



Submission to the Independent Communications Authority of South Africa (Icasa) on the issues paper entitled 'The review of the broadcasting regulatory framework – towards a digitally converged environment'

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'The review of the broadcasting regulatory framework – towards a digitally converged environment, October 2012'

Submission to the Independent Communications Authority of South Africa

Introduction

We thank the authority for this opportunity to submit on the review of the broadcast regulatory framework towards a digitally converged environment.

The following is a submission to the Independent Communications Authority (Icasa) from Mr Jabulani Nkuna on behalf of the Media Policy and Democracy Project on Icasa's issues paper entitled 'A review of the broadcasting regulatory framework towards a digitally converged environment'

It is not possible to respond comprehensively to an Issues Paper that spans such a large area, so this submission confines itself to responding to questions that relate to ownership and control issues as well as DTT regulations. This submission therefore covers the following sections of the Issues Paper:

Part B:

*Review of ownership and control of commercial services and limitations on broadcasting

*Digital Terrestrial Television Regulations

*General Comments

The *Media Policy and Democracy Project* is a joint collaborative research project between the Department of Communication Science at Unisa, and the School of Journalism and Media Studies at Rhodes University and was launched in 2012, and aims to promote participatory media and communications policymaking in the public interest.

Ownership and Control issues

The existing regulation does not address the concentration of media ownership. Concentration of ownership according to Picard (1998:61), refers to the “the degree of market control enjoyed by the largest firms in an industry.” Albaran et al (2003:41) argues that “mergers, take-overs, acquisitions and alliances that make strong media groups even more powerful continue to dominate the activities of the media companies.”

According to Doyle, (2002:13) concentration of media ownership can take one of the three different forms: horizontal, vertical and diagonal. Doyle (2002:289) describes *horizontal concentration* as the “common ownership of several firms or products in the same market” i.e. merger between two competing broadcasters.

Vertical concentration refers to the common ownership “along the supply chain for single product” (ibid) i.e. DSTV/Multichoice group controls the stage of production (exclusive content deals), transmission (Orbicom), re-transmission (DTH), consumer’s decoders, Encryption and smart cards. This type of concentration makes it difficult for the new entrants to enter the industry as MultiChoice has signed content deals to be exclusive broadcaster of specific programmes or events. New players who want to enter the market will not find any content to attract the consumers as the supply chain of content has already been monopolised. Along the supply chain, the ownership of STBs/decoders has also been monopolised. This means that the audience who wants to switch to another service are supposed to buy another STB in order to receive alternative services. The same thing has happened in the Cellphone industry where mobile phones were locked to specific network provider, however, the regulations dealt with that issue and the society are now able to switch from one network to another whenever they wish without changing their mobile-phone devices or starter packs. As we move toward DTT, the regulations should give the consumers the power to switch from one service to the other without having to pile their leaving room with STBs.

The third type of concentration, *Diagonal concentration* or cross media concentration - also known as market convergence or multimedia concentrations - because it brings together ownership from broadcast, print, and new media through mergers, acquisition, and alliances (Doyle, 2003:13). This is another form of concentration that the regulations need to tackle as we move towards digital convergence. We share similar views with Prof Duncan (2012) submission that the Authority need to “retain and broaden the scope of the current cross-media ownership rules”.

In whatever form it takes, concentration of media ownership consequently lead to lack of diversity, barriers to new entrants, limitations of minority voices, market driven journalism and also lack of competition. While concentration is good for large media companies, Turnstall et al

(1999) argues that “media concentrations limit the effective power of consumers through an informal system of market regulation which hampers democracy.” Modern media companies view themselves as businesses, sites of investment and sources of employment (Cottle, 2003:3). The basic difference between the media industries and normal business according to Cottle (2003:3) is that “the media companies characteristically produce and supply commodities and content that are essentially symbolic in nature and these symbols enter into life of society.”

As indicated in Prof Duncan submission, the Authority “need to assess whether a single company is exercising a predominant influence on public opinion across the range of platforms.” The Authority should review the ruling that ownership and control provisions in the ECA do not apply to subscription broadcasters (Duncan 2012).

Digital Terrestrial Television

In a post-dual illumination, the Authority is required to introduce new players as soon as possible. At the moment, there are few players in the industry who are propagating on what the public should view. According to Berger (2004:2) “there is a need for more media with independent owners to greater the chances of a variety of perspectives occurring and the greater potential for cultures.” The more independent media owners will also allow the ‘plural values of the society’ which again allows the media audience to ‘conform, accommodate, challenge or reject’ and to be interactive in whatever they are given (Chandler 2000:1).

Universal Access goals such as broadcasting in 11 languages, representation of local cultures and tradition will be achieved if there are many players from the three-tier system of broadcasting. Universal access is not only about everyone having access to television – but this also involves the extent to which local people and their languages are represented in the media. In this instance, the media should act as a mirror in a sense that it is required to reflect what is happening within the demographics of the country. These goals will only be achieved if the Authority allocates the available resources efficiently. The allocation that will promote the three tier system of broadcasting is highly recommended.

According to the R2K Campaign (2012), the current regulations on DTT shows that 70.78% has been allocated to commercial broadcasting and only a mere 3.3% has been allocated to community broadcasting. Within the 70% allocated to commercial broadcasters, around 30% has been reserved for subscription broadcasting service.¹ This means that the information poor-societies who have been marginalised in terms of access to information will continue to be marginalised in a digital environment. As a result, the information-rich societies who have enormous access to information through satellite and broadband will expand their sources of

¹ The estimates were done using the Draft DTT Regulations. We welcome the fact that in the final DTT regulations, the authority has decided to increase the allocation for Community TV from 10% - 15% in Multiplex 1.

information through DTT. This situation will undermine the government initiative of bridging the gaps of digital divide. Therefore, our recommendation to ICASA is that community broadcaster's allocation should be doubled in order to sustain democracy through the availability of different voices. Another proposal is that approximately 90% of all allocation in three multiplexes should be reserved for non-subscription broadcast to ensure that information is available to everyone including the disadvantaged.

The other issue which requires the regulations to tackle when it comes to DTT, concerns the efficient use of spectrum. In order to reach the universal access goals an efficient use of spectrum is highly recommended. According to BDM Policy (Sec1.3.2) the most important benefit of DTT is the availability of more channels which will enhance the country ability of ensuring universal services and to ensure more equitable access to information. However, there is a willingness from broadcasters to do high definition broadcast in order to attract high class audience. High definition broadcast will defeat the DTT's benefit of diversity of channels. Once again, the information poor who do not have access to high definition TV sets are set to lose out because the media is only interested in catering for the rich audience. Therefore, the Authority which has been vested with power toward efficient use of spectrum is required to regulate broadcasters to avoid wastage of spectrum. The regulations should restrict the HD broadcast until such time that the HDTV sets are affordable to masses of the population.

Subscription Broadcasting Services

We support the concerns raised by e.tv with regard to the dominance of DSTV. The fact that MNET, which is the sister company of DSTV, has received 40% - 45% of Multiplex 2 will consolidate the DSTV/Multichoice dominance. It will be difficult for new subscription players to enter this market because DSTV/MNET has a better content library than the other prospective players. As we have seen recently, new players like TopTV are struggling because DSTV has monopolised the supply chain. Once again, we call for a complete overhaul with regards to subscription broadcasting services.

Private Sound Broadcast

We support the Authority that the above regulations require a complete overhaul. However, this issue has not been listed in the Authority's timeline.

USAAF Contributions

We support the view by Kagiso that the community broadcasters should be exempted from contributing to USAAF. The community broadcasters have limited sources of income. With all the financial burdens, some of the community broadcasters will end up adopting commercial route in order to be sustainable. Therefore, we call on the Authority to exempt the community

broadcasters from contributing to Universal Access so that they could continue to play the role that they ought to play.

General Comments

We noticed that the 31 October 2012 preliminary report on Icasa's regulatory review process is still largely silent on pertinent issues related to the SABC as well as local content regulations mentioned by Duncan in her 14 April 2012 submission to the issues paper entitled 'A review of the broadcasting regulatory framework – towards a digitally converged environment'. In light of this, we wish to re-affirm the recommendations in this regard here. From Duncan (2012: 23):

Issue 79: What is the optimal way for the Authority to exercise its oversight role with regard to the SABC Charter, especially with regards Section 6 of the Broadcasting Act 1999?

The simple answer to issue 80 is that the Authority must do what it is legislatively mandated to do in terms of the Broadcasting Act. If the goals of the Charter, including the independence of the SABC are to be guaranteed, then the Authority simply needs to start doing its job.

Issue 80: Do the themes articulated in the Issues Paper capture the totality of the regulatory frameworks and issues that the Authority should be addressing? If not, what additional theme(s) do believe are appropriate and why?

The Authority must include in its review a review of the protection and viability of public broadcasting services in a digital multichannel environment. This review must consider all possible models for the existing public service broadcaster, the SABC, and ensure that the SABC is not marginalised in the digital environment, and must include policy proposals to reconceptualise public service broadcasting as public service communications. Future plans must place public service communications at the centre of the digital environment, not condemn it to the margins, which is the most likely scenario if the Authority continues its silence on this sector's future.

As well as Duncan (2012: 33)

Issue 49: How and when should the Authority review the existing local content quotas to reflect the multichannel environment, including mobile digital broadcasting and IPTV/VoD?

Issue 50; Should local content quotas apply to a service or to all new digital channels with a service? Please elaborate.

Issue 51: Should the Authority impose local content quotas on music specific television channels?

Issue 52: Should the Authority merge South African Television and Music Content Regulations into one regulation covering all platforms and services? Please elaborate.

Local content quotas should remain for existing broadcasters, **but need to be reviewed as they are low**. If services are targeting South African audiences as part of their business models, then they have an obligation to contribute to South African content, including music-specific television channels.

In cases where it is difficult for practical reasons to subject such new media platforms and services to quotas, **the Authority could consider imposing expenditure requirements, where services such as ISP's are required to contribute a certain percentage of their annual revenue to a local content production fund**. The Authority should explore options for the establishment of such a fund, and make recommendations to the Department of Communications. This recommendation may raise jurisdictional issues, as the Authority does not regulate internet content.

The Authority should also **explore the possibility of a Public Service Publisher (PSP) being established, 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**. The SABC could be assigned this responsibility. Alternatively, a separate PSP could be established. Content would be made available on a non-exclusive basis so that works could be shared across multiple platforms, incentivising the take-up of local content. The Authority should also recommend an appropriate funding model for the PSP.

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