

GENERAL NOTICE

NOTICE 757 OF 2006

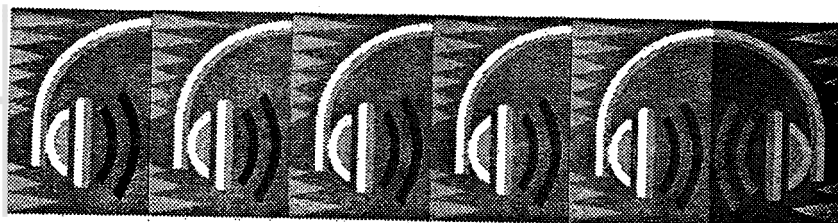


Independent Communications Authority of South Africa

Community Sound Broadcasting Policy

Position Paper

5 June 2006



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WORKSHOPS

The Authority would like to acknowledge the following community and public sound broadcasting licensees, community radio initiatives, non-governmental organisations, community-based organisations, and provincial government departments that participated in the workshops that were held countrywide in 2005:

LIMPOPO

1. Bakgaga ba Mabe;
2. Botlokwa Community Radio;
3. Department of Education (Phalaborwa);
4. Department of Health (Phalaborwa);
5. Forever Resorts (Phalaborwa);
6. Government Communication and Information System (Phalaborwa);
7. Greater Tzaneen Community Radio;
8. Hygienik (Makhado);
9. Khilovedu Language Project;
10. Makhado FM;
11. Modjadji Royal Council;
12. Mohodi Community Radio;
13. Mokopane Community Radio;
14. Moletji Community Radio;
15. Mopani FET College;
16. Mufhaga FM;
17. Munghana Lonene;
18. Phalaborwa Community Radio;
19. Phalaborwa Foundation;
20. Phalaborwa Network;
21. Phdaphala FM;
22. Radio Turf;
23. Radio Univen;
24. Sekgosese Community Radio;
25. Sekgosese Rural Development Association;
26. South African Police Services Namakgale;
27. Thobela FM; and

28. Volthan (Phalaborwa).

MPUMALANGA

29. Barberton Community Radio;
30. Disabled People of South Africa (DPSA);
31. Radio Kragbron;
32. Global Digitals;
33. Greater Middleburg FM;
34. Ikwewezi FM;
35. Kangala Community Radio;
36. Ligwalagwala FM;
37. Moutse Community Radio;
38. Radio Bushbuckridge; and
39. Radio Laeveld.

EASTERN CAPE

40. Imonti FM
41. Radio Kingfisher; and
42. Radio Nqubela.

KWAZULU-NATAL

43. Durban Youth Radio;
44. Highway Radio;
45. Imbokodo FM;
46. Izwi Lomazansi;
47. Maputaland Community Radio;
48. Maputaland Youth Development Initiative;
49. Newcastle Community Radio;
50. Radio Khwezi;

51. Radio Sunny South; and
52. Vibe FM.

WESTERN CAPE

53. Bush Radio;
54. CCFM;
55. Kaboesna FM;
56. Radio786
57. Radio Atlantis;
58. Radio KC;
59. Radio Namakwaland;
60. Radio Tygerberg;
61. Radio West Coast;
62. Radio Zibonele;
63. UCT Radio;
64. Valley FM; and
65. voice of *the* cape.

FREE STATE AND NORTHERN CAPE

66. Kopsie FM;
67. Mangaung Community Radio;
68. Naledi Community Radio;
69. Qwaqwa Community Radio;
70. Setsoto FM;
71. Takalani Community Radio; and
72. Vaaltar FM.

GAUTENG AND NORTH-WEST

73. East Rand Stereo;
74. Jozi FM;
75. MISA South Africa;
76. Radio ~~Kam~~;
77. Radio Litchenburg; ...
78. Radio Rainbow;
79. Radio TNG;
80. RAU Radio;
81. Soshanguve Community Radio; and
82. Thembisa Community Radio.

Submissions

The Authority would also like to acknowledge the following organisations that made written submissions:

1. Association of Christian Broadcasters of Southern Africa;
2. Bowman Gilfillan;
3. Freedom of Expression Institute;
4. Media Development and Diversity Agency;
5. Media Institute of Southern Africa – South Africa;
6. National Association of Broadcasters;
7. National Community Radio Forum;
8. Orbicom;
9. Open Society Foundation – South Africa;
10. Radio listeners Forum; and
11. Sentech.

PART A: Introduction

1. BACKGROUND

The Independent Communications Authority of South Africa (**“the Authority”**) published a Discussion Paper (**“the Discussion Paper”**) on the Review of Community Sound Broadcasting Policy on 20 September 2005. The purpose of **the** Discussion Paper was to generate comment **from** all stakeholders on the review of the regulatory framework of the Community Sound Broadcasting Services in South Africa. Section 28 of the Independent Broadcasting Act, No 153 of 1993 (**“the IBA Act”**), provides that the Authority may from time to time conduct an **Inquiry** into any matter relevant to the achievement and application of the principles of broadcasting **as** enunciated in section 2 of the Act.

The primary objectives of the inquiry were to:

- solicit public participation and input in reviewing the regulatory framework **for** community sound broadcasting in South Africa; and
- generate discussion on the appropriate policy and licensing framework **for** **existing** and new community sound broadcasting services.

The Authority also held workshops with community and public sound broadcasting licensees, community radio initiatives, non-governmental organisations **“NGOs”**, community-based organisations (**“CBOs”**), and government departments in **Phalaborwa**, Tzaneen, Makhado, Polokwane, Nelspruit, Motlatsa River Canyon, Richards **Bay**, Durban, **Port** Elizabeth, Cape Town, Bloemfontein, **and** Johannesburg. These workshops were held from July **to** November 2005.

The Authority was joined by the Southern African Music Rights Organisation (**“SAMRO”**) in these **workshops**. SAMRO attended the workshops to explain the importance of paying music royalties, to build proper **relationships** with community broadcasting licensees, and to encourage community broadcasting licensees to comply with the Copyright Act.

The Authority invited interested parties, stakeholders, and the public **to** respond **in the** Discussion Paper in the form of questions supported by explanatory and **contextual** discussions. The closing date for the receipt of representations was 31 October **2005**. **The** Authority received eleven submissions.

The Position Paper is divided into three parts: Submissions, **Policy**, and **Guidelines**. The Submissions section reflects the questions posed by the Discussion Paper **and also** summarises the written and oral submissions on these related questions. The **Policy** section sets out the Authority's policy on community sound broadcasting services, The Guidelines section deals with corporate governance issues,

PART B: Submissions

2 DEFINING COMMUNITY BROADCASTING

Section 4 of the Broadcasting Act, No. 4 of 1999, defines a community broadcasting service as a service which:

- (a) is fully controlled by a non-profit entity and carried on for non-profitable purposes;
- (b) serves a particular community;
- (c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and
- (d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned.

The Broadcasting Act provides for two types of community broadcasting services. These are broadcasting services catering for a geographic community and broadcasting services catering for a community of interest. The community served by a geographic broadcasting service is geographically founded. The service caters to persons or a community whose communality is determined principally by their residing in a particular geographic area.

The community served by a community of interest broadcasting service is one which has a specific ascertainable common interest. The distinctive feature of the broadcasting service is the common interest that makes such a group of persons or sector of the public an identifiable community. Types of broadcasting services catering for a community of interest include services catering for institutional communities, religious communities, cultural communities, etc.

The Authority's position has always been that a community of interest is geographically bound in that all the members of its group reside in one particular local area. It, however,

does not constitute a geographical community as it excludes other **people** who reside in the area

Bowman Gilfillan Attorneys ("BG Attorneys") submitted that the term **community**, as defined by the legislation, includes a geographically founded community **or** any group of persons **or** sector of the public having a specific, ascertainable common interest *"The word 'includes' implies that the two examples of communities specified in the definition are not the only types of communities that would fall within the ambit of the definition. It would be useful if the Authority's Position Paper could give an indication of the types of communities, other than the two specified in the definition, that would fall within the ambit of the definition."*¹

BG Attorneys also submitted that it has, on occasion, been argued in judicial review proceedings that only licensees that are licensed to serve geographically founded communities have geographically defined licence areas, **and that** licensees that are licensed to serve communities of interest are not restricted to broadcasting in geographically defined licence areas. *"This argument obviously does not reflect the policy underlying the IBA Act and the Position Paper, but has nevertheless given rise to disputes and uncertainty. For this reason, it would be advisable for the revised Position Paper, to state unequivocally that all community sound broadcasting services have geographically defined areas"*.²

The Media Development and Diversity Agency ("the **MDDA**") has submitted that regulatory definitions should emphasise that a community service should be owned by a not for profit organisation, the structure of which provides for membership, management, operation and programming by members of the community. *"It is insufficient for a community radio service to merely technically meet the legislative definitions of community broadcasting. It is important in this regard to consider the intention of the law, and the reason for establishing a community broadcasting sector. In view of this, we believe that the Authority should in new regulations and policy documents emphasise that a community radio service must be*

¹ BG Attorneys, Submission to ICASA: Review of Community Sound Broadcasting Policy, at pages 1 and 2.

² BG Attorneys, at page 2.

*demonstrably distinct in both style and substance from public and commercial radio services.*³

The MDDA also submitted that questions on how the applicant proposes to increase programme choice in both music and spoken word programming and how the applicant proposes to have broadcast programming that is relevant, should be included in redrafted application forms to facilitate assessment of whether or not an applicant will meet the objectives. "These *criteria should be reflected in generic licence conditions, 2nd the individual applicant should be bound to promises of performance made in this regard. The final policies should define the different legal non profit entities that would be acceptable to ICASA and perhaps briefly describe the implications of each,*"⁴

3. THE LICENSING PROCESS

3.1 Licence Application

Applicants for the provision of community sound broadcasting licences are required to apply for licences in terms of section 41, read with subsections 47(1) and (2) of the Independent Broadcasting Authority Act, NO 153 of 1993 ("the IBA Act") and subsections (1), (2), (3), (4) and (5) of section 32 of the Broadcasting Act.

Section 47(1) of the IBA Act provides that, in considering any application for a community broadcasting licence, the Authority is required, with due regard to the objects and principles as enunciated in section 2, to inter alia take into account whether the applicant is fully controlled by a non-profit entity and carried on or to be carried on for non-profitable purposes; whether the applicant proposes to serve the interests of the relevant community; whether, as regards the provision of the proposed broadcasting service, the applicant has the support of the relevant community or those associated with or promoting the interests of such community, which support shall be measured according to such criteria as shall be prescribed; and whether the applicant proposes to encourage members of the relevant community or those associated with or promoting the interests of such community to

³ MDDA, Submission to ICASA: Review of Community Sound Broadcasting Policy, at pages 8 and 7.
⁴ MDDA, at page 7.

participate in the selection and provision of programmes in the course of such broadcasting service.

Applicants are required, in terms of section 47(2) of the IBA Act, to demonstrate the need, demand, capability, and expertise. Applicants are also required to submit proof of funding and a business plan for the first term of the broadcasting licence. Applicants are also required to demonstrate the technical quality of the proposed services."

Community sound broadcasting licensees have complained about the **slow** process of licensing. Communities that did not apply for four-year licences in the late 1990s have **not** been able to get four-year broadcasting licences. They have been applying for special event licences. Licensees, NGOs, and **CBOs** suggested that measures should be put in place to issue four-year licences to communities that currently do not have radio **stations**.

The NAB submitted that in terms of the Electronic Communications Bill community sound broadcasting licensees will fall under the category "Class Licence" which requires a registration process as opposed to the current application process? The NAB emphasised the importance of the Authority formalising a registration process, inclusive of the registration form, in the form of regulations. *"The current four-year licence application process is adequate. However, the four-year licence renewal process is perceived to be very cumbersome and detailed requiring community sound broadcasters to complete the same application forms as they did for the initial application. The NAB submits that the renewal process can be simplified by requiring the applicant to supply only information that is of relevance to the renewal process, such as community support, financial status, a compliance report and future projects."*⁷

BG Attorneys submitted that it would probably be of assistance to both the Authority and licence applicants if the procedures to be adopted by the Authority in evaluating licence applications were to be formalised in the form of regulations.

¹ The Authority has to take into account sub-sections (a), (b), (d), (g), and (f) of section 46(1) of the IBA Act

⁶ The NAB, at page 3.

⁷ The NAB, at page 15.

*"Furthermore, the revised Position Paper could elaborate on the procedure recorded in the proposed regulations, by fleshing out in simple terms the steps to be taken by the Authority during each phase of the evaluation process."*⁸

BG Attorneys also submitted that when an unsuccessful applicant institutes judicial review proceedings in respect of a decision by the Authority not to renew a licence, the applicant usually obtains interim relief enabling it to continue broadcasting pending the outcome of the review proceedings, *"It could take more than four years to complete such proceedings and to exhaust appeal procedures, with the result that an unsuccessful licence applicant can effectively obtain the benefit of a four-year licence if the review and appeal procedures are not prosecuted with reasonable expedition. This is problematic for two reasons: (a) it undermines the Authority's regulatory function and the licensing system established by Parliament by means of the IBA Act; and (b) in circumstances there where competing applicants for the Same frequency and licence area, and the Authority prefers one applicant to another in terms of section 41(10) of the IBA Act, the successful applicant is often prejudiced because it is precluded from commencing its broadcasting service pending the finalisation of the judicial proceeding, thus effectively losing the benefit of the licence awarded to it. Consideration should be given to ways in which these problems can be addressed in a manner which is fair to both licence applicants and the Authority. It might necessitate the introduction of statutory review procedures which stipulate time periods for the expeditious institution and prosecution of review and appeal proceedings."*⁹

The National Community Radio Forum ("the NCRF") proposed that the following should be required by the Authority when licensing community sound broadcasting licensees:

- the applicant's constitution;
- list of Board members and management;
- information on the Chief Accounting Officer
- programming plan; and
- business plan."

⁸ BO Attorneys, at page 4,

⁹ BG Attorneys, at page 4 and 5.

¹⁰ The NCRF, Submission to ICASA: Review of Community Sound Broadcasting Policy, at page 10.

3.2 Legal Form

Section 1 on the Broadcasting Act defines a Community Sound Broadcasting Service as a service which is fully controlled by a non-profit entity and carried on for non-profit purposes. This means that a community sound broadcasting service can be controlled by a Section 21 company, a Trust or an Association.

The MDDA submitted that they do not believe that a Section 21 company is the best means of ensuring community ownership and participation. *"Founding legal documents for example can limit ownership of stations to those who originally signed the Memoranda, and in practice many stations registered as Section 27 companies, are not adhering to their Articles of Association but are governed by constitutions. This could create difficulties for them should there be conflicts within the organisation. The final policies should note the different legal forms that would be acceptable to ICASA (such as co-operative, non profit organisation, Section 21 company etc) and perhaps briefly describe the pros and cons of each to enable initiatives to decide on the form which best meets their needs."*¹¹

4. ENTITIES PROHIBITED FROM HOLDING A COMMUNITY SOUND BROADCASTING LICENCE

Section 51 of the IBA Act states that, no broadcasting licence shall be granted to any party, movement, organisation, body or alliance which is of party political nature.

The Authority's position papers on community sound broadcasting, 1997, and community television, 2004, state that in determining whether an applicant is in compliance with section 51 of the IBA Act, the Authority considers ownership; funding; board membership; management; programming; and consistent public identification with a particular political entity.

The Authority's position has always been that political office bearers should not be in the board, management and staff of a community radio station. Previous policy had, however, not defined 'political office bearers'. This led to confusion as to whether known supporters

¹¹ MDDA, at page 8.

and members of political parties should also be barred from contesting positions in the boards of community radio stations or from working in community radio stations.

Participants at the workshops requested that the issue of political office bearers be clearly stated in the new policy. Participants also agreed that communities should be made aware of the holding of the licensee's Annual General Meeting ("AGM") at least four months before such AGMs are held. It was also agreed that licensees should have a process of qualification and disqualification for community members who intend contesting for positions in the licensees' board of directors. Such a process would ensure that political office bearers are disqualified before the AGM is held.

5. PROGRAMMING

5.1 Local Origination of Programmes

The Authority's opinion has always been that the majority of programmes broadcast by a community sound broadcasting service, news bulletins and current affairs shows in particular, must be produced and sourced locally.

Participants at the workshops held countrywide recommended that syndication/networking and programme sharing between community sound broadcasting licensees should not exceed 20% of the licensee's programming.

The NAB submitted that setting a limit to the amount of content that is produced locally is not ideal as flexibility is needed when dealing with programme scheduling. ***'However, the NAB believes that in the event of the Authority wishing to impose such a limit, the NAB will not find a limit of 25% syndicated or networked programming unreasonable.'***

The MDDA submitted that regulations should encourage sharing of programmes between stations, and pooling of resources to ensure that stations are not limited to only covering local issues, whilst protecting stations from losing a distinctive local service and flavour.

The Media Institute of Southern Africa ("MISA-SA") submitted that in determining limitations, the Authority should distinguish the dependence on syndication by community of interest stations from that of geographic communities (e.g. Greek or Chinese stations who receive feeds from Greece or China).¹²

The NCRF submitted that 90% of community sound licensees' programming should be produced by the licensee concerned.¹³

6. COMMUNITY PARTICIPATION

Section 1 of the Broadcasting Act states that a community broadcasting service encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service.

Participants at the workshops pointed out that the statements "serves a *particular community*" and "encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service", are vague statements that need to be clarified in the new policy.

BG Attorneys also submitted that the word 'encourage' is vague in that it does not give a clear indication of what exactly is required of licence applicants. "Perhaps the word 'encourage' also sets the bar too low. Instead, licence applicants should be required to establish appropriate structures that are reasonably likely to facilitate and ensure active community participation in the selection and provision of programmes. Ideally, the Position Paper should also provide guidance to licence applicants on appropriate mechanisms for community participation."¹⁴

¹² MISA-SA, at page 10.

¹³ NCRF, at page 15.

¹⁴ BG Attorneys, at page 2.

The NAB submitted that the matter of community participation is sufficiently dealt with under the provisions of existing legislation and regulations. The NAB submitted that the Authority can resolve the problem by educating broadcasters and providing them with guidelines on the meaning of community participation and how the Authority evaluates it.¹⁵

MISA-SA submitted that stations bemoan the interference from some community members in the running of the station. *"While this issue could potentially be remedied by interventions vis-à-vis governance (e.g. relevant clauses in the stations' constitutions), community participation needs to be negotiated so as to meet the expectation of both the community and the stations in achieving its goals."*¹⁶

MISA-SA also submitted that the principles defining community television reflected in the Authority's Community Television Position Paper, 2004, provide sufficient articulation of the defining characteristics for the sector. *"However, we are of the view accountability must be highlighted as a critical principle."*¹⁷

The Association of Christian Broadcasters of Southern Africa ("the ACB") submitted that programming committees, if run properly, can help to encourage community participation."

The MDDA submitted that AGMs are expensive and time consuming to organise and communities have not necessarily seen attendance at such meetings as an important means of claiming ownership of a station. *"Such gatherings even when they happen regularly are not necessarily a measure of the extent of participation in a station. ICASA should rather require that each individual station shows that it has support, and that there has been widespread participation by a range of sectors (not only individuals) in developing the station. Such enabling requirements could for example provide for representatives of a range of community based organisations to participate in governing a station."*¹⁹

¹⁵ The NAB, at page 5.

¹⁶ MISA-SA, Submission to ICASA: Review of Community Sound Broadcasting Policy, at page 7.

¹⁷ MISA-SA, at page 8.

¹⁸ The ACB, Submission to ICASA: The Review of Community Sound Broadcasting Policy, at page 5.

¹⁹ The MDDA, at page 16.

7. GOVERNANCE

There have been conflicts between the boards and management of different community sound broadcasting licensees. This is partly due to the fact that most licensees have not clearly defined the different roles, rights, and responsibilities of the Board, management, and staff.

BG Attorneys submitted that the formulation of section 32(3) of the Broadcasting Act, which provides that a community sound broadcasting licensee must be managed and **controlled** by a board which must be democratically elected from members of the community in the licensed geographic area, is problematic. *"First, it suggests that the board must manage and control the licensee, thus blurring the distinction between traditional functions of a company's board of directors and the management of that company. Secondly, the requirement that the board be elected 'from' (not 'by') members of the community might give rise to an argument that the members of the community need not necessarily participate directly or indirectly in the election process, and that all that is required is that the candidates for election should emanate from the community. Thirdly, it should be made clear that all members of the community to be served are entitled to participate in the election of board members. It should also be made clear that the use of words 'in the licensed geographic area' should not be construed as meaning that this provision only applies to licensees that serve geographically founded communities. Fourthly, the Position Paper should provide guidance on appropriate election procedures that would comply with the requirement that board members be elected 'democratically.'"*²⁰

BG Attorneys also submitted that it is probably necessary to strike an appropriate balance between retaining the distinction between the respective functions of the board and management and ensuring management accountability to the board, on the one hand, and permitting a degree of management involvement by board members. *"This could be achieved by stipulating that, at all times, no more than a specified percentage of board members may be involved in managing the radio station. In addition, the oversight*

²⁰ BG Attorneys, Submission to ICASA: Review of Community Sound Broadcasting Policy, at page 3.

functions of the 'non-executive' board members should be explained in the Position Paper.²¹

The MDDA recommended that the Authority should develop a broad code outlining governance principles which need to be adhered to, "The Authority should request applicants and stations to submit codes of practice (and ethics) for Board's and staff and the Authority should develop mechanisms (such as reference to such codes in licence conditions) to ensure these are applied. The Authority should also consider requiring that at least one member of the Board should have a financial background/understanding of finances (in line with principles codified in many Codes of Conduct) to ensure the Board has capacity to oversee financial discipline. The Authority should further carefully consider its approach to having members of political parties or local government represented on Boards. There is a need for this to be explicitly clarified in regulations as well as licence conditions as currently there is some confusion in this regard."²²

The NAB submitted that the board should not get involved in operational matters. "The board's responsibilities are to establish broad policy direction, determine operational policy, develop a strategic plan and ensure that management implements policies and strategy. Management should be responsible for the operational running of the station and implementing policies and strategy as determined by the board. Unnecessary interference in either's role will lead to a lack of cohesion and direction. Community sound broadcasters should be managed in a manner that is in line with good corporate governance and in accordance with Generally Accepted Accounting Principles (GAAP). Both board and management should act professionally and in a transparent manner for they are the custodians of the sound broadcasting licence and not the owners."²³

The NCRF proposed the following as the role of the Board:

- **monitoring of management in respect of implementation of the Board's plans;**
- **ensuring compliance with all relevant laws, regulations and codes of good practice;**

²¹ BG Attorneys, Submission to ICASA: Review of Community Sound Broadcasting Policy, at page 4.

²² The MDDA, Submission to ICASA: Review of Community Sound Broadcasting Policy, at page 13.

²³ The NAB, at page 14.

- giving strategic direction to the licensee;
- appointment of the station manager;
- development of a **corporate code of conduct**; and
- identification of risk **areas** and performance indicators.

8. SIGNAL DISTRIBUTION

Community sound broadcasting licensees have been complaining that Sentech charges them a lot of money for signal distribution on a monthly basis. They argue that Sentech's tariff structure is applied uniformly to all broadcasters and **no distinction** is made **between** the three tiers of broadcasting. Community sound broadcasting licensees have alleged that Sentech has misinterpreted section 37(a) of the IBA Act **as** meaning that **all broadcasters** should **be** treated equally, whereas "equitable" does not mean **equally**, **but** rather that **the** tariffs be fair and impartial in their **application**.²⁴

Submitters recommended that an inquiry on signal distribution tariffs, separate **from** the one on community sound broadcasting policy, be conducted by the Authority.

The NAB submitted that it is of the view that the matter of signal distribution tariffs can best be dealt with as the subject of a separate inquiry **as** required by Section 33 of the Broadcasting Act, **and** originally intended by the Authority. *"This will provide all parties, including the public and commercial broadcasters, wit..an opportunity tu comprehensively deal with the matter."*²⁵

Sentech submitted that the Authority must conduct **an** inquiry to determine the **licence** conditions, obligations and tariff structure for signal distribution including **the** regulatory regime for multi-channel distribution services and convergence, according to section **33** (1) of the Broadcasting Act **4 of 1999**. *"Sentech, therefore suggest that broadcasting signal distribution should be dealt with in totality as required by section 33 (1) of the Broadcasters Act. The discussion on broadcasting signal distribution and the common carrier status of*

²⁴ independent Communications Authority of South Africa, Review of Community Sound Broadcasting Policy: Discussion Paper, at page

28.

²⁵ The NAB, at page 10.

*Sentech are misplaced in this Discussion Paper. Sentech suggests that the discussion on signal should be dealt with after promulgation on the Electronic Communication Bill which is currently before Parliament.*²⁶

Orbicom submitted that a full-scale, comprehensive inquiry into broadcasting signal distribution ought to be undertaken as a matter of reasonable urgency. "Orbicom is of the opinion that the inquiry into community sound broadcasting cannot and should not serve the dual role of an inquiry into signal distribution and community broadcasting at the same time."²⁷

²⁶ Sentech, Submission to ICASA: Review of Community Sound Broadcasting Policy, at page 2.

²⁷ Orbicom, Submission to ICASA: Review of Community Sound Broadcasting Policy, at page 7.

PART C: Policy

In analysing the framework for the regulation of community sound broadcasting services, the Authority has been guided by, amongst other things, section 2 of the IBA Act which sets out the primary objectives of the Act. The primary objectives of the IBA Act are stated, amongst others, as being "to provide for the regulation of broadcasting activities in the Republic in the public interest through the Authority established by section 3, and for that purpose to-

- 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;
- encourage ownership and control of broadcasting services by persons from historically disadvantaged groups;
- promote the empowerment and advancement of women in the broadcasting services;
- ensure that commercial and community broadcasting licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic;
- encourage investment in the broadcasting industry; and
- promote the stability of the broadcasting industry.

The Authority believes that the new policy and regulations for community sound broadcasting services, and the introduction of more community sound broadcasting services will result in the further development of this sector, the development of communities served, and job creation.

9. THE LICENSING PROCESS

The Authority shall have 'two window periods' every year to allow aspirant community sound broadcasters to apply for four-year licences. The following procedure shall be followed with regards to the registration/application of new licenses, renewals of licences, and amendments:

9.1 Registration/Application

- the process shall be an administrative one: and
- community sound broadcasting licences shall be granted if:
 - frequencies are available;
 - no valid objections are received after the application has been gazetted;
 - the applicant demonstrates measures to comply with the Authority's regulations applicable to sound broadcasting licensees;
 - the application satisfies all the Authority's requirements; and
 - there is no competitor.

9.2 Renewals

- applicants shall be required to supply information on demand, need, and support, business plan, compliance report, and future projects; and
- the licence shall be renewed if the applicant has been complying with the Act, regulations and licence conditions.

9.3 Amendments

The Authority shall deal with each application on its own merits. The Authority will, in considering such an amendment, ensure that the needs and interests of the community are served.

10. ENTITIES PROHIBITED FROM HOLDING A BROADCASTING LICENCE

The Authority has decided, in order to clarify the intention of section 51 of the IBA Act, to define and list persons who cannot play any role in the board, management and staff of community radio stations. The following persons are prohibited from taking part in the activities of community sound broadcasting licensees

- members of the Local 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;
- members of the Regional 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;
- members of the Provincial 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;
- members of the National Executive Committee 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;
- Councillors;
- Mayors;
- Members of Provincial Legislatures; and
- Members of Parliament,

11. PROGRAMMING

The majority of programmes broadcast by a community sound broadcasting service, news bulletins and current affairs shows in particular, are supposed to be produced and sourced locally. Programme syndication/networking and programme sharing between sound broadcasting licensees shall, therefore, not exceed 20% of the community sound licensee's programming.

PART D: Guidelines

12. LICENSEES' CODE OF GOOD PRACTICE

The Authority urges community sound broadcasting licensees to have Codes of Good Practice. Such Codes should have chapters that, amongst others, deal with the following:

- **legal** status;
- **community** policy and decision meetings such as AGM and quorum for such meetings in view of the requirement for community participation;
- categories of membership (i.e CBOs, NGOs, etc);
- appointment of Board members;
- governance (policies, separation of roles and responsibilities, etc)
- persons **not** allowed, **in** terms of legislation and regulations, to **be** in the licensee's Board, Management, and staff;
- the licensee's rights, obligations and responsibilities;
- licensee's vision, mission, and objectives;
- **community** development and participation;
- management strategy for surplus funds;
- programming (programming policy, format, participation mechanisms by the community);
- language obligations;
- **human resources** matters;
- **compliance** with related legislation such as skills development; and
- provision for audited financial statements.

13. PRINCIPLES OF COMMUNITY RADIO

13.1 OWNERSHIP AND CONTROL

Section 32(3) of the Broadcasting Act states that a community sound broadcasting service must **be** managed and controlled by a board which must **be** democratically elected from members **of** the community in the licensed geographical area. Diversity manifests **itself** in the different groups within the community in terms of age, gender, language, culture, religion, economic status, literacy level, music preference, etc. Different groups/sectors have different needs, demands and interests.

The Authority advises community sound broadcasting licensees to identify the different sectors that constitute the community and ensure that they are represented in the governing boards, advisory committees, and programming councils/committees of broadcasting licensees. Encouraging community participation implies the equitable access to and equitable involvement in **the** control, management and programming of the radio, by all interest groups in the area.

The existence of programming committees/councils and advisory boards would ensure proper community participation and compliance with section 32(3) of the Broadcasting Act. Licensees' Codes of Good Practice should have chapters explaining how community participation will **be** encouraged and sustained.

13.2 COMMUNITY PARTICIPATION

The model of community broadcasting 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 mechanisms to ensure the 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. This

in turn results in the equitable representation of the linguistic, cultural and religious diversity within the geographical boundaries of the area.

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 best means of ensuring community access to the airwaves.

Licensee's Codes should have chapters dealing with encouraging and ensuring community access.

f3.3 NON-PROFIT MAKING ENTITIES

A community broadcasting service is a service which is fully controlled by a non-profit entity and carried on for non-profitable purposes. The words "*nun-profitable entity and carried on for non-profitable purposes*" do not mean or imply that community broadcasting services are not supposed to generate income. They mean that all surplus funds derived from the running of a community broadcasting service must be invested for the benefit of the particular community. This could in the form of giving financial study assistance to needy members of the community, establishing and/or funding community projects, etc.

Licensee's Codes should have chapters detailing how surplus funds generated by the licensee will be ploughed back into the community served.

14. PROGRAMMING

14.1 Reflecting Community Needs and Interests

These guidelines are meant to give effect to the provisions of the IBA Act, the Broadcasting Act, the Electronic Communications Act and any other applicable piece of legislation. Community sound broadcasting licensees are urged, 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, environmental affairs, local and international; and the reflection of focal culture; and
- promote the development of a sense of common purpose with democracy and improve quality of life.

Community sound broadcasting services are expected to 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.

Licensee's Codes should have chapters dealing with programming matters and such chapter should, amongst others, emphasise:

- 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 and commentary and analysis;
- avoiding the misrepresentation of viewpoints by giving misleading emphasis, 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.

14.2 LANGUAGE OBLIGATIONS

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. 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,

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.

Community broadcasting services are required to broadcast in languages used in the relevant communities. Since the demographics of communities change from time to time, community sound broadcasting licensees are encouraged to amend their licences to include languages that were not originally in their programming, in the event of the growing number of the speakers of such languages in their communities.

15. FUNDING

Section 1 of the **Broadcasting Act** states that a community **broadcasting service** may be funded by donations, grants, sponsorships or advertising or membership fees, or by **any combination** of the aforementioned.

The Authority has placed **no** restrictions or **caps** on the number of minutes **per hour** for advertising by community sound broadcasting licensees. But many **community** sound 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 **on** potential advertisers that could be approached **within** their **areas**;
- lack of adequate audience profiles of the community sound broadcasting **sector** that could be used by advertisers; **and**
- expressed dependence **on** one form of revenue **stream**.²⁸

Some community sound 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 community and that they owned the radio station. The community **can** only have a sense of ownership **if** community groups/sectors participate meaningfully in the running **of** the radio station.

Another revenue stream that has been identified is the utilisation of the funds generated for telecommunications companies during phone-in programmes. Telecommunications network operators (Vodacom, Telkom, Cell C, and MTN) should be approached and be requested to share the revenues generated by community sound broadcasting licensees. Telecommunications network operators can be asked to **allocate** **special** numbers to different community sound broadcasting licensees. Such numbers **can** be used during

²⁸ Independent Communications Authority of South Africa, Review of Community Sound Broadcasting Policy: Discussion Paper, at page 35.

phone-in programmes, either by calling the numbers or by sending short message systems (sms). Network operators can then agree with community sound broadcasting licensees how the revenues generated by these special numbers will be shared.

Community sound broadcasting licenses are also advised to work or collaborate with Multi Purpose Community Centres ("MPCCs") and other public premises in their communities in fund raising.

16. HUMAN RESOURCES POLICIES

16.1 Rights, Roles and Responsibilities of Staff

The majority of community sound broadcasting licensees do not have human resources policies. Lack of policies has, over the years, resulted in problems that, in some cases, have led to the stations' collapse, unfair dismissals, strikes, abuse of power and funds, and the forced removal of management or the board.

Licensees **need to** be administered like business enterprises, with a sense of professionalism and accountability. Licensees should have human resources policies and such policies should, amongst others:

- **deal** with the remuneration of staff members;
- management policy for volunteers to deal with time management, scope of work, **etc;**
- **deal** with the rights and responsibilities of staff members;
- oppose and attempt to break down prejudice on the basis of ethnicity, **race**, language, gender, sexual preference, religion, age, physical or mental ability, **cultural** belief **or** political affiliation; and
- deal with matters relating to sexual harassment etc.

Such policies should be easily made available to all staff members.

16.2 Internal Conflict Resolution

The Authority advises licensees to have policies and procedures which outline mechanisms to facilitate internal conflict resolution. The following are guidelines for internal conflict resolution:

- policies and procedures should be made available to all;
- management should commit to acknowledge in writing all complaints within ten days of receipt;
- resolution of the conflict should begin within thirty days of receipt of complaint in a conscientious and impartial manner;
- parties involved should be provided with reasonable notice of meetings;
- there should be access to independent mediation processes where resolution is not easily achieved;
- there should be access to an appeals process; and
- individual rights to privacy and to fair and equal treatment should be respected.

Licensees should also investigate complaints with all parties concerned by a nominated officer with the authority to represent the licensee, or a complaints committee made up of representatives of staff, management and board or other impartial members appointed to the committee. The investigation process should generally follow the following steps:

- establish if there has been any breach of station policy, legislation, or other legal requirement;
- recommend appropriate action in relation to staff if a breach has occurred;
- negotiate for dispute resolution by managing discussion between disputants in order to bring about agreement or a settlement;
- recommend appropriate legal response if legal action is likely or is taking place;
- recommend appropriate response to the complainant(s) after taking legal advice if necessary;

- recommend appropriate action needed to avoid future breaches; and
- **write** to **all** parties involved in **the** investigation outlining the outcomes of the investigation and informing them that they have a right to lodge a letter of Appeal regarding the determination made by the investigating party to the management or the board of the station at their next sitting.

16.3 Mediation

Where complaints are not resolved through the findings of the investigation process, licensees should consider independent mediation or arbitration if a reasonable **outcome** for **all** parties cannot be achieved, and also consider impartial legal or other expert advice as required.

16.4 Retention of skills

The community sound broadcasting sector has been plagued by the high turn over of **skilled** personnel to lucrative deals offered by the commercial broadcasting sector. They must have an on-going training development strategies plan such as in-house training **programme**. Community sound broadcasting licensees are advised to ensure that measures and mechanisms are put in place in the form of policies that would address the **issue**.

17. GOVERNANCE

The Authority advises community sound broadcasting licensees to have clearly defined roles of management and the Board Members in their contracts. The following **should serve** as a guide in defining and differentiating the roles:

17.1 The Role of the Board/Trustees/Coordinating Committee

The Board represent the community. The Board 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 run the station on a daily basis. The Board is responsible for appointing (not electing) management, guided by **employment** policies. **The Board should ensure financial accountability.**

17.2 The Role of Management

Management is accountable to the Board and runs the station **on a daily basis**. Management appoints staff below manager level, and management **is responsible for** the operations of the station, including human resources, funds, **etc.**

18. ROYALTIES PAYABLE TO SAMRO

The Authority advises community sound broadcasting licensees **to comply with the Copyright Act, Act No. 98 of 1978, by paying the SAMRO fees.** Compliance with **the Copyright Act** would ensure the smooth running of community sound broadcasting **services.**

19. CONCLUSION

The Authority would like to thank all stakeholders, interested parties and everyone who made submissions and participated in this inquiry. Written and oral submissions reflected a high level of expertise and knowledge and contributed to a better understanding of the community sound broadcasting sector. The Authority has been mindful of the need to, amongst others, ensure fair competition between broadcasting licensees, encourage investment in the South African broadcasting industry, and to promote the stability of the broadcasting industry.

The Authority would like to urge community sound broadcasting licensees to ensure that they draft and adopt Code of Good Practice to ensure the professional running and administration of the sector.

This Position Paper is also available on the Authority's website www.icasa.org.za. The Position Paper is also available in Sepedi, Sesotho, Setswana, Siswati, isiNdebele, Tshivenda, isiXhosa, Xitsonga, isiZulu, and Afrikaans.

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