ISSUES PAPER:

A COMPREHENSIVE REVIEW OF THE SOUTH AFRICAN BROADCASTING POLICY
1. Introduction

The rapid and unprecedented changes occurring both in society and the communications world have not only declared our 20 year old broadcasting policy archaic and inadequate, they are occurring at a rate outpacing policy development. As many analysts have correctly observed, the communications industry is going through a period of unprecedented disruptive change brought by the pervasiveness of social media platforms and other technologies, unprecedented increase in corporate failures and impact on stability of financial markets, enhanced transparency and disclosures, rapid technological development, heightened stakeholder expectation, shareholder activism, the growing environmental concerns and the ever shifting needs of the millennials not conforming to traditional and linear thinking. In an attempt to reposition the industry to these developments, the policy review process has commenced in South Africa.

The process to review South Africa’s broadcasting policy started as far back as 2009 with the gazetting of what was referred to as the Public Service Broadcasting Bill. The Bill was subsequently withdrawn in favour of a comprehensive broadcasting policy review. Following the endorsement by Cabinet in 2012 for the review of all existing Information and Communication Technology (ICT) related policies covering telecommunications, broadcasting, postal services and e-commerce in order to develop an integrated ICT related White Paper, an ICT Policy Review Panel was appointed to assist government in the process. The scope of the review covered:

- the functioning of the policy, legislative and regulatory frameworks for all ICT sectors in broadcasting, and their effectiveness;
- market structures and the role of the Independent Communications Authority of South Africa (ICASA);
- strategies for research and development, applications development promotion, human capital development, investment in ICT markets for growth and development;
- universal service and access policy goals; and
- Institutional arrangements to support the new converged ICT environment.

Following the completion of various research projects in the different sectors, a Green Paper was released for public comments in 2014. This was followed by a Discussion Paper which presented a range of policy options for consideration. A recommendation report was released in early 2015.
While the final **White Paper** was approved by Cabinet in September 2016, it excluded broadcasting due to the separation of telecommunications, postal and broadcasting services. This meant that a broadcasting policy had to be finalised separately. This process started with the release of the General Notice 1003 of 2014 (Gazette 38206) which invited interested parties and members of the public to submit issues for consideration.

Drawing from the above, it is quite evident that this policy review builds on the work done since 2009 instead of starting this process anew.

### 2. Emerging Issues

This Emerging Issues Paper summarises some of the information received throughout the last few years of consultation, and is primarily intended to:

- highlight the key issues distilled from the various consultative processes listed above,
- form the basis of further policy discussions,
- outline the next steps for the review.

The paper is not an exhaustive list of the issues that emerged but highlights those that continue to dominate the policy discussions in the post-apartheid South Africa. As indicated in the steps for the review, more consultations will occur in the coming months where opportunities will be provided to raise other issues for consideration during the review process.

Stakeholders, including members of the public may:

- make a submission on relevant matters at any point from the release of this paper until 31 August 2018 make a submission in response to either some or all of the Emerging Issues for inclusion in the draft Broadcasting Policy to be released in the 3rd Quarter (by 31 December 2018).

The Department will consider in full all submissions received prior to the finalisation of the Draft White Paper for inclusion therein.

In making submissions, stakeholders are also encouraged to:

- raise new issues they feel the Department has omitted;
- provide ideas for changes to the current regulatory framework;
- provide ideas about how policy frameworks can be reinvented;
- identify barriers to innovation and competition in the current environment;
provide new and innovative mechanisms for addressing some of the issues raised in the emerging issues paper—for example, ways to increase competition, encourage innovation or provide better consumer and citizen outcomes; and

provide details of regulatory, non-regulatory or de-regulatory solutions to issues raised so far.

The Department welcomes new ideas, particularly in submissions that are well-researched and, where relevant, with assertions and recommendations backed by evidence.

Starting with the withdrawn Public Service Broadcasting Bill process, the following issues continue to dominate the policy discussions:

2.1. **South African broadcasting beyond analogue switch-off:**

2.1.1. Defining and creating a vision for the South African broadcasting system beyond the analogue switch-off, especially as the country battles through this complex project is critical. The Save Our SABC (SOS) coalition raised questions about the best way to ensure that public interest objectives are met through licensing and noted that it did not believe that the channel authorisation process adopted by ICASA for the Digital Terrestrial Television (DTT) would achieve this. The South African Broadcasting Corporation (SABC) meanwhile stated that under ICASA’s DTT regulations, it is the only broadcaster required to undergo a public value test for each channel authorisation and raised concerns that this would result in delays, which had a potential of negatively affecting its ability to compete with other licensees and therefore its viability as envisaged in section 2(t) of the Electronic Communications Act (no.36 of 2005). The broadcaster further recommended that ICASA be compelled to conduct a market study before inviting new individual licence applications. The SABC also suggested that it and other terrestrial broadcasters should be licensed as a network – with licence conditions applying to the network rather than individual channels. It stated that this was essential so that licensees could have sufficient flexibility to respond to audience needs.

2.1.2. ICASA has, in its DTT Position Paper and regulations, outlined the process for authorisation of channels by commercial and public broadcasting licensees. The authorisation process set out for free-to-air (FTA) broadcasters is largely administrative, but the SABC would have to undergo a public value test for each channel. There are several key issues which need to be considered in reviewing the current framework relating to the approval of channels, by ICASA, in a multi-channel environment:
If licence conditions would be network-wide or if there would be a need to include any channel specific conditions.

Whether or not the authorisation process as outlined in regulation allows ICASA to fulfil its mandate of ensuring that individual broadcasting licensees offer a diverse range of programming, including South African content.

If, given the different approaches to regulation of FTA and subscription services, the channel authorisation process should be the same for these two categories. Fair competition principles would be important to consider in relation to this.

If there should be a different approach for satellite versus terrestrial broadcasters (whether FTA or subscription).

2.2. Three-tier broadcasting system:

2.2.1. The South African Communications Forum (SACF) indicated that its members had different opinions on the compatibility of a three-tier system in the long term, given convergence. Others suggested that there was a need to adapt and/or strengthen the system. The policy should make provision for future changes to the system to ensure that “opportunities for each tier” are not lost.

2.2.2. The SOS coalition said that an over-reliance by all three tiers on commercial funding blurs distinctions exacerbated by ICASA’s failure to effectively monitor compliance by licensees. The SOS coalition stated that it believes the three-tier system needs to be strengthened to ensure that each tier is distinct.

2.2.3. Both Mindset and the Association of Community Television of South Africa (ACT-SA) raised the possible need for a “fourth tier” – national/provincial FTA non-profit broadcasters. Such services could be specifically focused on fulfilling key objectives in the Broadcasting Act (such as education) or a neglected sector of the audience (such as the youth).

2.3. Strengthening FTA platforms (limitations on advertising):

2.3.1. The issue of strengthening the FTA platform is raised within the context of growing the pay tv in South Africa amid the declining FTA platforms. In a developing country wherein 17 million people survive on social grants, this is rather strange. MultiChoice and M-Net argued that existing limitations on subscription broadcasters’ advertising revenue are
“unwarranted and inappropriate”. They said that subscription services were naturally constrained to limit the amount of advertising as excessive advertising “would push away, rather than attract or retain, subscribers”. The submission said that the real threat to television broadcasting revenue comes from an increase in online advertising and the introduction of international content service providers. The two broadcasters proposed that viability of the broadcasting sector as a whole should be secured through a less restrictive regulatory framework.

2.3.2. e.tv stated that this affects its capacity to fulfil public interest obligations, and access by millions of viewers to, for example, a range of South African content. The broadcaster also proposed that policy and legislation should urgently increase the existing limits as the viability of the commercial FTA broadcasting sector is under threat.

2.3.3. The SABC proposed that the advertising limitation on subscription broadcasting services be retained but that this must be “effectively monitored by ICASA to ensure that there is fair competition in the market for advertising by the television broadcasters”.

2.3.4. SACF, the SOS coalition and other stakeholders that made submissions on this issue all proposed that the existing limitations be tightened.

2.4. Public broadcasting:

2.4.1. The Media Policy and Democracy Project (MPDP) stated in its submission that the policy should explore the possibility of establishing a public service publisher with the responsibility of “commissioning, promoting, aggregating and distributing local content, as well as with ensuring the survival of local content in the digital media environment”. Content would be made available “on a non-exclusive basis” to be shared across multiple platforms. It suggested that the responsibility could be given to the SABC or a separate public service publisher. The MPDP said that a recent study it had participated in showed that while South African youth use media (particularly radio and television), they “do not feel that the media is relevant to them”. It stated that the SABC mandate should specifically address this as youth make up a large proportion of the South African population. It further proposed that a new obligation be added requiring the SABC to interact with audiences using mobile phones and the Internet.

2.4.2. The SABC said that its mandate is too broad, which results in it “unintentionally” neglecting some aspects. It proposed that its Charter be categorised into high priority and general objectives, including:
• universal service;
• providing audio and audio-visual services in all official languages;
• providing a diversity of services or programmes which are educative, informative and entertaining;
• providing services targeted at people with disabilities, youth, children and women;
• providing international, national, regional and local news and information; and
• developing the creative industry.

The public broadcaster further indicated that while it sees the broadcasting of sports of national interest and development sports as important, it is expensive to fulfil these requirements (over R600 million was spent in the 2012/13 financial year on rights for sports of national interest). It also stated that any obligations relating to sports should be funded.

2.4.3. The SOS coalition recommended that the Charter be redrafted as obligations are currently contained in several different sections of the Broadcasting Act. It stated that that the mandate must reinforce the SABC’s distinctive role and that it should be required to focus explicitly on educational programming. The SOS coalition added that processes should be put in place to regularly review the obligations set for the SABC. It highlighted that this could allow for the remit to be specifically aligned to its budget for a set period.

2.4.4. Mr Veer Singh from the Ethekwini Municipality stated that the SABC must be accessible to everyone in the country and “its programming must be understandable and followed by everyone”. Its programming he said should be “popular” – it must provide a public forum for all to participate in, not just the elite. He stated that the SABC must promote comprehensive, objective and unbiased discussions and play an active role in preventing conflicts while promoting culture. Editorial control must be protected from political and economic interference.

2.4.5. In a joint submission, MultiChoice and M-Net stated that the focus of the SABC should be on airing diverse information and viewpoints and providing multicultural programming which informs, educates, entertains and contributes to the development of the South African production industry.

2.4.6. The National Association of Broadcasters (NAB) emphasised the need for any review of the mandate to specify that the SABC’s licence conditions should be reviewed by ICASA to ensure that they match mandate obligations.

2.4.7. The National Community Radio Forum (NCRF) outlined a suggested charter in its submission, adding on responsibilities for providing foreign services. The Progressive
Professionals Forum highlighted universal access as a critical mandate for the SABC and stated that generally government needed to strengthen oversight of the public broadcaster.

### 2.5. Public broadcaster funding:

2.5.1. The NCRF and ACT-SA proposed that the SABC be funded from a more general public broadcasting fund that would also allocate funds to community broadcasters.

2.5.2. The SABC highlighted particular areas that it said required government/public funding:

- Expansion of its radio network: SABC noted that although radio penetration stood at about 90% of the population, this was based on access to any radio service rather than to a service in a person’s preferred language. It said that first language radio penetration is much lower for African language population groups and that expansion would cost over R30 million.

- Transmission costs: The SABC said that it has on average spent over 8% of its funds on transmission and that this would increase with the migration to DTT and the ongoing expansion of its radio network.

- Funding for the acquisition of rights to sporting events of national interest (unspecified).

- Funding for children’s programmes, educational programming and sporting events (both minority and developmental sports and sports of national interest).

2.5.3. The National Treasury noted that the failure by the SABC to produce separate accounts made it difficult to assess the costs of the broadcaster’s mandate.

2.5.4. The NAB emphasised the need for an independent assessment of the costs of the public mandate as part of the policy review process.

### 2.6. Public broadcaster funding sources:

2.6.1. Most stakeholders that made submissions proposed that the mixed funding model (public and commercial revenue) be retained, but that the ratio of public funding to commercial revenue should change.

2.6.2. MTN said that policy must be based on an in-depth review to determine how the SABC could be self-funded from TV licences (with a new strategy and model), advertising and sponsorship (with a five year plan in place), commercial enablement of third party content providers, commercial business models (free and paid for), content development and sales, mobile and other e-services.
2.7. Mechanisms:

2.7.1. The SABC highlighted that the television licence fee could be replaced with a tax or a specific levy on particular services (such as electricity, telephone or other utility bills) – to solve the problem of evasion. The licence fee could remain but policy and legislation should address collection challenges. This, it said, could include provisions for inflation-linked increases to licence fees and extending the range of devices linked to payment of the fee. The SABC suggested that the current definition of a television set in the Broadcasting Act should be revised to cover all devices that can receive audio-visual content in recognition of convergence.

2.7.2. MultiChoice and M-Net proposed that the public remit be funded via a budget appropriated by Parliament. It said that a more efficient mechanism for collecting licence fees should be explored such as a line item on a tax return or on a utility bill. The proposal stated that this could be delinked from viewing devices and framed as a public broadcasting service levy so that collection mechanisms in place at the South African Revenue Services or municipalities can be leveraged to reduce administration and collection costs.

2.7.3. The NCRF suggested that the licence fee be replaced by a 1% tax transferred to a Public Service Broadcasting Fund accessible to the SABC and community broadcasters. Additional sources of revenue for the fund could include expropriations from Parliament, contributions from other broadcasting licensees (commercial) and business. The fund should be managed by the Media Development and Diversity Agency.

2.7.4. Paul Hjul, proposed that the SABC should become a mutual public company with 100 million shares. Sale of these shares (25 million on basis of current valuation of SABC and the rest handed over for payment of a TV licence or calculated at the cost of a TV licence). The licence would fall away and the SABC would become a "savings instrument with a minor return on investment".

2.8. Structure of the public broadcaster:

2.8.1. The SABC stated that the current division into public and commercial services is not practical or implementable. The broadcaster added that it is “close to impossible to expect three commercial radio stations to fully subsidise the public mandate of the 15 public radio stations”. It further said that obligations to keep separate books of accounts for the two divisions have “serious administrative implications”. It suggested the following options:
- Divisions should be removed – policy could include limits on commercial content and stress public service responsibilities. ICASA could be required to determine the criteria for public service versus commercial service programming. This is the SABC’s preferred option.

- The public commercial division could be privatised and established as a separate company. The SABC could be a shareholder or majority shareholder in this new company.

- The possibility of public/private partnerships (this was not expanded on but could include partnerships on production of individual channels).

2.8.2. The National Treasury, while not commenting directly on the structural division of the SABC, emphasised that separate accounting should be a requirement for all public entities. It said: “(T)here is a need for a new paradigm where all State-Owned Entities, including the SABC must be compelled to publish separate accounts for their public interest and commercial businesses. This will assist in evaluating the degree to which cross-subsidisation between the commercial and the public components is occurring”.

2.8.3. The SOS coalition in its submission said that the division had not achieved intended objectives and should therefore be scrapped and all services categorised as public. e.tv made similar charges, stating that SABC practices have negated the objectives of the division and that there is “no real and meaningful distinction” between the two. It proposed that any new policy should include specific restrictions on commercial activities as it alleged that the SABC currently engaged in unfair competitive practices.

2.8.4. ACT-SA raised a number of questions regarding the structure of the SABC (with a focus on television). It said, for example, that it was not convinced that the SABC should be allocated almost an entire multiplex with DTT and asked if what it described as “over inflated budgets” for such services could not be allocated more “evenly” to other stakeholders.

2.8.5. The NCRF was the only stakeholder that made a submission on foreign services. It stated that foreign services should be specifically incorporated into the mandate and funded as part of this.

2.9. **The carriage of public channels by subscription broadcasting services:**

2.9.1. The SABC said that while the intentions behind existing provisions are good, they are unnecessary and an “illegitimate intervention inhibiting market freedom” in the
multichannel environment. They said provisions should ideally be removed as the SABC is the largest broadcaster in the country and not in need of protection. The SABC proposed that the approach can also be adapted and the number of channels can be limited (particularly noting that DTT will increase the number of SABC channels) and arrangements around who bears the costs adapted.

- Section 60(3) of the Electronic Communications Act (no.36 of 2005) must be amended to read: “Subscription and commercial broadcasting services that intends to carry SABC channels must pay subject to the SABC’s agreement and commercial negotiations”. Thus the principle of “must carry, must pay” must apply.
- The “must carry” must be a commercially negotiated process which must culminate into a contract between two parties.

2.9.2. M-Net and MultiChoice however, argued that the rules provide “an important benefit to the public broadcasting service” as they assist it in meeting its universal service obligations by ensuring the broadcaster can be received in areas not covered by its transmission network. They said the current provisions are “technologically neutral”, “digital ready” and “are working well” and there is no need to amend either policy or legislation in respect of “must carry” rules.

2.9.3. e.tv, on the other hand, addressed primarily the issue of costs, linking this to the need to protect FTA television (commercial and public) so it is viable and can meet public interest objectives. It proposed that all FTA television licensees be given “must carry” status, as they all contribute to meeting public interest objectives, and that subscription broadcasters pay the FTA services carriage or retransmission fees, “reasonably approximating the value they contribute to the pay TV platform”. e.tv argued that in South Africa “a near monopoly subscription television service has built a …very profitable business, in substantial part by re-selling FTA broadcast signals … while avoiding the considerable costs of public interest obligations”. The commercial FTA broadcaster said that it is one of the most watched channels on the DStv platform.

2.9.4. The SACF also proposed that “must carry” status should be extended to all FTA broadcasters and that retransmission fees be paid by subscription services/platforms to FTA services.

2.9.5. Cape TV/ACTSA highlighted that the anti-competitive environment can only be addressed through a “must carry, must pay” obligation on DStv to ensure media diversity in South Africa.
2.10. **Ownership and control rules, including foreign ownership:**

2.10.1. MultiChoice and M-Net argued that developments in recent years and the abundance of sources of every kind of content, including news and current affairs (originating from local and international sources), meant that there is no longer any basis for retaining the existing cross media limits and that therefore the limitations should be reviewed. They said that these limits were introduced for a single channel analogue terrestrial commercial FTA environment and that traditional linear broadcasting services in South Africa are “facing increasing competition for the provision of audio-visual content from the Internet/over-the-top (OTT) players, as well as from telecommunications operators (both fixed-line and mobile)”. They noted that many new content providers are multinational companies, not subject to South African regulation.

2.10.2. Vodacom stated that ownership and control restrictions “may, in addition to being difficult to enforce, deter investment in new broadcast services”. It proposed that ownership limits focus on traditional broadcasters and not be extended to new broadcast media such as Internet protocol television as this would stifle innovation.

2.10.3. The MPDP and Freedom of Expression Institute (FXI), on the other hand, argued for the strengthening of existing limitations in light of convergence and digitisation. The MPDP cited data from the Digital Media and Marketing Association/Effective Measure stating that this showed that the most accessed South African Internet sites are “published largely by the already dominant providers of news and entertainment, which calls into question whether the introduction of online and mobile sites has in fact increased diversity to the point where ownership rules have become anachronistic.” The MPDP suggested that the new policy should strengthen provisions by introducing “a diversity of voices test which would be used to monitor the extent to which existing patterns of ownership and control actually enable diversity of voices”.

2.10.4. ICASA proposed specific amendments to each of the ownership limits in the law, while also suggesting that the Broadcasting Act be amended to remove limits and give the regulator the power to prescribe limitations. The individual proposals are highlighted under each of the relevant sub-sections below, but it is important to interrogate whether or not such rules should be set in policy and law or if the regulator should be given the power to determine these.
2.11. Limitations on the number of television licences:

2.11.1. ICASA proposed that the limitation that no person can control more than one commercial television licence remain. In 2005, ICASA stated that it would recommend that limitations on the number of television licences any one entity can control not apply to subscription broadcasting services.

2.11.2. MultiChoice and M-Net proposed that the limit on the number of television licences any one person can control should be removed, but that if such limits remain “they should be confined to single channel analogue terrestrial commercial FTA television services”.

2.12. Cross-media Ownership and control:

2.12.1. According to ICASA, no person who controls a newspaper should be allowed to control both a commercial radio and commercial television licence. No person who is in a position to control a newspaper may be in a position to control a radio or TV broadcasting licence in an area where the newspaper has an average weekly ABC circulation of 25% of the total newspaper circulation if the licence area of the radio or TV service licence overlaps substantially with the circulation area of the newspaper.

2.12.2. In 2005, ICASA recommended that cross-media limitations not apply to subscription broadcasting services. In addition, in 2013 and 2014, ICASA approved amendments to the ownership of two commercial radio licences, giving Times Media Ltd control over them. As the regulator has not to date published reasons for its decision, it is not possible to outline what considerations underpinned the decision to exceed current cross-media requirements.

2.12.3. MultiChoice and M-Net said existing cross-media controls should be removed "particularly as regards television broadcasting services" as these had become irrelevant as broadcasters will face competition from new content providers and OTT services which would not face the same limits.

2.12.4. The MPDP disagreed. It stated that ICASA’s recommendation that cross-media controls not apply to subscription broadcasters needs to be reviewed, saying this had allowed Naspers to become a “major media player in both legacy and new media spaces, to the detriment of plurality and diversity”. It said that any new policy should consider broadening the scope of the current rules to not only cover existing platforms
but also “new platforms with significant public influence which could be determined on the basis of a specified threshold of traffic to popular sites”.

2.13. Foreign ownership limitations:

2.13.1. ICASA proposed the following limitations in relation to foreign ownership of commercial broadcasting licensees:

- One foreign person may not hold securities, either directly or indirectly, equal to or exceeding 25% in a South African unlisted company which controls a commercial broadcasting licence;
- More than one foreign person may not hold securities, either directly or indirectly, equal to or exceeding 35% in a South African unlisted company which controls a commercial broadcasting licence;
- No foreign person may hold securities, either directly or indirectly, equal to or exceeding 25% in a South African listed company which controls a commercial broadcasting licence;
- The introduction of a clause allowing ICASA to exempt a licensee from the limits on good cause shown and if necessary impose additional obligations as a result of the exemption.

2.13.2. One Digital Media (ODM) in its submission argued that foreign limitations should be relaxed as these affect investment, growth, innovation, diversity, affordable access to services and fair competition thus "defeating the objectives" of legislation. It said the limits supported the continued domination of monopolies in broadcasting. The broadcaster stated that the limitations are obsolete and if retained will result in "discrimination" against traditional broadcasters as international and multinational content providers increasingly enter the market. National Treasury said that limits on foreign ownership do not recognise that anyone can trade through the JSE and that such restrictions therefore could not be imposed on listed companies.

2.14. Content issues:

2.14.1. Vodacom said that South African content regulation is “better suited” to traditional television and that new broadcast media should not have to comply with fixed content quotas “given the…costs associated with customising content”. It said that there was a need to rethink the approach to South African content promotion and proposed that
policy makers consider establishing a “Production Fund” with contributions from all content providers.

2.14.2. MultiChoice and M-Net argued that the approach to the regulation of South African content is “outdated, ineffective, unnecessarily restrictive and increases the costs of compliance”. They said that broadcasters already exceed the minimum quotas due to audience demand, but that regulation increased the costs of regulatory compliance. The subscription licensees said that quotas should focus on the public broadcaster, that those on commercial broadcasters be removed and that policy adopt creative mechanisms to “promote, encourage and incentivise local content” and a flexible approach so that providers could “decide how best to promote and include local content on their services”.

2.14.3. The SABC focused only on its own responsibilities. It said that the approach should change from channel-based quotas to network requirements in light of the migration to DTT. The public broadcaster further suggested that government establish content hubs in all provinces as it could not alone be the “sole driver of the creative industry development”. It further proposed the introduction of mechanisms that will allow it to “exploit its archive content in the digital space … to use so-called orphan works on the basis that it can set aside 10% of revenue generated by such content in a trust account to be used for the benefit, and development, of the creative industry”.

2.14.4. The SOS coalition said it is critical that the “credibility, professionalism, quality and creativity of South African content” is boosted to counteract the impact of international companies streaming content into the country. It proposed that content requirements (including provisions on independent production) be extended for all broadcasters. Other mechanisms proposed by the coalition include:

- a shift in the intellectual property regime to enable independent producers to exploit content rights on different platforms and in different territories;
- strengthening South African production tax and incentive rebates managed by the Department of Trade and Industry (DTI) and increasing support for the National Film and Video Foundation (NFVF);
- investigating the establishment of a South African content fund to support production of local content across a number of platforms; and
- strengthening ICASA’s capacity to monitor compliance with South African content requirements.
2.14.5. The MPDP noted that the popularity of South African educational, drama and soaps programming was evidence that the quotas have been successful in stimulating demand for local content. It agreed that convergence and digitisation raise challenges for the local content framework, but argued that these concerns should not lead to local content quotas being removed as emergent services “may take many years to reach maturity, and may not even take root at all”. It proposed that all broadcasters and other content services/distributors “targeting South African audiences” should have South African content obligations. Where it is impractical to subject new media platforms and services to quotas, “expenditure requirements could be considered, where services such as Internet service providers (ISPs) are required to contribute a certain percentage of their annual revenue to a local content production fund”. It suggested that any public broadcasting fund established to support the SABC should also provide funding for South African public interest content.

2.14.6. e.tv emphasised that its capacity to fulfil public interest obligations such as South African content quotas depended on the concerns it had raised about unfair competitive practices by subscription broadcasters and the SABC being addressed. It said the new approach to South African content should be based on ensuring parity between like services regardless of delivery platform.

2.14.7. ACT-SA suggested that the policy approach to community television should consider the sector’s particular circumstances, and thus not require commissioning from independent producers as channels did not have the funds to commission programmes. It further proposed that a contestable fund for public broadcasting set aside grants for community TV programming, and that government considers adapting existing incentives and funds in place for the film industry to boost South African content production capacity across all platforms.

2.15. **Human resources capacity for the sector:**

2.15.1. ACT-SA indicated that there has been minimal recommendation on this aspect and it requires focus. The Sector Education and Training Authority could support learnerships, internships and training programmes for community media while the National Electronic Media Institute of South Africa works with the sector in accrediting courses and training producers.
2.16. **Regulatory parity, certainty and the independence of the regulator:**

2.16.1. Regulatory parity

2.16.2. This issue has consistently been raised by broadcasters who feel that in a converged environment, and with the proliferation of OTT services and telcos offering content, they remain highly regulated with more obligations while the latter are not subjected to such. As a result, their competitiveness is constrained. As seen in many jurisdictions, ‘Regulatory parity’ is founded on ideas of fair competition and technology neutrality wherein content is treated equally. In Australia it was noted that achieving regulatory parity may have difficulties in practice. For example, regulation that may be appropriate for programmed or linear content, such as broadcast classification time zones, may not be appropriate to an on-demand or non-linear delivery mode, even though the content is often the same. There seems to be no agreement on this matter amongst stakeholders, although there is a strong belief that it is a serious policy issues for discussion and clarity.

2.16.3. MultiChoice and M-Net argued that the approach to regulation of South African content is “outdated, ineffective, unnecessarily restrictive and increases the costs of compliance”. They said that broadcasters already exceed the minimum quotas due to audience demand, but that regulation increased the costs of regulatory compliance. The subscription licensees said that quotas should focus on the public broadcaster, that those on commercial broadcasters should be removed and that policy should adopt creative mechanisms to “promote, encourage and incentivise local content” and a flexible approach so that providers could “decide how best to promote and include local content on their services.

2.16.4. The SABC focused only on its own responsibilities. It said that the approach should change from channel-based quotas to network requirements in light of the migration to DTT. The public broadcaster further suggested that government establish content hubs in all provinces as it could not alone be the “sole driver of the creative industry development”. It further proposed the introduction of mechanisms that will allow it to “exploit its archive content in the digital space … to use so-called orphan works on the basis that it can set aside 10% of revenue generated by such content in a trust account to be used for the benefit, and development, of the creative industry”.

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international companies streaming content into the country. It proposed that content requirements (including provisions on independent production) be extended for all broadcasters. Other mechanisms proposed by the coalition include:

- a shift in the intellectual property regime to enable independent producers to exploit content rights on different platforms and in different territories;
- strengthening South African production tax and incentive rebates managed by the DTI and increasing support for the NFVF;
- investigating the establishment of a South African content fund to support production of local content across a number of platforms; and
- strengthening ICASA’s capacity to monitor compliance with South African content requirements.

2.16.6. The MPDP noted that the popularity of South African educational, drama and soaps programming was evidence that the quotas have been successful in stimulating demand for local content. It agreed that convergence and digitisation raise challenges for the local content framework, but argued that these concerns should not lead to local content quotas being removed as emergent services “may take many years to reach maturity, and may not even take root at all”. It proposed that all broadcasters and other content services/distributors “targeting South African audiences” should have South African content obligations. Where it is impractical to subject new media platforms and services to quotas, “expenditure requirements could be considered, where services such as ISPs are required to contribute a certain percentage of their annual revenue to a local content production fund”. It suggested that any public broadcasting fund established to support the SABC should also provide funding for South African public interest content.

2.16.7. e.tv emphasised that its capacity to fulfil public interest obligations such as South African content quotas depended on the concerns it had raised about unfair competitive practices by subscription broadcasters and the SABC being addressed. It said the new approach to South African content should be based on ensuring parity between like services regardless of delivery platform.

2.16.8. ACT-SA suggested that the policy approach to community television should consider the sector’s particular circumstances, and thus not require commissioning from independent producers as channels did not have the funds to commission programmes. It further proposed that a contestable fund for public broadcasting set aside grants for
community TV programming, and that government considers adapting existing incentives and funds in place for the film industry to boost South African content production capacity across all platforms

2.17. **Universal access, issues for the visually impaired:**

2.17.1. Protection of children, classification and standards – the SACF stated that the current provisions are sufficient.

2.17.2. SOS stressed the need to ensure a common approach across different regulators and more coordination between these.

2.18. Development of South African languages and social cohesion:

2.18.1. Cape TV/ACTSA said it is difficult for community channels to acquire indigenous language content as it is usually produced by the public broadcaster.

2.18.2. The SABC said it will improve delivery of local content through its radio service platform.

The SABC should be encouraged to share the local content with community broadcasters.

2.19. Institutional arrangements:

2.19.1. Cape TV/ACTSA suggested that an enabling environment should be created for the community TV sector through regulation, oversight and funding. ICASA must be adequately resourced to monitor community channels with specific regard to good governance and fulfilment of their license mandate.

2.19.2. According to the SABC, ICASA should confirm and ensure the sustainability and feasibility in the sector before issuing a license to new applicants. ICASA should conduct a market research prior to the licensing of new entrants and conduct regulatory impact assessments to ensure that regulations that are developed are effective and efficient within the broadcasting sector.

2.19.3. This issue should be contextualised within the Presidential Review Report (2012) on the review of State Owned entities (SOEs) and review of SOEs across government as announced on SONA 2017 and 2018. There is a need to minimise duplication of mandate in the communications sector.
The above scenario reflects the diverse views on various issues. These issues shall be at the core of our policy review process. Other issues that the industry did not adequately reflect on include the following:

- Access to broadcasting services by people with disability particularly those with visual and hearing impairments,
- Boosting the local languages,
- How to continue using broadcasting services to deepen democracy and build our fledgling social cohesion.

These are the issues that we cannot ignore given our position as a developing country. We should therefore reflect on them.

3. **The Next Step/process:**

A lot of broadcasting policy issues have been intensely discussed as contained in the ICT Integrated ICT Discussion Document and the subsequent recommendations report.

Noting the comprehensive process already undertaken, the process to review the broadcasting policy will follow a two-pronged approach:

3.1. **A separate review for public broadcasting:**

As shown in many jurisdictions, the review of public broadcasting requires a separate process to deal with the sector’s issues in a comprehensive manner. This will start with a notice inviting submissions on various issues pertaining to public broadcasting in July 2018. This will be followed by a consultative colloquium on public broadcasting in August 2018. The outcome of these processes and the recommendation emanating from them will inform the policy on public broadcasting for integration into the broader policy white paper.

3.2. **Gazetting of the Draft White Paper:**

Upon obtaining approval from Cabinet, the Draft White Paper on the Broadcasting Policy will be gazetted for public comments in the 3rd Quarter. In addition to the public broadcasting issues, the White Paper will incorporate issues gathered during the formulation of the National Integrated ICT White Paper developed by the Department of Telecommunications and Postal Services, and subsequently approved by Cabinet.

3.3. **Finalisation of the White Paper on Broadcasting**
The Department intends to submit the White Paper to Cabinet for approval in the 4th Quarter of 2018/19 Financial Year.

4. Final Word

As Minister, Nomvula Mokonyane said, “this Issues Paper marks the beginning of a journey that will transform and create a new vision for broadcasting in South Africa. We want South Africans, particularly the millennials and the born during technology (BDTs) generation to join us because through their active participation we can create an industry that cater for their needs into the future when many of us are gone”.

Please submit your feedback on the Emerging Issues paper to the review secretariat using our online submissions form at: www.doc.gov.za, or by email to: pbs@doc.gov.za, or by post to: The Broadcasting Policy Review Secretariat, Department of Communications, Tshedimosetso House, 1035 Corner Frances Baard & Festival Street, Hatfield, Pretoria, 0001