



***MEDIA INSTITUTE OF SOUTHERN AFRICA-
SOUTH AFRICA CHAPTER
SUBMISSION ON PUBLIC SERVICES
BROADCASTING DISCUSSION PAPER 2009
GOVERNMENT GAZETTE NO 32420 ISSUED ON
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SUBMITTED ON 31.AUGUST 2009***

1. INTRODUCTION

1.1. MISA-SA would like to thank the Department of Communication and the Parliamentary Portfolio Committee on Communication for the opportunity presented to stakeholders and interested parties to submit their inputs in order to assist the deliberations of the public services broadcast amendment bill issued as Government gazette No 32420 on 20 July 2009 (electronic communication Act 36/2005) notice inviting comments on public services broadcasting discussion paper to amend the broadcasting Act 1999.

1.2. The Media Institute of Southern Africa - SA Chapter (MISA-SA) welcomes the opportunity to lodge its presentation on the discussion paper. MISA-SA requests an opportunity for an oral presentation on a date to be determined by the Parliamentary Portfolio Committee on Communication.

1.3. **MISA-SA will focus in this submission primarily on Part B and Part D of the discussion paper.**

1.4. MISA-SA is part of the Civil Society Coalition: Save our SABC and in the SOS submission we focus mainly on the Public Broadcaster.

2. WHO IS MISA

2.1. The **Media Institute of Southern Africa (MISA)** is a regional membership-based non-government organization promoting media diversity, independence, pluralism and self-sufficiency. MISA is active and operates within eleven countries in the SADC region.

2.2. **MISA-SA** is a membership organisation. MISA South Africa is a **chapter** of MISA, Africa's largest media advocacy NGO based in Windhoek Namibia. The body was established as a direct response to the challenge of the Windhoek Declaration in 1991. We work to ensure a media that educates informs and empowers all sectors of society and that helps journalists and media workers to exercise their rights so that they can inform the public without fear or favour. We are at the forefront of initiatives to ensure to redress imbalances in our society especially in and through the media. The programmes and activities of MISA are done to ensure the growth and consolidation of a vigorous, free, and independent South African media that will tell the South African story and foster democracy and development through communication in the public interest.

2.3. MISA-SA will not respond to all the questions raised in the discussion paper "the amended". MISA-SA will deal only with questions relevant to its Community Broadcasting Services with a focus on Community Television. We will not follow the order of the discussion paper but we will try to answer questions asked in the paper.

3. UNDERSTANDING OF THE AMENDMENT

- 3.1. MISA-SA would like to draw the Honorable Minister, The Department and Parliament Portfolio Committee on Communication's attention to the difficulty herein is a need to clarify public regarding the issues at hand Amendment vs. repealing of the Broadcasting Act to be read in the context of this policy process.
- 3.2. In this submission MISA-SA would like to address its submission to a special area of Community Television. These challenges are not new to the Community Broadcasting Services Sector. As honorable members are aware of Community Media and Broadcasting has gone through them and to this date Community Media still experiences market discrimination by incumbents herein SABC, Multichoice, and Sentech etc.

4. THE POLICY PAPER

- 4.1. MISA-SA is in agreement with most sections of part B of the discussion paper regarding the need to provide response of s34 (4) of the broadcasting Act (1999).
- 4.2. MISA-SA strongly agrees that Community Broadcasting Services has demonstrated that it can carry its mandate as prescribed by the related legislation if provided an enabling environment.
- 4.3. However Community Broadcasting Services still does not enjoy the incentive of delivering its mandate. To this day government has not made provision for a **Community Broadcasting Incentive Scheme** that seeks to promote, protect and provide for exclusivity where there is a need.
- 4.4. MISA-SA is strongly convinced that " there is a need to provide such an incentive and there must be guidelines to managing the incentive scheme". For example the Department of Trade and Industry is facilitating a scheme called Business Product Supply Development Programme (BPSDP). The scheme is providing support to small companies that are entering the market. This is one of the

mechanisms that we propose for a **funding model** of Community Broadcasting Services.

5. GENERAL REGULATORY ISSUES

5.1. The legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation, including promoting respect for freedom of expression, diversity, and the free flow of information and ideas, as well as a three-tier system for broadcasting: Public Service, Commercial and Community.

5.2. All formal powers in the areas of Broadcast and Telecommunications regulation should be exercised by public authorities who are protected against interference, particularly of a political or economic nature, by among other things, an appointment process for members which is open, transparent, involves the participation of civil society and is not controlled by any particular political party.

5.3. Decision-making processes about the overall allocation of the frequency spectrum, should be open and participatory and ensure that a fair proportion of the spectrum is allocated to broadcasting uses. The frequencies allocated to broadcasting should be shared equitably among the three tiers of broadcasting.

5.4. Licensing processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent and based on clear criteria that include promoting media diversity in ownership and content.

5.5. Broadcasters should be required to promote and develop local content, which should be defined to include African content, including through the introduction of minimum quotas. The

government should promote an economic environment that facilitates the development of independent production and diversity in broadcasting.

5.6. The development of appropriate technology for the reception of broadcasting signals should be promoted.

6. THE CREATION OF THE INCENTIVES SCHEME FOR COMMUNITY BROADCASTING SERVICES

6.1. MISA-SA acknowledges that despite the setting up of Media Development Diversity Agency (MDDA) over the period of its operation it has been proven that MDDA support a monolithic project and is biased to community sound broadcasting services. MISA-SA propose that the department set up an incentives scheme that will be hosted by the department of Trade and Industry and core administered by both the department of Trade and Industry and Department of Communication.

6.2. That the MDDA should: -

Report directly to the Department of Communication and it must be provided power to source matching funding in the international and private sector as a funding Agency

6.2.1. Be provided a state owned enterprise powers so that it can be directly involved in protection of these social markets as an Agency.

6.3. The Sentech Act: -

6.3.1. Be amended to be in line with the current dispensation i.e. Digital Migration of Broadcasting Services and Convergence, Electronic Communication Act and the inclusion of Community Television carrier on Signal Distribution on Preferential Services

6.3.2. All licenses issued in terms of the Sentech Act are reviewed so as to allow ICASA the Regulator to issue these licenses in the public interest.

6.3.3. Sentech must be regulated in the public interest and should be accountable to the public

6.4. LIBERALISATION OF BROADCASTING SERVICES

6.4.1. The issues of community media and digital migration of broadcasting services from analogue to digital provides opportunity for the introduction of community television in the market thus introduced for the liberalisation of broadcasting services, broadcasting technological, platforms media, signal distribution, ownership and control – suggested to proponents of marketisation that spectrum scarcity arguments are no longer valid. Thus makes the Sentech Act no longer relevant in this day.

6.4.2. MISA-SA submits that Sentech is still run the old way and if this is not transformed the Republic will not realise its future vision to free the public from the current monopolistic market lead by strong market fundamentalist agenda.

6.4.3. MISA-SA argues that there is no need or justification for state regulation to discriminate against COMMUNITY TELEVISION SERVICES in the Republic.

6.4.4. MISA-SA agrees that there was growing concern that state monopoly of broadcasting services limits freedom of movement on the airwaves. This will not allow for the provision of more channels as they will still be controlled in a monopolistic way

6.5. MONOPOLY AT LEVEL OF SIGNAL DISTRIBUTION AND TRANSMISSION

6.5.1. MISA-SA is aware of monopoly of signal distribution of Broadcasting Services by the state and rich private signal distribution companies.

6.5.2. MISA-SA note that as much as state control Sentech it has just prioritice South Africa broadcasting Corporation as its major client

and not allowing community media to enjoy equitable access under the must carry and common carrier obligation, not provide broadcasting side monopoly Orbicom is a private signal distribution company that carries the corporation called Multichoice, DSTV.

6.5.3. For the Public Services Broadcasting charter to be enforceable monopolistic approach is not a way to go. **Then community broadcasting will seek exclusivity on certain section of the market in order to carry its signal distribution and transmission cost which is currently the biggest challenge in the market.**

6.5.4. Sentech amendment to cater for community media, MISA-SA is aware that Sentech is not in a position to cater for the community media sector for both community television and radio on preferential services. Therefore proposes that we need to review the Sentech Act so as to make it relevant to the current dispensation.

6.5.5. National Community Media Signal Distribution New Company

If the state has to promote media diversity and freedom of expression a new company must be licensed to give stock to Community Media Signal Distribution operator still to be funded 100% by the state to carry Community Broadcasting Services.

6.5.6. Exclusivity on sections of the market

6.5.6.1. Exclusivity on high site (To Be Identified by New Co)

6.5.6.2. It must use existing high site provided by Sentech

6.5.6.3. Government Services Advertising at all levels (exclusivity to Community broadcasters

6.5.6.4. Advertising of Public Services Announcement

6.5.6.5. E-Governance services 90% of the production to be done by community media and its operators

6.6. All these proposals should be seen as addressing the current challenges facing community media and community television to be specific,

6.7. MISA-SA submitted that community broadcasting should be protected against the backdrop of the incumbents not allowing communities to own television services.

7. DECLARATION OF THE COMMUNITY BROADCASTING CHARTER “THE CHARTER”

7.1. MISA-SA welcomes the Charter as it will obligate community broadcasters to stick to its mandate and to further promote and foster freedom of expression, access to information, promotion of African culture and religion, the advent of education and learning, continue to demystify technology, media and broadcasting i.e. digital broadcasting in particular.

7.2. The Charter should encompass section 3(16, 18, 19) and 50 of the ECA it should also borrow from the IBA ACT

7.2.1. This will include the following

7.2.1.1. Authority to investigate application to renew, amend or transfer where the Authority shall investigate any application for renewal, amendment or transfer of a license, and the provisions of regulation 4 shall *mutatis mutandis* apply in relation to such application.

7.2.1.2. Discretionary bearing regarding renewal, amendment, or transfer The Authority may in its discretion hold a hearing with a view to making a decision regarding the renewal, amendment or transfer of a license, in which event the provisions of regulation 5 shall *mutatis mutandis* apply.

7.3. MISA-SA propose that ICASA the regulator should be required under the Electronic Communications Act (“the Act”) and the Broadcasting Act 1999 (as amended) to draw up a Charter for television and radio,

covering standards in programmes, sponsorship, fairness and privacy. This Charter is to be known as the Community Broadcasting Charter (**"the Charter"**).

7.4. Community Broadcasters Charter must be binding and obligate community broadcast operators. It must outline and inform the rules and regulations, of the principles that apply to each section, the meanings given by ICASA and of the guidance issued by ICASA, all of which may be relevant in interpreting and applying the Charter. No rule should be read in isolation but within the context of the whole Charter including the headings, cross-references and other linking text.

7.5. In setting these standards, ICASA must secure the standard objectives set out in the Act. This not only involves setting minimum standards but also such other standards as may be appropriate.

7.5.1. Minimum standard of ownership structure

7.5.2. Minimum standard of operations

7.5.3. Minimum standards of management structure

7.5.4. Minimum standards of community participation and membership

7.5.5. Minimum technical requirement for broadcasting services

7.5.6. Minimum standards of budget required

7.5.7. Minimum standards of Quality of production

7.5.8. Minimum qualification of Leadership and Management.

7.6. The Charter has to be drafted in the light of the taking into consideration of the constitution of the republic the bill of rights. In particular, the right to freedom of expression, as expressed in the constitution, encompasses the audience's right to receive creative

material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society.

7.7. This charter, together with EC Act should include sections regarding the right to a person's private and family life, home and correspondence;

7.8. A session, catering for the right to freedom of thought, conscience and religion; and the right to enjoyment of human rights without discrimination on grounds such as sex, race and religion, should apply.

7.9. Broadcasters are required by the terms of their community radio licence to observe the Standards Charter and the Broadcasting Code, which are to be interpreted as references to the charter. Observance of this Charter is also required in the case of the ICASA by the ICASA Act .Except where the Charter states otherwise, the term "television broadcasters operation" refers to providers of television programme services (including any local services such as restricted television services), the SABC, and "radio broadcasters" refers to providers of radio programme services (including local and community radio services and community digital sound programme services) and the SABC.

7.10. Insert into the definitions of the Act "General control" is wider than editorial control in that it includes control over services and facilities to which access is provided (for example through the inclusion in the main service of a link or facility to interactive features) and over which the broadcaster may not have editorial control.

7.11. Although a link included in the service may lead to features outside of that service which are not regulated by SABC, the provision of access to those features by, for instance, the inclusion of a link, is within the control of the broadcaster and so within SABC's remit. SABC may therefore require such a link or facility to be removed where SABC

has concerns, in the light of its statutory duties and, in particular, the standards objectives set out in section 319 of the Act, about the material to which it leads. In any event, the transition from broadcaster to third-party control must be clear to the viewer, so as to manage both audience expectations regarding the material to which they are being led and the risk to the broadcaster of being found in breach of this Charter.

7.12. Where the Charter has been breached, ICASA will normally publish a finding and explain why a broadcaster has breached the Charter (these findings must be available in ICASA website www.icasa.org.za . When a broadcaster deliberately, seriously or repeatedly breaches the Charter, ICASA may impose statutory sanctions against the broadcaster. ICASA's procedures for investigating cases (following the receipt of a complaint or otherwise) and applying statutory sanctions to broadcasters must be on the website. Members of the public who have no access to the web can ask ICASA to send them a copy of the procedures by post. Or ICASA must make them available to all post offices in the republic.

7.13. MISA-SA note that the Community Broadcasting Charter, where the context admits, references to any legislative provisions, whether in regulation or legislation, include a reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time; any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.

8. DRAFT PUBLIC SERVICE BROADCASTING CHARTER

8.1. WHAT IS THE CHARTER

- 8.1.1. The purpose of the Charter is to provide an understanding to the people of the Republic of what is expected of COMMUNITY TELEVISION SERVICES IN return for the significant public funds provided to COMMUNITY TELEVISION SERVICES from the proceeds of the television licence fee.
- 8.1.2. Broadcasting law requires community broadcasting both radio and television services to see the character law enforcement policy of a public service broadcasting bill, to be regulate free-to-air, free and universal services, where practicable, to the whole community own and control by the community through a democratically elected members of the operation.
- 8.1.3. Building on Community television statutory remit the Charter is a statement of principles that clarifies what is expected of COMMUNITY TELEVISION SERVICES AS the community public service broadcaster, including COMMUNITY TELEVISION SERVICES's accountability to its audience.
- 8.1.4. The Minister for Communications will keep the Charter under review so as that it can reflect change in the nature of Republican society along with changes in the broadcasting environment. A formal review will be carried out within five years at a maximum.

8.2. COMMUNITY BROADCASTING STATUTORY MANDATE

- 8.2.1. Under the Community Broadcasting charter community broadcasting services are required to provide a comprehensive range of programmes, in official languages as stipulated for by the constitution of the republic, which reflect the cultural diversity of the whole republic. Community broadcasting services (television) is specifically mandated to provide the following:
- < Programmes that are local, entertain, inform, and educate
 - < Programmes of news and current affairs
 - < Coverage of sporting, religious, election, music and cultural activities
 - < Coverage of community development and the Parliamentary, legislative and council activities
- 8.2.2. In fulfilling this mandate community broadcasting services is required to cater for the expectations of the community generally as well as the expectations of members of the community with special or minority interests and in every case to respect human dignity. Community television should also mandate to facilitate or assist contemporary

cultural expression and to encourage or promote innovation and experimentation in broadcasting.

- 8.2.3. While community television can decide whether programmes are to be produced in-house, commissioned, or acquired, it has a statutory obligation to commission a prescribed value of programming from the independent production sector.

IN ADDITION TO THE OBLIGATIONS PROVIDED FOR IN NATIONAL LEGISLATION COMMUNITY TELEVISION ALSO HAS OBLIGATIONS SET DOWN UNDER INTERNATIONAL PRACTISE, MOST NOTABLY

- < THE CHAPTER ON BROADCASTING WHICH REQUIRES TO ENSURE, AMONG OTHER THINGS, THAT AT LEAST 50% OF ITS PROGRAMMING ON TELEVISION, EXCLUDING NEWS, SPORTS EVENTS AND GAMES, IS RESERVED FOR AFRICAN WORKS, AND.
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- < COMMUNITY TELEVISION SERVICES, among other things, should maintain separate accounts in relation to costs and revenues associated with its public service and commercial activities

9. GUIDING PRINCIPLES

9.1. COMMUNITY SERVICE REMIT

- **COMMUNITY TELEVISION SERVICES** as the community service broadcaster shall reflect the democratic, social and cultural values of the society it broadcast to and the need to preserve media pluralism
- **COMMUNITY TELEVISION SERVICES** at all times shall strive to reflect fairly and equally the regional, cultural and political diversity of Republic and its peoples
- no editorial or programming bias will be shown in terms of gender, age, disability, race, sexual orientation, religion or membership of a minority community

REGIONAL EMPHASIS

- news reporting and public affairs coverage shall be undertaken from a variety of perspectives; events should not be assessed and reported from a local perspective alone

- **Community Television Services**
- Programming shall reflect regional diversity and include a significant range and proportion of indigenous programming made outside the greater Dublin area

CHILDREN

⟨ IN ITS PROGRAMMING, COMMUNITY TELEVISION SERVICES SHALL ENSURE THAT CHILDREN ARE RESPECTED AS YOUNG CITIZENS WITH A VALUED CONTRIBUTION TO MAKE AND A VOICE OF THEIR OWN

⟨ **COMMUNITY TELEVISION SERVICES** acknowledges the strong influencing powers of broadcasting, particularly on children and young people. In its programming **COMMUNITY TELEVISION SERVICES** will have regard to the responsibilities associated with this.

Language

- In reflecting the multilingual nature of republican society **Community Television Services** will actively support the use of the South Africa languages in everyday life through the production of suitable programming

Social Inclusion

- **Community Television Services** programming shall be socially inclusive and shall reflect the lives and concerns of all social strata in Republic

Physical, Sensory, and Intellectual Disability

- **Community Television Services** is obliged to take into account the needs of those with a physical, sensory, or intellectual disability. **Community Television Services** will take measures to increase the accessibility and relevance of programming to such audience

GENDER

- In its programming and editorial content, **COMMUNITY TELEVISION SERVICES** will strive to resist gender stereotyping

OTHER

- In its programming, **COMMUNITY TELEVISION SERVICES** will respect the sanctity of an individual's private life, unless a compelling public interest demands otherwise

PROVISION OF SERVICES

In terms of services COMMUNITY TELEVISION SERVICES commits:

- To broadcast schedules on all its channels which establish a benchmark for quality, range and diversity in broadcasting on the island of Republic
- ⟨ To the key genre categories of national and international news and current affairs (including coverage of the Jazz), arts, business, children's programmes, drama, education, entertainment, features, history, music, science and technology and sport
- ⟨ COMMUNITY TELEVISION SERVICES sports' programming will reflect the demands for national, regional, minority, amateur and local sports in Republic today
- To schedules which are high on original content and which provide a showcase for home production. In particular, COMMUNITY TELEVISION SERVICES will encourage an approach to production, which recognises originality of idea and techniques
- To recognize the multilingual nature of society
- To recognize the special needs of children as part of the audience
- To recognize the particular contribution of regional and local character
- To develop content, which can be available to its audience across all delivery platforms
- To national and international news of high quality journalism and impartiality, as a cornerstone of its schedule. COMMUNITY TELEVISION SERVICES news coverage must be accurate, impartial and objective: this will help set the agenda for informed democratic debate in Republic
- That as Republic's national public service broadcaster, it should, through its programmes and its public activities, encourage and equip its audience to play an active role in their communities. In so doing, it has a responsibility to reflect the full range and diversity of cultures within Republic
- To continue to honour its commitment to independent producers and to encourage the creativity of independent productions
- To maintain and develop the COMMUNITY TELEVISION SERVICES website to the highest standard
- To continue to nurture its performing groups so that their music can be widely heard and appreciated through broadcast, public performance and recording
- To ensure a well managed and accessible audio-visual archive which can enrich the South African national heritage

- In the case of its programming, to maintain and cherish its freedom from political control or influence and from all other vested interests, whether commercial, religious, social or cultural

In the delivery of its services COMMUNITY TELEVISION SERVICES will have regard to the manner in which it addresses the requirements of people with disability

ACCOUNTABILITY

In terms of accountability COMMUNITY TELEVISION SERVICES:

- Will publish in advance broad frameworks for its schedules with commitments as appropriate for the individual channels on local news papers
- Will, at the end of each year, report on its performance against targets set; these reports being subject to independent review
- Produce details in its annual report of the cost and revenues associated with each of its services on local newspapers
- Will keep detailed financial records in a manner that will enable the Minister of Communications, Marine and Natural Resources, or a party appointed by him, to evaluate COMMUNITY TELEVISION SERVICES performance in fulfilling its statutory remit
- Recognizes encourages and welcomes the public's expression of views on COMMUNITY TELEVISION SERVICES performance and establish an Audience Council as a means of enhanced communications and ensure that all complaints are logged, acknowledged and investigated.

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- Introduce a Code of Fair Trading to clarify how its activities will operate in a broadcasting landscape which has competing interests

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- Pledges to deliver to its audience the highest level of value for money in return for the public investment in its programming. It will offer that value in terms of its quality schedule and the efficiency with which it conducts its business
- ⟨ Will provide details of license language programming and other language services in its Annual Report.

Conclusion

MISA-SA would like to thank the Department of Communications for this opportunity. We are also available to make a presentation and engage with this submission. The names of 3 MISA-SA NGC members are included for this purpose.

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