



**WRITTEN SUBMISSION ON THE PUBLIC BROADCASTING SERVICES
BILL (2009)**

BY THE NATIONAL COMMUNITY RADIO FORUM (NCRF)

15th January 2010

1. Introduction

1. The Department of Communications (DoC) published the ‘Public Broadcast Services Bill, the Charter of the Corporation and the Charter of Community Broadcasting Services’ (the Proposed Bill) in Notice No. 1409 in Government Gazette No. 32663 on 28 October 2009. The deadline for written submissions was set for 7 December 2009 and thereafter extended to 15 January 2010.
2. The NCRF would like to thank the Minister of Communications and the DoC for the opportunity to make this written submission. The NCRF would also welcome the opportunity to make oral presentations on these issues.
3. The National Community Radio Forum (NCRF) is a national, membership-based association of 103 Community Radio Stations and support service organisations. The NCRF was established in 1993 to lobby for the diversification of the airwaves in The Republic of South Africa and to promote the development and growth of the Community Radio sector. The NCRF is governed by a Charter and the Constitution that are implemented by the Board of Directors elected bi-annually at a Bi-Annual General Meeting.

2. ORGANISATION OF OUR SUBMISSION

1. First, the scope of the NCRF’s submission is outlined.
2. Second, the submission hones in some general policy issues, including the need for a substantive policy review process
3. Third, the submission looks at the objectives outlined for community broadcasters.
4. Fourth, the submission looks at a number of key issues: funding, governance and independence.
5. Fifth, a number of individual submissions received from community radio stations are attached as annexure.

3. SCOPE OF THE NCRF’S WRITTEN REPRESENTATIONS

1. The NCRF appreciates the DoC and the Minister of Communication's ('the Minister') enthusiasm and the commitment they have shown in bringing about very necessary legislative reform and is furthermore very heartened by the DoC's appreciation of the vital role played by community broadcasters. While the NCRF acknowledges the need to deal with these matters as speedily as possible, the NCRF is of the view that this is an opportunity to deal with challenges in a holistic and comprehensive manner and should not be fast-tracked.
2. This submission is based on resolutions passed at the NCRF's Bi-Annual General Meeting held in Upington, Northern Cape in December 2009. The BGM was attended by 70 member stations and service organisations. The submission also draws on the resolutions taken at the NCRF's Policy Reflection workshop held in October 2009.
3. The NCRF, in support of the DoC's efforts to bring out legislative reform, and in partnership with the SOS Coalition: Supporting Public Broadcasting; have engaged in a campaign to encourage community radio stations to make individual submissions and for these stations to run public awareness programmes on the proposed Bill through the production of materials and the provision of support. This is in recognition of the principle that citizen participation in the legislative process is incredibly important. Individual submissions are attached as annexure to this representation. The NCRF would like to stress that public involvement and consultation should not be short-circuited.
4. The NCRF is a member of the Coalition and supports the Coalition's submission. Given the limited amount of time to put together a submission, the NCRF has focused its submission primarily on those aspects of the proposed Bill that speak to community broadcasting issues while the SOS submission takes care of other matters, particularly on issues related to the public broadcaster, Constitutional and procedural matters in a more substantive manner.
5. The NCRF acknowledges the extension for public comment to the 15th January 2010 (from 7 December 2009). However, the NCRF wishes to place on record that the extension coincided with the annual festive season period which meant that there was limited time for the wider public consultation that is essential as part of our democracy. The NCRF again reiterates the call for more time to be given for public comment and input into this process.
6. Given the tight timeframes, the NCRF has focused its attention on some of the main issues and problems that arise from the Proposed Bill. The NCRF also reserves the right to submit updated submissions informed by further contributions through community consultations by stations.
7. The NCRF assures the DoC and the Minister that it wishes to engage in a frank, open and constructive engagement with the Proposed Bill to ensure that public broadcasting, and community broadcasting in particular, serves to deepen and strengthen our democracy,

contributes to diversity, is sustainable and does indeed serve the needs of our people and our emerging democracy.

4. A Comprehensive Policy Review Process

1. Given the lack of access to the underlying motivations and background that gave impetus to the Proposed Bill, the NCRF's response is limited and may have its shortcomings. The NCRF acknowledges that the Proposed Bill was drafted with the intention of resolving many of the challenges that have beset the public broadcaster and community broadcasters. However, in the absence of concrete information on what the identified problems are, it is difficult to make sense of some of the provisions of the Proposed Bill. Furthermore, the Proposed Bill does not address some of the root causes for existing challenges facing community media such as the need for preferential transmission rates and some of the proposals could in fact exacerbate some of the challenges
2. The legislative processes in the Republic, together with Constitutional imperatives, are based on the principles that good law-making should be clear about what it is trying to achieve; it should be easy to both understand and implement; and it should not be vague.
3. Currently, there are a range of different laws that govern broadcasting. These include, among others:
 - a. The Electronic Communications Act of 2005;
 - b. The Independent Communications Authority of South Africa Act of 2000
 - c. The Broadcast Act of 1999

The EC Act and the Broadcast Act currently deal with community broadcasting.

4. Some key pieces of legislation, like the Independent Broadcasting Authority of South Africa Act, 2000 ("the ICASA Act"), or the Media Development and Diversity Agency Act, 2002 ("the MDDA Act") are not taken into account in terms of the proposed amendments that are envisaged. Such an oversight would contribute to a policy quagmire with inconsistent and indeed clashing provisions in the various pieces of legislation that regulate broadcasting
5. Given the nascent nature of community broadcasting and its limited engagement with policy matters, this represents a potential problem for community broadcasters and others like the Regulator for example where there are inconsistent and even conflicting provisions in the various pieces of legislation and where different pieces of legislation will have to be consulted. This

conflict and inconsistency may be the unintended outcome if this opportunity is not used to ensure clarity and consistency through a thorough policy review process.

6. The NCRF is also of the view that the community broadcasting sector would be better served by the EC Act dealing with community broadcasting and that the Broadcast Act be amended to focus on public broadcasting. There is also a need to clarify that public broadcasting services is the public broadcaster – the SABC – without diluting the current principle that all broadcasters have to meet certain public service obligations. Any proposed changes to community broadcasting should then be achieved through amendments to the EC Act.

5. Objectives of Community Broadcasting

1. The NCRF believes that for community media to fulfill its role in our participatory democracy – facilitating meaningful freedom of expression and access to information - it must be independent of the government and other powerful sections of society and accountable to the broad community that it serves.
2. Section 20 of the Proposed Bill outlines a long list of objectives for community broadcasters. Such a list is unnecessary given that the objectives of community broadcasting are already defined in the individual license conditions for Community Sound Broadcasters.
3. Even more importantly, these objectives are too prescriptive; does not take into account the vast diversity that exists within many communities nor does it allow for communities themselves to define what its core issues are. This contravenes the basic tenets of community broadcasting which is broadcasting driven by the community for the community. Each community should define what the objectives of its community broadcaster should be as guided by the Regulator, ICASA.
4. The NCRF seeks clarity on the definition of the ‘developmental state’. The critical role of community broadcasters in development is universally acknowledged and such a role should be strengthened. Such strengthening should be based on the principles of freedom of expression, independence and impartiality and the role of community broadcasters should be to promote human rights, democracy and the Constitution and create platforms for dialogue and debate and not as a mere mouthpiece for government or any other stakeholder. The very robust and vigorous role that community media can play in development should not be diluted in any way. This means safeguarding the active role a station plays in creating platforms for debate, discussion and where the community is encouraged and empowered to shape their development and express their views freely. But also emphasizing the important role of all stakeholders especially Government to partner Community Broadcasters on developmental projects.

6. The Public Broadcast Fund

1. The NCRF broadly welcomes the intention to establish a Public Broadcast Fund as a measure to ensure greater sustainability among community broadcasters and believes that it is imperative that community media should have access to sufficient resources to produce programming and facilitate participatory process that ensure meaningful freedom of expression, access to information and community ownership and control of projects.
2. The NCRF wishes to raise a concern around the extension of the MDDA mandate and the possibly negative implications this could have for community broadcasters. Currently, in terms of the MDDA Act No.14 of 2004, 60% of the Agency's funds are ring-fenced for community media. In terms of the Proposed Bill, the MDDA will administer the PSB Fund and the Fund will fund: the public broadcaster (including regional, international and other services), content development, signal distribution and the Broadcast and Signal Distribution Museum. There is a real danger that such an expanded role for the Agency could lead to a marginalization of community broadcasting and a reversal of gains already achieved by the sector. The NCRF therefore calls on the DoC to ensure the regulations of the Fund allocate sufficient resources to support an independent community media sector to ensure that the sector does not have to compete with the SABC, Sentech, and others for access to a common pool of resources;
3. The NCRF is also concerned that there has been no economic modeling or research that indicates the projected levels of revenue that will be collected through the proposed tax. In the absence of such data, there is a real danger that the PSB Fund will be insufficient to cover the costs of the public broadcaster, let alone all the other contenders for funding in terms of the Proposed Bill. Hence the proposal that any funding formula should ring-fence support for community media development.
4. The NCRF would suggest that that a number of different options could be explored to enhance the financial sustainability of community broadcasting, including inter alia, an annual subsidy from the state for stations that comply with the regulations and requirements - on the basis that community broadcasting and information is in the public interest and should be supported with public funds.
5. The NCRF is concerned about the requirement that community broadcasters comply with the Public Finance Management Act, 2006 ("the PFMA").
 - a. Firstly, the PFMA is not appropriate to institutions of the size, capacity, and complexity of community radio stations and it does not represent a standard for best practice in community radio development in South Africa and internationally.
 - b. Secondly, the PFMA as it currently stands does not apply to entities such as community broadcasters. This would therefore require an amendment to the PFMA. This provision again points to contradictions within the Proposed Bill as municipalities are governed by the Municipal Finance Management Act (MFMA).
 - c. Thirdly, given current capacity and resource challenges within community broadcasters, such a requirement would severely impact on the sector's ability to access these funds.
 - d. Finally, one of the principles of development funding is that it should not increase the administrative burden on the beneficiary but should rather be enabling.

6. The NCRF acknowledges that compliance and accountability needs to be enhanced and strengthened in the sector; this should be driven by the principle of self-regulation with the sector setting up its own frameworks, standards and processes. The NCRF therefore supports the need for accountability within community media and requests the DoC, in partnership with MDDA and the sector itself, to develop financial and other management standards based on best practice in community radio development in South Africa and internationally.
7. Sustainability is hugely affected by the high transmission rates charged by Sentech and other prohibitively high costs. A much more important intervention would be to ensure a preferential rate for transmission costs for community broadcasters.

7. Governance and Participation

1. The Right to Freedom of Expression, Freedom of Association and the Right to Access Information are protected in the South African Bill of Rights.
2. Section 22 and 23 of the Proposed Bill and various provisions of the proposed Community Charter appear to introduce a 'one size fits all' approach to governing structures for all community broadcasters. The provisions also do not take into account 'community of interest' broadcasters nor the fact that community broadcasters are constituted variously and through a range of not-for-profit entities such as Trusts or Section 21 companies. These contain their own provisions for the establishment of such entities and the governance requirements thereof which are in conflict with the provisions of the Proposed Bill and Charter.
3. The NCRF strongly believes that:
 - 3.1. The proposed Bill should rather emphasize common governance principles and processes and enable each community to decide how it wants to structure participation based on its own unique needs and conditions rather than a mechanistic one-size-fits-all approach
 - 3.2. Meaningful community participation in a community broadcaster's governance can best be achieved through a Sector Based Governance model that enables only civil society and community organizations to nominate prospective Board/Council to be elected at AGMs to represent agreed sectors in the community. This model will bring stability and organizational resources and accountability to media projects.
 - 3.3. Community broadcasters should be free to develop policies and transparent mechanisms to enable community members to share the overall programming and editorial policy of the station and to enable community members to access the airwaves – including producing and hosting shows - as community participation should go beyond governance and should be an integral part of all aspects of the broadcaster's work.

- 3.4. License conditions are already in place and ICASA's capacity to monitor effectively should be enhanced and strengthened. One of the main interventions should be to strengthen ICASA to play its monitoring role more effectively.
- 3.5. There is no need for a Charter as the NCRF already has a Charter in place and the principle of the community deciding what is best for that particular community needs to be retained. The sector should be assisted to review and upgrade the existing NCRF Charter into a compulsory sector charter endorsed by all sector associations.

8. Independence

1. Section 3.3(2) of the Proposed Community Broadcast Charter makes provision for the co-option of local municipality officials to the Governing Council as ex-officio members. The NCRF believes that community broadcasters need to be independent of all powerful sectors of society including government and commercial interests and accountable to the broader community they serve. Such a provision raises the possibility of political interference; is inappropriate as it undermines the separation between party political officials and community broadcasters and could impact on the independence of community broadcasters.
2. The NCRF believes municipalities should not be isolated from other stakeholders and that the principle advanced should rather be on encouraging community broadcasters to forge partnerships as widely as possible in their communities, including with municipalities. The NCRF believes that a code should be developed for Municipalities to utilize community media as a local communications platform on a client provider basis and the code should protect the independence of community media. Such a Code should also task Municipalities to dedicate specific budget towards supporting local community media operations.
3. The NCRF therefore submits that:
 - a. Government should not be represented on project Boards/Councils.
 - b. Senior government officials and elected representatives of political parties should be barred from serving on Boards/Councils;
 - c. Station should be free to choose their locations and not be obligated to broadcast from local government offices;
 - d. Stations should be free to negotiate the terms of partnerships with local municipalities if these extend beyond access municipal information.
 - e. Government funded infrastructure be protected through ownership contracts that clearly stipulates that the equipment and infrastructure is publicly funded and hence not the property of the station.
4. The NCRF is also against proposals in the Bill giving the Minister of Communications powers to issue directives to community media on "any matter connected to public service broadcasting" if the entity is unable to "perform its functions as prescribed in this Act" and believes that:

- a. ICASA should be strengthened so as to have the necessary capacity to monitor compliance with the Act and make necessary corrective interventions when non-compliance occurs;
- b. The NCRF has an important role to play in monitoring compliance with the NCRF Charter and as a sector representative body should have access to resources to build its capacity to make necessary corrective interventions in order to enhance compliance of all stations.

Conclusion

The NCRF once again extends its gratitude to the DOC for this opportunity to comment on the Proposed Bill and remains available to engage on this going forward.

Please feel free to contact Mr. Franklin Huizies should there be any queries or clarity regarding this submission.

Email: franklin@ncrf.org.za

Cell: (078) 459-8103

List of Annexure:

Annex A: Radio Laeveld Submission

Annex B: Voice of Wits Submission

Annex C: Fine Music FM

Annex D: Panorama FM