

SABC REPRESENTATIVES

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SABC MANDATE

- ❑ The SABC welcomes the opportunity to participate in the DTPS public hearings with respect to the Electronic Communications Amendment Bill of 2017 (“the Bill”)
- ❑ The SABC is mandated to deliver a public value proposition of educating, informing and entertaining all South Africans in all official languages in line with the Broadcasting Act of 1999, as amended
- ❑ The SABC delivers on its mandate through 18 radio stations plus Channel Africa and 5 television channels
- ❑ The SABC will focus on areas that affect public broadcasting services

ICASA'S INDEPENDENCE

- ❑ The SABC appreciates that section 192 of the Constitution of the Republic of South Africa 108 of 1996, requires of an independent Authority to regulate the broadcasting sector in the public interest(own emphasis), and ensure fairness and diversity of views broadly representing South African society
- ❑ Section 192 of the Constitution, read with sections 3(3) and (4) of the ICASA Act, No.13 of 2000, as amended, are very clear as to whose responsibility it is to regulate the broadcasting sector and further re-emphasises the independence of the broadcasting regulator
- ❑ The SABC is of the view that the broadcasting regulator was established to function wholly independently of the State, governmental and party political control or interference (this view is supported by section 3(4) of the Electronic Communications Act (“the ECA”) which says ICASA must consider Ministerial Policy directives)

ICASA'S INDEPENDENCE, CONT

- ❑ In 2007, government instituted an inquiry into the Review of the Chapter 9 Institutions and ICASA was one of the reviewed institutions. This inquiry was led by the late Prof Kader Asmal and the objective thereof was to assess the effectiveness of these institutions in as far as strengthening constitutional democracy in South Africa is concerned.
- ❑ The findings of the Kader Asmal Report as approved by Parliament, indicated that the existence of an independent regulator was necessary for the protection of free speech, as well as the creation of a stable industrial and investment environment for the development of this strategic sector in the information age (Page 202)
- ❑ Sec 29 of the Independent Broadcasting Authority Act, No. 153 of 1993 (now replaced by ECA), also gave the regulator the power to control broadcasting frequency spectrum
- ❑ The SABC submits that the power to control broadcasting frequency spectrum should reside with the broadcasting regulator

ICT REGULATORS

- ❑ The SABC has noted the apparent split of ICASA into the Content Regulator and the ICT Sector Regulator as per the provisions of the White Paper
- ❑ The SABC is of the view that this approach/provision is retrogressive as it takes the sector back to an uncovered dual regulator system
- ❑ Consequently, there will be duplication of services that could have been averted if there was one regulatory for the sector
- ❑ Thus, the SABC strongly objects to any potential split of ICASA as it will be costly to the country and affected licensees

RADIO FREQUENCY SPECTRUM

- ❑ **Control of radio frequency spectrum:**
- ❑ Sections 30(1) and (2) read with sections 34A(3) and 34 B (b) of the Bill propose to take the control of the radio frequency spectrum from the regulator to the National Radio Frequency Division and the said Division is to be established under the DTSP
- ❑ The SABC is of the view that the control of the radio frequency spectrum resides with ICASA as part of its regulatory function which is afforded to it by section 192 of the Constitution
- ❑ Thus, the SABC proposes that this function should remain with ICASA

RADIO FREQUENCY SPECTRUM, CONT

❑ **Radio frequency sharing:**

- ❑ Section 31(C) of the Bill requires radio frequency spectrum licensees to share licensed spectrum
- ❑ It is understood that spectrum sharing is the simultaneous usage of a specific radio frequency band in a specific geographical area by a number of independent entities
- ❑ Whilst it is acknowledged that the ITU's Radio Regulations as well as the National Radio Frequency Plan encourages priority sharing but other forms of spectrum sharing will not be practical for broadcasters
- ❑ Capacity sharing for instance will be more applicable to mobile services where the network of a particular service provider can be shared with subscribers of different network operator
- ❑ Thus, the SABC proposes that all forms of spectrum sharing should be coordinated by ICASA to avoid uncontrolled harmful interferences

RADIO FREQUENCY SPECTRUM, CONT

❑ **Spectrum re-farming:**

- ❑ It is acknowledged that the demand for new technological services is growing so fast that it has resulted in spectrum re-farming
- ❑ However, it is important to ensure that TV networks are not squeezed out of competition for limited frequencies on the radio spectrum they broadcast over
- ❑ The SABC submits that the band 470-694 MHz should be protected for terrestrial TV broadcasting

RADIO FREQUENCY SPECTRUM, CONT

❑ **High demand spectrum:**

- ❑ It is noted that Minister will determine high demand spectrum and assign it to the WOAN within 6months of the commencement of the Amendment Act
- ❑ The SABC has over 200 analogue transmitters operating in the 700 MHz and 800 MHz bands and a large number of DTT transmitters operating in these bands. These transmitters need to be migrated to below 694MHz following a process of restacking
- ❑ It is assumed that the high demand spectrum will include the 700 MHz and 800 MHz bands and the assignment and the use of these bands while SABC transmitters are still on will result in serious interference
- ❑ Thus, it is submitted that the process of digital migration should be prioritised as it I done for the national good

RADIO FREQUENCY SPECTRUM, CONT

❑ **Broadcast Digital Migration (BDM):**

- ❑ The BDM process is underway; the digital switch on date was 01 Feb 2016 as published by the Minister of Communications
- ❑ Households in the SKA area are fully migrated and the distribution of subsidised set-top-boxes is underway. The BDM process deserves full support from government and all stakeholders
- ❑ The SABC submits that the migration from digital to digital (restacking) will require many radio frequency transmission equipment to be returned to the designated frequency at the various transmitter sites or new transmitters and combiners which are pre-tuned will be installed at the site affected sites
- ❑ Thus, the SABC submits that the timelines for the bringing into use of the high demand spectrum should take into account the BDM and restacking processes

RADIO FREQUENCY SPECTRUM, CONT

❑ **Spectrum licence renewal:**

- ❑ Section 31 (3A) of the Bill proposes that radio frequency spectrum licences will be renewable annually, despite the duration of the licence
- ❑ The SABC is the holder of two broadcasting licences for each of its TV and Radio Services, namely: the service licence and spectrum licence
- ❑ Current licence duration : TV =15yrs, Radio =10yrs
- ❑ Thus, the SABC submits that the two broadcasting licences should be conterminous in line with section 8(2)(c) of the ECA read with sections 4(3)(d) and (e) of the ICASA Act which state that ICASA will prescribe licence duration/conditions

OTHER RELATED LEGISLATION

- ❑ The SABC has noted that clause 1.2 of the memorandum on the objects of the Bill indicates that there are other Bills, namely: the ICT Sector Commission and Tribunal Bill and Digital Development Fund Bill that will be introduced at a later stage
- ❑ However, the non-publication of these Bills brings regulatory and policy uncertainty in the broadcasting sector ; it is difficult to gauge the extent to which the ICT Sector Commission will affect the broadcasting services and section 192 of the Constitution

CONCLUSION

- ❑ In conclusion, the SABC submits that the DTPS needs to consider :
 1. the implications of the Bill on section 192 of the Constitution and the enabling legislation (ICASA Act) ; the intention of the legislature has always been to empower Regulator to regulate the broadcasting sector in its entirety;
 2. the split of ICASA into two diverse regulators will be costly to the country and licensees;
 3. the regulator's function with respect to controlling and managing the broadcasting frequency spectrum;
 4. the ECA enjoins the broadcasting regulator to safeguard the viability of public broadcasting services;
 5. engage the Department of Communications more on radio frequency matters with a view of safe-guarding the interests of broadcasters; and
 6. allow and support the BDM process as it is in the public interest to do so.

THANK YOU