



Submission on the National Integrated ICT Policy Green Paper

Contents

Introduction.....	3
Section 1: Regulatory approaches	4
1.1 Defining community television in South Africa	4
Policy recommendations	5
1.2 License application process	6
Policy recommendations	6
1.3 Public funding for public-interest programming.....	6
1.4 Business model: a mixed economy	7
1.4.1 Government and statutory bodies	7
1.4.2 Funding and donations.....	8
1.4.3 Commercial sources of revenue.....	8
1.4.4 Universal Service and Access Fund	8
Policy recommendations	9
Section 2: Reviewing the definition of broadcasting	10
2.1 Net neutrality.....	10
2.2 Regulatory parity.....	11
2.3 The right to information.....	13
2.4 Incentivizing digital content production	13
Policy recommendations	14
Section 3: Diversity of services and content.....	15
3.1 A restructured television broadcasting environment.....	15

Policy recommendations	16
3.2 Creating a sustainable broadcasting eco-system	16
3.2.1 Modeling the television broadcast environment.....	16
3.2.2 Funding for community channels	18
3.2.3 Licensing issues.....	19
Policy recommendations	20
3.3 Local content regulations.....	20
Policy recommendations	21
Section 4: Spectrum allocation.....	21
4.1 Spectrum and transmission	21
Policy recommendations	22
4.2 Digital Terrestrial Transmission and Multiplex Allocations	23
Policy recommendations	24
Appendix 1: Scope and focus of the Green Paper	25
Convergence, regulation and the public interest.....	25
Independence of the Regulator.....	27
Concluding remarks.....	28

Introduction

The Association of Community Television of South Africa (ACT-SA) thanks the Department of Communications (the DoC) for the opportunity to make written submissions to the DoC on the National Integrated ICT Policy Green Paper (the Green Paper) published in January 2014.

ACT-SA wishes to place it on record that it would like to be given the opportunity to make oral representations should the Department deem it fit to hold oral representations with regards to submissions received on the Green Paper.

The ACT-SA is the only representative of South Africa's Community TV Broadcasting Industry. The Association aims to further the interests of the Community TV broadcasting industry in South Africa by contributing to the development of the Broadcasting Industry and Associated Industries in South Africa.

The DoC has invited input into deliberations on the National Integrated ICT Policy Green Paper. This document covers *inter alia* policy development within the broadcast sector, within the overall context of digital communications. Consequently this response from the community television sector under the aegis of Act-SA concerns the interests of Act-SA members in the carrying out of activities pertaining to the production, acquisition and distribution of content in the context of the community television environment in South Africa. We have also provided some analysis of the Green Paper in order to identify certain shortcomings and what we consider to be important areas of policy focus. This is set out in Appendix 1 of this document.

The Green Paper sets out the conditions which currently prevail in the various ICT sectors, including telecommunications, e-services, postal services, mobile communications and broadcasting. It notes that digital technology has had a marked impact on the communications environment due to factors such as the phenomenon of convergence and more efficient usage of the radio frequency (RF) spectrum; and that South Africa's communications environment must be shaped for the future to allow for changes towards increased efficiency, competitiveness and to enable citizens to optimize the information and communications benefits that such technology affords.

With regard to the broadcasting sector, the Green Paper identifies key public policy objectives as being to:

- Ensure access to diverse content for all, including locally-produced public service programming.
- Promote diversity of ownership and control of content services and limit media concentration.
- Ensure fair competition between different content services; and
- Protect audiences from illegal content; ensure community standards are agreed on and met and that children are protected from harmful content.

Act-SA supports these policy objectives and this submission addresses these concerns under headings pertaining to the set of policy questions posed by the Green Paper, these being:

1. What new regulatory approaches should be adopted to support innovation, access to affordable services and the creation and promotion of a diverse range of high-quality South African public interest programming to all audiences?
2. Is there a need to review the definition of broadcasting services, given the changing environment, in order to ensure that identified public interest objectives for the sector are met? If so, how?
3. How should policy ensure that there is a diversity of services and content and that audiences have access to international, national, provincial and local news, information and other programming of relevance to them given that new services will not be limited to specific licence areas?
4. What key issues should be considered in regard to spectrum allocation to ensure that the public interest, cultural, social and economic objectives linked to audio-visual and audio content services are met?
5. What objectives should the SABC prioritize? How should the mandate of the SABC, as described, be funded? Are the current funding arrangements adequate to fulfill all the requirements placed on the SABC in law? What should the role of government as the shareholder of the SABC on behalf of the public be?

This document will address the first four questions because these have a direct impact on the community television sector. Act-SA will refrain from addressing the challenges faced by the national public service broadcaster as the Association is primarily concerned with the issues facing its members, although at the same time the organisation encourages a positive and cooperative relationship between the public service broadcaster and its community broadcaster peers. There are certain areas where the interests of the SABC and community broadcasters overlap, such as the inception of mechanisms to support the production of public service programming, and hence the SABC is mentioned in this regard within the scope of this document.

Section 1: Regulatory approaches

1.1 Defining community television in South Africa

Community television is distinguished as a category of broadcasting which is distinct from public service and commercial broadcasting and has particular criteria governing its activities in this arena. These include criteria for the protection of public benefit including non-profit status, community ownership and control, local, community orientation and viewer participation in both production and on-air activities.

Democratic participation in the activities of community channels are enshrined in the legislation and these mechanisms are all aimed at ensuring the use of television as a means of social development through communication. As such, community television is an important component of the national effort to promote social development, social cohesion and nation-building.

Today South Africa's community television stations reach over 14 million people across the country, and the sector is represented by a newly-formed coalition called Act-SA (Association of

Community Television – South Africa). The membership of Act-SA consists of seven licensed community TV stations representing both established and newly-formed broadcasters, including new test licensees pioneering newly-opened digital bandwidth.

The current formulation of community television is one of the most significant, if unacknowledged, social benefits accruing from the democratic dispensation of 1994. The ideal of democratizing South Africa's airwaves has borne fruit in the establishment of a vibrant community television sector, which is actualizing the dream of giving communities a voice and stimulating the advancement of South Africa's diverse cultures.

Community television represents a community-owned sector which has proved its resilience and is poised to expand in the digital broadcasting era. Community channels are owned by the communities in which they exist, according to overall legislative requirements. There have been distinct problems with the implementation of this policy imperative with the involvement of commercial entities in the sector, but ICASA, the MDDA and the DoC have been instrumental in addressing such problems in conjunction with the sector and progress has been made on resolving the issue.

Community channels reach people at the local level and they address population sectors which have previously been marginalized, and in particular should be addressing those sectors which remain marginalized today. They form an important bridge between government and the people in enabling two-way communications as well as enabling citizens to use the medium of television as a means of communication rather than it being a top-down distributor of entertainment and mainstream information programming like the national public service and commercial channels.

In order to safeguard the interests of the public it is important to secure community broadcasting from domination or control by outside vested interests including commercial enterprises, sectional religious organisations and government. While it is useful and logical for community channels to have a good relationship with government at local, provincial and national levels, this should not require the active participation of government or state agents in the governance or management of channels, nor any form of economic dependence which might place the channel at the mercy of political decision-making over resources or funds. Community channels must pursue a mixed economy where no one funding sector dominates and is thus able to exert editorial control over channel content.

Policy recommendations

1. That the current three-tier system of broadcast regulation in South Africa be maintained.
2. That community television be secured as a non-profit, public benefit sector which is independent of control by commercial, religious, party-political or state interests.
3. Notwithstanding point 2 above, that government be responsible for providing support to the community TV sector through distinct mechanisms, such as the Media Development and Diversity Agency (MDDA), Universal Services and Access Agency of South Africa (USAASA), National Film and Video Foundation (NFVF), the MICT Seta and other potential tools such as a Public Service Broadcasting Fund or specific public levies or taxation.
 - a. The DoC must negotiate policy alignment between particular funding bodies and the community TV sector in order to stimulate the development of the sector.
 - b. The MDDA must be strengthened in order to ensure that it is capable of effectively supporting the community TV sector.

4. That provincial and local government be obliged to support community broadcasting through legislation governing the functioning of such legislative bodies. This is opposed to the provisions in the Public Service Broadcasting Bill (2009), which placed the onus for securing relations between local government and community broadcasters on the latter, and which effectively placed local government in a position of considerable power and influence over the community broadcasters.

1.2 License application process

Regulation of the community television sector has been characterised by a 'light touch' approach which has allowed a multiplicity of business models to be instituted by licensees. This, together with ICASA's inability to monitor licensees business operations in a thorough manner, has led to the encroachment of commercial operations into this non-profit sector.

In addition, ICASA has adopted a 'first come, first served' approach to community license applicants which means that it may not always be the most suitable organisation that wins a broadcast license to serve a particular area.

Consequently we argue that ICASA needs to do a better job at screening broadcast license applicants, formulate practical and effective license conditions through research and insight into the sector and ensure compliance and due diligence among licensees.

Policy recommendations

1. The selection process for license applicants should be simple but a more rigorous approach to selection should be instituted. Licenses should not be awarded on a 'first come, first served' basis, but instead ICASA should call for licence applications, hold public hearings and award licenses to the strongest applicant.
2. Licensees should be able to demonstrate:
 - Broad, diverse support in the community; (here the 'public petition' approach of simply collecting hundreds of signatures or a few 'letters of support' are not the only mechanisms to measure such support, and other options should be included such as demonstrable support through public meetings, support from a range of civil society organisations, etc.)
 - A sound business plan and a business model which ensures independence from commercial, religious and government interests;
 - Start-up capital and basic resources;
 - A Constitution which adheres to the provisions of relevant legislation, including the ECA, ICASA regulations and the Act-SA Charter.

1.3 Public funding for public-interest programming

The Green Paper observes that funding is an ongoing challenge to the community TV sector and transmission costs in the DTT environment will be a factor which can either limit or stimulate their access to transmission services.

Community television services sustain themselves through a variety of mechanisms including grants, donations, sponsorships, sale of airtime, advertising and membership fees. While these

mechanisms have sustained South Africa's burgeoning community TV sector for the past few years, it is still early days for community television in South Africa. The market has been somewhat distorted in that commercial enterprises have partnered with community TV licensees in order to profit from the sector. While there may be advantage for the sector in this, the compromise with commercial imperatives must be interrogated in order to ensure that the public interest prevails.

Nevertheless, the issue of funding is of vital importance to the community television sector in view of its commitment to fulfill its social development obligations. Money for programme production comes from different sources, ranging from funding organisations to government and commercial enterprise principally in the form of grants, sponsorships and donations. Advertising is another source of revenue but this is limited in scope due to a range of factors including limited audience reach, low-income audiences, conservatism among advertisers and media agencies, limitations in audience research, local government recalcitrance and lack of sales expertise.

One proposal mooted by the DoC in its Public Service Broadcasting Bill (2009) was the formation of a Public Services Broadcasting Fund (PSBF), which was to draw revenue from several sources including taxation. This latter aspect of the Fund became a sore point in the Bill for it crossed the boundary of other legislation which devolves powers around taxation to the Minister of Finance and the SARS, and hence was unenforceable; nevertheless the basic premise of a special fund to finance public service television deserves attention. Another complication in the provisions of the Fund was that it was to service both the public service broadcaster, the SABC, as well as community broadcasters, thus diluting its contribution across a wide spectrum including the resource-hungry, high-tech operations of the national broadcaster.

Another issue with the proposed fund was that it was to be managed by the MDDA and there are concerns about both the MDDA's capacity and its independence. A public programming fund must be independent of all vested interests. Also, it can't be the only means of funding public programming but more of a 'top up' to support programming that is also financed by other mechanisms.

It makes sense to allocate public resources to the cause of communication for social development purposes, although at the same time it is necessary to be sensitive to the extent of any such allocation given the constraints of the fiscus and the greater economic environment in which the state exists. The South African government has many obligations regarding social and economic development and funding mechanisms must be sensitive to this wider economic context. Yet there is a need to ensure that public service programming is produced by both broadcasters and the independent production sector, and that public service transmission is enabled through appropriate mechanisms.

1.4 Business model: a mixed economy

Community TV stations shall be sustained from a number of revenue streams including government support, commercial revenue, sponsorships and donations.

1.4.1 Government and statutory bodies

Government is a significant partner and needs to be engaged to ensure that support is unlocked through policy alignment from the following state organs:

Adspend (GCIS and direct)	30% of government advertising should be spent on community broadcasters (PPC directive, November 2011). This applies to national, provincial and local levels of government as well as parastatals.
DTI	Support for community-based production collectives and "super collectives". TV production incentives.
DoC	Programming and infrastructure support.
MICT Seta	Support internships, skills programmes and learnerships.
Municipalities	Provide office space, partner to bring information to the community.
USAASA	Subsidize signal distribution costs.
MDDA*	Base line funding: Start-up costs and core costs.
Lottery	Infrastructure: studios, equipment and vehicles Arts, culture & sports programming

1.4.2 Funding and donations

As NGOs community broadcasters may apply for donor funding. Funding partners include:

CSI	To make this more attractive community broadcasters shall qualify for 18(a) status in terms of the Income Tax Act (1962).
Other	Foreign and local donors.

* The MDDA cannot be the conduit for government adspend as this will cause unnecessary delays and introduce a third-party to the procurement process, which is inefficient and unnecessary.

1.4.3 Commercial sources of revenue

Commercial revenue may include:

Advertising	30-second classic ads and advertiser-funded (sponsored) programmes. Limited to no more than 8 minutes per hour.
Airtime sales	Should account for no more than one third of the station's revenue.
Production services	The broadcaster produces paid content on behalf of third parties.

In terms of the above sources of revenue, ideally no one source of revenue should dominate thereby exerting undue influence on the station.

1.4.4 Universal Service and Access Fund

Section 89(1) of the Electronic Communications Act (ECA), 2005, requires every holder of a licence to pay prescribed annual contributions of the licensees licensed activity to the Universal Service

and Access Fund (USAAF). Section 89(2) of the ECA then provides that the Authority may then prescribe:

“the basis and manner of determination of the contribution, which must not exceed 1% of the licensee's annual turnover, or such other percentage of the licensee's annual turn-over as may be prescribed by the Minister after consultation with the affected parties, by notice in the Gazette and the dates when such contributions become payable and manner in which they may be made.”

From ACT-SA's reading of the subsection, ICASA is given discretionary empowers to make a determination on how the contributions should be made, however, the determination must not exceed 1% of the licensee's annual turnover. This meant that ICASA would have the discretion to set the contributions for community broadcasters at 0%.

When ICASA made these regulations it was argued that Community broadcasting services should not be treated the same way as Commercial broadcasting services. By their nature, Community broadcasting services are fully controlled by non-profit entities, and are carried out for non-profit purposes¹. Most Community broadcasting services are barely financially sustainable. As a result, Community broadcasting services are currently some of the major beneficiaries of assistance from the Media and Diversity and Diversity Agency (MDDA). Section 3 of the MDDA Act² states that one of the objects of the MDDA is to encourage the channeling of resources to the community media and small commercial media sectors.

ICASA was made aware that if Community Broadcasting licensees were to contribute to both funds they would encounter the following difficulties:

- They would become both the contributor and the beneficiary of the funds, which defeats the whole purpose of both funds;
- A lot of money would be lost in administration costs due to difficulty with collecting contributions; and
- Due to the financial difficulties most community broadcasters find themselves in, it will not be cost effective for community broadcasters to make contribution to the funds, it may even be impossible for most community broadcasters to contribute.

ICASA claimed that it did not have a discretion and continued to impose contributions on community broadcasters in the regulations when clearly this could not have been the intention of the legislator. It is humbly requested that national policy clarify this point, so that at a later stage the legislation can be amended to clarify that the requirement for contributions should be not be applied to community broadcasters who are one of the intended beneficiaries of the Fund.

Policy recommendations

1. Institute a public funding mechanism for the production of public service programming.
2. This fund could support programming for both the SABC and community channels but a portion would be ring-fenced for the community sector.
3. The SABC to be required to support community channels through programming arrangements, for example making its public service programming available to community

¹ Section 1 of the Electronic Communications Act 36 of 2005.

² Media Development and Diversity Agency Act 14 of 2002.

channels free of charge or for minimal licensing fees or some other commercial or exchange arrangement.

4. The NFVF to make funds available for the development of public service television programmes such as series and documentaries, as well as the marketing of South African feature film content.
5. NEMISA to work closely with the sector to develop local talent in the video production and broadcasting sectors of community TV, with regard to training and accreditation.
6. SARS to grant 18(a) tax status to community broadcasters to ensure the release of corporate funding on the basis of corresponding tax breaks.
7. That community television stations be expressly excluded from the requirement to contribute to the USAAF.

Section 2: Reviewing the definition of broadcasting

The Green Paper in Section 8.2.2 points out that a “technology-neutral definition of broadcasting” means that in future on-demand services, including those delivered over the internet, “may be a substitute for traditional broadcasting” and would “therefore” require some form of regulation, but this would mean regulating “content services” as opposed to “broadcasting services”.

In Britain, Ofcom distinguishes between television services using the DTT platform who have to have particular licenses, while those offering EPGs over other platforms require another license to do this (Television Licensable Content licenses). In SA, content services such as video-on-demand do not require licenses.

In Section 8.3, the Green Paper goes on to posit the notion of regulatory parity which is based on principles of fair competition and technological neutrality and aims to ensure that like services are treated in a similar manner regardless of how they are delivered (e.g. satellite, transmitters, internet), or what device is used to access them.

The question arises of whether the current approach to regulation by business model is appropriate in the new environment, where different types of broadcast service are all competing against one another.

2.1 Net neutrality

Audiences may have different expectations from different mediums. The principle of net neutrality means that “all data on the internet is treated equally by network providers”. There is a concern that broadband providers might block content such as OTT (Over-the-top or internet-based video distribution).

Arguments against net neutrality are based on concerns over bandwidth usage for high data quantities of OTT streams. The problem is that there will always be an increasing demand for bandwidth – for example the latest technological innovations in television are 4K and 8K resolutions, which are respectively around four and eight times the amount of data carried by HD resolutions. This is problematic when considering bandwidth allocation on multiplexes because already HD delivery chews up double the amount of bandwidth required by SD channels. Still, technologies to secure the delivery of high-bandwidth applications are constantly improving and it is possible for additional multiplexes or delivery mechanisms such as satellites to come into play.

On the internet front, Nielsen's Law states that network connection speeds for high-end home users would increase 50% per year, or double every 21 months. Fibre and WiFi networks are being rolled out as demand for data delivery services increase and this type of infrastructure development will be ongoing. These phenomena militate in favour of net neutrality, which must take account of the elasticity of bandwidth to encompass the ever-expanding need for increased data transfer rates.

It is also necessary to avoid “access tiering” where the architecture of the internet is being threatened by ISPs wanting to give big (monied) players access to more bandwidth for faster sites with richer content. This necessarily sidelines smaller independent sites. As more and more content moves on-line we need to ensure that net neutrality is implemented because this mitigates against access tiering, so government must regulate pro-actively in the interests of net neutrality.

2.2 Regulatory parity

When addressing the issue of regularity parity and internet content, one has to take into account the issue of cross-border services where both international and local internet content providers compete with TV channels for audiences. This phenomenon necessitates consideration of how – or whether – regulation can protect South African broadcasting and other content services.

We contend that the approach here should be the stimulation of content production rather than the throttling of information availability. If government wants to promote locally-produced content in the internet environment then it must find ways of stimulating content production. It must not be tempted to enforce quotas on local content providers nor must it limit access to information resources (e.g. international providers) in any way.

The concept of regularity parity is dangerous when comparing broadcast to internet media because each has demonstrably different characteristics. As the theorist Marshal McLuhan observed, “the medium is the message” – in other words each medium has a distinctive manner whereby it interacts with human consciousness, such that each medium conveys information in unique ways. There are four factors which differentiate broadcasting from internet delivery, these being:

- a) Broadcasting delivers a set of linear audio-visual information streams from which users make selections;
- b) The number of broadcasting information streams are limited by bandwidth available in a particular zone of the RF spectrum;
- c) Broadcasters exist within a particular economic eco-system which limits their numbers; and
- d) Broadcasters pay for the delivery of the information stream whereas on the internet users pay for the delivery of data.

This differentiation compels regulation to take account of such distinctions rather than attempting to submerge content aggregators under the rubric of an undifferentiated digital environment, despite the democratizing influence of digital data which sees all information streams as simple assemblages of binary codes existing within a digital domain.

The latest digital television sets, not to mention devices such as personal computers, tablets and smart phones, can receive a multitude of digital information streams including broadcast television, streaming video, internet television, video-on-demand, websites and any other data delivered by IP connectivity.

Nevertheless within this converged digital domain broadcast media are delivered as linear streams in an unmediated way, i.e. once the viewer has selected a channel as an information stream, then that is what he or she gets – the only agency they have is to select or deselect the channel.

Moreover, the number of available television channels is limited by usage of the RF spectrum, particularly in the analogue environment. While this number will expand significantly in the digital broadcasting terrain there will nevertheless be limitations on the number of operators due to bandwidth constraints. The nature of television in the analogue environment has meant that it has maintained a monopoly on the delivery of audio-visual information, but this monopoly is being eroded by digital media and will ultimately disappear.

However it must be borne in mind that people will have access to differing levels of information depending on their ability to pay for it. Free-to-air television will remain an affordable option for the poor while pay-TV and internet information tiers will be price-sensitive for uptake, depending on the costs of service provision and interface devices.

The rationale for regulating television as opposed to the internet tier is firstly because the RF spectrum has limitations in terms of the number of providers which can be accommodated on this publicly-owned medium, while the internet does not face such encumbrances and channels using this latter medium are not constrained by having to deliver linear content streams.

Secondly, broadcasters exist within an economic eco-system where various market forces prevail. These forces include the interests of advertisers, sponsors, subscribers, funding organisations, government and airtime clients, a collective which exist within the boundaries of the national economy.

The Green Paper mentions an increase in national television adspend to R16.2 billion in 2012, but it does not interrogate television income thoroughly and no statement is made concerning the contribution of other funding agencies to total television income. Nevertheless, each source of income is a fraction of overall television spend in the economy and the overall total limits the number of channels which can exist within the national economy. Because of this limitation regulation must come into effect to a) secure a competitive yet sustainable broadcast environment and b) to secure the public interest through public benefit content.

Since internet content providers exist in the internet economy, this economic factor distinguishes them from broadcasters and precludes them from the necessity of regulation. Internet media are delivered via the global network of networks, the internet, which is unrestricted in terms of the number of operators which may exist in its economic eco-system. Here the user has a wide selection of content both across different portals and within any particular portal that he or she can browse at will and select particular subsets of data for use.

Trying to differentiate audio-visual content in an internet media context is a fruitless pursuit because all such media are merely data which is made available through the internet from servers hosted across the planet. A website will offer a variety of data services, including text, images, audio-visual content and interactive mechanisms such as E-commerce and user feedback.

To target a particular sub-set of websites offering primarily audio-visual content for restrictive content controls and sanctions through licensing will be extremely difficult to manage because of issues of definition, monitoring and economic effects. How would such websites be defined? What

would it take to monitor them (massive resources), and what impact would such restrictions have on the site's business model in the context of international competition?

The idea that because some internet data is transferred to the end user over the radio frequency spectrum and should thus be legislated by government agency ignores the fact that this same data can just as easily be delivered over terrestrial infrastructure including copper and fibre-optic lines. This fact renders redundant any claims to authority over content based on the transport medium whereby that content is conveyed to the end-user.

Enforcement of content restrictions would also be difficult to impose because content can be hosted internationally. The South African government cannot have jurisdiction over content located in other countries, a factor which is further complicated by the ability of content holders to shift content around in order to avoid attempts to restrict its availability.

2.3 The right to information

But there is a deeper principle at work here and that is the notion of information availability in the digital domain. People have the right to access whatever information they choose in cyberspace. While limits may be set in certain areas of social concern such as child pornography, such access is restricted in terms of laws governing these specific areas and not through a general ICT policy nor any government body set up exclusively for this purpose.

Video-on-demand services provided over the internet or via other IP delivery should be seen as data services which are ancillary to broadcasting and not an intrinsic part of it and therefore subject to legislation. We do not want 'Big Brother', i.e. government censors, in our homes. Access to information is sacrosanct and any attempt by government to limit people's access to data should be resisted. It is only through access to information that people can empower themselves and resist domination – while correspondingly it is only through control of information that domination can prosper and persist.

The idea that broadcasters must be protected from competition in the digital environment is a specious one – one cannot discriminate between content providers in the digital realm because here all are equal (bar inequalities of bandwidth, i.e. access tiering). In cyberspace, small groups and individuals can also achieve the power to alter popular perceptions through publishing and disseminating their messages, so competition is inherent in the digital terrain. Broadcasters must compete against other content providers on a level playing field, not one that is artificially skewed in their favour by restricting online content providers.

While it is still possible to distinguish between broadcast and internet content in the digital domain, there should be some regulation of broadcast content. However, the regulatory compliance burden can be reduced through the application of technology solutions in the digital environment such as parental control mechanisms that place control of viewing of content by children in the hands of parents. The internet however should be left unrestricted except for defending the principle of net neutrality.

2.4 Incentivizing digital content production

If government is truly interested in helping broadcasters to compete in the digital terrain then it must provide support for their endeavours in this realm. This can be through the promotion of production activities in the creation of content, stimulating skills development, tax breaks or other incentives for digital content production enterprises. Government has previously mooted the idea of digital content hubs, and this is one instance which could be developed strategically through consultation with the relevant stakeholders.

The mechanisms by which broadcasters can compete against internet media providers in the digital domain include:

1. The provision of real-time, high quality audio-visual information streams; this is particularly useful in the case of live event coverage, live shows requiring audience interaction and news.
2. Access to transmission infrastructure utilizing the RF spectrum, which enables the conveyance of high-quality information streams at little or no cost to the end user (bar the purchase of reception equipment).
3. The provision of fresh high-cost, high production value content – e.g. feature films, documentaries and drama series. Once this content has been aired its value falls as it is dispersed through the digital medium through online sales, DVD distribution, sharing and piracy, as well as the decay of information value through being viewed³.
4. Ownership of high-tech content production infrastructure, which enables them to produce live content streams and relatively high-value pre-recorded content.

As the Green Paper notes, there is a high demand too for local content and this militates against protective measures aimed at promoting local content over international content. In order to then further the production of local content and maintain the local and international competitiveness of South African broadcasters, government should turn its attention to ways of stimulating and enhancing the above-mentioned competitive mechanisms for broadcasters rather than trying to stymie access to internet data.

At the same time we need an intellectual property rights regime that assists both broadcasters and independent producers so that we can ultimately build a thriving independent production industry where IP rights are shared between producers and broadcasters. Broadcasters get “first window” opportunities and then independent producers can sell their content in different territories and across platforms.

Policy recommendations

1. The concept of regulatory parity must give way to the principle of net neutrality when considering internet-based services. In other words broadcasters will still be subject to some legislative restrictions in the public interest, while internet providers will not be so constrained.
2. The internet services offered by broadcasters should not be regulated.
3. Internet-based business models for AV-delivery portals should not be regulated outside of laws governing specific unlawful behavior types such as child pornography, defamation, invasion of privacy, fraud etc..
4. Modes of information access associated with broadcasting, such as EPGs, may be regulated to ensure effective access to public service content.

³ In other words when you’ve watched something once you are less likely to want to watch it again.

5. Government should be responsible for establishing mechanisms to promote the production of digital content across various media platforms; for example Digital Content Hubs could be established to facilitate such production, and other incentives could be devised.

Section 3: Diversity of services and content

3.1 A restructured television broadcasting environment

A complicating factor with regard to funding, including the crucial issue of potential viewership for community channels, is the question of the scale at which community broadcasting takes place. Currently community broadcasters are limited to particular geographic areas, which encompass metropolitan regions in urban areas and much wider rural regions.

Another issue which the PSB Bill placed on the table was the scope of community broadcasting in terms of expanding broadcast footprints to provincial level. This would necessarily increase the number of transmitters used by community broadcasters, along with escalating the associated costs of transmission. This would have an impact on the business models of these broadcasters along with their ability to represent local communities; the bigger a station's geography, the less its ability to reflect local issues and concerns in terms of airtime, resources and governance.

Still, the concept of provincial community television needs to be considered in terms of mapping the entire broadcast terrain. Our proposal is to divide the broadcasting categories or three tiers along the lines of both geography and category to obtain an even spread of public service, community and commercial interests across local, regional and national footprints. Consequently models for community television in South Africa should take into account:

- The context of the three tiers of broadcasting which sets out clear parameters for commercial, public and private broadcasting in South Africa;
- The environment in which community TV stations operate in particular urban and rural areas and the related question of financial sustainability;
- The definition of community to include both communities of interest and geographical communities.

In this context there could be four models for community TV:

National community of interest	National channels could serve population categories such as youth, women, ethnic minorities, etc. Care should be taken that any such allocation not be overrun by religious organisations, which often have prodigious economic resources and which tend to pursue narrow sectional interests aimed at promoting a particular point of view. Any such licensees should be balanced by a strong secular sector that can serve wider interests.
Sub-regional model	A metropolitan station broadcasting to the surrounding rural areas. There could be 2 - 3 sub-regional stations operating out of separate metros per province.

Provincial consortium model	Stakeholder organisations share a provincial footprint. This model allows for commercial sustainability in more sparsely populated rural provinces. A bottom-up production model should be encouraged.
Local metropolitan model	Metropolitan stations are viable and represent community TV in the true sense of the word in that they are local and are in a position to enable community access and participation.

To enable national community of interest channels a bigger percentage of MUX1 should be allocated to community television operators and additional channels allocated to national community of interest providers. Community stations should be allowed to operate more than one channel instead of the present restriction to only one channel per organisation. Alternatively, capacity must be allocated on new broadcasting multiplexes created using radio frequency spectrum released after the analogue switch-off (Digital Dividend).

Most of the existing community licensees could be accommodated through the sub-regional model. The local metropolitan model could be facilitated by the allocation of one metropolitan station and one provincial station in each province. These should not be located in the same city to avoid competition for scarce resources.

At present there are a range of community content channels that use a broad spectrum of transmission mechanisms, including terrestrial analogue transmission, satellite transmission on DTH subscription and free-to-air services, and transmission across the internet via video sharing or video delivery portals. In the light of the principle of net neutrality, regulations concerning content and organisational structure should only pertain to those using the RF spectrum for traditional broadcasting purposes.

Policy recommendations

1. That regulations be promulgated to enable community license categories based on the four-tiered picture outlined above, including:
 - a. National community of interest channels;
 - b. Sub-regional community channels;
 - c. Provincial community channels;
 - d. Local metropolitan community channels.

3.2 Creating a sustainable broadcasting eco-system

3.2.1 Modeling the television broadcast environment

Models for community television cannot be developed in isolation from the broadcasting ecosystem as a whole, that is, the three tiers of broadcasting. However, the current conceptualization of the three tiers of broadcasting is one dimensional whereas it needs to be viewed as a matrix, taking into account national, provincial (and sub regional) and local levels.

A more holistic approach will help to develop a more sustainable broadcasting ecosystem that meets the needs of the public while taking into account other factors such as availability of frequency. The following matrix is a useful tool through which to understand the bigger picture in

terms of the current status of free-to-air television in South Africa and where we want to be in the future.

Current status of the "three tiers of broadcasting" in terms of television:

	Public Television (state funding)	Private Television (commercial)	Community TV (non-profit)
National	<p>SABC 1, 2 & 3</p> <p>DTT: 13 more channels to be introduced.</p> <p>What is the SABC going to do with 13 more channels? This could be distributed more evenly to other stakeholders.</p> <p>Over inflated budgets could be put to better use.</p>	<p>eTV</p> <p>DTT: 13 more channel to be introduced.</p> <p>Another free-to-air service to be introduced.</p> <p>Likely to operate national, provincial and/or local channels which will compete with whatever is happening at regional and local level.</p>	<p>No space for national community of interest channels such as Portuguese TV, youth channel, NGO channel, etc.</p>
Provincial	<p>Currently, there is no provision for regional, public television. Is there a need for this? Are some community TV applicants not in fact public, regional initiatives?</p>	<p>No provision for commercial interests is why they are entering the community sector.</p>	<p>Many community TV operators are expanding their reach to become sub-regional or even provincial channels in order to increase their revenue.</p>
Local		<p>There is no space at this level for commercial players which is why they are entering the community space.</p> <p>Is it viable for commercial, local television to exist alongside community TV with different funding sources?</p>	<p>Community TV: Cape Town (metro) Soweto (metro) Tshwane (sub regional?) 1 KZN (sub regional) Bay TV (PE, regional)</p> <p>ICASA has many new applications. Many of these initiative are actually commercial or public regional initiatives.</p>

Problems with the current structure:

- Skewed and imbalanced
- Not meeting the needs of the public
- Lack of diversity
- Underfunded in some sectors (community) and wasteful in others (public)
- Not meeting the needs of stakeholder interest groups (e.g. commercial operators)

A more ideal picture in a post DTT environment:

	Public Television (state funding)	Private Television (commercial)	Community TV (non-profit)
National	SABC 1 and 2	eTV (DTT: 13 more channel to be introduced) Another free-to-air service to be introduced	National community of interest channels
Provincial	Provincial public broadcasting services x 9 Frequency allocation: one channel per province. Funding model: 50 % Government funding, 50 % advertising.	Commercial, provincial television (operated by one of the above) Funding model: Advertising. Frequency allocation: One channel per province.	
Local			Community TV: Local and sub-regional, non-profit, community owned and controlled. Funding model: Low budget, funded by MDDA, MICT Seta, IDC, Lottery, DTI, etc. Frequency allocation: Two channels per province operating if different locales Local multiplexes shared by community and commercial operators.

3.2.2 Funding for community channels

Funding resources are scarce in the community television environment for various reasons, including the nature of non-profit operating entities not attracting private sector investment, lack of government investment in start-up operations, relatively low production values due to low skills and technology levels and lack of clout among media buyers. Community stations also have a small pool of funding organisations to draw on, local government is sometimes inimical to community channels and channels may lack market penetration or appeal to market segments that are relatively undesirable to commercial advertisers.

Consequently competition among community stations is not desirable and instead cooperative models should be pursued. Community channels can provide a strong value proposition for reaching national audiences if advertising and sponsorship can be spread across them as a package, as the SABC does with its multiple channel offerings.

There is also much room for cooperation between community broadcasters and the SABC, and while there have been some early moves towards such communion nothing concrete has yet emerged between the public broadcasting and community broadcasting sectors.

While the regulator should set limits on advertising on community channels, such as limiting the amount of advertising per hour of airtime, community channels should not be restricted in any other way. For example it has been suggested that community channels be prevented from carrying national advertising – but such attempts to restrict the ability of the commercial sector to utilize a range of media outlets including community media in its marketing efforts should not be entertained.

At the same time it must be recognised that community broadcasting occurs within a greater broadcasting economic eco-system and that limitations need to be placed on the number of community channels operating within this system in order to ensure stability. Such restrictions must be based on the medium used for transmission purposes; regulations govern channels using the RF spectrum to provide linear broadcast services, while those using the internet as a delivery mechanism must remain unrestricted.

3.2.3 Licensing issues

Distinct problems with the licensing process for community television have been identified. From a regulatory point of view, the Green Paper points out that Class licenses have constrained the ability of the regulator to adjudicate the value of content providers in this area. This is because of the 60-day limit to considering applications as well as the fact that the regulator is not specifically empowered to reject an application. The ECA does not empower ICASA to suspend, revoke or refuse to renew a class license, even if the licensee has not adhered to license conditions.

A further problem is that licenses are issued on a ‘first-come, first-served’ basis, so no competition is encouraged and opportunistic groups face no opposition. No limits have been set to the number of licenses to be granted in the community sector as a whole, nor to local or regional areas which may be served by such stations. While ICASA has itself placed a moratorium on the granting of new community TV licenses during the migration period, the field will be open once this period ends. Furthermore, the Authority may grant a license to provide a broadcasting or content delivery service without concomitantly granting an RF spectrum licence to ensure that this content can be delivered in the analogue environment.

In addition, the free-to-air DTH providers have the power to allow any content provider access to their delivery service, a situation which sidesteps the oversight abilities of ICASA in the broadcasting arena. In contrast, Pay-TV DTH providers, in terms of Subscription Broadcasting Regulations, have to apply to ICASA for channel authorization before a channel can be added to their bouquet.

Policy recommendations

1. No additional restrictions on advertising revenue sources for community channels.
2. Limitations on the number of community channels in the digital broadcasting environment, within the framework proposed in section 1.5 above.
3. The license application process to be adjudicated according to the provisions of section 1.3 above.
4. ICASA should be empowered to reject community television license applications, provided that reasons are given for the rejection and the rejected applicant be allowed to re-apply.
5. The 60-day limit on consideration of license applications should be retained. This will force ICASA to respond speedily to such applications because additional delays would likely jeopardize the funding and business arrangements of the applicants, so substantially disadvantaging them.
6. Licenses should only be granted where spare capacity on a multiplex has been identified to carry the licensee if the license is granted.
7. Free-to-air DTH providers with ECNS licenses may not allow the carriage of channels on their bouquets without such channels being authorised by ICASA.

3.3 Local content regulations

The current regulatory framework stipulates that community broadcasters must air 55% local content where this is defined as programmes that are produced mainly in South Africa. This is a reasonable quota given the nature of community broadcasting and its focus on local affairs, combined with its mandate to also provide viewers with perspectives on international matters. Local content in this context should not be limited to metropolitan or regional content as production capacity at the local level may be very limited, particularly in rural areas.

The internet provides community broadcasters with an unlimited ocean of content, from programming which can be downloaded and aired free of charge to contacts with independent producers across the globe. At the same time international broadcasters often allow community channels to rebroadcast their material, which then adds to the richness of the content mix that community channels can provide to audiences. A quota of 55% local (South African) content is sufficient to ensure coverage of local affairs while at the same time allowing stations to bring international content streams to inform and entertain viewers.

ACT-SA understands that commissioning is a normal practice in any broadcasting industry and appreciates why policy and regulations tends to be prescriptive and requires national broadcasters to have a certain percentage of independent production in order to ensure a strong production sector and diversity in content carried on those national platforms. However, that rationale does not make sense for community broadcasters who are capable of producing content for themselves that directly reflects the community of which they are a part. It should be kept in mind that independent television production in South Africa is centred around the national TV broadcasters in Johannesburg and to a lesser extent in Cape Town. This requirement therefore does not lead to production in the community area being served, but rather a capital outflow to metropolitan areas. Whereas own production by the Community TV broadcaster benefits the community.

Therefore, since ICASA does not want to exercise its discretion and provides for a 40% independent television production quota for community TV, it should be clarified in policy that it should not be applied to Community TV. The regulatory requirement for commissioning procedures to be fair,

transparent and non-discriminatory can be retained, as indicated above commissioning is a normal practice and will continue to take place. However, community broadcasters should be given the flexibility to determine according to their business plan how much of their programming should come from independent producers.

Policy recommendations

1. No additional or more onerous local content quotas to be enforced on community television broadcasters as existing quotas are adequate.
2. Local content to be defined as South African content.
3. Geographically-based community TV licensees to focus on stimulating content production in their areas of operation in order to ensure coverage of local matters. This would occur within the 55% local content allocation, but this should be regulated on a 'light touch' basis rather than through entrenched quotas.
4. The requirement that 40% of content on community TV channels be produced by the independent production sector must be revisited. This quota should be left up to community broadcasters to determine, based on their business model.

Section 4: Spectrum allocation

4.1 Spectrum and transmission

Community television has arisen in the context of analogue transmission where each channel is allocated a frequency or frequencies which it may use from specified transmission sites in order to convey its programming to audiences. Community channels have been licensed according to their reach into particular geographic areas and most stations are concomitantly geographically based in terms of the community they are licensed to serve, with the exception of the "grandfathered" community licence granted to the American Christian network, TBN.

Community broadcasters then draw on their respective geographic communities to form their governance structures, with boards being elected from members of the geographic community. While these community channels do attempt to serve the information and entertainment needs of their communities, the situation has been complicated by the fact that these local channels have sought to increase their viewership by means of additional carriage on national subscription or "pay-TV" services, which means they are available everywhere in the country to those households which subscribe to the pay-TV networks.

While this national carriage has proven very advantageous to the community channels in terms of increasing viewership and consequently enhancing their appeal to advertisers and sponsors, it has distorted the broadcasting environment originally envisioned by the legislation which relegated it to serving only local areas. Nevertheless, this type of expansion is symptomatic of the digital age, where information can be made available everywhere; and indeed where channels are streamed over the internet in addition to being broadcast over the airways, they do indeed reach everywhere and are available anywhere in the world where there is internet access.

This situation of local production and national transmission will be extended in the DTT environment; while local single-frequency networks (SFNs) have the potential to expand local transmission reach across multiple transmitter sites, Sentech's 'gap filler' DTH service, FreeVision,

will convey all DTT-enabled channels nationally, enabling all community TV channels to be available on a free-to-air basis across the country.

While such expansion will be a boon for community television, the question remains of what it will cost and who will pay. During the digital migration period, government has agreed to cover the transmission costs of the national broadcasters on the digital multiplexes, but has made no such undertaking to community television.

The community sector has been spared the requirement to dual illuminate during this time, with the only demand being that it migrate from analogue to digital transmission before the end of the performance period. This approach has several consequences, these being:

- a) Community channels may not be visible on the DTT multiplexes until after the performance period; and the duration of this period is unknown. Because they will not be providing content on these multiplexes, viewers will have less incentive to purchase set-top boxes (STBs) and this could affect the rate at which uptake of the digital service occurs.
- b) Community TV stations will face the prospect of attracting fewer and fewer viewers to their analogue transmissions as viewers migrate to DTT equipment. Such audience shrinkage will be inimical to the sustainability of these channels. At the same time they will not be able to move to DTT transmission too soon as viewership on the digital channels will only build up over time as more STBs are sold; and even once the channel is available on the DTT multiplex, viewers will be slow to change their viewing habits to include additional channels. So the shift from analogue to digital transmission represents a significant threat to community channels.
- c) Sentech has offered incumbent community channels free carriage on its FreeVision platform, so community channels will be incentivised for uptake with regard to this service. However the greater the penetration achieved by the DTH platform, the less uptake can be expected for DTT reception.
- d) Sentech has not yet been able to advise its clients of the costs to be expected with DTT transmission. While additional transmitter sites will provide community channels with a wider local reach, the cost implications of this are unknown and may be significantly greater than those of analogue transmission networks.
- e) The architecture of the national multiplexes will force community channels outside of Johannesburg to incur significant additional costs in order to convey their signals from the point of origin to the multiplex uplink facility in Johannesburg.

Policy recommendations

1. Allow community channels to dual-illuminate on both analogue and digital mediums during the performance period.
2. Government to pay the costs of this dual illumination by covering the transmission costs of incumbent community stations on the digital multiplex, including costs of signal carriage from outside of Gauteng to Johannesburg – at least during the performance period.
3. After the performance period, government should continue to cover the costs of signal carriage from outside of Gauteng to Johannesburg. Such costs could be borne by provincial or local government rather than national government, because securing such carriage guarantees exposure of local and provincial matters in the national broadcasting environment.

4. After the performance period, community channels would be responsible for their own transmission costs in terms of the use of transmitter sites. However some kind of formalised support for these costs should be instituted by government; this could be through an existing organisation such as the MDDA or USAASA, or through some other innovative mechanism such as a Public Service Broadcasting Fund, direct taxation or a levy or budget allocation from local government.

4.2 Digital Terrestrial Transmission and Multiplex Allocations

Community television broadcasters have currently been allocated 15% of the MUX1 digital terrestrial multiplex. The SABC has been allocated the remainder of capacity on this multiplex, but there are a limited number of additional channels which the national broadcaster can deploy. The digital migration regulations stipulate that any unused capacity will be forfeit after the digital migration period, but this could be reconsidered to enable startup community broadcasters even during the migration period.

MUX2 has been set aside for the commercial broadcasters and much of the capacity of the proposed MUX3 has also been disposed of to commercial interests. The question of public interest presence on these multiplexes remains and should be addressed. This could occur through public interest obligations on commercial content providers, bearing in mind the mix of reception devices that may occur across content networks and the content mix of bouquets which they offer.

The principle must be applied that ownership of the broadcast spectrum is a public property from which public advantage must be abstracted – and that commercial interests alone cannot deliver an adequate public information and communication service. The question must be asked of how much public space can be allocated on each multiplex and by what means.

The idea of spectrum as a scarce resource must be investigated. As digital broadcasting is simply the conveyance of digital data over a communications medium, it must be seen as part of a continuum of data transfer over different media. This is an essential principle of convergence in that all data becomes ‘faceless’, no matter which medium it is transferred across. So digital broadcasting using the RF spectrum becomes an increasingly irrelevant distinction when data transfer rates are increasing across different media.

Transfer rates across mobile devices using 4G technology such as HSDPA (High Speed Downlink Packet Access) are reaching speeds of 7.2Mbps and fixed line rates for consumers and business users are increasing to 20Mbps and 40Mbps as Telkom rolls out its next-generation ADSL network. These speeds are far in excess of what is required for high-quality streaming video, which is all that television is in the digital environment.

The difference between the RF spectrum and the copper and fibre networks is that there are relatively few major players ‘owning’ transmission in this environment. Sentech is the largest terrestrial ECNS supplier in terms of television transmission, while satellite television networks occupy a different niche in the RF spectrum licensing environment. Sentech is reliant on its network of existing terrestrial transmitters, which were designed for the analogue transmission environment. While such infrastructure remains valuable, information transfer dynamics will change in the digital environment, with smaller network transmission point networks becoming viable. Video streams will be switched across other digital eco-systems such as cellular and internet

networks, as well as local multiplexes which may be built on a similar density level to cellular networks.

Some community initiatives are exploring technologies such as the L-band in the RF spectrum, which can be used for local transmission systems. The legislation must allow for future self-provision on the part of digital broadcasters and the inception of new multiplex systems.

Transmission costs have been a sore point for the community television sector, which started out in South Africa under unduly onerous conditions vis-à-vis transmission costs as the national carrier, Sentech, was then charging the same tariff structure across all broadcast clients. This meant the community broadcasters were charged the same rates as commercial entities, a situation which was unfair in terms of each party's ability to cover these costs. This situation has now been changed through the intervention of ICASA and the actions of Sentech, and a more enabling environment now prevails.

Nevertheless transmission costs will be a factor in the digital broadcasting environment. Cost factors include the number of transmitters on a multiplex, the relative payment rates of transmission clients across the three tiers for shared transmitters, actual transmission costs of digital broadcast equipment and related infrastructure, ECNS management costs, etc.

ICASA has identified capacity on Multiplex 1 operated by the public broadcaster (SABC) to be set aside for Community TV for the purposes of providing DTT. However, there is no clarity on how this will be assigned to the current Community TV broadcasters or how new Community TV broadcasters will be able to access this capacity.

ICASA has not finalised any Tariff Regulations for DTT signal distribution and there is no guidance for how community TV will be accommodated on Sentech's satellite DTH gap-filler for rural areas that do not have access to DTT.

This glaring policy "black hole" around Community TV on DTT is not limited to Community TV only, it also extends to our colleagues in the Community Radio sector. The SABC has already indicated to the Parliamentary Portfolio Committee that the public broadcasting radio stations will be carried on DTT Multiplex 1 as an audio bouquet which will have the benefit of dramatically extending the reach of minority language stations beyond the geographic limits set by their radio frequency spectrum licenses and allowing them to be accessed on a different platform. There has been no equivalent mention of how Community Radio stations will be accommodated in a similar audio bouquet.

Policy recommendations

1. Community television organisations should be allowed to operate more than one channel.
2. More capacity on MUX1 can be allocated to community channels, particularly since the SABC is very unlikely to use its 85% allocation within the performance period.
3. Capacity on MUX2 and MUX3 should be allocated to public service channels, including the SABC and community channels.
4. Commercial operators utilizing the digital multiplexes should have public service programming requirements embedded in their license conditions.
5. Allowance must be made for self-provision of signal distribution for broadcast licensees, including the ability to apply for ECNS licenses to operate alternative multiplexes or to make use of the services of a variety of licensed ECNS providers.

Appendix 1: Scope and focus of the Green Paper

Convergence, regulation and the public interest

The scope and focus of the Strategy is very unclear as it begins by suggesting that it is in response to convergence, but then continues to deal with the industry as being in separate silos called Postal, IT and Broadcasting. This is made even more evident in Chapter 2 where dealing with the current landscape of the South African Communications sector there is no focus at all on the current converged services offered on the mobile, satellite or Internet platforms and how they are developing or even what their growth rate is predicted to be in the next five years. The focus instead remains on the major traditional players in the telecommunications and broadcasting sectors, to the detriment of smaller players such as community TV broadcasters and exciting SMME start-ups on the Internet platform.

There is a lot of initial exciting talk about convergence and how it can drive economic growth, job creation and allow South Africa to participate in global market, but instead of engaging in how to take South Africa to that vision within the next ten or twenty years – we are instead drawn back into the “staid” reality of the current situation and the same “old faces” who represent the face of the industry for government. Those companies, such as Telkom, Vodacom, MTN, SABC, etv and DStv who are referred to by name versus the smaller players in the IT space and community broadcasting who are luck for throwaway mention.

Why focus on these well-established players, who no doubt are already positioning themselves to survive and continue to make profits whatever the converged future brings. Instead government should focus on the smaller, medium micro-enterprises (SMMEs) for whom they can make the most difference through a range of policy instruments and incentives leading to real wealth creation at local level and not just at the national level of “the usual suspects”. If you want the big companies to grow and drive up GDP numbers then just regulate them less and monitor competition more. Remember dominance or market power is not the problem, the problem is abuse of dominance and this is already sufficiently dealt with by the Competition Act – it just needs to be enforced.⁴

South Africa really doesn't need more big companies who copy each other and usually just end up cannibalizing each other's existing markets instead of creating new markets (e.g. Neotel and TopTV) – it needs smaller enterprises who are prepared to be innovative and challenge the status quo. Companies that have changed the world did not leap fully formed onto the world stage. Microsoft which ended 2013 with a \$26.76 billion operating income,⁵ started in Bill Gate's garage, Facebook which has over 1.2 billion users in 2013⁶ was launched in 2004 by Harvard university students for Harvard university students. The Green Paper and White Paper should instead be looking at how government can incentivise, facilitate and incubate innovation at the micro-level and this will lead to more successes at the macro-level when these seeds grow organically into sustainable major players in the ICT (including broadcasting) environment.

⁴ Competition Act, Act No. 89 of 1998

⁵ <http://www.engadget.com/2013/07/18/microsoft-q4-2013-earnings-surface-rt-inventory/>

⁶ <http://expandedramblings.com/index.php/by-the-numbers-17-amazing-facebook-stats/#.UyLv5V4nujo>

The Green Paper might have better served the development of the envisaged White Paper if it had made a clear distinction between these “traditional” markets in telecommunication and broadcasting which continue to exist despite the digital updating of infrastructure and content and leveraging of IP assets across different platforms, compared to converged markets or new media whose different content formats (audio, video, text, images) are delivered to the public via a range of different digital networks (internet, mobile cellular infrastructure, satellite, WiFi and so forth). Most of these new entrants are content players only, with no infrastructure, and are providing their content over-the-top (OTT). It is this second group of players who will be the most dependent upon government initiatives in the area of net neutrality, open access networks, increased broadband speeds and bandwidth, incubators and content hubs.

Here is the true challenge for developing a forward-looking policy in South Africa – How to deal with the traditional media markets which continue to exist and have not yet been replaced by the new markets and opportunities that have opened up as a result of the digitisation of content and growth of digital networks. While at the same time creating an open, flexible and stimulating electronic communications environment that encourages the growth and development of those new markets which one day will become substitutes for the traditional markets.

The Green Paper focus is also very much on South Africa and the convergence of technology. It does not seem to consider that the emergence of these new services and broadening of existing services will likely expand beyond South Africa. The global nature of these digital online platforms is key to unlocking access to the benefits of the global economy for South Africa. South Africa has been falling behind the rest of Africa because it has become too inward-focused so the question we should be asking ourselves is how we can embrace change to create an environment that supports and does not hold back domestic players to break out onto the global stage.

The low cost of establishing business on online platforms makes it possible for all sizes of businesses to develop a regional (SADC) and global reach. To make this globalisation of our domestic businesses happen a proper analysis is required of the regulatory barriers and regulatory compliance cost burdens in place within our market. A critical failure of the Green Paper is that although it raises the point that existing rules were defined in an analogue media environment, and now services are cutting across traditional boundaries, both technologically and geographically. It never goes on to call into question the underlying rationale beneath the different regulatory approaches in the different sectors.

Clearly, the public interest goals and rationales that informed the regulation of broadcasting in an analogue era characterised by scarcity of frequency spectrum and a handful of media outlets cannot be the same public interest goals and rationales that inform the regulation of broadcasting in the digital era characterised by a plethora of media outlets and multi-channel offerings. The public interest is not fixed and immutable – it changes, and so must the regulatory environment. The public interest may have required a man to walk in front of the early motor car to warn people of its approach, but as the motor car became more common-place and horse-drawn vehicles were phased out the public interest changed and longer required this antiquated idea. In the same way this review needs to establish what is the public interest now and how is it different to the public interest that informed the White Paper on Broadcasting in 1998.

In the context of broadcasting, it is ACT-SA’s view that whether it be on traditional media or on new media platforms the role of government and the regulator is simply to promote the public interest,

human rights and freedom of expression in order to ensure that there is media democracy. This view is supported by section 192 of the Constitution which specifically provides that:

“National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society.”

In SA, government and the regulator need to preserve media democracy by concentrating on the following:

- building up a viable non-profit, non-commercial community media sector;
- establishing and maintaining a non-commercial, non-profit, public radio and television system;
- regulating commercial broadcasting in the public interest; and
- ensuring that there is fair competition in markets.

In our view, and in line with best practice internationally, the regulatory principles that should be applied when seeking to achieve the media democracy objectives we highlighted above in a converged communications environment are:

- Avoid over-regulation, be proportionate to the goal which government wishes to achieve;
- Create a regulatory framework that is predictable and encourages regulatory certainty, but at the same time flexible enough to meet the needs of rapidly changing market;
- That builds on existing Universal Service and Access principles to ensure everyone participates in the benefits of the converged media landscape;
- Independent regulators continue to remain important, especially where the state retains a shareholding in any market player; and
- Meets the needs of the public in terms of choice, price and consumer rights.

ACT-SA is aware that new media platforms, business models, and services are disrupting traditional broadcasting activities, content, distribution and networks. We are also aware that in part this is what informed government’s decision to facilitate the transition from analogue to digital broadcasting television. We are concerned, however, that government may become so swept up by all the benefits it raises in the Green Paper around convergence and the opportunities these new services offer for economic growth that it may overlook the importance of ensuring a future for traditional free-to-air community television as a conduit for locally produced content and public benefit broadcasting. There is no doubt that community TV will be available on all these new media platforms, but government should also ensure that community broadcasting remains on the terrestrial platform as well, to prevent our citizens becoming swallowed up by an ocean of foreign online media services.

Independence of the Regulator

Section 192 of the Constitution is fairly clear ICASA is an independent regulator and this independence is further enshrined in the objects of the ICASA Act. However, in practice a regulator is only as independent as the commitment by the government, the industry and the regulator itself to the principle.

There have been two incidents in the past where a Minister did not understand where the limits on the ministerial power existed with regards to ICASA and where ICASA itself chose not to defend its independence. These are:

The court judgment⁷ in 2008 that declared a 2007 Ministerial Policy Direction relating to electronic communication services *ultra vires* as it usurped ICASA's responsibility for licensing and where it was implied that ICASA itself should not have considered the Directive in its decision-making; and

Another Ministerial Policy Direction in September 2007 where the Minister directed ICASA to conduct an inquiry into how the services of a particular international subscription satellite radio provider (Worldspace) could be provided and licensed. Although there was never a court decision challenging this direction, it clearly oversteps the boundaries of ICASA's independence in licensing.

Policy must be general, when it is specific it is no longer policy it is intervention. A strong concern with the Green Paper is that it appears to be advocating a number of steps that will cross the boundary between policy and ultimately undermine the independence of the regulator. Requiring ICASA to consult with the Minister prior to publishing regulations and issuing regulations in tandem with Ministerial Directives to ensure that the objectives of the policy directive are met, as suggested by the Green Paper, seem to suggest a lack of commitment once again to that principle of independence. This should be avoided and instead the White Paper should be focused on how the independence of ICASA can be ensured and strengthened by means of a sustainable funding model.

Concluding remarks

In the view of ACT-SA the current tech-neutral policy framework in the ECA seems to be working fine and should not be changed. There is continued support for the three-tier approach of public, commercial and community broadcasting. It is accepted that the current definition of broadcasting only captures traditional broadcasting services and may need to be adapted or modified to ensure that the jurisdiction of the ECA also extends to online broadcasting services, domestic and foreign, where the target market is the South Africa public.

South Africa needs to create an enabling environment and should move away from a tendency to over-regulate, there are other regulatory tools beside regulations – such as guidance notes, incentives, content hubs, etc, that can be used in place of formal regulation. A useful maxim to consider in the digital era is regulate only where necessary.

Finally, that local should be treasured at a time when citizens have access to content from anywhere and government should put in place measures to ensure the sustainability of community broadcasting in South Africa on all platforms.

⁷ Judge Davis, 'Judgment in the High Court of South Africa in the Transvaal Provincial Division in the matter between Altech Autopage Cellular (Pty) Ltd and the Chairperson of the Independent Communications Authority of South Africa and others', Case no. 20002/08.