



Independent Communications Authority of South Africa

REGIONAL TELEVISION BROADCASTING SERVICES

POSITION PAPER

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Contents

Index	Page Number
CONTENTS	2
SUBMISSIONS	3
A. INTRODUCTION	4
1. AIMS OF THE POSITION PAPER.....	4
B. SUBMISSIONS	8
2. FREQUENCY ASSIGNMENT AND A VAILABILITY.....	8
3. APPROACH TO PUBLIC REGIONAL TELEVISION SERVICES.....	10
3.1 <i>The Broadcasting Act</i>	10
3.2 <i>Viability</i>	12
4. DEFINING REGIONAL TELEVISION.....	14
5. PROGRAMMING.....	14
6. SOUTH AFRICAN TELEVISION CONTENT.....	16
7. FUNDING AND ADVERTISING.....	17
8. LICENSING.....	19
C. FINDINGS	22
9. FREQUENCY ASSIGNMENT.....	22
10. APPROACH TO COMMERCIAL REGIONAL TELEVISION.....	23
11. APPROACH TO THE REGULATION OF PUBLIC REGIONAL TELEVISION.....	25
11.1 <i>Constitutional Rights and Statutory Duties</i>	25
11.2 <i>Funding of Public Regional Television Services</i>	27
11.3 <i>Licence Application</i>	29
11.4 <i>Programming Contributions</i>	29
11.5 <i>News</i>	30
11.6 <i>Actuality Programming</i>	30
11.7 <i>Children's Programming</i>	31
11.8 <i>Educational Programming</i>	31
11.9 <i>South African Television Content</i>	32
11.10 <i>Independent Television Production</i>	33
11.11 <i>Reflecting South Africa's Regional Diversity</i>	34
12. CONTENT RELATED MATTERS.....	34
12.1 <i>Compliance with National Laws and the Authority's Regulations on Sponsorship</i>	34
12.2 <i>Code of Conduct</i>	34
13. LICENCE FEES.....	34
14. QUESTIONS.....	35

Submissions

We thank the following organisations and individuals who made submissions:

1. Midi Television (Pty) Ltd (e.tv)
2. Mikhail Peppas
3. Malcolm Ramsay
4. Media Monitoring Project (MMP)
5. M-Net
6. National Association of Broadcasters (NAB)
7. National Community Radio Forum (NCRF)
8. Orbicom
9. Primedia Broadcasting
10. South African Broadcasting Corporation (SABC)
11. Sentech
12. Seriti Broadcasting Company

A. INTRODUCTION

1. Aims of the Position Paper

Section 2 of the Independent Broadcasting Authority Act, No. 153 of 1993, (“the IBA Act”) states that the primary purpose of the Act is to provide for the regulation of broadcasting and for that purpose to, *inter alia*, promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level, which, when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information; promote the development of public, commercial and community broadcasting services which are responsive to the needs of the public; ensure that broadcasting services, viewed collectively develop and protect a national and regional identity, culture and character; provide for regular news services; actuality programmes on matters of public interest; programmes on political issues of public interest; and programmes on matters of international, national, regional and local significance.¹

The significance of section 2 is that it very clearly places an obligation upon the Independent Communications Authority of South Africa (“the Authority”) to promote the introduction of a diverse range of sound and television services at national, regional and local level. Sound broadcasting services are currently offered at national, regional and local level. Television broadcasting services are, however, currently only offered at a national level, with the exception of one “grand-fathered” licensee at community level (Trinity Broadcasting Network). The Authority has also, since 1996, licensed a range of community groups as special events television licensees.

In the Triple Inquiry Report, 1995, the Authority recommended that the new commercial free-to-air channel may consist of regional network stations.² This option was preferred on the grounds that licensing of regional stations would allow for a diverse range of owners to enter the television industry. It was also argued that regional television stations would stimulate the development of production centres and infrastructure throughout the country making an important contribution to promoting and developing regional identity, culture and character. The achievement of these goals would, of course, rest on the availability of resources.

¹ Section of the IBA Act No.153 of 1993

² IBA Triple Inquiry report, 1995, at page 30

Parliament's report on the Triple Inquiry Report in March 1996 stated that the Authority should licence a new free-to-air commercial channel by July 1997. Parliament further required the Authority to consider the introduction of a second commercial channel and, if financially viable, that it be introduced in a phased-in manner³. The Authority conducted a national consultative process, which led to the decision that at that point in time regional networked stations were not economically feasible. This led to the licensing of Midi Television (Pty) Ltd (trading as e.tv) as a national commercial free-to-air television broadcaster, rather than the original proposed concept of regional network stations. The principle set out in section 2 of the IBA Act that a diverse range of television services at regional level be promoted was met to a certain extent by including "provincial diversity" as a licence condition for e.tv

New legislative requirements for introducing public regional television as well as technological advances and interest expressed in such licences by commercial entities have placed these issues once again on the Authority's policy agenda. Consequently the Authority has conducted a public inquiry to determine public demand for and the financial sustainability of regional television services.

The introduction of regional television broadcasting services would satisfy the objects of section 2 of the IBA Act. The categorisation of broadcasting licences is set out within the three tier system of broadcasting in South Africa, namely public, commercial and community broadcasting services, as set out in section 5(1) of the Broadcasting Act, No. 4 of 1999 ("the Broadcasting Act"). Section 5(2) of the Broadcasting Act provides that subject to this Act, broadcasting licences are categorised as:

- (a) free-to-air broadcasting service;
- (b) terrestrial subscription broadcasting service;
- (c) satellite subscription broadcasting service;
- (d) cable subscription broadcasting service;
- (e) low power sound broadcasting service; and
- (f) any other class of licence prescribed by the Authority from time to time.

The licensing of regional television is enabled by section 5(2) of the Broadcasting Act.

³ The IBA's Position Paper for the introduction of the first -free-to-air private television service in South Africa, 1997

Against this background the Authority conducted an inquiry into regional television. The Authority published a Discussion Paper titled "Inquiry into Regional Television" on 22 August 2003. The purpose of the Discussion Paper was to generate comment from all stakeholders on the introduction of regional television broadcasting services in South Africa. Its primary objective was to solicit public participation and input in developing the regulatory framework for regional television in South Africa, and to generate discussion on the appropriate policy and licensing framework for the introduction of regional television. The Discussion Paper was divided into sections dealing with the introduction of public regional television, commercial regional television and community regional television services.

The Authority invited stakeholders and the public to respond to the questions and issues raised in the Discussion Paper and to make an input on any issues related to the well being and survival of the broader television market in South Africa. The Authority received twelve submissions. Ten of these indicated their wish to make oral representations. Oral hearings were held at the Authority's offices on 16 and 17 October 2003.

The Authority also commissioned a feasibility study on the viability of commercial regional television. The study was published on 17 October 2003 and interested parties were invited to comment thereon by 31 October 2003. The Authority received seven written representations in this regard.

In analysing the framework for the introduction and regulation of regional television services, the Authority has been guided by, amongst other things, the need to promote the provision of a diverse range of television broadcasting services on a national, regional and local level which, when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information; the need to promote the development of public broadcasting services which are responsive to the needs of the public; the need to ensure that broadcasting services, viewed collectively, develop and protect a national and regional identity, culture and character; the need to ensure that, in the provision of public broadcasting services, the needs of language, cultural and religious groups and the needs of the constituent regions of South Africa are duly taken into account; the need to promote stability within the broadcasting industry; as well as ensuring fair competition between broadcasting licensees.⁴

⁴ Section 2 of the IBA Act, 1993

The Position Paper is divided into the Submissions and Findings sections. The Submissions section reflects questions posed by the Discussion Paper and also summarises the written and oral submissions on those and related questions, and the Findings section explains the Authority's decisions.

B. SUBMISSIONS

2. Frequency Assignment and Availability

The Discussion Paper stated that regional television services would make use of the available spare capacity in the television band. It further noted, however, that there were potential demands on those spare capacities which necessitated prioritisation and reorganisation. These demands were stated as the rollout of Digital Terrestrial Television (DTT); the potential introduction of local television broadcasting services; and the possible migration of current VHF television channels 11 and 13 to the spare UHF assignments in view of accommodating Digital Audio Broadcasting (DAB) in Band III.

The Discussion Paper sought opinion on the number of regional television services to be granted taking into account the scarcity of terrestrial frequencies. The Discussion Paper also sought opinion on the categorisation of frequencies in the advent of digitisation.

Midi Television submitted that the Authority had not shown there was spectrum available for a new commercial regional television station. "Consideration should be given to the possible migration to digital broadcasting by broadcasters in the coming years. We submit that in the absence of clarity on frequency availability it would be improper to proceed with the licensing of regional broadcasters."⁵

M-Net submitted that insufficient research, particularly as regards terrestrial broadcasting services, has been conducted in South Africa about the viability of migration from analogue to digital broadcasting. "If and when it is decided that migration ought to occur, frequency plans to deal with migration, including the transition phase, will need to be prepared, and an overarching framework for migration, and specific time frames, will need to be developed. MNet cautions against the Authority taking isolated decisions, in the absence of fully developed frequency plans and an overarching regulatory framework."⁶

⁵ Midi TV's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 9.

⁶ M-Net's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 3.

Sentech submitted that the number of television licences to be granted would depend on the availability of interference free frequencies for regional and local television use and not causing harmful interference to existing television services. "Sentech is of the opinion that the following frequency management issues need the urgent attention of the Authority before regional and local television licences are granted: to initially reserve television spectrum in metropolitan areas to facilitate migration from analogue television to DTT should be the foremost consideration of the Authority; limited spectrum available in metropolitan areas; and the decision of the Authority not to assign television frequencies in the UHF band above 800MHz should be cancelled, if regional and local television must also be licensed in metropolitan areas without harmful interference".⁷

Sentech also submitted that it conducted a study of the Frequency Management Spectrum requirements to migrate from analogue to digital television transmissions in metropolitan areas in South Africa, and that the outcome of the study was that sufficient frequency spectrum is available in the metropolitan areas. "Two multiplexes can be deployed in metropolitan areas, without affecting current analogue services if the spare UHF-TV spectrum is used for migration; if no further television frequencies are assigned for analogue services in metropolitan areas and in some rural areas; and if the regional television network is developed using digital transmissions to utilise the frequency efficiency of digital".⁸

Sentech argued further that if new analogue television services were deployed on the last remaining available frequencies, South Africa would forfeit the smooth transition from analogue transmission to digital transmission. Sentech recommended that the last remaining two frequencies in metropolitan areas should be used for large area DTT single frequency networks.⁹

The NAB submitted that should the Authority accept a recommendation not to assign any more frequencies in the 800 MHz band, additional pressure would be placed on the remaining UHF television spectrum that could severely inhibit any expansion of analogue services. "Considering that one or two analogue channels per site will be required for digital transmissions in the migration to a fully digital service, in addition to the existing analogue channels in use, the NAB submits that the Authority will be required to balance the frequency requirements of regional and local television against current frequency allocations of existing broadcasting, and future frequency requirements."¹⁰

⁷ Sentech's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 2.

⁸ Sentech's additional information on the "Inquiry into Regional and Local Television", November 2003, at page 1.

⁹ Sentech's additional information on the "Inquiry into Regional and Local Television", November 2003, at page 3.⁹

¹⁰ NAB's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 8.

The SABC submitted that given the limited available terrestrial frequency at most two additional regional licences could be accommodated. “Two public regional television licences, namely a Northern and a Southern service have been mooted. In order to include all relevant audiences, these would likely cover all major metropolitan areas, and hence no frequencies on an analogue basis would be available for commercial or community regional licences should these be granted. Some of the criteria that have been utilised by the SABC to assess which areas the regional services could potentially service are language distribution, need and demand for specific language programming, gaps between the need and demand for specific language programming and current supply, and socio-demographic profiles of audiences”.¹¹

The SABC further submitted that Gauteng was the only area where frequency was limited. “Should sufficient frequency not be available for double illumination, a hybrid solution (cable or satellite) could be used for the transition to digital”.¹²

Orbicom submitted that given the developments towards digital broadcasting and the possible tabling of Convergence legislation in Parliament later in 2003 or in early 2004, the Authority should not perpetuate technical obsolescence by introducing new services using analogue modulation techniques. “It is believed that a recommendation has been made that the Authority should not assign any more frequencies in the 800MHz band. This will place additional pressure on the UHF television spectrum and severely inhibit any expansion of analogue services. Considering that one or two analogue channels per site will be required for digital transmissions in the migration to a fully digital service, in addition to the existing analogue channels in use, we submit that it is not feasible to licence additional local and regional television services using analogue modulation”.¹³

3. Approach to Public Regional Television Services

3.1 The Broadcasting Act

Section 22A(1) of the Broadcasting Act states that in the performance of its public service mandate under section (10)(a) and (b), the South African Broadcasting Corporation (“the SABC”) must, within nine months of the commencement of the Broadcasting Amendment Act, 2002, apply to the

¹¹ SABC’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 10.

¹² SABC’s additional information on the “Inquiry into Regional and Local Television”, November 2003.

¹³ Orbicom’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at pages 3-4.

Authority in terms of section 41(4) of the IBA Act, read with section 45(2) of that Act, to licence it to provide additional television services which broadcast regionally in such languages as are appropriate, having regard to language usage within respective regions served by the proposed services, and so as to ensure that between these regional services, broadcasting in the language of Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, Afrikaans, isiNdebele, isiXhosa and isiZulu is provided on an equitable basis.¹⁴

Currently, South Africa has a population of 44,8 million.¹⁵ The province with the most people is KwaZulu-Natal (9,4million), followed by Gauteng (8,8million) and Eastern Cape (6,4million). Northern Cape, although it is the largest province has only 0.82 million inhabitants. In terms of language use, the most common language spoken in South Africa is isiZulu, which is spoken by 23.8% of people, followed by isiXhosa, 17.6% and Afrikaans at 13,3%. Public regional television as implemented by the SABC will need to consider how many services and what regions will need to be covered to meet the requirements of the Broadcasting Act. The Discussion Paper sought guidance on the regions to be covered by public regional television in order to meet the unique language demands of the different regions of South Africa, and on how the provinces needed to be divided between the different public regional television services in order to be sustainable.

The SABC submitted that if regional services are to further the objectives of universal access, the final determination of which regions public regional television services should serve should take account of where current television coverage and access to television services is lowest. "Our analysis, based on information from AMPS, the census and Sentech, indicates that coverage and access is lowest in Limpopo, the Eastern Cape and KwaZulu Natal. In terms of language groupings, our analysis shows that coverage and access is lowest among Northern Sotho, Venda, Zulu, Xhosa and Ndebele speakers. Our thinking to date is that two channels would be developed, based on regional consolidation, with languages reflective of the regions. Region A will cover Limpopo, North West, Gauteng, Free State, Northern Cape. Region A would be likely to broadcast in Setswana, Sesotho, Sepedi, Xitsonga, Tshivenda and Afrikaans. Region B will cover Mpumalanga, Limpopo (Eastern Border) Gauteng, KwaZulu, Eastern Cape, Western Cape. Region B would be likely to broadcast in isiZulu, isiXhosa, isiNdebele, Siswati and Afrikaans".¹⁶

¹⁴ Section 22A of the Broadcasting Act, No.4 of 1999.

¹⁵ Census 2001.

¹⁶ SABC's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at pages 21-22.

Primedia submitted that if the purpose of public regional television is to cater for marginalised languages, then the basis should be the language profile of the different provinces. “The division should suit the purpose of introducing the services. For example, the Northern and Western Cape provinces should form the same region because they both have high numbers of people who speak the Afrikaans language”.¹⁷

3.2 Viability

Section 46(1) of the IBA Act states that in considering an application for a commercial broadcasting licence, the Authority shall with due regard to the objects and principles enunciated in section 2, take into account, amongst other things, the demand for the proposed broadcasting service within the proposed licence area; the need for the proposed service within such licence area, having regard to the broadcasting services already existing therein; and the expected technical quality of the proposed service, having regard to developments in broadcasting technology.

The South African television broadcasting system is dominated by the SABC’s free-to-air services. The SABC currently has a market share of 60% and in terms of coverage, covers about 73% of the country.¹⁸ This will make it difficult for commercial regional television licensees to enter the market, especially when the new public regional television broadcasting services begin operation.

Currently 54% of South Africans have access to television, out of this 44% is African, 74% is Coloured, 91% is Indian and 93% is White.¹⁹ New entrants to the market would have to compete for a market share of these television households. There is a general assumption that an increase in a number of suppliers of a product or service and the concurrent increase in supply of the good itself are typically associated with a corresponding increase in demand and consumption of that product. This assumption, however, does not appear to be true for the television broadcasting industry, as the relationship between an increase in supply of the good does not lead to a corresponding increase in television viewing consumption as it typically does in other industries.²⁰ The Authority’s feasibility study report indicated that commercial regional television broadcasting would not be viable without a subsidy from government or any other agency that had an interest.

¹⁷ Primedia’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 16.

¹⁸ AMPS 2002B.

¹⁹ AMPS 2002B.

²⁰ Picard, Robert. Expansion and limits in EU Television Markets: Audience, Advertising and Competition Issues: Paper Presented to the workshop on Competition in Media and Advertising Market, University of Aix Marseille-II, France, October 12-13, 2001

The feasibility study report indicated that licensing commercial regional television broadcasting services would not be commercially viable and not sustainable in long term. Licensing commercial regional television broadcasting services would also fragment the free-to-air television market, which is already struggling for sustainability. The report indicated that the break-even point for a new entrant capturing 10% of the advertising could only happen after 10 years.²¹

Midi Television submitted that the SABC's monopoly position has resulted in its domination of revenue share, despite the fact that e.tv has made hefty inroads into its audience share. They submitted that the licensing of a commercial regional television channel would further fragment the limited revenue available to commercial broadcasters as a result of the SABC's domination. "This will severely impact on e.tv's viability and does not augur well for the success of the new regional commercial channel. On the contrary, the more the market is fragmented by individual commercial players, the more the SABC's market domination will be entrenched."²²

Midi Television argued that the broadcasting market must be properly regulated before any consideration could be given to the licensing of regional television services. "In particular, the imposition of appropriate licence conditions on all three SABC television channels remains an urgent regulatory priority which must be addressed prior to the introduction of regional television."²³

Commenting on the Authority's economic feasibility study, Midi Television submitted that the study failed to pay any attention to the impact of regional television on existing broadcasters. "The study concerns itself solely with the prospects of success of a regional service and does not assess the extent to which the viability of existing services would be affected".²⁴

Midi TV also argued that the cost projections for a regional television broadcasting service, as reflected in the economic feasibility study, were grossly inaccurate. "The study suggests a programming budget of R24 million for the first six months of service and this budget excludes international programming. It is inconceivable, even on an extremely tight cost structure, that a programming budget of R24 million would provide programming for more than six weeks. If such a budget excludes international programming it would not be sufficient even for one month".²⁵

²¹ ICASA's report on "Market Analysis for Commercial Regional and Local Television", 17 October 2003, at page 153.
Study conducted by ZComs.

²² e.tv's submission to ICASA submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 6.

²³ Ibid.

²⁴ Midi TV's additional information on the "Inquiry into Regional and Local Television", October 2003, at page 7.

²⁵ Ibid

The SABC agreed with the Authority's economic feasibility study and argued that the introduction of e.tv fragmented television revenue rather than grew television's share of revenue. The SABC went further to state that regional radio revenues were likely to be impacted by the introduction of regional television services.²⁶

Primedia submitted that the fact that the Authority's economic feasibility study indicated that commercial regional television would not be viable meant that even public regional television would not be viable unless it was funded by government or another agency. Primedia also submitted that the Authority should also be concerned with the viability of incumbent operators when introducing new services, and not only be concerned with the viability of new services.²⁷

4. Defining Regional Television

Public regional television is not defined in the IBA Act or the Broadcasting Act. Section 22A(1) of the Broadcasting Act only indicates that the services must be broadcast regionally, in languages appropriate to the region being serviced. The Discussion Paper suggested that the term region could mean more than one province.

The SABC submitted that it has in its draft editorial policies identified universality, accessibility, national and provincial identity, diversity of choice, quality, independence and accountability and efficiency as the guiding principles for public broadcasting in South Africa. Based on these principles the SABC submits that public regional television has the following defining characteristics: relevant regional content, reflective of the language and socio-cultural backdrop of the regions; some level of local content origination and production (although this may not be immediately achievable given the lack of capacity in areas outside of the main metropolis).²⁸

5. Programming

In considering the introduction of public regional television broadcasting services, the Authority must also consider the public broadcasting imperatives set out in section 8(d) of the Broadcasting

²⁶ SABC's additional information on the "Inquiry into Regional and Local Television", October 2003, at page 1.

²⁷ Primedia's additional information on the "Inquiry into Regional and Local Television", October 2003, at page 2.

²⁸ SABC's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 21.

Act, which requires the SABC to provide, in its public broadcasting services, radio and television programming that informs, educates and entertains.

Section 22A of the Broadcasting Act refers to section 10(1)(a) and (b) which require the public service of the SABC to make services available in all the official languages, and to reflect both the unity and diverse cultural and multilingual nature of South Africa and all its cultures and regions to audiences.

The Discussion Paper raised a question whether other obligations should be considered for public regional television. Midi Television submitted that public regional television services should be permitted only to broadcast in South African languages other than English and that at least ninety percent of such languages should be African languages (i.e. excluding Afrikaans).²⁹

Primedia Broadcasting ("Primedia") submitted that the Authority should rather flesh out the obligations on public regional television given in the Broadcasting Act. "Any other obligations that are not in the Act may be ultra vires".³⁰

The SABC submitted that section 10(1) of the Broadcasting Act lays out obligations which are to be achieved collectively by the public service of the SABC. "The obligations do not apply to each of the SABC's public stations or channels but apply to the public service of the SABC as a whole. They will therefore not apply, in full, to the public regional television services. Section 22A refers only to section 10(1)(a) and (b) and not to the rest of the section. These clauses state that the SABC's public service must make services available in all official languages, and must reflect the unity and diverse cultural and multilingual nature and all of its cultures and regions to audiences. From the drafting of the Broadcasting Act it is therefore clear that section 10(1) is primarily relevant to public regional television in that it provides a rationale for the applications envisaged in section 22A".³¹

The SABC proposed that the public regional television services should deliver the news, information programming (including documentaries, informal knowledge building programmes and current affairs shows), children's / educational programming, and South African drama. "The SABC concurs that these and other genres such as sport are core to a public service channel. Aside from

²⁹ Midi TV's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 10.

³⁰ Primedia's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 15.

³¹ SABC's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 18.

these genres, the public regional channels should have the discretion to provide a mix of entertainment and other programming. The public regional television channels will be driven by regional content, especially in terms of news, information programming and sport. In terms of language, it is recommended that regional and marginalised languages be represented in a manner that is reflective of the regions and will assist in the delivery of language equitability by the SABC. The SABC proposes that over time the public regional television channels provide the majority of their programming in languages other than English”.³²

6. South African Television Content

The Authority published a Position Paper and Regulations on South African content on television and radio in February 2002. The overall quota for national public television was raised from 50% to 55% while the overall quota for commercial free-to-air television was set at 35%³³. The new policy and Regulations came into effect on 22 August 2003.

The Authority stated in the Position Paper that the quotas for community and regional television would be determined during the process of drafting regulations for these sectors.³⁴

Midi Television submitted that programming on public regional channels should be exclusively South African content. “Such programming should be sourced entirely from independent production companies resident in the relevant regions, i.e. the channels must be subject to a 100% independent production quota”.³⁵

The SABC submitted that while it is committed to regional content origination and development it should be noted that there is a scarcity of production skills and expertise outside of the major metro poles. “In light of this, regional content origination may need to be treated as a longer term objective”.³⁶

The National Association of Broadcasters (“the NAB”) submitted that the Authority’s regulations on South African content could be amended to reflect the particular requirements of regional and local

³² SABC’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 19

³³ SABC’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 19.

³⁴ Ibid.

³⁵ Midi TV’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 10.

³⁶ SABC’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 19.

television. “Otherwise specific requirements for regional and local television could be contained in licence conditions insofar as the Authority wish to ensure that all or any part of the programming broadcast by such broadcasters are sourced within their licensed areas. The Authority should be consistent with respect to the South African content quota insofar as it relates to the obligations of broadcasters”.³⁷

The Media Monitoring Project (“MMP”) submitted that programming and local content should be quota based and negotiated at reasonable, equitable levels and in line with the public broadcasting mandate. “This would mean compliance with the dramatically high quotas and provisions accompanying the public service mandate in areas such as language, local content and catering for provinces previously ignored”.³⁸

7. Funding and Advertising

Section 22A(2) and section 22A(3) of the Broadcasting Act, state that the regional services provided by the Corporation must be funded by money appropriated by Parliament and may draw revenue from grants, donations and sponsorships and that the Authority must determine the extent to which these services may draw revenue from advertising.

The Discussion Paper sought advice on the funding model to be applied to public regional services. The SABC submitted that it was unclear whether the advertising market could sustain the introduction of regional television channels. “Our initial analysis suggests that advertising alone will not sustain public regional television, which in turn means it is likely that public regional television will need to rely heavily on government funding in the near to medium term (i.e. first eight years of the licence)”³⁹. The SABC proposed that if advertising limits were imposed on public regional television, they should be identical to those in the Authority’s Position Paper on Private Free-to-Air Television.⁴⁰

Primedia submitted that the SABC must be transformed into a ‘pure’ public broadcasting service. “As a ‘pure’ public broadcasting service, the SABC would be enabled to focus on its core function of providing multi-cultural and multilingual programming that fosters nation-building and

³⁷ NAB’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 10

³⁸ oral submission to ICASA on the “Inquiry into Regional and Local Television”, 16 October 2003, at page 5.

³⁹ SABC’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 4.

⁴⁰ Ibid.

development. To this end, Primedia Broadcasting's submission is that the SABC must sell some of its radio and/or television services to fund public regional television. This would only serve as a viable funding model for public regional television if the SABC is allowed to retain the proceeds of the sale for the abovementioned purpose".⁴¹

Primedia also submitted that it had, in the past decried the market dominance of the SABC in respect of advertising revenue. "For the calendar year 2002, the SABC received a total of 56% (excluding self-promotions) of the total advertising revenue spend for the broadcasting industry (both television and radio). Therefore, Primedia is of the view that the SABC should not carry advertising on its public regional television services".⁴²

Primedia also submitted that the dependence of the SABC on advertising was unhealthy and that the SABC needed to be "freed from that stranglehold". "The Legislature has taken cognisance of this, hence the provisions of section 22A(2), which do not list advertising as being one of the mandatory sources of funding for public regional television services. It however seems that the Legislature did not want to 'close the door' entirely on the SABC's dependence on advertising, in the absence of an established viable funding model, hence the requirement on the Authority to determine the extent to which these services may draw revenue from advertising. Primedia Broadcasting's submission in this regard, is therefore that the SABC's regional television services, when licensed, should not be allowed to draw revenue from advertising, as this may affect the viability of all advertising based media owners. However, should the Authority be of the view that a certain amount of advertising is required in the beginning, it should be capped".⁴³

The NAB submitted that it would seem that the legislature intended the SABC to meet the above objectives, by the SABC broadcasting regionally, as an obligation is placed on the SABC to apply for a regional broadcasting licence. "It is unclear whether the obligation on the SABC in terms of section 22A(1) of the Broadcasting Act, places a reciprocal duty on ICASA to grant a regional broadcasting licence to the SABC, notwithstanding the non-viability thereof".⁴⁴

⁴¹ Primedia's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at pages 7 and 8.

⁴² Primedia's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 8.

⁴³ Submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 9.

⁴⁴ NAB's submission to ICASA on the "Inquiry into Regional and Local Television", September 2003, at page 11.

Midi Television submitted that the absence of licence conditions for the SABC and the failure to regulate its market domination, has resulted in a continuing unfair competitive environment for television broadcasting in particular.⁴⁵ Midi Television proposed that public regional television should be permitted only to broadcast in South African languages other than English, and at least 90% of such languages should be African languages, i.e. excluding Afrikaans. “The channels must carry no commercial revenue, including sponsorships from commercial sources. They should be funded entirely by the state, licence fees and non-commercial donations. In addition, no other SABC service should be promoted on the channels. In the event that the channels are subject to these conditions, it would be fair not to require the imposition of a broadcasting licence fee. SABC1 and SABC2 must be governed by licence conditions which are appropriate for public service television and which ensure that these channels do not operate effectively as commercial entities while enjoying the benefits of public service funding. SABC3 must have, at the very least, identical licence conditions to those governing e.tv”.⁴⁶

MMP submitted that the funding of new regional channels appeared to be within the stated mandate of the Media Diversity and Development Agency.⁴⁷ M-Net submitted that the extent to which the SABC relies on advertising as its primary source of revenue and the fact that no limitations are imposed on it at all concerning the amount of advertising permitted does not accord with international best practice. “M-Net proposes that advertising be allowed on public regional and local television broadcasting services, but the limits imposed on the amount of advertising ought to be more restrictive limitations than those imposed on the amount on commercial regional and local television services. The limitations to be imposed on public regional and local television services should be an average of five minutes of advertising per hour to be measured annually, and a maximum of six minutes allowed in any one hour”.⁴⁸

8. Licensing

Section 22A of the Broadcasting Act specifically directs the SABC to apply to the Authority in terms of section 41(4) of the IBA Act, read with section 45(2) of that Act, to be licensed to provide additional regional television broadcasting services. Section 41(4) merely indicates that subsection 3 applies to everyone who applies to the Authority for a broadcasting licence. Section 41(3)

⁴⁵ Midi TV’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 10.

⁴⁶ Ibid.

⁴⁷ MMP’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 6.

⁴⁸ M-Net’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 6.

therefore requires the SABC to provide the particulars of the proposal in relation to the nature and licence area of the service which, with due regard to section 45, may be reasonably necessary in order to enable the Authority to properly consider the application, and shall be accompanied by the prescribed application fee.

Section 78(1) of the IBA Act states that the Council may make regulations, not inconsistent with the provisions of this Act in relation to-

- (bB) payment to the Authority of charges and fees in respect of broadcasting licences, including applications of all descriptions, the issue, renewal, amendment, transfer or other disposal of broadcasting licences or any interest in broadcasting licences and the periodical maintenance of the force and effect of such licences;
- (1A) Different charges and fees may be prescribed under paragraph (bB) of subsection (1) in respect of different licensees and different categories and types of licensees based on any characteristic or criterion whatsoever, including the income, revenue or audience size of a licensee or the antenna height, power output, or radiation pattern.

In this context, the Authority stipulated the following administrative fees for the commercial free-to-air television broadcaster:

Licence application fee	R300 000.00
Issue of Licence	R 5 000.00
Application for amendment	R200 000.00
Application for renewal	R300 000.00

All the above fees are non-refundable.

The Discussion Paper sought opinion on the administrative fees to be imposed on public, commercial and community regional television services.

M-Net submitted that given the smaller licence area of regional television services it supported a reduced licence fee for such services. "Licence fees payable by regional services should not be so high as to affect the viability of the broadcasting service. There ought to be proportionality between the licence fees paid by national, regional and local, and between public, commercial and

community broadcasting services by taking into account the relevant factors in section 78(1A) of the IBA Act”.⁴⁹

The SABC submitted that the Authority should not prescribe any administrative fees, including licence application fees, for any public broadcasting services whether regional or local. “This is consistent with the Authority’s existing position whereby the SABC is exempt from paying any licence fees. The rationale for this would appear to be sound. It would not be desirable to divert funds used to provide for, or cross-subsidise, public broadcasting activities, away from such activities. It would also be irregular for the SABC’s existing services to be exempt from paying such fees while new SABC services, such as regional television services have to pay such fees. As far as fees for commercial regional and local television channels are concerned, the SABC is of the view that these should be the same as those applicable to existing free-to-air commercial broadcasters. This will ensure fair competition amongst licensees in the same category”.⁵⁰

The NAB submitted that administrative fees relating to licence applications, the issuance of licences, applications for amendment to licence conditions and applications for renewal of licences are set by the Authority in its discretion in terms of sections 41 and 78 of the IBA Act. “The NAB believes that administrative fees should be formulated in the most consistent and fair manner possible having regard to the actual administration costs incurred by the Authority. As regards an annual licence the same criteria apply”.⁵¹

⁴⁹ Ibid

⁵⁰ SABC’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 12.

⁵¹ NAB’s submission to ICASA on the “Inquiry into Regional and Local Television”, September 2003, at page 10.

C. FINDINGS

9. Frequency Assignment

The licensing of any additional television broadcasting services requires the allocation of spectrum within the existing terrestrial broadcasting frequency plan. It follows, therefore, that a number of services are competing for the very limited number of spare frequencies in the plan. Competing services include national commercial and public television broadcasting services, regional television broadcasting services, local television broadcasting services, as well as digital terrestrial television broadcasting services.

In some areas only a single frequency remains available. In other areas two or more frequencies may be available at the main site but not at the respective gap-filler sites. It follows that it may in some cases be impossible to provide additional analogue coverage equivalent to that achieved for existing analogue services. Significant gaps may exist in the coverage areas.

International stakeholders including South Africa are in agreement that broadcasting services should migrate to digital platform for reasons acceptable to all. The technology is mature and enhancements and applications are continually being developed. The time frames for migration from analogue to digital depend on the individual countries. The International Telecommunications Union (“the ITU”) will soon finalise its re-planning of the television band exercise. Digital television services will have to utilise the spare UHF capacities in the terrestrial broadcasting frequency plan.

The representations received from the public on the issue of analogue-digital platform prioritisation call for an urgent need for a migration plan. Whilst submissions in general agreed that the future of broadcasting would be digital, the overarching national policy on the introduction of digital terrestrial broadcasting and migration is not yet in place. The successful introduction of digital terrestrial television and the migration from analogue to digital will require a holistic approach and can not be considered only in the context of regional and local television.

The introduction and migration strategy for digital broadcasting hinges on the availability of spectrum and the Authority has decided to prioritise the allocation of frequencies for digital in order

to secure a migration path that would enable a smooth transition to digital. An overarching migration plan however, cannot be finalised without ministerial policy directives.

The Authority has decided on the following to secure a migration path:

- to prioritise the introduction and migration to digital. If such prioritisation does not take place the inevitable future introduction and migration to digital will be seriously hampered;
- spectrum reservation for digital should ensure that the current analogue services are accommodated and also provide for future expansions;
- to make provision for two multiplexes (two analogue television frequency allocations) at each current transmission site (if available);
- the prevailing practice is that multiplexes accommodate 5 to 6 television channels. Possible multiplex configurations are as shown in the table below.

Multiplex 1	SABC1	SABC2	SABC3	RTV1	RTV2	SPARE
Multiplex 2	Etv	MNET	CSN	RCOM	RPTE	SPARE

- The network is to utilise single frequency network operation as far as possible and specifically in the metropolitan areas;
- The remaining analogue channels at each current transmission site, are to be allocated for public regional services if digital platform cannot be utilised. The obvious problem with this scenario is the gaps in coverage area (for example, there will be no coverage in the following cities/towns Pretoria, Bloemfontein, Cape Town, Durban, Kimberly, Umtata, etc);
- The remaining analogue assignments at the transmission sites will be re-categorised for commercial and community services to cater for e.tv analogue expansion, and local television if these services do not utilise digital transmission.

10. Approach to Commercial Regional Television

The Authority's inquiry into regional television demonstrated that while there is a need to satisfy the requirements of section 2 of the IBA Act, of promoting the provision of a diverse range of sound and television broadcasting services on a national, regional and local level, the South African television market is not yet ready to sustain regional television services that are dependent on advertising revenue for their viability. The economic feasibility study commissioned by the Authority

indicated that according to international experience “a successful regional television regime needs government and a regulator’s intervention through, for example, funding and protectionist regulatory policies”.⁵²

The Authority has decided not to licence commercial regional television channels in the short-to-medium term.

The findings of the feasibility study commissioned by the Authority held that ‘the business case for commercial regional television is very marginal at best’ and we were advised ‘not to licence commercial regional broadcasters as this would not be commercially sustainable in the long term’.

In deciding not to licence commercial regional television channels the Authority also took into account, inter alia, that:

- the majority of submitters to this inquiry held the view that commercial regional television is not financially viable at present and presented persuasive arguments in this regard;
- the introduction of commercial regional television services would fragment the free-to-air television market, which is already struggling to sustain itself;
- the introduction of commercial regional television would impact negatively on the commercial national free-to-air television channel, e.tv and the SABC, noting the Authority’s statutory duty to encourage investment in and promote the stability of the broadcasting industry as well as protecting the integrity and viability of the public broadcaster; and
- the Authority is required to consider both the viability of incumbent operators and the viability of new services.

However, the Authority has not permanently ‘closed the door’ on the licensing of commercial regional television services. Technological developments, such as digitization, as well a significant growth in the advertising market may require further investigation in the future.

⁵² Market Analysis for Commercial and Local Television – Commissioned by ICASA, October 2003, at page 145.

11. Approach to the Regulation of Public Regional Television

11.1 Constitutional Rights and Statutory Duties

The regulation of public regional television must be considered within our constitutional and statutory context. Apart from the submissions to this inquiry, there is also a developed body of policy and international legal instruments that have informed the Authority's approach.

The Authority is guided by section 2 of the IBA Act which requires it to ensure that a diverse range of sound and television broadcasting services on a national, regional and local level which, when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information.

Chapter 1, section 6(1), of the Constitution of the Republic of South Africa has declared eleven official languages at national level: Afrikaans, English, isiNdebele, Sesotho, Sepedi, Setswana, siSwati, Tshivenda, Xitsonga, isiZulu, and isiXhosa. Section 6(2) states that recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

Section 2e(i) of the IBA Act obliges the Authority to ensure that, in the provision of public broadcasting services the needs of language, cultural and religious groups are duly taken into account.

The Triple Inquiry Report recommended that in line with the Constitution, the public broadcasting system be designed in a manner that allows for the equitable treatment and development of all eleven official languages of South Africa, with special emphasis on those that hitherto have been marginalised⁵³, and also in a manner that contributes towards the appreciation of all the different languages and cultures in South Africa by all citizens and builds a sense of identity with these.

⁵³The Triple Inquiry Report, 1995, at page 14.

Section 10(1) of the Broadcasting Act requires the public service of the SABC to, amongst other things, make services available in all the official languages; reflect both the unity and diverse cultural and multilingual nature of South Africa and all its cultures and regions to audiences; strive to be of high quality in all of the languages served; provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests; and enrich the cultural heritage of South Africa by providing support for traditional and contemporary artistic expression.

Other pieces of legislation, like the Pan South African Language Board Act (“the PANSALB Act”), are there to spearhead the promotion and development of South Africa’s various languages in broadcasting, education, and other spheres of public life.

Language is one of the most evident characteristics that define a given ethnic group and gives it identity and character as a group. Language is not only a constitutional right, but also the right to language is basic to the articulation and enjoyment of all other rights. When the right to language is taken away the right to communicate, to be authentic, and to be able to be heard is also taken away.

The Authority is aware that the denial of language rights is a denial of continuity, of tradition, of historical memory, each of which is important to living in the present and essential to the survival of a people. The declaration of eleven official languages by the South African Constitution is a realisation that the plurality of South African languages is a fact that cannot be wished away without provoking deep resentment and arousing the suspicions of one language group wanting to establish some hegemony or condemning others to cultural and linguistic extinction.

The Authority also supports the Universal Declaration of Human Rights (UDHR, 1948) which formulated the right to culture in the sense of participation in cultural life. Article 22 of the UDHR states that everyone is entitled to realisation through national effort and international cooperation of the economic, social and cultural rights indispensable for their dignity and the free development of their personalities.⁵⁴

⁵⁴ C.J Hamelink– The Politics of World Communication.

The UNESCO Declaration on Racial Prejudice (1978), General Conference Resolution 3/1.1/2 founded the right to culture on the notion of culture as a 'common heritage of mankind'. This implies that all people should respect the right of all groups to their own cultural identity and the development of their distinctive cultural life within the national and international context.⁵⁵ The right to culture thus implies, beyond participation in cultural life, the protection of cultural identity, the need to conserve, develop and diffuse culture, and the need for national and international cooperation.

11.2 Funding of Public Regional Television Services

In order to promote the constitutional right to language, government proposed the introduction of public regional television services, under the ambit of the SABC. As the introduction to this inquiry has explained, this policy objective was enshrined in section 22A(1) of the Broadcasting Act which provides that:

“(1) In the performance of its public service mandate under section 10(1)(a) and (b), the Corporation must, within nine months of the commencement of the Broadcasting Amendment Act, 2002, apply to the Authority in terms of section 41(4) of the IBA Act, read with section 45(2) of that Act, to license it to provide additional television services which broadcast-

- (a) regionally;
- (b) in such official languages as are appropriate, having regard to language usage within respective regions served by the proposed services;
- (c) so as to ensure that between these regional services, broadcasting in the languages of Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, isiNdebele, isiXhosa and isiZulu is provided on an equitable basis”.⁵⁶

The Authority will therefore consider applications from the SABC for regional television services within the statutory framework set out by the legislation and in terms of the policy framework set out in this Position Paper

Sections 22A(2) and (3) of the Broadcasting Act provide guidance as to how these services are to be funded:

⁵⁵ Ibid.

⁵⁶ Section 22A(1) of the Broadcasting Act.

“(2) The regional services provided by the Corporation must be funded by money appropriated by Parliament and may draw revenues from grants, donations and sponsorship.

(3) The Authority must determine the extent to which these services may draw revenues from advertising”

It is clear from subsection (2) that these services must be funded by money appropriated by Parliament. This provision is peremptory. In the Authority’s view this state or government funding is vital to ensure the sustainability of the proposed regional television services. Upon application for these services, the SABC is required to submit a business plan and proof of funding for the first term of the broadcasting licence.

The legislature has allowed for the possibility that any funding short-fall may be made up by grants, donations and sponsorships. But, the question of advertising is another matter. Subsection (3) clearly provides the Authority with the discretion to determine the extent to which these services may draw revenues from advertising.

The study commissioned by ICASA found that the success of public regional television elsewhere was linked to government funding and special regulatory measures.

In exercising its discretion in this regard, the Authority has decided to not allow advertising on public regional television broadcasting services. These services must be wholly funded by:

- money appropriated by Parliament;
- grants;
- donations; and
- sponsorships.

In making this decision, the Authority has had regard to the following:

Firstly, even if these services were permitted to carry advertising they would still be largely dependent on government funding for their survival. As this inquiry demonstrated, reliance on advertising would be ill-advised. Furthermore, the Authority was concerned that should advertising be allowed, the SABC may be tempted to deviate from the mandate of the regional services. It is important therefore that the SABC and government properly plan for the funding of these services.

In this funding plan, allowances must be made for the potential loss of audience by SABC 1 and SABC 2 to the proposed public regional services.

Secondly, the Authority is required to promote the stability of the broadcasting industry and ensure fair competition between broadcasting licensees. In this context, the Authority believes that there may be competition concerns if the SABC launched television services that were primarily funded by government but also competed with e.tv for advertising revenue. The Authority was also concerned that regional radio revenues would be also be negatively impacted if the advertising were allowed on public regional television.

11.3 Licence Application

As mandated by section 22A(1) of the Broadcasting Act, the SABC is required to apply for the new regional licences in terms of section 41(4), read with section 45(2), of the IBA Act. Section 45(2) provides that, in considering the granting of new regional public broadcasting licences, the Authority is required, with due regard to the objects and principles as enunciated in section 2, to inter alia take into account the demand for the proposed broadcasting service within the proposed licence area; the need for the proposed service within such area, having regard to broadcasting services already existing therein; and the technical quality of the proposed service, having regard to developments in broadcasting technology.

Notwithstanding the legislative requirement that the SABC should apply for such licences, the applicant is still required to demonstrate the need, demand and technical quality of the proposed services as set out in section 45(2).

As stated above, the SABC will also be required to submit proof of funding and a business plan for the first term of the broadcasting licence. The Authority may also require additional information to be submitted after the lodging of the licence applications.

11.4 Programming Contributions

The implication of the omission of English from the enabling statutory provisions in the Broadcasting Act is that these regional services are aimed at addressing languages other than English. The Authority has, therefore, decided to prohibit the use of English in these services. The

two services shall also be required to allocate more air-time to Tshivenda, Siswati, isiNdebele, and Xitsonga. These are languages currently receiving very little air-time on television.

Public regional television broadcasting services will be expected to meet the needs of everybody in the coverage areas. These services should enable openness in the process through which views, insights, linguistic and cultural practices and preferences initially shared by a few can also be found to be interesting and worthwhile by a majority. It is through such a dynamic form that public regional television broadcasting services can serve as a meaningful cultural forum and factor in cultural and linguistic development.

Public regional television broadcasting services will be expected to ensure that the requirements of the IBA Act relating to regional/provincial identity, culture and character are addressed. All the provinces need to have their news and cultures represented.

11.5 News

Public regional television broadcasting services are guided by a sense of qualitative priorities as well as by their cultivation of a reputation for accessibility to regional concerns and responsiveness to regional needs. Section 2 of the IBA Act obliges the Authority to ensure that, when viewed collectively, broadcasters must provide for regular news services, actuality programmes on matters of public interest, programmes on political issues of interest, and programmes on matters of international, national, regional and local significance. The number of hours per day shall be specified in the licensees' licence conditions.

11.6 Actuality Programming

Each regional service shall be required to ensure that they provide a range of actuality programmes. This includes documentary programming, documentary drama, informal knowledge building programmes and regular current affairs programmes. The number of hours per week of actuality programming shall be specified in the licence conditions.

11.7 Children's Programming

It is recognised internationally that specific provision needs to be made to ensure that children are provided with programming that entertains, informs and educates them. Children need to be provided with programming which is made specifically for them, which enhances their understanding and existence of the world and which reflects their culture, language and life experiences and which affirms their sense of self, community and place. Such programming should be broadcast at times when children form part of a larger audience.

The following values apply to the principle of safeguarding the welfare of children and juveniles in the media environment:

- respect for the child's personality and development needs. This implies the affordable and convenient provision of media materials that will foster creativity and imagination, broaden horizons, stimulate curiosity and critical awareness and encourage social, cultural and civic competence; and
- avoidance of the exposure of children to harmful materials and overly adult fare before they are ready for it.

Children's programming shall include programmes for children between the ages of 0 to 6 years and 7 to 12 years. Early childhood programming should address the language needs of the audience. Children's programming should include entertaining, informative and educative programming in a range of programme formats.

The number of hours per week of children's programming shall be stated in the licensees' licence conditions.

11.8 Educational Programming

Section 2e(iii) of the IBA Act requires the Authority to ensure that, in the provision of public broadcasting services, the need for educational programmes is duly taken into account. Public regional television broadcasting services will have an important role to play as a powerful source of general public education and empowerment. They should be responsible to produce and broadcast educational programmes which respond to the diverse educational needs of the regions

for both curriculum and non-curriculum related education and training and, in general terms, to the human resource development needs of the regions.

11.9 South African Television Content

Section 53(1)(a) of the IBA Act defines South African television content as television programming (excluding transmissions of sports events, advertisements, teletext and continuity announcements) which is produced:

- (i) by a broadcasting licensee; or
- (ii) by a person who is a citizen of and permanently resident in the Republic; or
- (iii) by a juristic person the majority of the directors, shareholders or members of whom are citizens of and permanently resident in the Republic; or
- (iv) in a co-production in which persons referred to in subparagraph (i), (ii), (iii) or (iv) have at least a fifty percent financial interest; or
- (v) by persons referred to in subparagraph (i), (ii), (iii) or (iv), in circumstances where the prescribed number of the key personnel who are involved in the production of the television programme, are citizens of and permanently resident in the Republic; or
- (vi) by persons referred to in subparagraph (i), (ii), (iii) or (iv), in circumstances where the prescribed percentage of the production costs are incurred in the Republic.

South African television content is vital to ensuring that South African television reflects and develops South Africa's local, regional, and national identities, cultures and characters. South African content regulations also assist in the promotion and development of the South African television production industry.

The inclusion of South African programming in the schedules of regional television services broadcasters is both a social necessity and an economic opportunity for South Africa. South African drama creates a sense of pride and it also creates a competitive edge that relates to the unique cultural heritage and identity of South Africa. The potential economic benefits from the production of South African programmes for the television industry are considerable. The production of regional drama will develop the regional production industry and also create jobs for script writers, actors and producers.

The Authority has decided on the overall South African television content quota of 55% for public regional television services from start-up.

The Authority's South African Television Content Regulations, 2002, incentivise the production of South African drama, African language drama, children's drama, children's informal knowledge building programmes, arts programming, and diversity of commissioning (i.e. 3 points commissioning programming from Mpumalanga, Limpopo, North West, Northern Cape, Eastern Cape and Free State, and 2 points for commissioning programming from Kwazulu-Natal). The Authority has decided, in addition to the above-mentioned Format Factors, to incentivise the production of the following genres in African languages, specifically for Regional television services:

- Documentary - 3 points for any documentary produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa and isiZulu;
- Children's Programming - 3 points for any children's programme produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa and isiZulu; and
- Arts Programming - 3 points for any Arts programme produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa and isiZulu.

11.10 Independent Television Production

Section 53(1)(b) of the IBA Act defines independent television production as a production of South African television content:

- (i) by a person not directly or indirectly employed by any broadcasting licensee; or
- (ii) by a person who is not controlled by or is not in control of any broadcasting licensee.

The Authority stated, in the Position Paper on South African content quotas on television and radio, 2002 that with the extended quotas for South African television content, no adjustment was required to increase the opportunities for local producers to contribute to the diversity of South African programming. The Authority, therefore, retained the independent television production quota at 40%.

The Authority has decided that the independent television production quota for regional television services be 40% as well.

11.11 Reflecting South Africa's Regional Diversity

The Authority has to ensure that the requirements of the IBA Act relating to regional identity, culture and character are addressed. Different regions need to have their news, cultures and characters represented on regional television broadcasting services .

12. Content Related Matters

12.1 Compliance with National Laws and the Authority's Regulations on Sponsorship

Regional television services must comply with national laws relating to restrictions on advertising and sponsorship, and the Authority's 'Advertising, Infomercials and Programme Sponsorship Regulations (1999).

12.2 Code of Conduct

Regional television services shall comply with the Authority's Revised Code of Conduct for Broadcasters, 2003.

13. Licence Fees

Section 78(1) of the IBA Act states that "the Council may make regulations, not inconsistent with the provisions of this Act in relation to-

- (bB) payment to the Authority of charges and fees in respect of broadcasting licences, including applications of all descriptions, the issue, renewal, amendment, transfer or other disposal of broadcasting licences or any interest in broadcasting licences and the periodical maintenance of the force and effect of such licences;

(1A) Different charges and fees may be prescribed under paragraph (bB) of subsection (1) in respect of different licensees and different categories and types of licensees based on any characteristic or criterion whatsoever, including income, revenue or audience size of a licensee or the antenna height, power output, or radiation pattern”.

The Authority has decided on the following licence fees to be paid by regional television broadcasting licensees:

Licence application fee	R 50 000.00
Issue of licence fee	R 2 000.00
Application for amendment	R 30 000.00
Application for renewal	R 50 000.00

These fees are non-refundable.

14. Questions

The Position Paper is also available in Sepedi, Sesotho, Setswana, Siswati, isiNdebele, Tshivenda, isiZulu, isiXhosa, Xitsonga, and Afrikaans. Questions should be directed to Mr Pfanani Lishivha: Projects Manager, Policy Development and Research Department, ICASA, at (011) 321 – 8200, or e-mail: plishivha@icasa.org.za