasting equipment.
- (d) Monitoring by the Authority to ensure compliance with the above.<sup>50</sup>

4.47 NCRF Western Cape articulates that in terms of regulation 5.1 (a), ICASA should clarify what measures will be used in the feasibility and sustainability report and also consider the costs for these as it can become punitive and prevent some stations from complying with this.<sup>51</sup>

4.48 NCRF Western Cape further submits that regulation 5.1 (c) should be clarified regarding how stations should demonstrate “community access to the airwaves”. They further request clarity on regulation 5.1 (f) on how

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<sup>49</sup> Ibid.

<sup>50</sup> SACRO, Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 8.

<sup>51</sup> NCRF Western Cape, Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television, p 4.

the process will unfold in the event where there is already an existing licensee in relation to a new applicant in the same broadcast area. NCRF Western Cape proposes that the frequency spectrum licence is aligned to the broadcast license and they are not running concurrently. They request that ICASA should educate stations on the different licensees that are issued to community broadcasters.<sup>52</sup>

4.49 SENTECH submits that the Authority should not use regulation 5(f) (*"the existence of another community broadcasting licensee in the same geographical area;"*) of the draft regulations for refusal of the renewal application of a community broadcasting licence. SENTECH proposes that draft regulation 5(1)(f) of the draft regulations be removed as the existence of two or more broadcasting licensees in the same geographical area cannot be a fault of either of the broadcasting licensees. The proposed regulation 5(f) will reduce the number of stations nationally in an area based purely on the existence of two or more stations in an area.<sup>53</sup>

4.50 SENTECH is of the view that issues of plurality are more significant to the issue of having two or more community broadcasters in the same area. Taking into consideration section 6(1) and (2) of the constitution, and sections 15(1) and (2) and 16(1), it will likely be a difficult process for the Authority to determine which radio station has the right to exist. The proposed provision is also contrary to the objects of the EC Act, particularly section 2(g), (k), (r) and s(i).<sup>54</sup>

4.51 NCRF National argues that a requirement for Community Broadcasters to submit feasibility and sustainability reports are good business practices and this practice must be encouraged, but that this must not be a consideration for license renewal. Community Broadcasting Services must

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<sup>52</sup> Ibid.

<sup>53</sup> SENTECH, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 4.

<sup>54</sup> Ibid.

never be a resource solely reserved for economically viable communities as this may serve to prejudice the rural communities. The effect of this provision, read together with provisions on section 5 (3) and (4) and (5), will further entrench the already disadvantaged position of the impoverished communities.<sup>55</sup>

4.52 Act- SA<sup>56</sup>, Capricorn Concepts<sup>57</sup> and Tshwane TV<sup>58</sup> submits that Section 19 of the ECA does not make provision for the powers to the Authority to refuse to renew a Class License. Regulation 5 is therefore not authorised by Section 19 of the ECA, in so far as it allows the Authority to refuse to renew a class license, in this instance, a community broadcasting license. Regulation 5(2) (3) (4) and (8) must therefore be deleted from the draft Regulations. They note that the above-mentioned Regulation is based on the flawed findings in the Findings Document.

**4.53 The licensee has to satisfy the conditions for renewal before the renewal is granted. The Authority prescribe the terms of renewal of a class licence in line with section 19 (3) of the ECA.**

**4.54 A licensee should submit, as conditions for renewal of a class license:**

- **Feasibility/financial sustainability;**
- **A historical 5-year financial statement revealing how it has been performing;**

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<sup>55</sup> NCRF, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television.

<sup>56</sup> Act-SA, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 May 2018, p 4.

<sup>57</sup> Capricorn Community Concepts, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 04 May 2018.

<sup>58</sup> Tshwane TV, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 May 2018, p 4.

- Community support detailing how community members have been given access to the airwaves. Community participation refers to mechanisms to ensure community participation in the running of the operations, policy making, and programming of the licensee, and representation of the different sectors of the community in influencing the direction the licensee should take;
- On or off air status;
- Legality of office bearers in order to ensure that persons not allowed, in terms of legislation and regulations, to be in the licensee's Board, Management, and staff are not in such positions;
- An indication of the existence of another community broadcasting licensee in the same geographical area. The Authority will assess the effects of close proximity of radio stations on the community and the sustainability of the station. In order to get clarity on this, the Authority might call the stations in proximity to convince the Authority in terms of sustainability and the difference in their mandate. The Authority might request the licensees to come with plans of ensuring that they do not have similar programming and they are able to create revenue; and
- Non-compliance.

4.55 The Authority may hold public hearings upon the notice to renew a class licence where there is a need to collect more information or get clarity before taking a decision to renew a class licence. This will also assist when there are competing interests in the

license area such as the existence of a community broadcasting service in the area providing a similar service. In some instances the Authority would need to verify that the licensee has support in the licence area it serves.

**4.56 The Authority will update the register for community broadcasting licensees by either deletion or renewing the licence.**

### **Licence Transfer**

4.57 The NAB<sup>59</sup> and ACM<sup>60</sup> submit that regulation 6(1) of the Draft Regulation states that an intention to transfer a licence from one entity to another must be tabled and endorsed by the radio station's constituency either at its annual general meeting or special general meeting. They question as to why the regulation refers only to radio stations.

4.58 NCRF Western Cape could not definitely agree whether license transfers should stay or be removed from the draft Regulations. They further articulates that both arguments have merit, and under special circumstances there is a need for license transfer. NCRF Western Cape would like to put both arguments forward for further investigation.<sup>61</sup>

4.59 NCRF Western Cape submits that in terms of 6 (1) the decision to transfer the license should only be done at the Annual General Meeting, as it is the highest decision making body of the station. The decision that is made at the Special General Meeting, can be overturned or endorsed by the Annual General Meeting.<sup>62</sup>

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<sup>59</sup> NAB, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018.

<sup>60</sup> ACM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 June 2018.

<sup>61</sup> NCRF-WC, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 2018, p 4.

<sup>62</sup> Ibid.

4.60 NCRF Western Cape further articulates that in some instances, the Chairperson of the Board or the Board can refuse to call a meeting to decide to transfer the license, in spite of the need and demand from community members, and in this case, a Special General Meeting might be needed to take such decision.<sup>63</sup>

4.61 The NCRF National finds Section 6 of the draft regulations rather confusing that a provision is made for a Community Broadcast License to be transferrable to another community of the same community. They submit that the transferring of community is the same as the receiving community. It must be emphasized that the License is owned by the community. The NCRF National is of the view that it is impossible to determine why this whole section is necessary and therefore submits that the whole section be removed.<sup>64</sup>

4.62 **Transfer of a community broadcasting license is pronounced in terms of section 16 (6) of the ECA. Section 16(6) gives the Authority the responsibility to approve the transfer of a class licensee. As a result Authority has developed the requirements for license transfer to ensure predictability when approached by community broadcasters requesting transfer of their license. Transfer of a license might happen, amongst others, when two community broadcasters within the same vicinity wants to merge. Regulation on the transfer of class license apply to television and sound broadcasting.**

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<sup>63</sup> Ibid, p 5.

<sup>64</sup> NCRF, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 13 June 2018.

## 5. FUNDING

- 5.1 SACRO suggests that a report on how community broadcasting service licensees have utilised or invested the surplus must be submitted within 3 months of the end of the financial year.<sup>65</sup>
- 5.2 Kasie FM submits that the MDDA must fund and monitor radio stations and not position itself as another Broadcasting Authority Body. The Government must direct fund station through the city or regional structure and still continue to place advertisements. They suggest that the percentage of funding be based on annual budget toward production/technical or equipments on community shows and not salaries.<sup>66</sup>
- 5.3 Tshepo FM submits that the Authority should regulate government officials who charge different prices to broadcasters for the same project with the same duration. The GCIS should be held accountable to spending 30% on local media. Community broadcasters should not be disadvantaged due to listener statistics when partnering on content such as health issues.<sup>67</sup>
- 5.4 The KZN NCRF submits that a clear government funding model should be set and be budgeted for by the National Treasury to support the community radio development e.g. payment for signal distribution, housing of the stations, content development, skills development, administration operational costs and staff stipends. In addition, the KZN NCRF is of the view that government departments should be regulated by law to spend at least 30% to advertise its programmes on community

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<sup>65</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 9.

<sup>66</sup> Kasie FM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018.

<sup>67</sup> Tshepo FM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 1.

broadcasting stations, while municipalities should be forced to set aside budgets for existing community radios within their operational jurisdictions.<sup>68</sup>

- 5.5 Regulation 9(1) refers to how surplus funds are to be utilized by the NPO. The ACM brings to the attention of the Authority that this requirement is very problematic and potentially contravenes other related legislation. The NAB brings to the attention of the Authority that these regulations are not clear on what would be considered a surplus.<sup>69</sup>
- 5.6 NCRF National indicates that the Authority makes a provision that, in the event of making a surplus, the licensee should utilise and/or invest the funds in the community served for the purposes of community development. They note that the regulator does not define the term “surplus” and the NCRF used the basic definition that says that a surplus is any amount remaining after the expenditure within a financial year. The NCRF deems this provision to be contrary to proper business planning and long term financial planning principles, and believes that ICASA may be going beyond its mandate in regulating Community Broadcasting Services.<sup>70</sup>
- 5.7 Mr. Anthony Duke (“Mr Duke”) is of the view that although community broadcasting sector is not for profit in that it has no shares for equity (shareholders) and profit for a benefit (dividends), it’s essential that funds are reinvested into the station, by law, so the station’s strategy should be geared to attempt to make income exceed expense.<sup>71</sup>

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<sup>68</sup> KZN NCRF, Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, email submission.

<sup>69</sup> ACM, Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television, 14 June 2018.

<sup>70</sup> NCRF, Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television.

<sup>71</sup> Duke, A., Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television, 18 May 2018.

5.8 The Broadcasting Act<sup>72</sup> and the ECA<sup>73</sup> make provision that community broadcasting service may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned.

5.9 The Authority has placed no restrictions or caps on the number of minutes per hour for advertising by community sound broadcasting licensees. Many community broadcasting licensees have and continue to encounter great difficulty in acquiring sufficient income to meet the financial needs of the stations. Some of the problems identified include:

- the inability of stations to properly market themselves;
- lack of knowledge of potential advertisers that could be approached within their areas;
- lack of adequate audience profiles of the community broadcasting sector that could be used by advertisers; and
- expressed dependence on one form of revenue stream.

5.10 Some community broadcasting licensees have been raising substantial amounts of money through pledges by community members. It is believed that communities would not mind making pledges if they felt that the radio station was there for the advancement and development of the said community and that the community owned the radio station. The community can only have a sense of ownership if community groups or sectors participate meaningfully in the running of the radio station.

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<sup>72</sup> Section 1 of The Broadcasting Act (4/199).

<sup>73</sup> Section 1 of the Electronic Communications Act (36/2005).

**5.11 Class licensees must plough back the surplus to the community. The surplus must not be utilized for unintended means such as sharing by employees, management or the board. Class licensees must not have a profit accrual system. This does not prohibit the broadcaster from investing the surplus for future use by the radio station.**

## **6. MANAGEMENT CONTRACTS**

- 6.1 NCRF Western Cape believes that management contracts should be to enhance the stations operations and sustainability, and not take over, or outsource. The ownership and control of the community broadcaster is important and should be separate from all management contracts. They further articulate that any management contracts should include upskilling of community members so that the capacity within the station is built.<sup>74</sup>
- 6.2 NCRF Western Cape submits that editorial policies of the station should guide the production of programmes, including sponsored programmes which should not be in the interest of corporations, but serve the needs to the broadcast community. Sponsored programmes should also be allowed on air as it assists with the financial sustainability of the stations.<sup>75</sup>
- 6.3 NCRF Western Cape states that, with regards to the definition of local origination programmes, (d) should be removed as they cannot understand how co-producers can have 50% financial interest within

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<sup>74</sup> NCRF Western Cape, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, p 5.

<sup>75</sup> Ibid, p 2.

productions without wanting to influence editorial policies of the stations.<sup>76</sup>

- 6.4 Regulation 10(2)(a) states that the ownership of the community broadcasting licensee remains with the community being served. ACM states the word ownership; in reference to community broadcasting gives rise to the notion that it can be sold and suggests that the Authority should rather make use the word stewardship/stewarded.<sup>77</sup>
- 6.5 Cape Television notes that there is no definition for "management contract". It suggests a possible definition as follows; "Management contract is when a third party or private company provides a community broadcaster with personnel to run certain operational areas such as Production, Sales, HR, Technical Operations or any other managerial function within the organization, or if any such functions are entirely outsourced to a third party on a full-time basis." ICASA must provide community broadcasting licensees with an instruction on a clear and specific time line to draw and complete management contracts. The community broadcasting licensees must submit these management contracts to ICASA within allocated time in order that they can be properly perused and verified. The management contracts must be limited to a year in order to discourage private companies to influence the community broadcasting sector. The community broadcasters must not be allowed to entitle one contractor to produce their programming as this will exclude the contribution of the communities.<sup>78</sup>

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<sup>76</sup> Ibid, p 3.

<sup>77</sup> ACM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 June 2018.

<sup>78</sup> National Community Radio Forum Western Cape Submission on the Draft Regulations for Community Broadcasters, 2018.

- 6.6 ACT SA<sup>79</sup>, Capricorn Concepts<sup>80</sup> and Tshwane TV<sup>81</sup> suggests that the Authority must approve the management contract within 30 days of submission of the contract, failure to approve the contract within 30 days will be considered automatic approval.
- 6.7 The Authority views management contract as an arrangement under which operational control of a licensee is vested by contract in a separate entity/company that performs the necessary managerial/administrative functions in return for a fee or payment. The main purpose of management agreement is to assuage lack of skill and knowledge of operation within a licensee
- 6.8 Regulation 7 (12) in the Regulations on Standard Terms and Conditions in Terms of the Electronic Communications Act, (No. 36 of 2005) states that "if a licensee intends on entering into a management agreement with another entity, it should attach details and nature of the agreement, including timelines. Should a management agreement's time line lapse, if and when renewed, such must first be lodged with the Authority."
- 6.9 All management contracts must be lodged for approval with the Authority. The approval criteria will only deal with aspects that pertain to regulatory matters. The Authority will always be guided and consider section 2 (y) of the ECA in interrogating management contracts.
- 6.10 Management agreements with another entity are allowed for skills transfer, but not to exert control of the broadcasting

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<sup>79</sup> Act - SA, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 May 2018, p 4.

<sup>80</sup> Capricorn Community Concepts, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 May 2018.

<sup>81</sup> Tshwane TV, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 May 2018, p 4.

service. The agreement should clearly state the method of reimbursement and the duration of the agreement. The licensee must at all times retain editorial and programming control and independence. The licensee should not cede powers of the board of directors and management to another entity nor should another entity be the shareholder of a licensee. Fiduciary duties are the responsibility of the board of the licensee.

- 6.11 Management contract duration should not exceed two years to ensure that undue influence is not exerted unintentionally.

## 7. COMMUNITY PARTICIPATION

- 7.1 ACM contends that the consistent use by the Authority of the terms "community" and "ownership" in relation to each other is concerning and suggests an alternative use of terminology.<sup>82</sup>
- 7.2 In respect of Regulation 10 (2) of the Draft Regulation ACM states that including the community in the management of the licensee is impractical. The ACM suggests that community should be involved in the election of a fiduciary board, for example at the annual general meeting of the licensee.<sup>83</sup>
- 7.3 Regulation 11(3) of the Draft Regulation states that a community broadcasting licensee must establish programming councils/ committees to enable community members to participate in the selection and provision of programs. The ACM draws the Authority's attention to the cost implications certain forums carry for the licensee and advocates that

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<sup>82</sup> ACM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 June 2018.

<sup>83</sup> Ibid.

social media should be recognized as a platform not a supplementary platform for community participation.<sup>84</sup>

- 7.4 SACRO is of the view that the inference is that the community owns the licensee through the Board elected from members of the community. However, stories are rife of people being bussed in from areas outside of the community in order to influence the election of the Board. Board members that live in areas outside of the community are, as a result, elected to the Board. SACRO urges the Authority to urgently and decisively address this anomaly as it goes directly against the principle of community.<sup>85</sup>
- 7.5 SACRO requests the Authority to be more specific about what the term 'involve' in regulation 11(2) entails and must be careful not to confuse the community about its role versus that of the radio station management. For example, one cannot have members from the community walking in from the street and dictating how the station should be managed.<sup>86</sup>
- 7.6 The PMG is very concerned that ICASA does not appear to understand how Not For Profit Companies without Members as provided for in the Companies Act, 2008 operate. While such companies do hold AGMs, these are essentially meetings of the Board as, in terms of the PMG's MOI, the directors are, in effect, the members of the company, and represent a broad array of Christian churches and interest groups. Further, the stations in the PMG regularly hold audience focus groups as well as ongoing community of interest interaction between the station and its community through, among other means: letters, emails, phone-ins, Facebook posts, SMSes, Tweets, What's App groupings and the like.

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<sup>84</sup> Ibid.

<sup>85</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 10.

<sup>86</sup> Ibid.

These keep PMG intimately involved with its Christian community on a basis that is far closer and more interactive than an AGM.<sup>87</sup>

7.7 Consequently, PMG suggests the following amendment to section 11(5) of the Draft Regulations:

“(5) A community broadcasting licensee must submit proof of community participation at every annual general meeting and/or other forums that require community participation.”<sup>88</sup>

7.8 NCRF Western Cape recommends that a community licensee should involve the community through relevant platforms and organisational structures to participate in the affairs of the community broadcasting licensee.<sup>89</sup>

7.9 PMG states that Radio Pulpit and Cape Pulpit hold Annual General Meeting, although an Annual General Meeting is not Mandatory for non-profit companies. Furthermore, the Board members are selected according to their competencies in corporate governance as prescribed by the Companies Act. PMG states that the Board members include members of a variety of Christian constituencies such as churches and NGOs.<sup>90</sup>

7.10 PMG states that besides considering radio presenting talent during the appointment of presenters, it also consider the diverse range of Christian denomination and groupings that an individual represent. Presenters are required to consult with their constituencies twice a year for programming

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<sup>87</sup> Pulpit Media Group, Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 5.

<sup>88</sup> Ibid, p 6.

<sup>89</sup> NCRF Western Cape, Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television, p 5.

<sup>90</sup> Pulpit Media Group, Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television, 30 July 2018.

inputs. Proposals by different constituencies are incorporated in the programme planning on bi-annual basis. The meetings are minuted.<sup>91</sup>

7.11 PMG highlights that Radio Pulpit communicates with listeners through communication and listener community engagement plan. This includes frequent visits to churches to identify participants. During visits participation in the form of sermons by pastors, testimonies of individual and inserts by knowledgeable individuals is encouraged. The identified participants are invited to the radio station to participate in the creation of programme content. Gospel artists are also provided with an exposure by the radio station through interviews broadcast on air.<sup>92</sup>

7.12 Ownership of Community Radio by community members does not mean that community members should participate in AGMs and in the election of Board members. PMG states that since Board members that get appointed are from community and different organisation including churches, therefore, ownership by community does exist.<sup>93</sup>

7.13 PMG suggests that community participation through social media networks, letters, emails, telephone and through consultation by presenters or programming team for programming purposes should be sufficient.<sup>94</sup>

7.14 Primedia notes that the Authority has taken steps through regulation to ensure that there is greater participation of communities in the affairs of community sound broadcasters. They are of the view that there are a number of community broadcasters particularly sound broadcasters who do not demonstrate clear indications of which interest groups they serve within their communities and further show a lack of any community

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

participation in the affairs of the radio station. Primedia agrees with and supports the view expressed by Kagiso Media in the Regulatory Framework for Community Broadcasters Findings Document that there are "quasi-commercial sound broadcasters masquerading as community".<sup>95</sup>

- 7.15 The community broadcasting operating model challenges the traditional division between broadcasters on one side and listeners on the other side. In community sound broadcasting the listener becomes the broadcaster. Listeners get access to the airwaves. Community participation means availing mechanisms that ensure the participation by members of the community served, in the running of the operations, policy making, and programming of the licensee, and representation of the different sectors of the community in influencing the direction the licensee should take. This in turn results in the equitable representation of the linguistic, cultural and religious diversity within the geographical boundaries of the area.
- 7.16 Affording community members who are experts in various fields such as community health, education, culture, language, customs, environment, science, etc, an opportunity to host programmes in their respective fields, is one of the means of ensuring community access to the airwaves.
- 7.17 The community must get involved in the production and management of communication systems and in the ownership and control of the means of communication. As far as community participation in the selection and provision of programmes is concerned, community television broadcasters should establish

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<sup>95</sup> Primedia, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 2018.

programming councils/committees. These councils/committees should be representative of different sectors within the community served.

- 7.18 Without community participation, community broadcasting ceases being for the community and by the community. Community broadcasting licensees must continue submitting proof of community participation in annual general meetings, and all other forms that require community participation.
- 7.19 Community broadcasters should strive to understand the community they are serving. Also, they should know what is available in terms of skills, revenue streams and build on the strengths of their community. They should build relationships and partnerships with common interest to realize the vision and meet goals of the community.
- 7.20 The method of participation must not disadvantage part of the community that is already disadvantaged in terms of social media access and knowledge to clearly voice their views timeously, be understood and be able to engage with issues thoroughly. The broadcaster should realise a difference between a discussion and a once off comment. However, social media can be used to enhance community participation, although not as a primary method for community participation.
- 7.21 Schedule 4(1) of the Companies Act provides that a non-profit company is not required to have members, but its memorandum of incorporation (MOI) may provide for it to do so. Licensees operate within a regulated environment. Consequently, the regulator may require a company to amend its MOI in line with section 16 of the Companies Act.

- 7.22 The Authority understands that non-profit entities vary from each other as some are trusts, others are companies whilst others are pure associations. Thus, they all have different rules and laws applicable to them due to their nature. Once an entity decides to acquire a licence to operate as a broadcaster additional rules and laws apply to that entity.
- 7.23 A non-profit company which is a licensee of the Authority must comply with the regulatory requirements of the sector, including having members. It is in this sense that the Authority requires non-profit companies licensed for the purpose of community broadcasting to hold AGMs irrespective of the fact that the Companies Act does not compel them.
- 7.24 Community broadcasting licensees are solely meant for the benefit of the community not the board, individuals and/or directors of the entity/company that holds the licence. Therefore, a non-profit company that holds a licence must account or report back to the community it serves as a community broadcaster. The AGMs are the best way to report and account to communities. This also brings the licensee close to the people it serves.

## **8. PROGRAMMING OBLIGATIONS**

- 8.1 Regulation 8(1) of the Draft Regulation states that majority of the programmes, news bulletins and current affairs broadcast by a community broadcasting service must be produced and sourced locally. The NAB states that the wording conflicts with the term 'local origination programmes' as defined in regulation 1. Notably<sup>95</sup>, the regulations also

do not give a clear indication of what would constitute a 'majority' for compliance purpose.<sup>97</sup>

8.2 The PMG submits that it appears that ICASA entirely ignores the programming constraints and requirements of community of interest stations despite the fact that the very definition of "community" in section 1 of the ECA requires ICASA to recognize a distinction between geographically-based community stations and community of interest community stations.<sup>98</sup>

8.3 The PMG reiterates that ICASA's position regarding locally-sourced programming and limiting programming syndication or programme sharing to 20% is, of course, entirely appropriate for geographically-based communities which have unique needs, interests and concerns arising out of the grass roots conditions pertaining to that particular geographical area. However, ICASA's position is entirely inappropriate for community of interest stations which are required to meet the needs of a particular sub-community in a geographic area and which may indeed need content from outside that particular geographic area in order to connect with and service the needs of particular communities of interest in different geographical areas.<sup>99</sup>

8.4 PMG suggests the following amendment to section 8(1) of the Draft Regulations:

"(1) In respect of geographically-based community stations:

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<sup>97</sup> NAB, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018.

<sup>98</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 9.

<sup>99</sup> Pulpit Media Group, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 4.

<sup>99</sup> Ibid, p 4.

- (a) the majority of programs, news bulletins and current affairs broadcast by a community broadcasting service must be produced and sourced locally; and
- (b) programme syndication/network and programme sharing shall not exceed 20% of the community licensee's programming."

The above amendment would then require the deletion of section 8(2) of the Draft Regulations which will have been incorporated into section 8(1) as proposed above. This would then require section 8(3) to be renumbered 8(2).<sup>100</sup>

8.5 With regards to regulation 8(1) ACM states that this places a restriction on the broadcaster and may prove difficult if quality and variation are to be maintained.<sup>101</sup>

8.6 Makhado Community Radio submits that in Limpopo there are approximately eleven Community broadcasters who because of the challenge of unemployment creates jobs and training for the broadcasting industry.<sup>102</sup> Makhado Community radio continues to submit that 'it is difficult for advertisers to place advertisements in all of these broadcasters, in that regard their submission is that 'stations in the same area be allowed to syndicate some hours wherein advertisers will be able to advertise in those hours.<sup>103</sup>

8.7 Mr Duke believes that it is imprudent to think that the quality of the programme doesn't matter just because a station is 'community'. It is only fair that those behind the operations are equipped to deliver a product that is unique. The biggest strength of community radio is its

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<sup>100</sup> Ibid, p 5.

<sup>101</sup> ACM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 June 2018.

<sup>102</sup> Makhado FM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 12 June 2018.

<sup>103</sup> Ibid.

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uniqueness. The Unique Selling Point (USP) for community radio is that its staff can touch, see and feel their audience and the land around them, at any time of the day. They are different to those stations that do not live in your district, township, village or street as your listener does.<sup>104</sup>

**8.8 The majority of programmes broadcast by a community broadcasting service, news bulletins and current affairs shows in particular, are supposed to be produced and sourced locally. Community broadcasting applicants/licensees should submit their proposed programming format with majority of programmes produced and sourced locally. Programme syndication/networking and programme sharing between broadcasting licensees shall not exceed 20% of the community licensee's programming.**

**8.9 The Authority still holds a position that programming must reflect community needs and interests in accordance with legislation, to ensure that programming provided reflects the needs of the people in the community which must include amongst others cultural, religious, language and geographic needs and must:**

- **provide a distinct broadcasting service dealing specifically with community issues which are not normally dealt with by the broadcasting service covering the same area;**
- **be informational, educational and entertaining;**
- **focus on the provision of programmes that highlight grassroots community issues, including, but not limited to, developmental issues, health care, basic information and general education,**

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<sup>104</sup> Duke, A., Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 18 May 2018.

environmental affairs, local and international, and the reflection of local culture; and

- promote the development of a sense of common purpose with democracy and improve quality of life.

8.10 Community broadcasting licensees must broadcast programming that supports and promotes sustainable development, participatory democracy and human rights as well as the educational objectives, information needs, language, culture and entertainment interests of different groups such as women, youth, civic and sport interest groups.

8.11 Licensees must have policies dealing with programming matters that include, amongst others:

- mechanisms for community participation;
- programming format;
- language policy;
- the provision of access to views/opinions under-represented by the mainstream media;
- the accurate presentation of factual material and ensuring that reasonable efforts are made to correct substantial errors of fact at the earliest possible opportunity;
- clear distinction between factual material, commentary and analysis;

- avoiding the misrepresentation of viewpoints by giving misleading information;
- editing out of context or withholding relevant available facts;
- respect for different cultures, customs and religions;
- seeking appropriate advice on how to best respect different cultures, customs and religions; and
- the promotion and development of local musicians and other artists.

8.12 Whilst taking advantage of other platforms such as online broadcasting and social media, the programming content should be relevant to the community being served within the licence area. The other platforms should be a means to share the local experience or stories but not to dilute the localness of the community broadcaster. Broadcasting of local music and programming is important for community broadcasting due to its grassroots mandate of servicing and reflecting the communities served so that they can relate to and promote the community broadcasting service.

## 9. GOVERNANCE AND MANAGEMENT

9.1 The KZN NCRF is of the view that annual financial reporting requirement should be a licence condition instead of being a regulation. The KZN NCRF also argues that community radio stations should have clear constitution document regulating the Boards and policy documents regulating staff

members.<sup>105</sup> Furthermore, the KZN NCRF submits that the clear roles of the Board vs Management and the Station Manager should be set by the license conditions to avoid conflicts.<sup>106</sup>

- 9.2 NCRF Western Cape articulates that instead of only identifying who should be excluded, they feel that there is a need to include those that should be included on the board. They further submit that new board members should have the following skills amongst others: Financial, human resource, legal, community development, senior management skills and fundraising; and also board members should take an oath of office when they start their term. NCRF Western Cape would also like to include “involve in the process of appointment of senior management” so that the board has a say in their appointment, but the accountability will still be with the Station Manager, to ensure that Station Managers do not appoint their family or friends, etc. in positions of management. The role of the board should be aligned in terms of the new Companies act.<sup>107</sup>
- 9.3 NCRF Western Cape submits that ordinary community members who do not necessarily have skills are also selected onto board.<sup>108</sup>
- 9.4 NCRF Western Cape would like to amend 3(i) to “supporting the station management in fundraising activities through potential credible fundraisers and partners”.<sup>109</sup>
- 9.5 Mr Duke’s experience is that station management can subvert the process and conspire to undermine or make profit from a business. He feels the clause on ‘board not *interfering* with management duties’ needs to be reworded to make sure that the board keeps a tight finger on the pulse

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<sup>105</sup> The Kwa-Zulu Natal National Community Radio Forum (KZN NCRF), Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, email submission.

<sup>106</sup> Ibid.

<sup>107</sup> NCRF Western Cape, Written Submission on ICASA’s draft regulations on Community Broadcasting Services: Radio and Television, p 4.

<sup>108</sup> Ibid, p 3.

<sup>109</sup> Ibid, p 4.

of the station. After all, two heads are better than one. Mr Duke believes that the term 'Interfere' is open to interpretation and could be used to hide a multitude of wrongdoings.<sup>110</sup>

9.6 Mr Duke does not believe that station managers can be trusted with running stations without an actual interference of the board. And thus, he is of the view that the term 'interference' needs to be clearly defined.<sup>111</sup>

9.7 ACM states that the Authority should rather adopt the provisions of the Income Tax Act in relation to a connected person instead of Regulation 3(2) of the Draft Regulations.<sup>112</sup>

9.8 The NAB<sup>113</sup> recommends that regulation 3(4)(g) be redrafted in the following manner:

*Ensuring that the licensee affiliates/ signs with the relevant forums such as the National Association of Broadcasters, the National Community Radio Forum or any other broadcasting industry forum as may be recommended by the Authority.*

9.9 SACRO agrees with the Authority that the Board should not consist of family members and would like the Authority to specify in the regulations how it proposes to monitor and regulate this important aspect.<sup>114</sup>

9.10 SACRO suggests that the role of the Station Manager should include initiating and executing projects. In addition, the Station Manager should

<sup>110</sup> Duke, A., Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 18 May 2018.

<sup>111</sup> Ibid.

<sup>112</sup> ACM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 June 2018.

<sup>113</sup> NAB, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018.

<sup>114</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 6.

be responsible for creating and maintaining a safe, secure and healthy work environment.<sup>115</sup>

9.11 Kasie FM suggests that the board appointment must be revised, to be appointed like SABC either by local government or GCIS and the board members must submit CVs. Board members cannot be elected because they talk too much without governance expertise, broadcasting knowledge nor management understanding while they are expected to give radio station vision and strategic direction. They get tempted by having access to staff salaries when they do not have source of income and they start to recruit for anti-station management/board move or have their close people within the board.<sup>116</sup>

9.12 Kasie FM would like management to be allowed to present the shows because this assist the station to save on finance, notwithstanding the need to create employment. They allude that the idea of volunteering in our county is not viable one to run the station nor abuse people to work 5 days a week and still be called volunteer where the rate of unemployment is high.<sup>117</sup>

**9.13 The findings denote that a large number of non-compliance instances emanate from unclear provisions in the licensees' constitutions. Despite the existing regulatory tools and the monitoring and compliance enforcement in place, there is still a high number of community broadcast licensees that are not compliant.**

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<sup>115</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 6.

<sup>116</sup> Kasie FM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018.

<sup>117</sup> Ibid.

**9.14 Community broadcasting licensees must have clearly defined roles of management and the board members in their policies. The roles of Board/Trustees, Station Manager and Management must be as outlined below.**

**The Role of the Board/Trustees:**

**9.15 The Board represents the community and is there to ensure, amongst others, that the interests of community are served. Board members are not employees of the radio station. The Board is not supposed to control daily administrative functions of the station as this is the responsibility of the Station Manager. The Board is also responsible for the employment of the station manager, to assist with the formulation and updating of the legal/founding documents, policy documents and the overall oversight of the licensee's operations.**

**9.16 In addition to the above, the Authority is of the view that the role of the Board includes, but is not limited to, the following:**

- monitoring of management in respect of implementation of the Board's plans;
- ensuring compliance with all relevant laws, regulations and codes of good practice;
- giving strategic direction to the licensee;
- development of a corporate code of conduct; and
- identification of risk areas and performance indicators.

**Role of the Station Manager**

**9.17 The Station Manager oversees the administrative, financial, technical responsibilities and business functions of a community broadcasting licensee.**

**9.18 The Station Manager has the responsibility to put the overall strategic objectives into action through:**

- Plan of Action (Development of projects to fulfil the mandate);**
- Recruitment of staff and volunteers (Drafting of contracts with clear and detailed job descriptions, and recruitment of the right people for the job);**
- Direct as well as train management staff for sound human relations and operational skills;**
- Management (Manage operations and delegate control of other departments), e.g. Programming, Sales and Marketing, News, Music, Finance, Technical and Administration;**
- Instil discipline (Through documented and adopted policies that detail corrective actions and procedures); and**
- Network (Meet potential clients, funders and donors, and affiliate/sign the licensee with relevant forums such as NAB, NCRF, etc.)**

### **The Role of Management**

**9.19** The management is made up of the Station Manager and other departmental managers who report to the Station Manager. The Station Manager must serve as ex-officio of the board and report to the board. Management below the Station Manager must report to the Station Manager on the operations of their respective departments. Management controls the daily administration of the station and is accountable to the Board.

**9.20** Corporate governance policies should consist of:

- Management;
- Technical operations;
- Human resource;
- Financial;
- Day to day operations;
- Editorial policy.

**9.20** The Authority encourages the community broadcasters' associations to play an active role in ensuring that all licensees comply with regulations.

## **10. COMPLIANCE**

**10.1** NCRF Western Cape submits that compliance officers need to do monitoring and support of new entities.<sup>118</sup>

**10.2** Primedia encourages that in the event the Authority implements the Draft Regulations, it ensures that it steadfastly enforces the compliance with

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<sup>118</sup> NCRF Western Cape, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, p 3.

regulation particularly on issues of community participation as provided for in draft regulation 11 of the Draft Regulations.<sup>119</sup>

- 10.3 According to Primedia, the publication of the Draft Regulations is a move in the right direction in building and maintaining a robust community broadcasting sector. The Authority may be aware that this tier of broadcasting is an essential part of ensuring that our communities have access to services that serve their interests and is an integral part of disseminating local community focused information.<sup>120</sup>
- 10.4 Primedia states that it has observed that there remains a challenge with compliance within the community broadcasting sector. This challenge is also alluded to by the Authority in its Discussion Document on Regulatory Framework for Community Broadcasting Services ("the Discussion Document"). The Authority notes in the Discussion Document that it initiated the inquiry process to address shortcomings in the regulatory and operational environment of community broadcasting sector. The Authority further notes the disregard of inter alia stations' community participation mandate and the exclusion of community members from participation in the affairs of the stations.<sup>121</sup>
- 10.5 Primedia agrees with the Authority on the above-mentioned challenges, and hopes that these Draft Regulations will be the first step in ensuring that community sound broadcasting licensees comply with their licensing obligations and further hope that following the adoption of these the Draft Regulations the Authority will also play its part by ensuring enforcement of these regulations within the community broadcasting sector. Regulation is only as good as its enforcement by the regulator, therefore there needs to be a consented effort by the Authority to ensure

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<sup>119</sup> Primedia, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 2018.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

compliance by community broadcasters if these Draft Regulations are to have the intended effect.<sup>122</sup>

- 10.6 Licensees must report on their funding, profit and the distribution of profit and such must happen at their annual general meetings. The report should include non-monetary donations and sponsorship.
- 10.7 Community broadcasting services funds should be put into an account whereby stations will be able to account for such funds.
- 10.8 The Authority will endeavour to strengthen and improve monitoring of broadcasters with all licence terms and conditions as well as regulations.

## 11. CODE OF CONDUCT FOR BROADCASTERS

11.1 PMG notes that many community broadcasting services are members of the NAB and, consequently, are bound by the Code of Conduct for Free to air Broadcasters prescribed by the Broadcasting Complaints Commission of South Africa (BCCSA). According to PMG this is provided for in section 54(3) of the ECA as an alternative to being bound by ICASA's Code of Conduct and consequently the requirements of section 12 of the Draft Regulations is *ultra vires* in terms of the ECA with regard to NAB members.<sup>123</sup>

11.2 Consequently, PMG suggests the following amendment to section 12 of the Draft Regulations:

*"(12) Community broadcasting services licensees must adhere to either the Authority's Code of Conduct for Broadcasters, 2009, or*

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<sup>122</sup> Ibid.

<sup>123</sup> Pulpit Media Group, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 6.

*to the BCCSA's Code of Conduct for Free to Air Broadcasters, or any amendment or replacement thereto.*"<sup>124</sup>

**11.3 In terms of section 54 of the ECA, broadcasters must comply with ICASA's Code of Conduct and with BCCSA Code of Conduct for those who are signatories of the BCCSA.**

## **12. RECORD KEEPING**

12.1 NCRF Western Cape recommends on regulation 14 (f) that the copies of programmes are kept for 90 days, while logs can be kept for 5 years as community broadcasters do not have the capacity to keep recordings for 5 years.<sup>125</sup>

12.2 SENTECH states that the draft sub-regulation 14(3) has a typographical error and should read "The logs, statistical forms and records contemplated in regulation **14(1) and (2)** (instead of regulation 13(1) and (2)) must be preserved for the duration of the broadcasting licensee's licence period."<sup>126</sup>

12.3 ACM is in contention with the use of the word "audited" in Regulation 10(1)(b) and advocated for the inclusion of an alternative for either "audited" financial statement or financial statements that have been "independently reviewed", raising costs concerns.<sup>127</sup>

12.4 NCRF National submits that section 14 (3) states that "the logs, statistical forms and records contemplated in regulation 13 (1) and (2) must be

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<sup>124</sup> Ibid.

<sup>125</sup> NCRF Western Cape, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, p 6.

<sup>126</sup> SENTECH, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 6.

<sup>127</sup> ACM, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 14 June 2018.

preserved for the duration of the broadcasting licensee's license period". They assume that the intention is to refer to section 14 (1) and (2) of the regulation. Section 13 deals with "Technical Standards and Specifications" while section 14 deals with "Record Keeping".<sup>128</sup>

**12.5 The Authority have considered concerns on the affordability of auditors and will request that the financial statements be compiled by an accounting officer at the least.**

### **13. PENALTIES**

13.1 SACRO suggests that the term 'non-compliance' be used rather than 'contravene' as it has a closer link to the requirement of compliance. Imposing a monetary penalty of 10% of annual turnover does not seem appropriate in the community broadcasting environment. It is contended that non-compliance with some of the license compliance criteria should not warrant penalties.<sup>129</sup>

13.2 NCRF Western Cape proposes that other avenues should be explored and that a fine should be the last resort after all other interventions have been exhausted.<sup>130</sup>

13.3 SENTECH states that considering that Community broadcasters do not operate for profit, a fine in the event of non-compliance with the regulation should not exceed **2%** of their annual turnover (as opposed to the 10%) suggested in the draft regulation 15.<sup>131</sup>

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<sup>128</sup> NCRF, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television.

<sup>129</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 11.

<sup>130</sup> NCRF Western Cape, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, p 6.

<sup>131</sup> SENTECH, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 6.

- 13.4 NCRF National submits that the Authority does not provide a compelling case as to why every contravention should result in financial penalty. Therefore they are of the view that the Authority appears to have done no investigation on the application of penalties. They make a note that the Authority further aims to use these contraventions against the licensee during the license renewal process and believe that this amounts to double jeopardy.<sup>132</sup>
- 13.5 SACRO proposes that the Authority provides for performance incentives, reasoning that incentives for good performance are seen as a more powerful motivator than penalties for poor performance. Below average performance accumulates de-merit points which may result in intervention by ICASA through support and/or correction. Above average performance on a criterion that previously performed below average will cancel out the applicable de-merit points.<sup>133</sup>
- 13.6 **The Authority does intervene in cases of non-compliance to assist the broadcasters to comply, before penalties are imposed through the CCC process.**
- 13.7 **The Authority is mindful of the nature of the sector when determining and imposing the amount payable for penalties. A fine not exceeding 10% is appropriate as it is a maximum penalty.**

#### **14. REPEAL OF REGULATIONS**

- 14.1 The PMG is extremely concerned that the Draft Regulations do not propose to amend or repeal any previous regulations relating to

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<sup>132</sup> NCRF, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television.

<sup>133</sup> SACRO, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 11.

community broadcasting. The result of the failure to deal with the previous regulations is that members of the community broadcasting sector now have to deal with four different sets of regulations many of which deal with the same subject matter in the same way, leading to confusion as to which one to refer to or, worse, deal with the same subject matter yet contain different, contradictory provisions.<sup>134</sup>

**14.2 The Authority is repealing the following regulations so that community broadcasters do not have to refer to few regulations on the same issue;**

Regulations	Extent of repeal or amendment
Class Licensing Processes and Procedures Regulations (as amended), 2010 published in <i>Government Gazette</i> No. 33297, Notice No. 526 of 14 June 2010, as amended by <i>Government Gazette</i> No. 39874, Notice No. 157 of 30 March 2016.	<ol style="list-style-type: none"> <li>1. Repeal of Regulations 7(1), 7(2), 7(5), 7(6) and 7(8).</li> <li>2. Amendment of regulation 4 by the substitution in subregulation (1)(a) and (1)(b) of the words "(Regulation 7(1))" and "(Regulation 7(2))" with the word "(Regulation 4(5)) of the Community Broadcasting Services Regulations".</li> <li>3. Amendment of Form A by deletion of the words "Regulation 7(1)".</li> <li>4. Amendment of Form B by the deletion of the words "Regulations 7(2)".</li> </ol>

<sup>134</sup> Pulpit Media Group, Written Submission on ICASA's draft regulations on Community Broadcasting Services: Radio and Television, 15 June 2018, p 2.

Standard Terms and Conditions Regulations (as amended), 2010 published in Government Gazette No. 9311, Notice No. 525 of 14 June 2010, as amended by Government Gazette No. 39872, Notice No. 609 of 30 March 2016.	Repeal of Regulations 10A(2), 10A(7), 10A(8), 10A(11), 10A(12) and 10A(14).
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## 15. CONCLUSION

The Authority would like to thank all stakeholders, interested parties and everyone who made submissions and participated in the development of the regulatory framework on Community Broadcasting Services.