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## GENERAL NOTICE

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### NOTICE 1825 OF 2002

#### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)



#### NOTICE OF PUBLICATION OF THE DISCUSSION PAPER ON THE REVIEW OF OWNERSHIP AND CONTROL OF BROADCASTING SERVICES AND EXISTING COMMERCIAL SOUND BROADCASTING LICENCES

The Independent Communications Authority of South Africa ("the Authority") hereby, in accordance with section 28 of the Independent Broadcasting Authority Act, as amended, 1993, publishes its Discussion Paper on the Review of Ownership and Control of Broadcasting Services and Existing Commercial Sound Broadcasting Licences

Interested parties are invited to:

- (a) obtain from the Authority or from the Authority's website ([www.icasa.org.za](http://www.icasa.org.za)) a copy of the Discussion Paper, and
- (b) submit written representations by post, or fax, or e-mail or delivered by hand to:

Policy Research Development Department  
Independent Communications Authority of South Africa  
164 Katherine Street, Pinmill Farm,  
Block D  
Sandton

**OR**

Private Bag X10002  
Sandton  
2146

**OR**

Fax: (011) 448 2414 or e-mail address: [vletsiri@icasa.org.za](mailto:vletsiri@icasa.org.za) or [mtillek@icasa.org.za](mailto:mtillek@icasa.org.za).

Any interested person or organisation who submits written representations should indicate whether they require an opportunity to make oral presentation at the hearings.

The closing date for the receipt of representations is 06 DecemberOctober 2002, at 16h30.



Independent  
Communications  
Authority  
of  
South Africa

Discussion Paper  
on the  
Review of Ownership and Control of  
Broadcasting Services and Existing Commercial Sound  
Broadcasting Licences

27 September 2002

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## **A INTRODUCTION**

### **1. An independent authority to regulate broadcasting**

1.1 Section 192 of the Constitution 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. The first incarnation of the regulatory authority contemplated in section 192 of the Constitution was the Independent Broadcasting Authority (IBA), which was established by the Independent Broadcasting Authority Act <sup>1</sup> (the IBA Act). In terms of the Independent Communications Authority of South Africa Act <sup>2</sup> (the ICASA Act), the IBA was merged with the South African Telecommunications Regulatory Authority <sup>3</sup> to establish the Independent Communications Authority of South Africa (ICASA), which came into existence on 1 July 2002.

1.2 The ICASA Act dissolved the IBA and SATRA. <sup>4</sup> However, ICASA is the legal successor to the IBA and SATRA <sup>5</sup> and has inherited the powers conferred, and the duties imposed, upon the IBA and SATRA by the Broadcasting Act, <sup>6</sup> the IBA Act and the Telecommunications Act. <sup>7</sup> In other words, all matters regulated by the IBA Act and the Broadcasting Act, such as matters relating to ownership and control of broadcasting licensees, now fall within the ambit of ICASA's regulatory jurisdiction.

1.3 Except where specifically indicated otherwise, this paper uses the term "the Authority" to refer to both the IBA and ICASA.

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<sup>1</sup> Act No 153 of 1993, available online on <http://www.icasa.org.za>.

<sup>2</sup> Act No 13 of 2000, available online on <http://www.icasa.org.za>.

<sup>3</sup> The South African Telecommunications Regulatory Authority (SATRA) had been established by the Telecommunications Act, No 103 of 1996, available online on <http://www.icasa.org.za>.

<sup>4</sup> Section 18(1) of the ICASA Act.

<sup>5</sup> Section 22(3) of the ICASA Act.

<sup>6</sup> Act No 4 of 1999, available online on <http://www.icasa.org.za>.

## 2. Background to the Discussion Paper

2.1 The Authority's Constitutional and statutory mandate requires it to regulate broadcasting activities in the public interest.<sup>8</sup> Accordingly, the Authority always strives to ensure that the statutory mechanisms for regulating broadcasting activities serve the public interest. In order to achieve this objective, the Authority is empowered to:

2.1.1 undertake inquiries on all matters within its jurisdiction;<sup>9</sup>

2.1.2 conduct research on all matters affecting broadcasting in order to perform its regulatory role;<sup>10</sup>

2.1.3 make recommendations to the Minister of Communications (the Minister) for amendments to the IBA Act and the Broadcasting Act so as to align those statutes with the prevailing industry and public policy environment.<sup>11</sup>

2.2 The Authority is also empowered to conduct inquiries, from time to time, into any matter relevant to:

2.2.1 the achievement of the objects and the application of the principles enunciated in section 2 of the IBA Act;<sup>12</sup> and

2.2.2 the exercise and performance of its powers, functions and duties in terms of the IBA Act.<sup>13</sup>

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<sup>7</sup> Section 4(1) of the ICASA Act.

<sup>8</sup> See section 192 of the Constitution and the preamble to and section 2 of the IBA Act. In seeking to promote the public interest, the Authority is guided by the objects enunciated in section 2 of the IBA Act and section 2 of the Broadcasting Act. For present purposes, it is important to note that section 2(h) of the IBA Act states that one of the objects of the IBA Act is to ensure that broadcasting services are not controlled by foreign persons (a sentiment which is echoed in section 2(n) of the Broadcasting Act, which requires that broadcasting services be effectively controlled by South Africans). Likewise, section 2(j) of the IBA Act provides that one of the objects of the IBA Act is to impose limitations on cross-media control of commercial broadcasting services.

<sup>9</sup> Section 13(1)(f) of the IBA Act, which also empowers the Authority to conduct public hearings.

<sup>10</sup> Section 13(1)(i) of the IBA Act.

<sup>11</sup> Section 13(1)(k) of the IBA Act.

<sup>12</sup> Section 28(1)(a) of the IBA Act.

2.3 Finally, whenever the Authority deems it necessary in view of developments in broadcasting technology or for the purpose of advancing the objects enunciated in section 2 of the IBA Act, it may, after due inquiry in terms of section 28 of the IBA Act, make recommendations to the Minister regarding the amendment of the existing restrictions on control of commercial broadcasting services. The Minister must table such recommendations in Parliament within 14 days after receipt of those recommendations.<sup>14</sup>

2.4 In the Position Paper on Private Sound Broadcasting<sup>15</sup> the Authority gave consideration to the second phase of licensing of commercial sound broadcasting licensees. In Annexure 1 to that Position Paper, the Authority stated the following:

“For reasons of viability, the Authority has invited eight applications in the area of Gauteng, Cape Town and Durban. These areas have high population densities which may mean greater chances of profitability. The exact parameters of the frequencies will be determined in consultation with the successful applicants ... the Authority will invite expressions of interest for commercial sound broadcasting services in areas other than Cape Town, Durban and Johannesburg. These expressions of interest should take the form of proposals to the Authority identifying the area and broadly describing the format of the station and its prospects in relation to financial viability.”

In the light of the Authority's interest in exploring the viability of awarding commercial sound broadcasting licences to licensees in areas other than Gauteng, Cape Town and Durban (so-called “secondary town” licensees), the Authority committed itself to investigating the viability of commercial sound broadcasting licences in secondary towns.

2.5 Against this background, the Authority has decided to conduct a review of:

2.5.1 the statutory limitations on ownership and control of broadcasting services, as set out in sections 48, 49 and 50 of the IBA Act;

2.5.2 the commercial sound broadcasting sector, particularly so-called Greenfields licences;

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<sup>13</sup> Section 28(1)(b) of the IBA Act.

<sup>14</sup> Sections 49(7) and 50(4) and (5) of the IBA Act. Also see section 50(6) of the IBA Act.

<sup>15</sup> Available online on <http://www.icasa.org.za>.

2.5.3 the feasibility of issuing commercial sound broadcasting licences in secondary towns.

- 2.6 The Authority has drafted this Discussion Paper having regard to the Broadcasting Industry as it presently exists and operates. Technological advances and new media opportunities, particularly digital broadcasting, will have an impact on the Industry in the medium term, but this Paper is not intended to deal with the impact of these developments, which is the subject of another Discussion Paper.
- 2.7 Accordingly, simultaneously with the publication of this Discussion Paper, the Authority will, as required by section 28(2) of the IBA Act, and by means of the publication of a notice in the *Government Gazette*, make known its intention to conduct an inquiry into the abovementioned matters.
- 2.8 The objective of this Discussion Paper is to initiate the abovementioned review process by outlining the legal and economic context within which the review is to be conducted and, by doing so, to provide a basis for public participation in the review process.

### **3. Aims of the Discussion Paper**

- 3.1 In general terms, the purpose of this Discussion Paper is to give all interested parties the opportunity to contribute their views on the matters that form the subject of the review to be conducted by the Authority.
- 3.2 More specifically, the Discussion Paper is intended to stimulate debate on the impact of the IBA Act on:
- 3.2.1 the Authority's statutory mandate and its approach to the regulation of the broadcasting industry;
- 3.2.2 the meaning and effect of legal concepts such as ownership, control and empowerment, both in the specific context of the IBA Act and in the general context of South African company law and competition law;



3.2.3 the imperatives of, and the prerequisites for, foreign and local investment (both in terms of funding and expertise) in the South African broadcasting industry;

3.2.4 policy and political considerations concerning black economic empowerment, diversity of ownership and related issues; and

3.2.5 the possible viability of issuing secondary town licences to commercial sound broadcasters.

3.3 It is hoped that the Discussion Paper will generate and solicit relevant research as well as a wide range of opinion and comments. To this end, the Discussion Paper is structured in the form of questions supported by explanatory and contextual discussion.

3.4 In drafting this Discussion Paper, the Authority appointed consultants comprising of KPMG Consulting and Bowman Gilfillan Inc. The consultants were requested to conduct research and to formulate a broad economic analysis of the South African broadcasting industry. In conducting the research, the consultants were requested to:

3.4.1 conduct a limited international benchmarking exercise with respect to the regulatory regimes in operation in six selected territories, namely Australia, Singapore, the United Kingdom and the United States of America.

3.4.2 conduct a survey of stakeholders. This stakeholders survey consisted of, in the main, existing broadcasting licensees and was conducted by the consultants as part of their research. As such, this stakeholders survey is not available to the public, but the expert team have highlighted certain issues and comments raised by these stakeholders in the course of this Discussion Paper.<sup>16</sup>

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<sup>16</sup> A list of the interviewees is attached as Annexure A to this Discussion Paper.

- 3.5 The information and statistics used in the analysis of the Broadcasting Industry was that data available for the Industry for the calendar years 1996 – 2001.
- 3.6 In terms of section 28(3) of the IBA Act, the Authority invites interested parties to submit written representations on the questions posed in this Discussion Paper and, more generally, on the subject matter of this Discussion Paper.
- 3.7 The publication of this Discussion Paper, and the submission by interested parties of written representations on the Discussion Paper, will be followed by a public inquiry, to be conducted by the Authority in terms of sections 28 and 28A of the IBA Act. Interested parties who will have submitted written representations on the Discussion Paper will be afforded an opportunity to make oral submissions to the Authority at the public inquiry.
- 3.8 Written submissions must be addressed, faxed or e-mailed to:

Policy & Technical Department, ICASA, Block D, 164 Katherine Street, Pinmill Farm, Sandton, Private Bag X10002, Sandton, 2146, Telephone : (011) 321-8000; Facsimile : (011) 448-2414; E-mail : [vletsiri@icasa.org.za](mailto:vletsiri@icasa.org.za) or [mtillek@icasa.org.za](mailto:mtillek@icasa.org.za)

Any interested person who submits written representations should indicate whether he or she requires an opportunity to make oral presentations at the hearings. The closing date for the receipt of representations is 6 December 2002 at 16h30.

- 3.9 Subsequent to the abovementioned public inquiry, the Authority will publish a Position Paper and, insofar as they are considered necessary, will formulate written recommendations regarding possible amendments to the relevant provisions of the IBA Act and the Broadcasting Act.

## **B THE BROADCASTING INDUSTRY : AN OVERVIEW**

### **4. Overview of trends in the international broadcasting industry - 2001**

#### **4.1 General trends**

4.1.1 The global advertising industry has suffered as a result of the shrinkage of the major-media industry, which showed “growth” of -6% in 2001, and which is expected to “grow” by -1% in 2002.<sup>17</sup> This drastic contraction in the global advertising industry must, however, be looked at within the context of a world recession, and it is important to bear in mind that advertising expenditure tends to mirror wider economic activity in an exaggerated manner.

4.1.2 Broadcasters have been faced with increasing competition for some time. Public television has seen its share of the audience - and of advertising revenues - shrink. Subscription television, first in the form of cable services and, more recently, with the spread of satellite services, has multiplied the number of channels and enabled greater precision in targeting audiences, making the deepest inroads in markets in the United States of America and, increasingly, in Europe.

#### **4.2 Technology**

4.2.1 Technological changes and new media have underlain the broadcasting industry's recent development, greatly expanding the number of services offered to consumers and markedly improving the quality of those services. The possibility of creating new revenue streams and the need to keep up with competitors have made broadcasters invest heavily in the digitisation of their systems. The market is still constrained by the high prices charged for these services and for the devices that enable them, but the outlook is promising. Technological hurdles are being overcome, standards are being

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<sup>17</sup> Zenithmedia (2001) page 1.

defined, and legal impediments (such as the lack of clear rules for copy protection) are being addressed.

- 4.2.2 Digital broadcasting has not yet been introduced in South Africa other than in respect of DSTV, whereby the digital signal is converted to analogue by a decoder / set top box. There are approximately 60,000 subscribers to DSTV at present.
- 4.2.3 Technology affects the bottom line of broadcasting companies by changing how broadcasters run their businesses. The growing competitiveness of the broadcasting industry reflects not only technological developments that favour size (larger companies will likely have greater resources to invest in technology and are better suited to take full advantage of the benefits they make possible), but changing regulatory and political environments have also had an impact.
- 4.2.4 Broadcasting regulators throughout the world are gradually subscribing to the notion that the plethora of platforms by which viewers and listeners can access entertainment and information means companies compete not within a single medium but among many.

### **4.3 Convergence**

- 4.3.1 Convergence has emerged from the integration of content (audiovisual and publishing industries), infrastructures (broadcasting and telecommunication services) and the storage and processing capabilities of computers and consumer electronics. Despite convergence having its origin within the various areas of technology, broadcasting and telecommunications, it represented new opportunities and challenges for these industries themselves.
- 4.3.2 The growth of convergence has largely been driven by infrastructure provided by telecommunications companies and the processing capacity of personal computers. This, in turn, has created the Internet and thus “new media”. In order to meet demand for content, Internet

and telecommunication companies have gradually encroached on broadcasting services, with telecommunications companies shifting their focus from voice to data transmission.

4.3.3 The rapid growth of “converged companies” throughout the nineties led to ever larger stock exchange offerings, but revenues did not grow in line with this growth. As it became evident in 2000 and early 2001 that business models had changed but business economics had not, the “boom” started to turn to “bust”, resulting in the “Dot Com” crash of 2000/01 and the subsequent market revaluation of both telecommunication and broadcasting companies.

4.3.4 Many countries are now in a consolidation phase subsequent to the previous decade of growth and are focusing on the review of regulatory environments in order to encourage sustainable market growth, as well as assisting failing telecommunications and media companies. Companies are also in a consolidation phase, seeking to grow market share and develop revenue models which use market principles and new media opportunities.

#### **4.4 Structural shifts in broadcasting business models**

4.4.1 One result of the trend toward liberalisation of broadcasting is the formation of complex entities offering a more varied portfolio of products and services within existing markets. These same entities can also reach into new geographic markets, establishing a national, or even an international, presence. Thus, what was a local or national business, often highly fragmented, is undergoing consolidation that puts a premium on size and often leaves smaller enterprises more vulnerable.

4.4.2 Aggressive corporate activity aimed at expanding footprint or strengthening brand recognition is a common strategy adopted by broadcasters. By expanding into new media forms, broadcasters can generate new revenue streams while at the same time creating cross-promotion opportunities that enhance their recognition among viewers

and listeners. Advertisers consider themselves well served by packages that encompass a wide array of media and enable them to reach different targeted audiences with a single campaign.

- 4.4.3 Consolidation is also a means of achieving improved profitability when it results in a larger customer base thus enabling economies of scale and improved efficiency, reducing costs. Swaps, on the other hand, enable clustering of assets that, besides improving operating efficiency, also helps rationalise capital expenditures. In times of shrinking revenues, however, companies have found it necessary to protect profitability by cutting costs through layoffs, reduction in programming costs, and postponing capital expenditures.
- 4.4.4 As they seek to improve their profit margins, broadcasters may develop a corporate strategy with an eye on diversification, or they may develop new in-house capabilities. Several broadcasters have invested in creating programming assets, keeping those costs inside the company, while at the same time developing a new revenue stream from sales to third parties. Advanced media often generates higher profit margins, and several companies are investing in digital platforms, complementary Internet ventures, and the like.
- 4.4.5 Consolidation allows for centralisation of back-office functions, such as advertising sales, billing, and marketing. In some instances, combining certain newsroom operations also reduces costs. Cost savings are being successfully deployed into programming and advertising sales efforts, as well as other areas such as facilities upgrades.
- 4.4.6 Internationally, there is some evidence to support the contention that ownership concentration across local markets and regions appeals to advertisers and advertising agencies alike. Marketers can reach larger markets and a wider audience with fewer advertising buys, and this one-stop-shopping concept boosts radio's attractiveness as an advertising medium, whether the advertiser is a local merchant, a regional advertiser or a national marketer.

## **4.5 Competition and barriers to entry<sup>18</sup>**

4.5.1 Throughout the world technological developments now afford consumers a myriad of sources from which to obtain news and entertainment. But technological development has another cost: new, constantly changing technology does not come cheap. Changing regulatory environments have also altered the competitive landscape. In the USA, for example, the Telecommunications Act of 1996 removed many barriers by permitting telephone companies and cable operators to enter each other's lines of business to compete on the same turf. In the light of recent US corporate problems, such as WorldCom, Global Crossing and Q West, there has been debate as to whether this strategy was commercially appropriate.

4.5.2 The cost of programming can be a significant barrier to entry for unaffiliated or start-up broadcasters. The line-up of programmes a station offers is the key ingredient in attracting and retaining audiences. Stations with affiliations have the advantage of a considerable amount of programming at a favourable cost, a benefit that single stations lack. Although affiliates derive little direct revenue from network programming – and even that is declining – they have the advantage of audience flow from network to local programming.

4.5.3 Smaller players also experience more difficulty keeping pace with technological developments. The exorbitant costs associated with adopting technologies such as digital television represent an onerous part of the budgets of smaller station operators.

## **4.6 Regulatory environment<sup>19</sup>**

4.6.1 Some countries have reacted to the dynamic changes in the marketplace by reviewing broadcasting ownership rules. For the

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<sup>18</sup> S & P (2002) page 11.

<sup>19</sup> S & P (2002) page 21.

purposes of this Discussion Paper, the Authority has reviewed four jurisdictions representative of both developed and developing markets

#### 4.6.2 In the United States of America:

4.6.2.1 The Telecommunications Act of 1996 gave radio station owners the right to own as many as 20 FM and 20 AM radio stations, and as a result consolidation and station-trading took place.

4.6.2.2 In May 2000, the Federal Communications Commission (FCC) ruled that an individual or company may own two television stations in a single market, though it retained its radio ownership rules and its newspaper/television cross-ownership rule.

4.6.2.3 The Court of Appeals, in February 2002,<sup>20</sup> overthrew the cable-television cross-ownership rule that barred a cable company from also owning a broadcast station in a given market. The court ordered the FCC to review the 35% ownership cap and stated that it was arbitrary and capricious. The FCC is now required to justify why the cap, which it reviews biennially, is in the public interest.

4.6.3 In the United Kingdom, the Independent Television Commission (ITC) called, in October 2001, for the government to implement interim legislation that would allow consolidation within the media and communications industries. In December 2001, the British government unveiled proposals to overhaul rules governing ownership of media and communication businesses. Some analysts have said that technological changes, such as the emergence of satellite and cable television services, have rendered the old rules

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<sup>20</sup> *Fox Television Stations Inc v FCC* Case No. 00-1222, US Court of Appeals for the District of Columbia Circuit, unreported, available at [www.fcc.gov/ogc/documents/opinions/2002/00-1222.html](http://www.fcc.gov/ogc/documents/opinions/2002/00-1222.html).



obsolete, and the proposed new regulations could set off a string of rapid merger and acquisition activity.

- 4.6.4 In Australia, the Broadcasting Inquiry Report,<sup>21</sup> published on 11 April 2000 by the Australian Productivity Commission, stated that the key objective of the reform of Australia's cross-media rules should be to encourage diversity of information and opinion while a cross-media regulation rule should be determined by a media-specific public interest test.<sup>22</sup> On 11 February 2002, Australia's Prime Minister, John Howard, announced that the government would introduce legislation to relax restrictions on foreign cross-ownership of the country's media during the next parliamentary session.<sup>23</sup>
- 4.6.5 In Singapore, the Singapore Broadcasting Authority (Amendment) Bill<sup>24</sup> was read on 23 May 2002. The Bill, *inter alia*, repeals section 44 of the Singapore Broadcasting Authority Act, gives more flexibility to the acquisition of shareholdings in broadcasting companies, although no person can become a "substantial shareholder" of a broadcasting company without approval from the Minister.<sup>25</sup>

## 4.7 Questions

- 4(a) *Is it correct to assume that the abovementioned developments in the global market have had, or will in the future have, a material impact on the way in which the South African broadcasting industry operates? If so, the Authority would appreciate the opinion of stakeholders as to how the industry has been, or will be, affected by these developments.*
- 4(b) *Stakeholders have suggested that there are questionable benefits to consolidating, in particular, radio stations, with the exception of back office functions (such as pay roll and administration). Is this correct? The Authority would appreciate the opinion of stakeholders as to the*

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<sup>21</sup> Available online at <http://www.pc.gov.au/inquiry/broadcast/finalreport>.

<sup>22</sup> See Part V, Chapter 10 of the Report.

<sup>23</sup> *Financial Post* Canada, 11 February 2002.

<sup>24</sup> Bill No. 19/2002, available online at <http://www.gov.sg/parliament/bills/data/020019.pdf>.

<sup>25</sup> Section 45A(1) of the Singapore Broadcasting Authority (Amendment) Bill.

*potential benefits, or dangers, of consolidation in the South African broadcasting market.*

## **5. The South African Broadcasting Industry – A General Overview**

- 5.1 The Authority is committed to the ideal that all South Africans should have access to broadcasting services. The Authority is aware that, despite the efforts of broadcasting licensees, there are still areas in South Africa that cannot receive radio or television signals.
- 5.2 In order to comply with the primary objects of the IBA Act, the Authority is required to find a balance between the commercial interests of broadcasters, on the one hand, and the public interests of society at large, on the other hand. Finding this balance has, at times, been problematic, especially more recently when the commercial interests of broadcasting licensees have led to a number of applications for amendments to licence conditions.
- 5.3 Since the launch of Midi TV (Pty) Ltd t/a e.tv (e.tv) (1998) and DSTV (1996), viewership trends have varied as audiences have fragmented and programming has been refined to capture audience share. This trend of audience fluctuation and fragmentation between broadcasters has been mirrored in the sound broadcasting sector. Much of this trend has been driven by increased choices available to consumers over the past five years, as a consequence of the Authority licensing more commercial and community sound broadcasting services.
- 5.4 The structure of commercial broadcasting services' revenues differs from that of public service broadcasters. However, it is important to note that, unlike most public broadcasting services worldwide, the South African Broadcasting Corporation (SABC) competes for advertising revenue along with community and commercial broadcasting services, and advertising and sponsorship earnings constitute the majority (75%) of total revenue for the SABC.
- 5.5 The contest for audiences and, therefore, advertising spend is, thus, highly competitive in South Africa. The advertising market is also not homogenous,

with variable pricing of audiences leading to a situation where high audience ratings do not necessarily lead to high advertising rates.

- 5.6 Both radio and television have been steadily increasing their share of above-the-line adspend over the course of the last ten years, as the general level of disposable income increases in South Africa. However, the growth in the number of radio stations and television channels has meant that competition in the broadcast sector has increased over the course of the decade. This is particularly true in the lucrative Living Standards Measure (LSM) categories 7 and 8.
- 5.7 The increased competition for advertising revenue, coupled with the relatively small size of the South African market, has meant that media companies face low margins and revenues. In order to offset these constraints, some owners of broadcasting services have expressed the view that the existing ownership and control restrictions (which were imposed by Parliament when it enacted the IBA Act, and which the Authority is legally bound to enforce) should be liberalised. Broadcasters have argued that liberalisation would allow them to derive economy of scale benefits, thereby reducing their costs through shared service facilities, like marketing, and allowing them to build revenues through multiple channels.
- 5.8 Furthermore, technology trends and market pressures have created the need for further capitalisation. Broadcasters and their shareholders have faced obstacles in their attempts to source further capital for their operations. Accordingly, these pressures have seen a number of applications, in terms of section 52 of the IBA Act, for amendments to broadcasting services' licence terms and conditions. As the need for further capitalisation of broadcasters has emerged, difficulties have been faced by broadcasters and their shareholders that are required to source capital for the purposes of their businesses.

## 6. The South African Broadcasting Industry – An Economic Overview <sup>26</sup>

### 6.1 Introduction

6.1.1 The Triple Inquiry Report recommended that a number of the SABC's regional stations be sold. <sup>27</sup> The sale of these stations, which included Good Hope, KFM, Algoa, RPN East Coast, Oranje, Highveld and Jacaranda, commenced the process of transforming the sound broadcasting landscape of South Africa.

6.1.2 The Authority's Position Paper on Private Sound Broadcasting expressed the view that regional commercial sound broadcasting licences, particularly in Gauteng, Cape Town and Durban, would have a greater chance of viability (see paragraph 2.4 above). Consequently, in issuing new commercial sound broadcasting licences to date, no national commercial sound broadcasting licences have been issued.

6.1.3 Today the sound broadcasting sector consists of:

6.1.3.1 **Public Service Radio Stations** : Incorporating the nine so-called African Language Stations (ALS), RSG and SAFM, these eleven radio stations are fully owned by the SABC and form part of its public service portfolio and mandate. <sup>28</sup>

6.1.3.2 **Public Commercial Radio Stations** : Also part of the SABC, this portfolio includes Metro FM, 5 FM, Good Hope FM, Lotus FM and Radio 2000. <sup>29</sup> Three other SABC stations, CKI Stereo, Radio Sunshine and Radio Bop, are legacies from the former homelands.

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<sup>26</sup> Also see Annexure B to this Discussion Paper.

<sup>27</sup> See page 41 of the Triple Inquiry Report.

<sup>28</sup> See section 10 of the Broadcasting Act.

<sup>29</sup> See section 11 of the Broadcasting Act.

6.1.3.3 **Commercial Stations** : Consisting of both Greenfields and privatised SABC stations, these commercial radio stations number fifteen.

6.1.3.4 **Community Stations** : Licensed from 1995 onwards, some eighty community sound broadcasting licences were granted by the Authority. These licences were initially granted on a temporary one-year basis, but are now granted for a licence period of four years.<sup>30</sup>

## **6.2 Broadcasting share of advertising spend**

Broadcasting's share of total advertising spend grew by 4.6% over the period 1996 – 2000

## **6.3 Audience and advertising trends in television broadcasting**

6.3.1 According to statistics published in 2000,<sup>31</sup> 18.8 million adults watch television every day, with SABC-TV holding 80% of the market with 17.3 million daily viewers.

6.3.2 2001 was the first year during which television spend exceeded print since the early 1990s, increasing its share from 38% in 1996 to 42% in 2001. For the period 1996 – 2000, television spend grew at a compound annual growth rate (CAGR) of 13%, increasing revenues from R1.9bn in 1996 to R4.1bn in 2001.

6.3.3 As appears from Figure 1<sup>32</sup> and Figure 2,<sup>33</sup> adspend trends in television over the period 1996 – 2001 show substantive gains for e.tv, from R19m in 1998 to R890m in 2001. M-Net tops the earnings with an increase from R619m in 1996 to R993m in 2001. While both SABC1 and SABC2 experienced heights in 1998 and 1999 of R813m

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<sup>30</sup> See sections 47, 47A and 54 of the IBA Act.

<sup>31</sup> AdIndex 2000, quoted in SABC Annual Report 2000.

<sup>32</sup> See Annexure C to this Discussion Paper.

<sup>33</sup> See Annexure C to this Discussion Paper.

and R917m for SABC1 and R639m and R663m for SABC2 respectively, both have seen a decline to 2001 (SABC1 to R798 m and SABC2 R551m). SABC3 has seen an increase from R287m in 1996 to R739m in 2001. When correlated to LSM audience type, this points towards increased adspend aimed at higher LSMs who tend to cluster around e.tv, M-Net and SABC3.

6.3.4 Figure 3 <sup>34</sup> indicates that, as of 2001, <sup>35</sup> SABC1 had the largest audience (14 247 000). Its footprint reaches 82.2% of the population; <sup>36</sup> SABC2, with a footprint of 85.5%, has the second largest audience (9 555 000). SABC3 has a footprint of 74.2% and 6 million viewers. e.tv has 7 261 000 viewers, and M-Net reaches 2 713 000 viewers. <sup>37</sup>

6.3.5 Figure 4 <sup>38</sup> indicates the CAGR of overall television viewership from 1996 to 2000. While constant growth is displayed for SABC3 over the four year period, despite the gains in the upper LSMs by e.tv, SABC1 saw a reduction in viewership over the period 1999 - 2000, with SABC2 growing steadily. Unfortunately, SABC2's increased viewership growth was not matched by revenue growth – remaining in the upper R600m range and actually declining by R100m in 2001. e.tv shows remarkable growth in the period between 1999 and 2000.

6.3.6 As Figure 5 <sup>39</sup> indicates, SABC1 and SABC2 have lost market share over the five-year period under examination, with e.tv overtaking M-Net.

## **6.4 Audience and advertising trends in radio broadcasting**

6.4.1 With R658m of adspend in 1996, radio held a 13% share of all media adspend. Despite an increase in radio's share of adspend to 14% in

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<sup>34</sup> See Annexure C to this Discussion Paper.

<sup>35</sup> AMPS 2001.

<sup>36</sup> SABC Annual Report 2000 / 2001.

<sup>37</sup> SABC Annual Report 2000 / 2001.

<sup>38</sup> See Annexure C to this Discussion Paper.

<sup>39</sup> See Annexure C to this Discussion Paper.

2000, their share dropped to 12% (R1.2bn) in 2001. Radio has maintained a 13% CAGR over the period. The drop in share could perhaps be attributed to some erosion by competing media – in this case outdoor advertising, which shares radio LSM targets, or greater intra-sectoral competition with the growth of more platforms over the years.

6.4.2 Figure 6<sup>40</sup> shows how audience share has shifted from public service radio stations to commercial radio stations over the period 1996 – 2001. In 1996, share was split 82% to 15.86%, public to commercial radio. The 82% audience for public radio remained constant in 1997 and then dipped to 74% in 1998 and 1999 and 72% in 2000. In 2001, public radio garnered 78%. Commercial radio enjoyed a share of 15.86%, 15.58% and 15.19% in the period 1996 - 1998. 1999 saw a decrease to 14.78% and 14.96% and 2000 in privatised stations, as Greenfields stations grew from 0 in 1996 to 4% in 1998, and 6% audience share in 2000. 2001 once more saw an increase in audience share for Greenfields stations to 7%, with commercial stations reducing share to 13.36% as stations such as Y-FM and, in particular, Kaya were drawing audiences away. Community stations also saw an apparent increase over the period to an average between 7% and 6% from 1998 to 2001.

6.4.3 Of all four radio categories, public service and public commercial radio stations experienced the largest decline in year-on-year growth in 2001. Commercial stations experienced a surge in advertising over the period 2000 to 2001 – some of which might be attributed to better marketing on the part of the stations. More specifically, a number of Greenfields stations were included in the statistics for the first time in 2001, with the concomitant effect of increased year-on-year growth for Greenfields stations.<sup>41</sup>

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<sup>40</sup> See Annexure C to this Discussion Paper.

<sup>41</sup> No data is available for community radio licensees.

- 6.4.4 As Figure 9 <sup>42</sup> indicates, when examining audience share against revenue share, skewed income:audience ratios are highlighted. While Greenfields stations are slowly growing their revenue bases and show a profile similar to the public commercial stations in terms of revenue:listenership ratios, certainly the "big winners" in the battle for revenue have been the (former SABC) privatised stations which enjoyed an established audience and adspend on buy-out.
- 6.4.5 The top ten radio stations captured 73% of total advertising spend on radio.
- 6.4.6 Figure 11 <sup>43</sup> provides greater insight into the spread of audience per top-earning station as highlighted in Figure 10. <sup>44</sup> 94.7 Highveld Stereo is the leader in the upper LSMs, with 5FM following. Next are Radio Sonder Grense (RSG), KFM, East Coast Stereo and Jacaranda 94.2. As can be predicted, Ukhozi leads with Umhlobo Wenene with the highest audiences in LSMs 1-4 with Metro following in third position. Leader in LSM 6-7 is Y-FM, with Metro following.
- 6.4.7 Corroborating the previous graphs is Figure 12, <sup>45</sup> which encapsulates the audience share and share of adspend for the top ten earning radio stations. Regional and commercial stations tend to capture greater adspend per listener.

## 6.5 Question

- 6(a) *The Authority would like to hear stakeholders' comments on the analysis set out above. In particular, the Authority believes that the above analysis may*

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<sup>42</sup> See Annexure C to this Discussion Paper.

<sup>43</sup> See Annexure C to this Discussion Paper.

<sup>44</sup> See Annexure C to this Discussion Paper.

<sup>45</sup> See Annexure C to this Discussion Paper.



*be impacted by the extent to which adspend is received nett of discounts granted by broadcasters to advertisers. If this is so, the Authority would like to hear from broadcasters as to how this may have an impact on the trends set out above.*

## **C THE COMMERCIAL SOUND BROADCASTING SECTOR**

### **7. Commercial sound broadcasting : Economic overview <sup>46</sup>**

7.1 In Figure 13, <sup>47</sup> the 2001 audience numbers for commercial radio stations are set out. Highest attractor of commercial radio listeners in 2001 was Y-FM, at seventh place overall, with 5.5% of audiences or 1.5 million listeners. Jacaranda 94.2 enjoyed 1.4 million listeners (5.1%). Third was East Coast Radio with 1.2 million listeners (4.3%), then Kaya with 938 000 listeners and 94.7 Highveld Stereo with 924 000 listeners (both 3.2%).

7.2 With respect to adspend trends, the following can be noted:

7.2.1 Despite the overall decline in radio adspend, commercial radio managed to grow slightly during 2001 – and has grown consistently since 1996.

7.2.2 Total spend on commercial radio grew from just under R300m in 1997 to R430m in 2001. The performance of commercial stations over this period has been mixed, although five of the top ten stations by adspend (2001) were commercial radio stations – 94.7 Highveld Stereo, East Coast Radio, Jacaranda 94.2, KFM and recently Y-FM. Three of these are located in Gauteng. The other two are in KwaZulu-Natal and the Western Cape.

7.2.3 Aside from licensing format, location and audience reach, strategy, marketing and management are key factors in the overall success of stations. 94.7 Highveld Stereo captured the highest percentage of adspend in radio and delivers the third largest audience of the commercial broadcasters.

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<sup>46</sup> Also see Annexure D to this Discussion Paper.

<sup>47</sup> See Annexure C to this Discussion Paper.

7.2.4 As is demonstrated by Figure 14,<sup>48</sup> performances of commercial radio stations over the period 1996 to 2002 were mixed, with Eastern Cape regional stations performing worst. Gauteng based talk station, 702, which was faced with competition as a commercial station (within its own stable), also reflected over 10% negative compound annual growth over the period. Greatest growth came from East Coast Radio, followed by 94.7 Highveld Stereo.

### **7.3 A summary of the relevant trends would indicate the following:**

- 7.3.1 The radio market is both concentrated and highly competitive;
- 7.3.2 Radio advertising declined during 2001, but growth remains positive for the period 1996-2001;
- 7.3.3 Public radio continues to dominate the radio broadcasting sector both in terms of share of audience and share of adspend;
- 7.3.4 Successful radio stations are either delivering high general audience numbers or are clearly targeted at LSMs 8-10;
- 7.3.5 Commercial sound broadcasting is a strong sector with the top two radio stations by adspend (2001) coming from this category;
- 7.3.6 Greenfields stations are starting to make an impact on the radio broadcasting market, but are still small in comparison to incumbent players.

### **7.4 Question**

- 7(a) *The Authority would like to hear from stakeholders as to whether they are in agreement with the analysis set out above. In particular, the Authority would like to hear the views of commercial sound broadcasting licensees as to whether they believe that the commercial sound broadcasting sector is*

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<sup>48</sup> See Annexure C to this Discussion Paper.

*economically viable and whether there are any impediments to the growth of the sector.*

## **8. Greenfields Licences : Audience Profile and Adspend**

- 8.1 After slow acceptance during the 1990s, Greenfields stations have begun to grow their share of adspend. However they still account for a small part of the overall sound broadcasting market – just over 10% in 2001. See Figure 16.<sup>49</sup>
- 8.2 The relationship between adspend and high LSM audiences holds true for Greenfields stations. Gauteng based Greenfields stations have been the most successful to-date, with Y-FM and Classic FM recently dominating the advertising market. By 2002, Y-FM had the greatest share of audience and adspend among Greenfields stations. See Figure 17.<sup>50</sup>
- 8.3 Two of the Greenfields stations have pursued higher LSMs (Classic FM and 567 Cape Talk), while the others have targeted middle income LSMs, namely Y-FM, Kaya and P4, with P4 Cape Town sharing mid and higher LSMs. See Figure 18.<sup>51</sup>
- 8.4 As of 2002, Y-FM enjoyed the greatest share of audience and adspend of the Greenfields stations, with Kaya enjoying strong audience share but lower revenues than Classic FM, which saw Moneyweb acquiring equity, bringing with them substantial adspend for Classic FM.
- 8.5 Stakeholders have made the following comments with respect to the performance of Greenfields stations:
- 8.5.1 For the Greenfields licensees, economic conditions are much tougher than they initially anticipated in that two licensees have already closed

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<sup>49</sup> See Annexure C to this Discussion Paper.

<sup>50</sup> See Annexure C to this Discussion Paper.

<sup>51</sup> See Annexure C to this Discussion Paper.

their doors, five would appear to be making losses and only one has broken even.

- 8.5.2 There are a number of factors which have contributed to difficult economic times for Greenfields broadcasters, including an efficient marketing and sales force, limited coverage areas, and the restrictions of format which are imposed by the Authority in Greenfields stations' licence conditions.<sup>52</sup>

## 8.6 Questions

- 8(a) *The Authority would like to hear from interested parties, and particularly Greenfields licensees, whether they agree with the above analysis of their business insofar as it relates to audience profile and adspend.*
- 8(b) *The Authority would like to hear from Greenfields licensees as to their commercial viability, both in respect of their share of advertising revenues and the reasons for any problems, which they may have in competing with other sound broadcasting licensees.*
- 8(c) *At present, sound broadcasting licences are granted on a regional basis only. Should the Authority consider the issuance of national sound broadcasting licences?*
- 8(d) *Should the Authority continue to grant licences on a regional or a national basis or should it not find a different basis for the allocation such licences, such as percentage of "listenership"?*
- 8(e) *It has been suggested that the issuance of FM licences to community broadcasters is an inefficient use of a scarce resource. Should the Authority consider the possibility of FM licences granted to community licensees being re-allocated to commercial sound broadcasting use, with community licensees being granted AM broadcasting facilities? Could this re-allocation be achieved without any cost or meaningful loss of quality with respect to existing community stations which have this advantage?*
- 8(f) *The Authority has been requested to consider, by existing commercial sound broadcasting licensees, allowing such licensees to migrate from AM to FM. Would such a consent have a positive or negative impact on the existing commercial sound broadcasting market?*

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<sup>52</sup> Format conditions in Licence Conditions derive from the Promises of Performance made by those licensees.

- 8(g) *The Authority has also been requested to consider by existing commercial sound broadcasting licensees, whether medium wave is a commercially viable answer to the scarcity of available frequencies for commercial sound broadcasters. The Authority would like to hear from stakeholders as to whether medium wave would be viable.*
- 8(h) *In the Gauteng, the Authority has received requests from existing commercial sound broadcasters for the extension of their coverage area. At present, only two FM frequencies are available in the Gauteng and there are four licensees. A number of suggestions have been made with respect to how the Authority should deal with allocating scarce resources to either existing or new sound broadcasting licensees. One of these suggested methods is to allocate the frequencies to commercial broadcasters on a “first come first serve” basis. Another suggestion has been to allocate such frequencies by means of an auction. The Authority would like to hear from stakeholders as to their views on the manner in which the Authority could best regulate and manage the allocation of frequencies.*

## **9. Secondary town licences <sup>53</sup>**

- 9.1 The Authority has heard from stakeholders that they would be interested in investigating the possibility of the Authority issuing commercial sound broadcasting licences to broadcasters situated in secondary towns. With a view to considering the feasibility of such licences, the Authority and its consultants have conducted some preliminary research and identified a list of proposed secondary towns for consideration by stakeholders. “Secondary town” licences, being licences in respect of commercial sound broadcasting licensees situated outside of Gauteng, Durban and Cape Town, were first proposed in the Position Paper on Private Sound Broadcasting (referred to in paragraph 2.4 above).
- 9.2 The Authority proposes the following as being possible secondary town commercial sound broadcasting licence sites:

#### 9.2.1 North West

- Klerksdorp
- Rustenburg
- Potchefstroom

#### 9.2.2 Limpopo Province

- Polokwane
- Potgietersrus

#### 9.2.3 Eastern Cape

- Port Elizabeth / Uitenhage
- Grahamstown
- East London

#### 9.2.4 Free State

- Bloemfontein
- Welkom
- Kroonstad

#### 9.2.5 Northern Cape

- Kimberley
- Upington
- De Aar

#### 9.2.6 Mpumalanga

- Standerton
- Middleburg

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<sup>53</sup> Also see Annexure E to this Discussion Paper.

- Bethal

#### 9.2.7 Gauteng

- Vanderbijlpark

#### 9.2.8 KwaZulu-Natal

- Pietermaritzburg
- Newcastle

#### 9.2.9 Western Cape

- Paarl
- Hout Bay
- Somerset West.

### 9.3 Questions

- 9(a) *The Authority has, in paragraph 9.2 above, listed potential “secondary towns” where commercial sound broadcasting licences may be awarded. The Authority would like to hear from stakeholders as to their views on the listed secondary towns, and whether there are other approaches to identifying potential “secondary town” licence areas which the Authority should consider.*
- 9(b) *Stakeholders have enquired as to the rationale for issuing or considering secondary town licences whilst the commercial, Greenfields licensees are struggling to become, and remain, profitable. The Authority would like to hear from stakeholders as to whether or not there is any scope for the issuance of secondary town licences.*
- 9(c) *Is there scope for the award of secondary town licences, and if so, should such licences be awarded to existing sound broadcasting licensees or can new, Greenfields secondary town licences be commercially viable?*



## **D LIMITATIONS ON OWNERSHIP AND CONTROL OF BROADCASTING SERVICES**

### **10. Introduction**

10.1 The primary objects of the IBA Act, which guide the Authority in discharging its regulatory mandate, are set out in section 2. The relevant provisions are set out in Annexure A to this Discussion Paper.

10.2 Sections 48, 49 and 50 of the IBA Act set out the statutory limitations with regard to ownership and control of commercial broadcasting services. These limitations mean that there is a restriction on the transferability of investment opportunities to existing and potential investors in the broadcasting industry. In a number of applications for amendments to broadcasting licensees' licence terms and conditions, which have been made to the Authority in recent years, the Authority has had to decide whether investors in broadcasting licensees should be permitted to dilute, or divest themselves of, their shareholdings in licensees, and whether licensees should be permitted to allot shares to new investors, for the purposes of obtaining additional funding.

10.3 In this regard, reference can be made to a number of applications that have been considered by the Authority, in particular:

10.3.1 the application brought by KFM (Pty) Ltd in terms of which its control would pass from the original shareholders to, effectively, New Africa Investments Limited (NAIL);

10.3.2 the application for the amendment of the shareholding structure of Kaya FM by the introduction of a new investor, Corpcom Limited;

10.3.3 the application by P4 Durban and P4 Cape Town for changes to their shareholding structures, which would allow New Africa Media (Pty) Ltd to acquire control of these commercial radio stations;

10.3.4 the application by Kagiso and NAIL for the acquisition by NAIL of all of the media assets owned by Kagiso.

10.4 In the four instances referred to above, the Authority had to interpret the IBA Act and, in particular, the provisions relating to “control” and “ownership” in the light of the commercial realities of the South African broadcasting industry. This requires balancing the competing interests referred to in section 2 of the Broadcasting Act and section 2 of the IBA Act, which is a difficult task.

10.5 The inquiries held into the abovementioned applications highlighted a number of issues, most importantly the following:

10.5.1 On the one hand, there is a need on the part of shareholders in broadcasting licensees (in particular empowerment groups) to be able to trade their investments. On the other hand, there is a concern that, if empowerment groups were able to sell their shareholdings in broadcasting licensees, the ownership and control of broadcasting licensees by previously disadvantaged groups would be diluted. Such dilution would be contrary to the requirements of the IBA Act <sup>54</sup> and the Broadcasting Act. <sup>55</sup> This concern also arises in the context of the fact that, very often, a broadcasting licence was awarded to the relevant licensee, pursuant to a competitive licensing process, precisely on the strength of its empowerment credentials; the dilution of empowerment shareholders’ equity stake in that licensee would undermine the competitive nature of the licensing process.

10.5.2 There is a possibility that, if left to market forces, existing media groups might dominate the commercial broadcasting industry in a manner which may not be appropriate and in the public interest, in that it may adversely affect diversity and plurality.

10.5.3 The lack of a definition, in the IBA Act and the Broadcasting Act, of the concept of “empowerment” and, more particularly, of the criteria to be applied in ascertaining whether a particular entity is an empowerment vehicle, might need to be addressed.

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<sup>54</sup> Section 2(f).

<sup>55</sup> Section 2(c).

10.5.4 The IBA Act does not provide guidance on the most appropriate mechanism for promoting ownership and control of broadcasting services by persons from historically disadvantaged communities. In this regard, the Authority's standard practice of entrenching a broadcasting licensee's shareholding structure in its licence terms and conditions, in an effort to ensure that the licensee's ownership and control structures (especially its empowerment shareholding) are not altered without the Authority's prior approval having been obtained (through an amendment of the relevant licence in terms of section 52 of the IBA Act), has been criticised.

## **11. Definition of "control"**

11.1 Sections 48, 49 and 50 of the IBA Act are all concerned with the "control" of commercial broadcasting services. Section 1(2) of the IBA Act provides that, for the purposes of that Act, a person shall control, have control or be in control of or be in a position to exercise control over, a broadcasting licensee, a newspaper or a company, *inter alia* in the circumstances contemplated in paragraphs 1, 2 and 3, respectively, of Schedule 2 to the IBA Act, which are set out in Annexure A to this Discussion Paper.<sup>56</sup>

### **11.2 Questions**

- 11(a) Is the definition of "control" set out in Schedule 2 to the IBA Act appropriate and sufficiently clear? If not, what amendments to that definition would you propose, and why?*
- 11(b) Stakeholders have criticised the definition of "financial interest" in section 1 of the IBA Act as contradicting the provisions of paragraphs 1 and 3 of Schedule 2, thereby creating confusion and possible inconsistencies in the IBA Act. Do you agree with this criticism and, if so, how should the IBA Act be amended?*

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<sup>56</sup> It is apparent from section 1(2) that the definition of "control" set out in Schedule 2 is not intended to be an exhaustive definition. In other words, it is possible that the facts of a particular case might show that a person has control over a broadcasting licensee, newspaper or company even though the circumstances contemplated in Schedule 2 might not exist.

## 12. Section 48 : Foreign control

12.1 One of the stated objects of the IBA Act is to ensure that broadcasting services are not controlled by foreign persons.<sup>57</sup> Section 48 expressly limits the extent to which foreign persons may exercise control over, or have interests in, commercial broadcasting services. The relevant provisions of section 48 are set out in Annexure A to this Discussion Paper.

12.2 In broad terms, the practical effect of sections 48(1) and (2) is the following:

12.2.1 control of every commercial broadcasting service must be vested in South African persons (whether natural persons or juristic persons), and no such service may be under the direct or indirect control (as defined in Schedule 2) of one or more foreign persons;

12.2.2 a foreign person may not have a financial interest or shareholding exceeding 20% of such interests or shareholdings in a broadcasting licensee, and

12.2.3 foreign persons may not constitute more than 20% of the board of directors of a broadcasting licensee.

12.3 The White Paper on Broadcasting Policy (the White Paper)<sup>58</sup> stipulates that “private broadcasters are expected to fulfil significant public policy goals. To ensure that the broadcasting system meets the needs of South Africa, it is imperative that effective ownership and control of our broadcasting system remain in the hands of South African citizens.”<sup>59</sup> Although the White Paper does not elaborate, these public policy goals encompass the black empowerment objective of ensuring the access of previously disadvantaged persons to the broadcasting sector, and a content objective. The latter is closely aligned to the general themes of diversity and plurality, and focuses on

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<sup>57</sup> Section 2(h). Also see section 2(n) of the Broadcasting Act, which requires that broadcasting services should be under the effective control of South Africans.

<sup>58</sup> Published by the Department of Communications on 4 June 1998, available online on <http://www.docweb.pwv.gov.za/docs/policy/broadcastingwp.html>.

<sup>59</sup> Chapter 9 paragraph 4 of the White Paper.

ensuring the cultural relevance of media voices to the local market. Against these priorities, the White Paper weighs the need for foreign investment to enable commercial broadcasters to fulfil the policy goals. It states that, “ ... the Government is keen to increase investment opportunities in the South African broadcasting system so that South Africa can play its rightful role in global markets. The increase in investment opportunities will flow from both the investments of South African companies and foreign companies that partner South African companies in new undertakings.”<sup>60</sup>

12.4 Some countries are reviewing their regulations with respect to the foreign ownership of broadcasting licensees and are considering amendments to those regulations. This is particularly so in:

12.4.1 the United Kingdom, where the Draft Communications Bill<sup>61</sup> proposes the removal of the existing general restriction on ownership of broadcasting licensees by non-European Economic Union (non-EEC) persons.<sup>62</sup> The Department of Trade & Industry, in conjunction with the Department of Culture, Media & Sport, has published a commentary on the policy framework of the Draft Communications Bill (the Policy Document),<sup>63</sup> which states that the current foreign ownership restrictions are “...inconsistent and difficult to apply. The Government wants to encourage inward investment from non-EEA sources, to allow the UK to benefit rapidly from new ideas and technological developments, aiding efficiency and productivity.”<sup>64</sup>

12.4.2 Australia, where the Broadcasting Services Amendment (Media Ownership) Bill, 2002 (the Media Ownership Bill) proposes to remove the regulatory barriers contained in the Broadcasting Services Act, 1992 to investment by foreign entities in Australian media.<sup>65</sup> An explanatory memorandum on the Media Ownership Bill (“the

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<sup>60</sup> *Ibid.*

<sup>61</sup> Published by the Government of the United Kingdom in May 2002. The text is available at [www.communicationsbill.gov.uk](http://www.communicationsbill.gov.uk).

<sup>62</sup> Section 264(1)(a) of the Draft Communications Bill.

<sup>63</sup> Available at [www.communicationsbill.gov.uk](http://www.communicationsbill.gov.uk).

<sup>64</sup> Paragraph 9.3.1 of the Policy Document.

<sup>65</sup> Schedule 2 of the Media Ownership Bill.

explanatory memorandum”), published under the authority of the Minister of Communications, Information Technology & the Arts,<sup>66</sup> expresses the conviction that the removal of the restriction will “broaden the scope for increased competition and improve access to capital and technology.”<sup>67</sup> However, the explanatory memorandum also states that “foreign ownership of commercial television and subscription television interests will continue to be regulated by the Foreign Acquisitions and Takeovers Act 1975 in the same manner as for commercial radio and newspapers. The Trade Practices Act 1974 will also continue to apply.”<sup>68</sup>

12.5 The survey of stakeholders referred to in paragraph 3.4.2 above has indicated that:

12.5.1 most of the interviewed stakeholders would not be in favour of removing the restrictions on foreign ownership of broadcasting licences set out in section 48 of the IBA Act;

12.5.2 some of the interviewed stakeholders would be comfortable with the threshold referred to in section 48(2) being lifted from 20% to a higher percentage, whilst other stakeholders are content with maintaining the current 20% threshold, or would like to see it reduced;

12.5.3 some stakeholders believe that if it is lawful for print media owners to be foreign, then the same should apply to broadcasting owners, with cultural identity and diversity issues being defined and defended by local content requirements.

12.6 South Africa is a member of the World Trade Organisation (“WTO”) and is bound by certain multilateral agreements entered into under the auspices of the WTO, including the General Agreement on Trade and Services (“GATS”). Although under GATS, South Africa is obliged to allow foreign shareholders to hold a maximum of 30% equity in companies which supply telecommunication

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<sup>66</sup> Available at [www.aph.gov.au/Senate/committee/ecita\\_ctte/media\\_ownership](http://www.aph.gov.au/Senate/committee/ecita_ctte/media_ownership).

<sup>67</sup> Page 1 of the explanatory memorandum.

services,<sup>69</sup> this obligation specifically excludes “cable or broadcast distribution of radio or television programming”.<sup>70</sup>

## 12.7 Questions

- 12(a) Is there any justification for, and is it appropriate (in the context of globalisation or otherwise) to continue to restrict foreign control over, and interests in, South African broadcasting licensees?*
- 12(b) Would the abolition of the present restrictions on foreign control over, and interests in, broadcasting licensees be likely to encourage investment and stimulate growth in the South African broadcasting industry?*
- 12(c) Would the abolition of the present restrictions on foreign control over, and interests in, broadcasting licensees be likely to have an adverse impact on the plurality or diversity of news, views and information available in the South African broadcasting industry? If so, how (if at all) can a balance be struck between the apparently competing interests of encouraging investment in the industry and maintaining such plurality and diversity?*
- 12(d) If restrictions on foreign control over, and interests in, South African broadcasting licensees were to be retained, should the threshold percentages set out in sections 48(1) and (2) be adjusted, or should a completely different approach be adopted to the regulation of foreign ownership and control of broadcasting services? Kindly motivate your answer by indicating how such regulations should be formulated and why, in your view, such formulation would be appropriate.*
- 12(e) Are the restrictions on the foreign control anti-competitive? If so, kindly motivate your answer and indicate how, in your view, the regulations should be formulated?*
- 12(f) Do the restrictions on foreign control comply with the multi-lateral trade treaties signed by South Africa, in particular, GATS? If not, in what respects?*

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<sup>68</sup> Page 1 of the explanatory memorandum.

<sup>69</sup> Supplement 2 to South Africa's Schedule of Specific Commitments.

<sup>70</sup> Article 2(b) of the Annex on Telecommunications excludes from the ambit of the annex “cable or Broadcast distribution of radio or television programming”.

### **13. Section 49 : Control of multiplicity of commercial services**

13.1 It is one of the stated objects of the IBA Act to ensure that commercial broadcasting licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in South Africa.<sup>71</sup> Against this background, section 49 of the IBA Act sets out the limitations on the extent of the control that any person may have over a multiplicity of commercial broadcasting services. This provision deals with limitations in respect of the control of:

13.1.1 commercial television broadcasting licences;

13.1.2 commercial FM sound broadcasting licences;

13.1.3 commercial AM sound broadcasting licences.

13.2 Section 49 of the IBA Act is reproduced in Annexure A to this Discussion Paper.

13.3 In essence, section 49 provides that no person may be in a position, directly or indirectly, to exercise control over more than one commercial television broadcasting licence or more than two commercial FM sound broadcasting licences or more than two commercial AM sound broadcasting licences. Where a person is in a position to control two commercial FM or AM sound broadcasting licences, such licences must not relate to the same licence area or to substantially overlapping licence areas.

13.4 The Authority's comparative international research shows that foreign jurisdictions are reviewing the limitations which they have placed on control of a multiplicity of commercial broadcasting services by a single person. In particular:

13.4.1 In the United Kingdom there is on-going debate in respect of the following:



13.4.1.1 Several amendments to the ownership restrictions have been proposed in the Draft Communications Bill, which adopts a deregulatory approach. In the Policy Document which accompanies the Draft Bill, the conviction is expressed that deregulation will promote healthy competition within individual media markets, provided that minimum guarantees of plurality remain.<sup>72</sup> However, it appears that, to some extent, cross-media ownership restrictions will continue to be enforced, because it is proposed that specific restrictions in respect of significant newspaper assets and public television services that have a mass audience be retained.<sup>73</sup>

13.4.1.2 In respect of the television market, the deregulatory approach of the Draft Bill is evident in the revocation of various rules, including the prohibitions on the formation of a single ITV company, the joint holding of two Channel 3 licences, and the rule imposing a 15% limit on a company's share of the total television audience.<sup>74</sup> In addition, the rule preventing joint ownership of a national Channel 3 and the Channel 5 licences will be revoked.<sup>75</sup>

13.4.1.3 With regard to radio ownership, the Draft Bill proposes the revocation of the rule prohibiting any person from owning more than one national analogue radio licence,<sup>76</sup> the revocation of the radio points system,<sup>77</sup> and, in respect of local radio, the institution of a scheme by the Secretary of State that will effectively ensure a minimum of three separate owners of local radio services in addition to the British Broadcasting Corporation in any given region.<sup>78</sup> A similar

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<sup>71</sup> Section 2(i).

<sup>72</sup> Paragraph 9.2.1 of the Policy Document, available at [www.communicationsbill.gov.uk](http://www.communicationsbill.gov.uk).

<sup>73</sup> *ibid.*

<sup>74</sup> Section 266(1) of the Draft Bill, and see paragraph 9.5.1 of the Policy Document.

<sup>75</sup> Section 266(1) of the Draft Bill, and see paragraph 9.5.2 of the Policy Document.

<sup>76</sup> Section 266(1) of the Draft Bill, and see paragraph 9.6.1.1 of the Policy Document.

<sup>77</sup> Section 266(1) of the Draft Bill, and see paragraph 9.6.1.2 of the Policy Document.

<sup>78</sup> Paragraph 11(1) of part 3 of Schedule 14 of the Draft Bill, and see paragraph 9.6.2 of the Policy Document.

scheme will be instituted in respect of local digital sound programme services.<sup>79</sup>

13.4.2 In Australia, there is discussion over the content of the Media Ownership Bill, though it does not propose to amend the existing limits in the Broadcasting Services Act, 1992 pertaining to audience reach and the maximum number of commercial broadcasting licences that can be controlled in the same licence area, but which does propose amendments to the cross-media restrictions. These proposed amendments are apparently underpinned by two core objectives: firstly, to “allow increased scope for commercial opportunities whilst preserving a diversity of opinion and information which is of relevance to local communities”; and secondly, to “ensure that the legislative framework has sufficient flexibility to accommodate changing conditions within the communications environment...”<sup>80</sup>

13.5 The Authority’s survey of stakeholders has indicated that many stakeholders would like to see the limitations on ownership and control of commercial broadcasting services set out in section 49 either amended or repealed in their entirety.

## 13.6 Questions

- 13(a) Should the number of opportunities available to any broadcasting licensee be proportionate to the total number of available licences? In other words, should the existing ownership restrictions be reviewed if the number of available commercial sound broadcasting licences were to be increased?*
- 13(b) Would the abolition of the restrictions set out in section 49 be likely to encourage investment and stimulate growth in the South African broadcasting industry? If so, how (if at all) can a balance be struck between the apparently conflicting interests of encouraging investment in the*

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<sup>79</sup> Paragraph 12(1) of part 3 of Schedule 14 of the Draft Bill, and see paragraph 9.6.3 of the Policy Document.

<sup>80</sup> Page 6 of the Explanatory Memorandum on the Media Ownership Bill, published under the authority of the Minister for Communications, Information Technology & the Arts, and available at [www.aph.gov.au/Senate/committee/ecita\\_ctte/media\\_ownership](http://www.aph.gov.au/Senate/committee/ecita_ctte/media_ownership)].

*industry and maintaining the diversity of control contemplated in section 2(i)?*

*13(c) Would the abolition of the restrictions set out in section 49 be likely to have an adverse impact on the plurality of news, views and information available in the South African broadcasting industry? If so, how (if at all) can a balance be struck between the apparently conflicting interests of encouraging investment in the industry and maintaining such plurality?*

*13(d) If it is your view that there is a need for restrictions of the nature contemplated in section 49, do you believe that the present formulation of that provision is appropriate, or would you recommend amendments to that provision? If the latter, kindly indicate how the provision should be formulated, and why your proposed formulation would be an improvement over the present formulation.*

#### **14. Section 50 : Cross-media control**

14.1 One of the stated objects of the IBA Act is to impose limitations on cross-media control of commercial broadcasting services.<sup>81</sup> Section 50 seeks to achieve that object by placing certain restrictions on cross-media control, being the control of commercial broadcasting services and other media businesses in different sectors, notably newspapers. The relevant provisions of section 50 of the IBA Act are reproduced in Annexure A to this Discussion Paper.

14.2 Paragraph 2 of Schedule 2 to the IBA Act sets out the circumstances in which a person will be regarded as being in control of a newspaper. The relevant provisions are reproduced in Annexure A to this Discussion Paper.

14.3 Comparisons with other jurisdictions indicate that, in some jurisdictions, regulations with respect to cross-media ownership are being relaxed, if not abolished. For example:

14.3.1 in the United Kingdom cross-media restrictions will be significantly deregulated, and will be reduced to three core rules, namely a rule

limiting joint-ownership of national newspapers and Channel 3,<sup>82</sup> a parallel regional rule,<sup>83</sup> and a scheme to ensure the plurality of ownership existing in local media.<sup>84</sup> The rules on cross-ownership of local newspapers will be simplified and relaxed,<sup>85</sup> and the public interest test currently applicable to the acquisition of any broadcasting licence by a newspaper owner will be removed.<sup>86</sup>

14.3.2 In Australia, the Australian Broadcasting Authority (“the ABA”) will be empowered to grant cross-media exemption certificates, which will operate as an exemption from the existing cross-media ownership restrictions.<sup>87</sup> In granting such an exemption certificate the ABA must have regard to the objective that separate editorial decision-making responsibilities must be maintained in relation to each media operation. This criterion encompasses the mandatory requirements of separate editorial policies, appropriate organisational charts, and separate editorial news management, news compilation processes and news gathering and interpretation capabilities.<sup>88</sup> In addition, the ABA may require that a regional broadcaster, who is the holder of an active exemption certificate, maintain existing levels of local news, weather bulletins and local community service announcements, emergency warnings and information, or prescribe a higher minimum level of such local news and information services.<sup>89</sup> Once an exemption certificate is granted, these requirements will become conditions of the certificate and the ordinary mechanisms for the enforcement of licence conditions will apply.<sup>90</sup>

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<sup>81</sup> Section 2(j).

<sup>82</sup> Paragraph 1(1) of part 1 schedule 14 of the Draft Bill.

<sup>83</sup> Paragraph 1(2) of part 1 schedule 14 of the Draft Bill.

<sup>84</sup> Paragraph 9.4.2 of the Policy Document.

<sup>85</sup> Section 266(1) of the Draft Bill, and see paragraph 9.4.6 of the Policy Document.

<sup>86</sup> Paragraph 9.4.7 of the Policy Document.

<sup>87</sup> Section 61C, schedule 2 of the Media Ownership Bill.

<sup>88</sup> Section 61F, schedule 2 of the Media Ownership Bill.

<sup>89</sup> Sections 61V and 61W, schedule 2 of the Media Ownership Bill.

<sup>90</sup> Section 61G, read with sections 61C and 61D, schedule 2 of the Media Ownership Bill.

14.4 In its Triple Inquiry Report,<sup>91</sup> the Authority expressed the concern that the concentration of media power may have an adverse effect on the diversity of information available to the public:

“Control of a number of media by one person or entity ... is hardly good for a democracy, where all views should be presented and must enjoy equal possibility of acceptance or rejection. Whatever the editorial content or the number of information carriers, concentration of control of media access in the hands of a few powerful moguls is by definition a threat to the diversity of information. Conversely, multiplying the number of media owners/controllers increases the probability of diversity of information, and if this were to be coupled with structural independence/autonomy, the effect on diversity of information would be positive. Also, effective competition amongst controllers/owners may lead to quantitative differentiation between the products offered by each of them and thereby favour editorial diversity.”<sup>92</sup>

14.5 In deciding upon recommendations to be made concerning cross-media control, the Authority took account of a number of relevant contextual factors:

“Firstly, South Africa and indeed the broadcasting industry in this country, is not at the same level of growth or maturity as most of the countries [studied by the Authority during the course of the inquiry]. The Authority has to establish and nurture an industry where none existed before. It is not uncommon for a regulator to introduce rules and policies aimed at initially protecting the fledging industry, and [subsequently] reviewing the rules to catch up with developments, needs and re-determined priorities. Secondly, the trend towards market regulation, or self-regulation, cannot adequately address the stated priorities of advancing democracy, development and nation-building. These priorities must be read to encompass the public interest in broad participation in the ownership of the broadcast media, particularly by persons or groups from historically disadvantaged communities, diversity of views, impartial reportage, enhancing national, provincial and local identities and cultures, providing educational and educative programming and a broad range of programme choices. To achieve these, direct regulation will be necessary. This may be reviewed in time as the need arises.”<sup>93</sup>

14.6 A survey of stakeholders has revealed that some of the interviewed stakeholders hold the following views:

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<sup>91</sup> The Authority was required, shortly after its inception, to conduct an inquiry into three specific areas of broadcasting regulation: see section 28(8)(b) of the IBA Act. Pursuant to that inquiry, in August 1995, the Authority released its “Report on the Protection and Viability of Public Broadcasting Services, Cross-Media Control of Broadcasting Services, and Local Television Content and South African Music”, which is commonly referred to as “the Triple Inquiry Report”, available online on <http://www.iba.org/toc.html>.

<sup>92</sup> Triple Inquiry Report, page 71.

<sup>93</sup> Triple Inquiry Report, page 74.

14.6.1 relaxing cross-ownership controls would enable previously disadvantaged communities to build up critical mass in media and broadcasting businesses;

14.6.2 it is not true that ownership equals editorial control, and strong editorial independence will ensure that there is a diversity of voice;

14.6.3 relaxing the present cross-media controls would give more opportunities to, for example, radio stations in that at present news is a cost, and inevitably broadcasters seek the cheapest (and often the same) news sources.

#### **14.7 Questions**

*14(a) Is there a direct or necessary correlation between diversity of ownership of broadcasting services and a diversity of opinion/voice? Kindly motivate your answer.*

*14(b) Are the considerations underlying the present cross-media controls (as described in the Authority's Triple Inquiry Report, quoted above) still applicable? Have socio-political and economic circumstances, and circumstances in the broadcasting industry, changed sufficiently since the publication of the Triple Inquiry Report now to conduct the review (envisaged in the abovementioned quotations from the Triple Inquiry Report) of the cross-media limitations imposed pursuant to the publication of that report?*

*14(c) Would the abolition of the restrictions on cross-media control of broadcasting services be likely to encourage investment and stimulate growth in the South African broadcasting industry? If so, how (if at all) can a balance be struck between the apparently conflicting interests of encouraging investment in the industry and maintaining the diversity of control contemplated in section 2(i) of the IBA Act and the plurality of views contemplated in section 2(d) of the Broadcasting Act?*

*14(d) If it is your view that there is a need for restrictions of the nature contemplated in section 50 of the IBA Act, do you believe that the present formulation of that provision is appropriate, or would you recommend that amendments be made to that provision? If the latter, kindly indicate how*

*the provision should be formulated, and why your proposed formulation would be an improvement over the present formulation.*

**15. Exemption from the requirements of sections 49 and 50**

15.1 The Authority has a discretionary power, in terms of sections 49(6)(a) and 50(3) of the IBA Act, to exempt any person, on good cause shown, from the requirement of having to adhere to the limitations contemplated in sections 49 and 50. However, in doing so, the Authority may not depart from the objects and principles set out in section 2. In other words, the restrictions imposed by section 49 and 50 are not absolute and, in appropriate cases, the Authority may permit non-compliance with these restrictions.

15.2 When considering whether or not an applicant should be exempted from the limitations set out in sections 49 and 50 of the IBA Act, the Authority must:

15.2.1 determine whether such applicant has shown good cause why it should be exempted; and

15.2.2 determine whether, if granted, the exemption would not amount to a departure from the objects and principles set out in section 2 of the Act.

15.3 In other words, it is an absolute requirement that the Authority may not grant exemption from the abovementioned restrictions if, to do so, would be inconsistent with any of the objects or principles set out in section 2 of the IBA Act. Consequently, in order to qualify for exemption, the applicant would have to satisfy the Authority that its proposed control structure (which is in contravention of section 49 or 50, but in respect of which exemption from those provisions is sought) is not inconsistent with the objects or principles set out in section 2. In addition, the applicant would have to satisfy the Authority that good reasons exist for granting the requested exemption.

15.4 The Authority is not required by the IBA Act or the Broadcasting Act to incorporate a licensee's shareholding structure in its licence terms and conditions. However, in the context of the Authority's duty to, *inter alia*, encourage ownership and control of broadcasting services by persons from

historically disadvantaged groups, and in view of the fact that the Authority, when making a decision to award a licence to a particular licensee, makes such decision on the basis, *inter alia*, of such licensee's shareholding structure, it is considered appropriate that the shareholding structure be entrenched in the licence. Accordingly, a licensee is frequently not able to amend its shareholding structure without first having obtained the Authority's approval, in terms of section 52 of the IBA Act, for an amendment to its licence conditions. If a licensee wishes to amend its shareholding structure such that the result of the amendment, if granted, would be in conflict with section 49 or 50, such amendment application must be considered simultaneously with an application for an exemption in terms of either section 49(6) or 50(3).

15.5 The Authority has, in recent years, received applications in terms of section 52 of the IBA Act from East Coast Radio (Pty) Ltd, Jacaranda FM (Pty) Ltd and Radio Oranje (Pty) Ltd for the amendment of their respective licence conditions. The applications in terms of section 52 depended on whether simultaneous applications in terms of section 49(6) succeeded. The Authority decided not to grant exemption in terms of section 49(6) with the result that the applications in terms of section 52(1) were also turned down.

15.6 KFM Radio (Pty) Ltd brought an application in terms of section 52 of the IBA Act, in terms of which it requested the Authority to amend the terms and conditions of its licence pertaining to its shareholding structure. The Authority considered whether there was an infringement of the limitations set out in section 49 and, if so, whether an exemption in terms of section 49(6) would have to be granted. The Authority found that there was no infringement.

## 15.7 Questions

*15(a) Is it desirable that the Authority be empowered to grant exemption in respect of the limitations imposed by sections 49 and 50 of the IBA Act, or should those limitations be applied rigidly? Kindly motivate your answer.*

*15(b) If you believe that the Authority should have the power to relax the limitations imposed by sections 49 and 50 in appropriate circumstances, do sections 49(6)(a) and 50(3) provide adequate mechanisms for doing so? Kindly motivate your answer.*



- 15(c) Would it be useful if the Authority were to publish guidelines regarding the interpretation and application of sections 49(6)(a) and 50(3), particularly regarding the meaning of the “good cause” requirement? If so, how should these guidelines be formulated, and what would constitute “good cause”? How should a balance be struck between the objects set out in section 2 and the commercial interests of licensees?*
- 15(d) Is it advisable for the Authority to entrench licensees’ shareholding and control structures in their licence terms and conditions? If not, why not, and how should the Authority rather exercise regulatory supervision over matters of ownership and control (particularly with a view to promoting the objects set out in section 2)?*
- 15(e) Should the Authority be empowered to grant exemption, in appropriate circumstances, from the limitations on foreign control set out in section 48? Kindly motivate your answer. If so, what would constitute appropriate circumstances for granting such exemption?*

## **16. Empowerment**

16.1 One of the primary objects of the IBA Act is to “encourage ownership and control of broadcasting services by persons from historically disadvantaged groups”.<sup>94</sup> Another object of the IBA Act is to promote the empowerment and advancement of women in the broadcasting services.<sup>95</sup> In the light of the number of current commercial sound broadcasting licences that are owned or controlled by previously disadvantaged groups, some progress has been made towards the achievement of these objects. In other words, by having regard to these objects in performing its regulatory function, the Authority has facilitated the entry of a number of empowerment companies into the broadcasting industry.

16.2 In order to promote these objects, the Authority’s practice has been to specify, in broadcasting licensees’ licence conditions, the names of its shareholders and their respective percentage shareholdings. The purpose of this practice is to ensure that control over a licensee does not change, and that the

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<sup>94</sup> Section 2(f). Also see section 2(c) of the Broadcasting Act.

<sup>95</sup> Section 2(gA).

percentage of shares held by historically disadvantaged persons in the licensee's issued share capital is not reduced, without the Authority's prior approval having been obtained. It has been suggested by some stakeholders that this is not an effective method of ensuring the continued participation of previously disadvantaged groups, especially in the light of the ongoing funding requirements of licensees, and the desirability of any investor, whether previously disadvantaged or otherwise, being able to trade these investments.

16.3 Another concern that has been raised, particularly during the course of applications (in terms of section 52 of the IBA Act) for the amendment of broadcasting licensees' licence terms and conditions relating to empowerment shareholding requirements, relates to the absence of a definition or common understanding of the terms "empowerment" and "historically disadvantaged groups".

16.4 The term "historically disadvantaged person/s" has been given the following definitions by the legislature (albeit in different statutory contexts):

16.4.1 "those persons or categories of persons, who prior to the new democratic dispensation marked by the adoption and coming into force of the Constitution of the Republic of South Africa Act, Act 108 of 1996, were disadvantaged by unfair discrimination on the basis of their race and includes juristic persons or associations owned and controlled by such persons";<sup>96</sup>

16.4.2 "persons or categories of persons that were unfairly discriminated against on the basis of past legislation, policies, prejudice and stereotypes";<sup>97</sup>

16.4.3 "a person is a historically disadvantaged person if that person –  
(a) is one of a category of individuals who, before the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), came into

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<sup>96</sup> National Empowerment Fund Act, No. 105 of 1998, section 1.

<sup>97</sup> World Heritage Convention Act, No. 49 of 1999, section 1.

operation, were disadvantaged by unfair discrimination on the basis of race;

- (b) is an association, a majority of whose members are individuals referred to in paragraph (a);
- (c) is a juristic person other than an association, and individuals referred to in paragraph (a) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes; or
- (d) is a juristic person or association, and persons referred to in paragraph (a), (b) or (c) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes.”<sup>98</sup>

16.5 The Employment Equity Act<sup>99</sup> seeks to promote equal employment opportunities for persons from “designated groups”. The term “designated groups” is defined as “black people, women and people with disabilities”. In turn, the term “black people” is defined as “a generic term which means Africans, Coloureds and Indians”. The term “people with disabilities” is defined as “people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment”.

16.6 The Black Economic Empowerment Commission (BEEC) has recommended the following definition of “black economic empowerment”:<sup>100</sup>

“It is an integrated and coherent socio-economic process. It is located within the context of the country’s national transformation programme, namely the RDP. It is aimed at redressing the imbalances of the past by seeking to substantially and equitably transfer and confer the ownership, management and control of South Africa’s financial and economic resources to the majority of its citizens. It seeks to ensure broader and meaningful participation in the economy by black people to achieve sustainable development and prosperity.”

16.7 The BEEC also proposed that the following definitions be applied by the public and private sector in initiatives aimed at de-racialisation of ownership:<sup>101</sup>

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<sup>98</sup> See section 3(2) of the Competition Act, No. 89 of 1998.

<sup>99</sup> Act No. 55 of 1998.

<sup>100</sup> BEEC Report (2001) page 2.

16.7.1 A “black company” is one that is 50.1% owned and managed by black people.

16.7.2 A “black empowered company” is one that is at least 25.1% owned and managed by black people.

16.7.3 A “black influenced company” is one which is 5% - 25% owned and managed by black people.

16.7.4 An “engendered company” is one with at least 30% representation of black women within the black equity and management portion of that company.

16.8 The survey of stakeholders has indicated that, insofar as broadcasting licensees are from historically disadvantaged groups, the restrictions placed on all licensees in terms of sections 48, 49 and 50 of the IBA Act may have had the effect of discouraging investment and growth by such licensees, in that any changes to ownership and control of a licensee require the approval of the Authority. The comment has been made that, as a result, empowerment companies in the broadcasting sector have been reduced to “a cottage industry”.

## **16.9 Questions**

*16(a) Should the term “historically disadvantaged person” be defined in the IBA Act, the Broadcasting Act and/or in broadcasting licensees’ licence terms and conditions? If so, how should this term be defined, and how would such definition be related to the definition of “control”? Are the statutory definitions set out above of any assistance in this regard?*

*16(b) Do you agree with the BEEC’s proposed definitions of “black economic empowerment”, “black company”, “black empowered company”, “black influenced company” and “engendered company”? Can these proposed*

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<sup>101</sup> BEEC Report (2001) page 34, paragraph 6.5.2. In these definitions, “ownership” refers to “economic interest”, and “management” refers to executive directors.

*definitions be applied usefully in the context of the broadcasting industry? If not, how should the terms “empowerment” and “empowerment company” be defined? In particular, it would be of assistance to the Authority to see representations from stakeholders as to whether the percentage of equity participation by previously disadvantaged groups should be the only yardstick, or whether there should be a more flexible set of criteria based on a basket of considerations such as equity participation, management control, the constitution of the board of directors, the company’s employment equity policies and its policies towards skills development and training.*

- 16(c) Are the comments from stakeholders (referred to in paragraph 13.9 above) correct? How should the Authority regulate and protect participation by previously disadvantaged groups in the broadcasting sector whilst allowing such groups to prosper?*
- 16(d) Has the promotion of the interests of women and people with disabilities received adequate attention? How should the Authority go about promoting these interests in the context of the requirements of sections 2(f) and 2(gA) of the IBA Act?*
- 16(e) Stakeholders have indicated that the Authority’s approach to, especially, black empowerment may be flawed in that it uses the same criteria for a company with a share capital of R100.00 as it does for a company owning assets worth R500 million. The Authority would like to hear whether there should be more flexibility as to how it evaluates companies, whether listed or unlisted.*

## **17. Level playing field**

17.1 Stakeholders have pointed out that the commercial viability of the broadcasting industry, whether in television or in radio, depends not so much on the number of licences which are available but on meaningful adherence to section 2(o) of the IBA Act, which states that the Authority has, as one of its primary objects, an obligation to “ensure fair competition between broadcasting licensees”.

17.2 For example, the following arguments have been raised:

17.2.1 It has been suggested that the fact that M-Net (which is a subscription television service) is allowed to provide free-to-air broadcasts during its daily “open window” gives it a competitive advantage over free-to-air broadcasters, who are not allowed to compete on a level playing field.

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17.2.2 It has been suggested by some stakeholders that the SABC has an unfair advantage over other broadcasting licensees in that it is permitted to operate a plurality of commercial radio stations, and in that some of its stations broadcast nationally (whereas other commercial sound broadcasting services have geographically restricted footprints).

17.2.3 It has been suggested that sources of revenue open to particularly television broadcasters are not equitable, in that subscription television stations should be prohibited from deriving revenues from advertising and that a public broadcaster such as the SABC should not be entitled to both public money and revenues from advertising.

### 17.3 Questions

*17(a) Is it necessary to review the provisions of the IBA Act in order to ensure compliance with section 2(o) of the IBA Act?*

*17(b) Licensees tend to contest the ability for the Authority to amend license conditions during a Section 44 renewal process. They argue that the Authority is only able to amend the license through a Section 52 process. However, the Authority would argue that it has the right to amend licenses to enable the aligning of license conditions to new regulations, fair competition and licensees promise of performance. Should Section 44 of the IBA Act or any other relevant sections such as Section 52 of the IBA Act be amended to clarify this matter?*

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<sup>102</sup> See e.tv's written representations, dated 4 February 2002, in respect of M-Net's application for the renewal of its broadcasting licence in terms of section 44 of the IBA Act.

## 18. Practical and procedural considerations

- 18.1 It is believed by many media owners that the prevailing regulatory regime is an impediment to the continued attractiveness of investment in the media sectors. One of the problems that have been pointed out is that, with respect to mergers or the acquisition by one party of the broadcasting interests of another party, the regulatory process is in conflict with the parties' commercial interests in that the process is often public, protracted and to the ultimate detriment of both parties (in the event of an adverse ruling on the part of the Authority). This state of affairs, it is argued, undermines confidence and potential investment in the broadcasting industry.

### 18.2 Questions

- 18(a) The Competition Commission has adopted a policy in terms of which it will enter into non-binding discussions, on an informal and "without prejudice" basis, with potential parties to a notifiable transaction, so that the parties can gauge whether or not there are impediments to their proposed transaction. This informal process is designed to ensure that, prior to a formal application to the Competition Commission, the parties are in a position to assess the risk of the application failing. The Authority has on occasion adopted a similar approach. Should there be a more formal procedure for this purpose?*
- 18(b) The Authority and the Competition Commission have recently signed a Memorandum of Agreement to govern the exercise of concurrent jurisdiction between the two regulators. Similar dual regulation also exists in other jurisdictions, for example, the United States, Australia, Europe and the United Kingdom. Should the Authority be considering any further measures in order to remove the perception that mergers and/or acquisitions of broadcasting interests face an almost insurmountable obstacle in acquiring the necessary regulatory approval?*

## **E CONCLUSION**

The primary purpose of this Discussion Paper is to give all interested parties the opportunity to contribute their views on matters that form the subject of the review to be conducted by the Authority. Should the Paper fail to raise pertinent issues and questions, interested parties are invited to make submissions in this regard. Likewise, any additional, relevant research would be welcomed.



## ANNEXURE A

### STAKEHOLDER SURVEY INTERVIEWEES

1. MAX KOEP : DEUTSCHE BANK
2. MARCEL GOLDING : e-TV
3. GLEN MARQUES : M-NET
4. ROGER JARDINE : KAGISO LIMITED
5. KUBEN PILLAY  
DAN MOYANE  
ZOLILE NTUKWANE
- PRIMEDIA
6. LARA KANTOR : NATIONAL ASSOCIATIONS OF BROADCASTERS
7. CONNIE MOLUSI AND VERNON MATZOPOULOUS : JOHNNIC PUBLISHING
8. HAROLD BOPALAMO : BARNARD JACOBS MELLET
9. JANE DUNCAN : FREEDOM OF EXPRESSION INSTITUTE
10. JUSTINE WHITE : EDWARD NATHAN INC.
11. PETER MATLARE/SHERELLE SHMULLIAN : SABC
12. MABALANE MFUNDISI : NATIONAL COMMUNITY RADIO FORUM
13. KOOS BEKKER : NASPERS

**APPLICABLE LEGISLATIVE PROVISIONS****1. Section 2 of the IBA Act****“Primary objects of Act**

The primary object of this Act is to provide for the regulation of broadcasting activities in the Republic in the public interest through the Independent Broadcasting Authority established by section 3, and for that purpose to –

- (a) promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level which, when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information;
- (b) promote the development of public, commercial and community broadcasting services which are responsive to the needs of the public;
- (c) ensure that broadcasting services, viewed collectively -
  - (i) develop and protect a national and regional identity, culture and character;
  - (ii) provide for regular -
    - (aa) news services;
    - (bb) actuality programmes on matters of public interest;
    - (cc) programmes on political issues of public interest; and
    - (dd) programmes on matters of international, national, regional and local significance;
- (d) protect the integrity and viability of public broadcasting services;
- (e) ensure that, in the provision of public broadcasting services-
  - (i) the needs of language, cultural and religious groups;
  - (ii) the needs of the constituent regions of the Republic and local communities; and
  - (iii) the need for educational programmes,are duly taken into account;
- (f) encourage ownership and control of broadcasting services by persons from historically disadvantaged groups;
- (g) encourage equal opportunity employment practices by all licensees;
- (h) ensure that broadcasting services are not controlled by foreign persons;
- (i) ensure that commercial and community broadcasting licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic;
- (j) impose limitations on cross-media control of commercial broadcasting services;
- (k) promote the most efficient use of the broadcasting services frequency bands;
- (l) ensure that public broadcasting licensees, commercial broadcasting licensees and signal distribution licensees comply with internationally accepted technical standards;
- (m) ensure that broadcasting signal distribution facilities are made available in respect of all licensed broadcasting services;
- (n) refrain from undue interference in the commercial activities of licensees, whilst at the same time taking into account the broadcasting needs of the public;

- (o) ensure fair competition between broadcasting licensees;
- (p) promote and conduct research into broadcasting policy and technology;
- (q) encourage investment in the broadcasting industry;
- (r) promote the stability of the broadcasting industry;
- (s) ensure equitable treatment of political parties by all broadcasting licensees during any election period;
- (t) ensure that broadcasting licensees adhere to a code of conduct acceptable to the Authority; and
- (u) encourage the provision of appropriate means for disposing of complaints in relation to broadcasting services and broadcasting signal distribution.”

## **2. Section 48 of the IBA Act**

### **“ Limitations on foreign control of commercial broadcasting services. –**

- (1) One or more foreign persons shall not, whether directly or indirectly –
  - (a) exercise control over a commercial broadcasting licensee; or
  - (b) have financial interest or interest either in voting shares or paid-up capital in a private broadcasting licensee exceeding twenty percent [sic].
- (2) Not more than twenty percent of the directors of a commercial broadcasting licensee may be foreign persons.
- (3) ...”

## **3. Section 49 of the IBA Act**

### **“ Limitations on control of commercial broadcasting services. –**

- (1) No person shall –
  - (a) directly or indirectly exercise control over more than one commercial television broadcasting licence; or
  - (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than one commercial television broadcasting licence; or
  - (c) be in a position to exercise control over a commercial television broadcasting licence and be a director of any company which is in a position to exercise control over any other commercial television broadcasting licence.
- (2) No person shall -
  - (a) be in a position to exercise control over more than two commercial FM sound broadcasting licences;
  - (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two commercial FM sound broadcasting licences; or
  - (c) be in a position to exercise control over two commercial FM sound broadcasting licences and be a director of any company which is in a

position to exercise control over any other commercial FM sound broadcasting licence.

- (3) A person referred to in subsection (2) shall not be in a position to control two commercial FM sound broadcasting licences which either have the same licence areas or substantially overlapping licence areas.
- (4) No person shall -
  - (a) be in a position to exercise control over more than two commercial AM sound broadcasting licences;
  - (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two commercial AM sound broadcasting licences; or
  - (c) be in a position to exercise control over two commercial AM sound broadcasting licences and be a director of any company which is in a position to exercise control over any other commercial AM sound broadcasting licence.
- (5) No person referred to in subsection (4) shall be in a position to control two commercial AM sound broadcasting licences which either have the same licence areas or substantially overlapping licence areas.
- (6)
  - (a) On application by any person the Authority may, on good cause shown and without departing from the objects and principles as enunciated in section 2, exempt such person from adhering to any one of the limitations contemplated in the preceding subsections.
  - (b) An exemption in terms of paragraph (a) may be made subject to such terms and conditions as the Authority deems appropriate and equitable in the circumstances.
- (7) ....”

#### 4. Section 50 of the IBA Act

“ **Limitations on cross-media control of commercial broadcasting services. –**

- (1) Cross-media control of broadcasting services shall be subject to such limitations as from time to time determined by the Transitional Executive Council acting on the recommendation of the Authority, or, where the Transitional Executive Council has dissolved in terms of section 29 of the Transitional Executive Council Act, 1993, by the National Assembly so acting, in accordance with the provisions of the Constitution.
- (2)
  - (a) No person who controls a newspaper may acquire or retain a financial control in both a radio and TV licence.
  - (b) No person who is in a position to control a newspaper may be in a position to control a radio or television licence in an area where the newspaper has an average ABC circulation of 20% of the total newspaper readership in the area, if the licence area of the radio

- licensee overlaps substantially with the said circulation area of the newspaper.
- (c) Substantial overlap shall be interpreted to mean an overlap by 50% or more.
  - (d) A 20% shareholding in a radio or television licence shall be deemed to constitute control.
  - (e) The shareholding and financial structures of commercial broadcasting licensees will form part of the annual reports submitted to the Authority.
- (3) The Authority may on good cause shown and without departing from the objects and principles as enunciated in section 2, exempt the publisher of a newspaper or, where such publisher is a company, the person in control of such company, from adherence to any of the limitations determined in terms of this section.
- (4) ....
- (5) ....
- (6) ....”

## **5. Schedule 2 to the IBA Act**

### **1. Control of a commercial broadcasting licensee. –**

- (1) For the purposes of this Act, a person shall control or be in a position to exercise control over any existing or prospective commercial broadcasting licensee if, inter alia -
- (a) such person, either alone or together with an associate, is in a position to exercise control over such broadcasting licensee;
  - (b) such person, either alone or together with an associate, is in a position to exercise direct or indirect control over the selection or provision of a significant proportion of the programmes broadcast or proposed to be broadcast by such broadcasting licensee;
  - (c) such person, either alone or together with an associate, is in a position to exercise direct or indirect control over a significant proportion of the operations of such a broadcasting licensee in providing a broadcasting service under the broadcasting licence;
  - (d) such person, either alone or together with an associate, is in a position -
    - (i) where the licensee or prospective licensee is a company, to veto any action taken by the board of directors of such licensee or to appoint or secure or veto the appointment of at least half of the board of directors of such licensee; or
    - (ii) to give or exercise in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the broadcasting licensee; or

- (e) the existing or prospective broadcasting licensee or, where such a licensee is a company, more than fifty percent of the directors of such company -
    - (i) acts or is accustomed to act; or
    - (ii) under a contract, arrangement or understanding (whether formal or informal) is destined, required or expected to act, in accordance with the directions, instructions or wishes of, or in concert with, such person or such person and his associate acting together or, if such person is a company, the directors of the latter company.
- (2) Subparagraph (1)(b) shall not apply in relation to the provision of programmes by a person to a broadcasting licensee under any agreement if the conditions of such agreement relate only to the programmes so provided or to the promotion thereof.
- (3) An employee of a broadcasting licence shall not by virtue of the provisions of subparagraph (1) be regarded as being in a position to exercise control over such licensee merely because of his or her being an employee, except where he or she is placed in such a position of control by virtue of his or her association with any other person.
- (4) More than one person may be in a position to exercise control over a licensee.

## 2. **Control of a newspaper. –**

- (1) For the purposes of this Act, a person shall control or be in a position to exercise control over a newspaper if –
  - (a) such person is the publisher of the newspaper;
  - (b) such person is in a position, either alone or together with an associate, and either directly or indirectly –
    - (i) to exercise control over a significant proportion of the operations of the publisher in publishing the newspaper; or
    - (ii) to exercise control over the selection or provision of a significant proportion of the material to be published in the newspaper;
  - (c) where the newspaper is published by a company, the person, either alone or together with an associate, is in a position –
    - (i) to exercise control over such company;
    - (ii) to veto any action taken by the board of directors of such company;
    - (iii) to appoint or secure or veto the appointment of at least one half of the board of directors of such company; or
    - (iv) to give or exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management of the affairs of such company; or
  - (d) where the newspaper is published by a company, the company or more than fifty percent of its directors –
    - (i) acts or is accustomed to act; or
    - (ii) under a contract or an arrangement (whether formal or informal) is destined, required or expected to act, in accordance with the directions, instructions or wishes of, or in concert with, such person or such person and his or her associate acting together or, if such person is a company, the directors of the latter company.

- (2) Subparagraph (1)(b)(ii) shall not apply in relation to the provision of material by a person to a newspaper under any agreement for the supply of material of that kind if the conditions of such agreement relate only to the material so provided.
- (3) An employee of the publisher of a newspaper shall not by virtue of the provisions of subparagraph (1) be regarded as being in a position to exercise control over such newspaper merely because of his or her being an employee, except where he or she is placed in such a position of control by virtue of his or her association with any other person.

**3. Deemed control of a company. -**

Without derogating from the provisions of any law or from the common law, and in the absence of proof to the contrary, a person shall be regarded as being in control of, or being in a position to exercise control over, a company if he or she has equity shareholding in the company exceeding twenty-five percent or has other financial interests therein equal to at least twenty-five percent of its nett assets.

## ANNEXURE C

### SOUTH AFRICAN BROADCASTING STATISTICS

Figure 1 : Television Adspend per channel (1996 – 2001) <sup>103</sup>

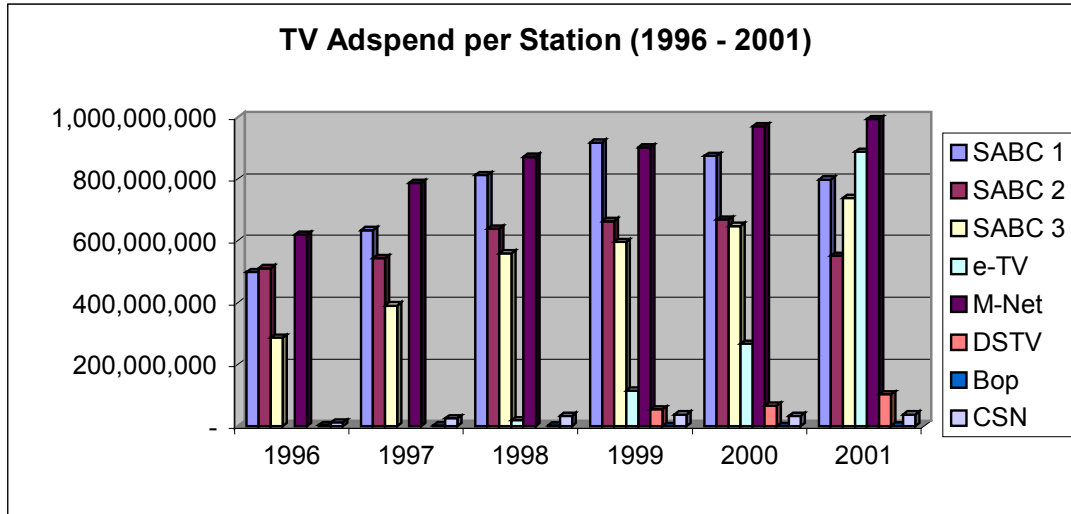


Figure 2 : Television Adspend per Station (1996 – 2001) <sup>104</sup>

	1996	1997	1998	1999	2000	2001
<b>SABC1</b>	498 995 331	634 396 588	813 244 338	917 615 074	875 165 443	798 049 209
<b>SABC2</b>	511 598 969	543 973 068	639 854 375	663 604 971	668 051 976	551 937 034
<b>SABC3</b>	287 420 456	391 003 204	559 528 552	596 398 945	648 026 035	739 315 107
<b>e-TV</b>			19 271 404	116 089 258	267 159 648	889 187 563
<b>M-Net</b>	619 838 633	787 689 687	872 181 406	902 416 503	969 701 547	993 890 762
<b>DSTV</b>				54 494 669	66 600 237	102 951 718
<b>Bop</b>	4 244 127	3 392 166	1 790 852	516 248	1 003 657	1 502 873
<b>CSN</b>	11 291 514	25 659 299	32 698 480	38 249 500	33 424 880	38 289 770

<sup>103</sup> AC Nielsen (2002).

<sup>104</sup> AC Nielsen (2002).



Figure 3 : Television Viewership 2001 <sup>105</sup>

	<b>e.tv</b>		<b>SABC3</b>		<b>M-Net</b>		<b>SABC2</b>		<b>SABC1</b>	
	<b>Absolute</b>	<b>%</b>		<b>%</b>		<b>%</b>		<b>%</b>		<b>%</b>
<b>LSM 1-4</b>	1373	19%	1089	18%	59	2%	3262	34%	6030	42%
<b>LSM 5</b>	1068	15%	789	13%	86	3%	1462	15%	2507	18%
<b>LSM 6</b>	1721	24%	1209	20%	312	12%	1690	18%	2563	18%
<b>LSM 7</b>	941	13%	780	13%	353	13%	879	9%	1101	8%
<b>LSM 8</b>	882	12%	780	13%	506	19%	877	9%	886	6%
<b>LSM 9</b>	718	10%	720	12%	644	24%	769	8%	675	5%
<b>LSM 10</b>	558	8%	633	11%	753	28%	616	6%	485	3%
<b>Total</b>	<b>7261</b>	<b>100%</b>	<b>6000</b>		<b>2713</b>		<b>9555</b>		<b>14247</b>	

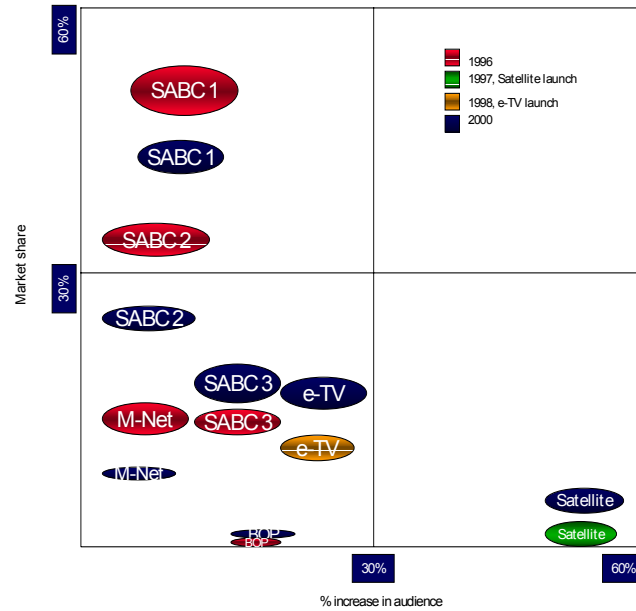
Figure 4 : Viewership growth patterns (1996-2000) <sup>106</sup>

						<b>CAGR 96-00 (total audience )</b>	<b>CAGR 99-00 (total audience )</b>
<b>Absolute audience</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>		
<b>SABC1</b>	26.20%	36.60%	33.50%	39.30%	47.20%	12.49%	9.59%
<b>SABC2</b>	20.10%	27.30%	24.10%	24.60%	32.70%	10.22%	15.29%
<b>SABC3</b>	9.10%	14.30%	11.50%	14.60%	19.70%	16.70%	16.16%
<b>e-tv</b>	-	-	-	12.40%	20.70%	N/A	29.20%
<b>M-Net - Main Service</b>	9.50%	10.90%	9.60%	9.60%	10.20%	1.43%	3.08%
<b>M-NET – CSN</b>	-	0.50%	0.40%	0.40%	0.50%	N/A	11.80%
<b>Bop TV</b>	0.50%	0.80%	0.60%	0.70%	1.20%	19.14%	30.93%
<b>Mmabatho TV</b>	0.10%	0.20%	-	-	-		
<b>Total Satellite Channels</b>	-	0.50%	0.80%	2.10%	3.10%	N/A	21.50%
<b>Total TV Audience / Adult pop</b>	65.50%	91.10%	80.50%	103.70%	135.30%	15.61%	14.22%
<b>Total free-to-air</b>	56.00%	79.20%	69.70%	91.60%	121.50%	16.76%	15.17%
<b>Total pay</b>	<b>10.00%</b>	<b>12.20%</b>	<b>10.60%</b>	<b>10.70%</b>	<b>11.90%</b>	<b>3.54%</b>	<b>5.46%</b>

<sup>105</sup> AMPS 2001.

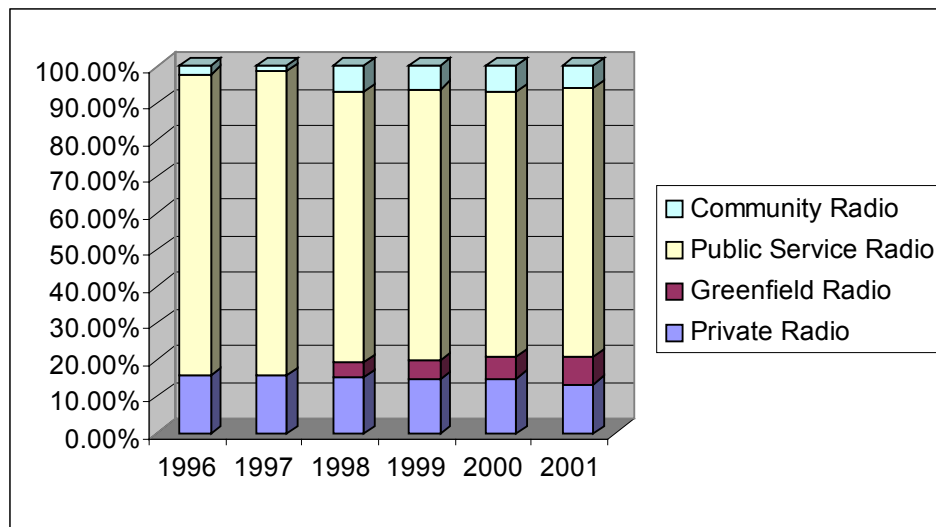
<sup>106</sup> AMPS 2001.

Figure 5 : Channel / Share of advertising spend and audience (1996 – 2001) <sup>107</sup>



Source: AC Nielsen 2001

Figure 6 : Percentage audience share : Commercial and Public Service Radio (1996 – 2001) <sup>108</sup>



<sup>107</sup> AC Nielsen (2001).

Figure 7 : Total advertising spend on radio per year <sup>109</sup>

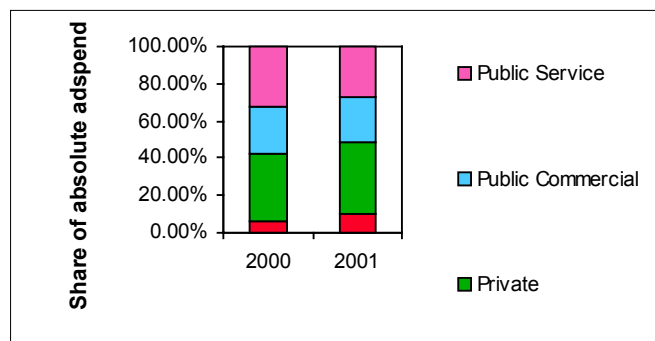
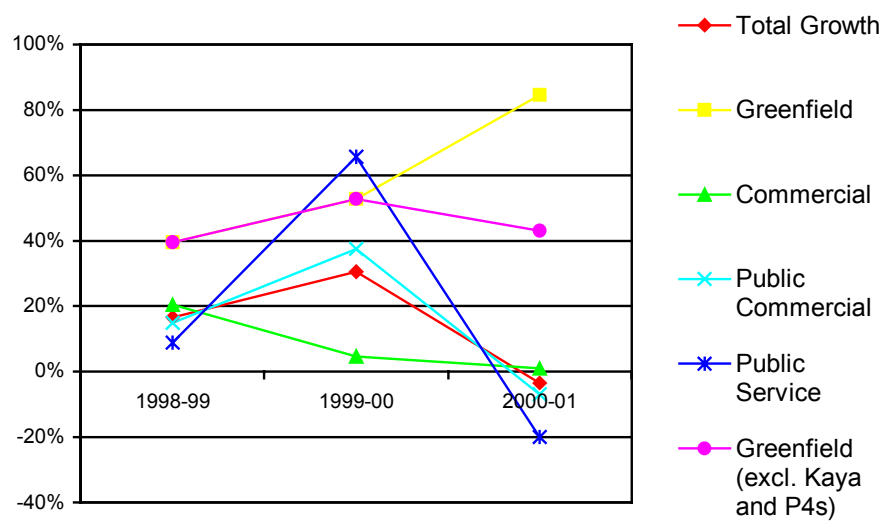


Figure 8 : Growth in Advertising Spend per sound broadcasting category (1998 – 2001) <sup>110</sup>



<sup>108</sup> SAARF RAMS 1996 – 2001.

<sup>109</sup> AC Nielsen (2002).

<sup>110</sup> AC Nielsen (2002).

Figure 9 : Share of adult listeners and share of adspend per radio categories <sup>111</sup>

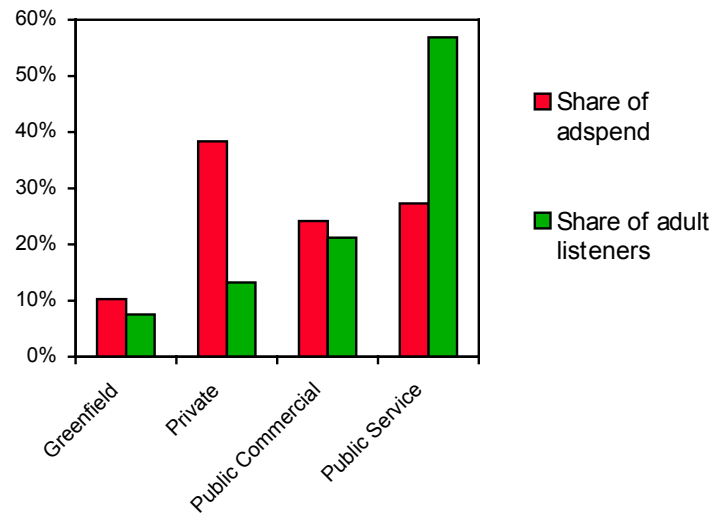
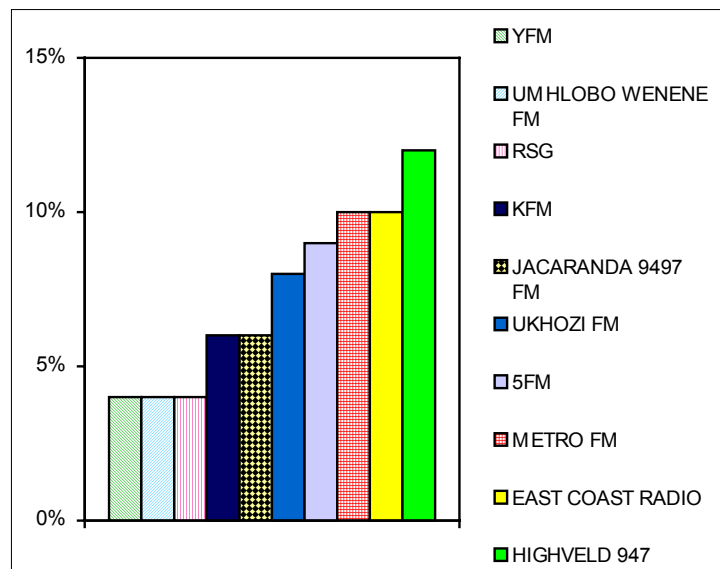


Figure 10 : Top 10 stations by share of advertising spend on radio 2001 <sup>112</sup>



<sup>111</sup> AMPS (2001) B; AC Nielsen (2002).

<sup>112</sup> AC Nielsen (2002).

Figure 11 : LSM spread per station – top ten in adspend / revenues <sup>113</sup>

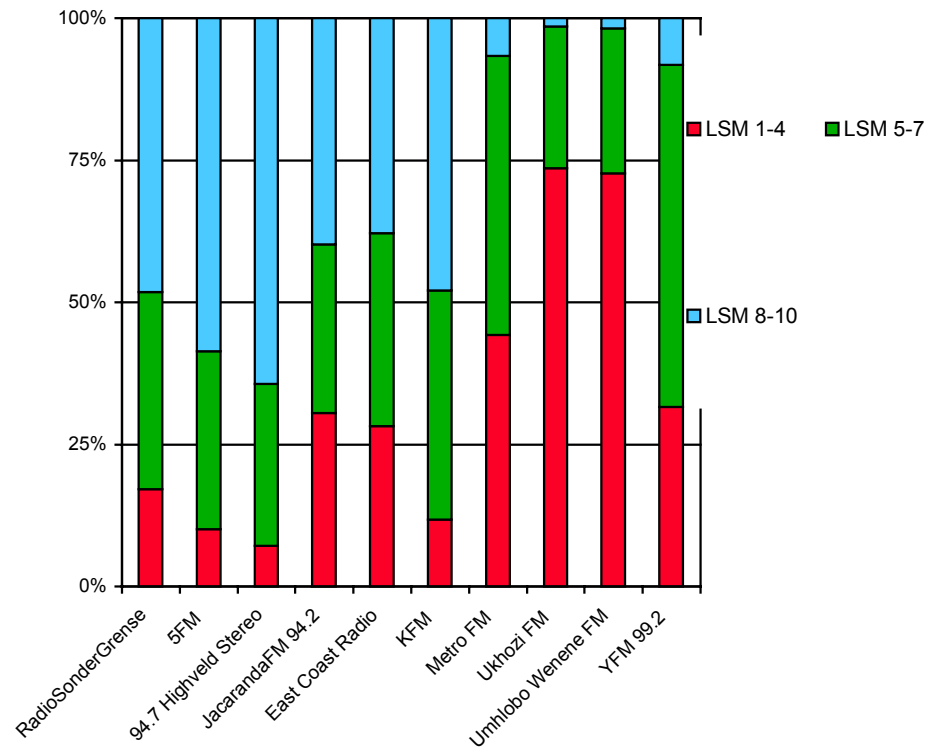


Figure 12 : Top 10 radio stations by adspend share of adspend and audience (2001) <sup>114</sup>

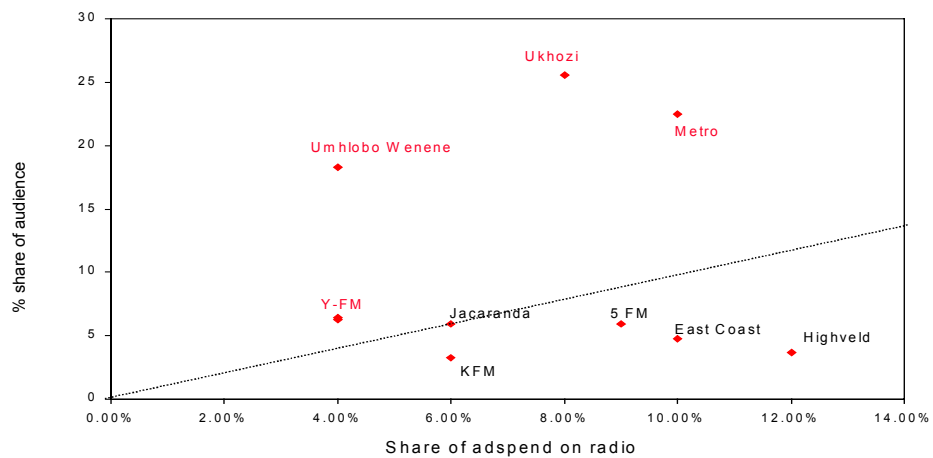


Figure 13 : Commercial Radio Audiences 2001 <sup>115</sup>

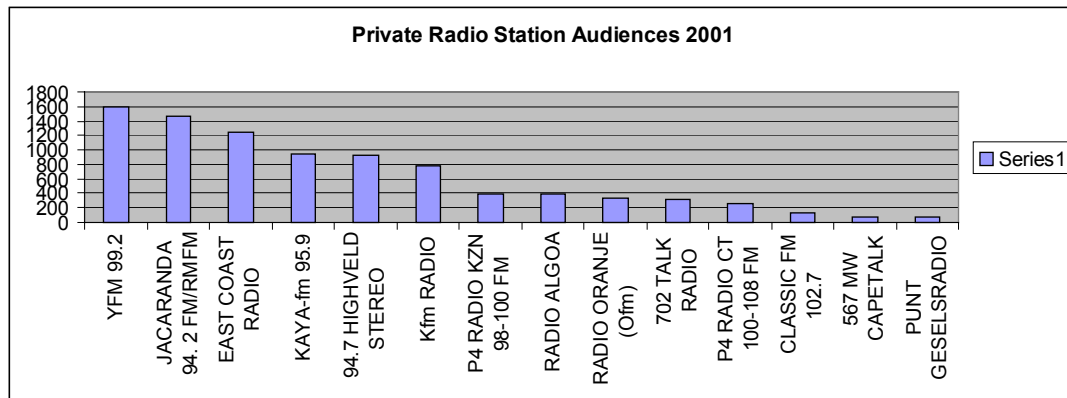
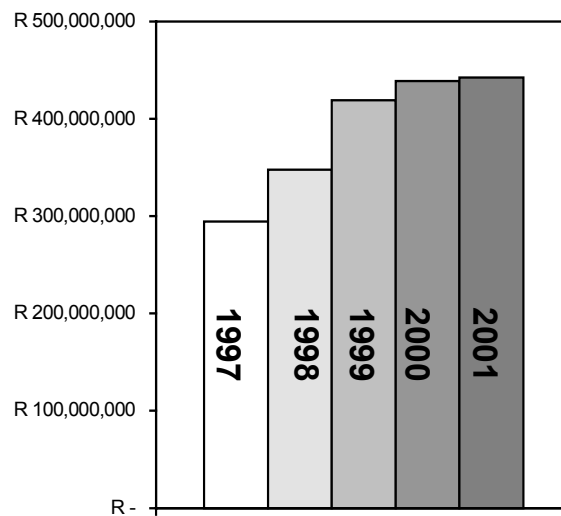


Figure 14 : Commercial Radio Adspend Levels <sup>116</sup>



<sup>115</sup> SAARF RAMS (2001) B.

<sup>116</sup> AC Nielsen 1996 – 2002.

Figure 15 : Compound average growth rate in advertising spend, Commercial Radio Stations 1996-2001 <sup>117</sup>

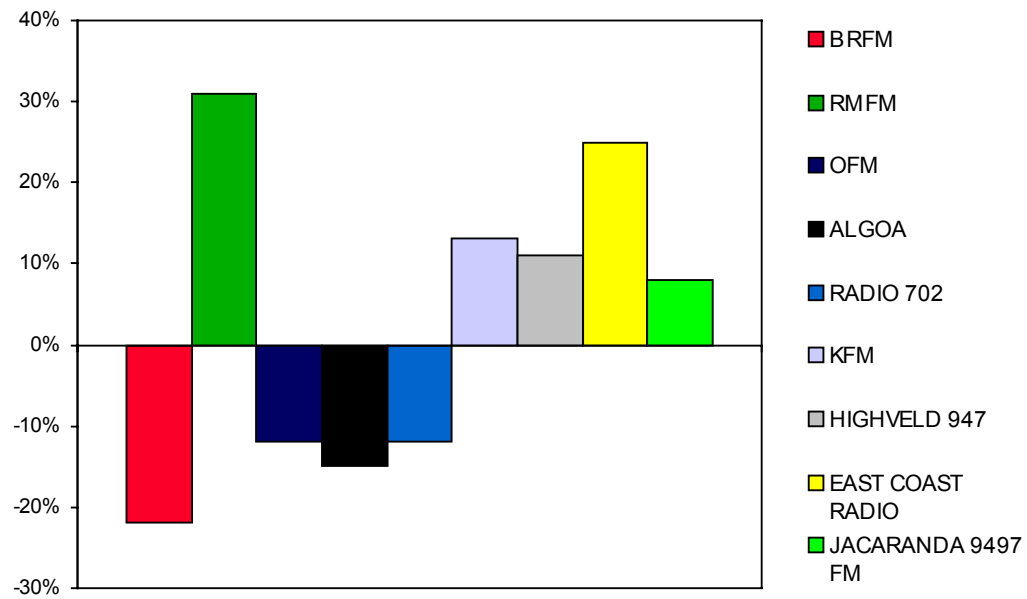
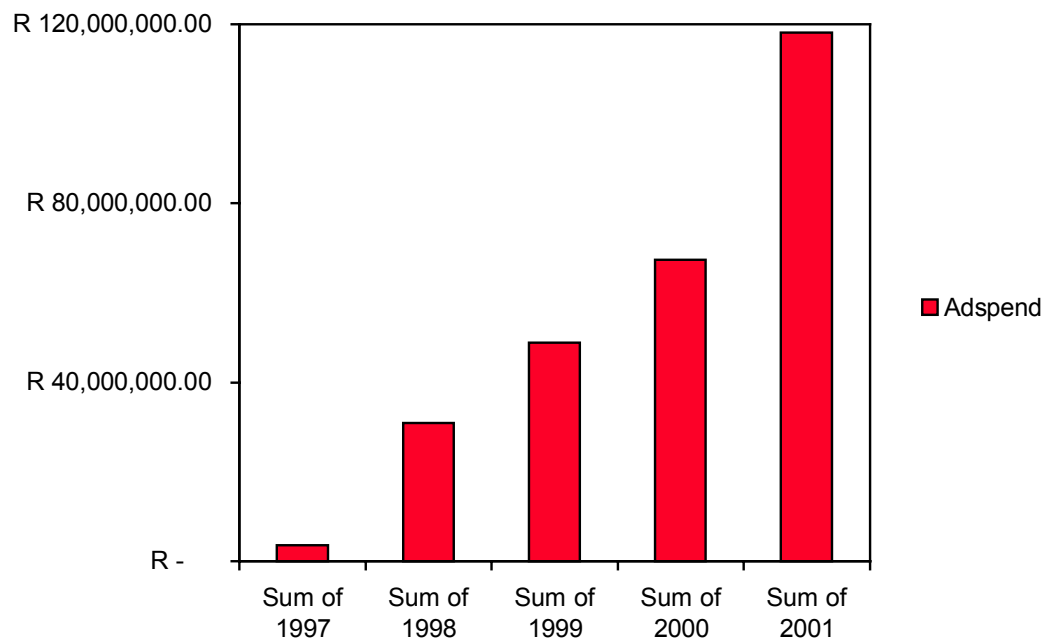
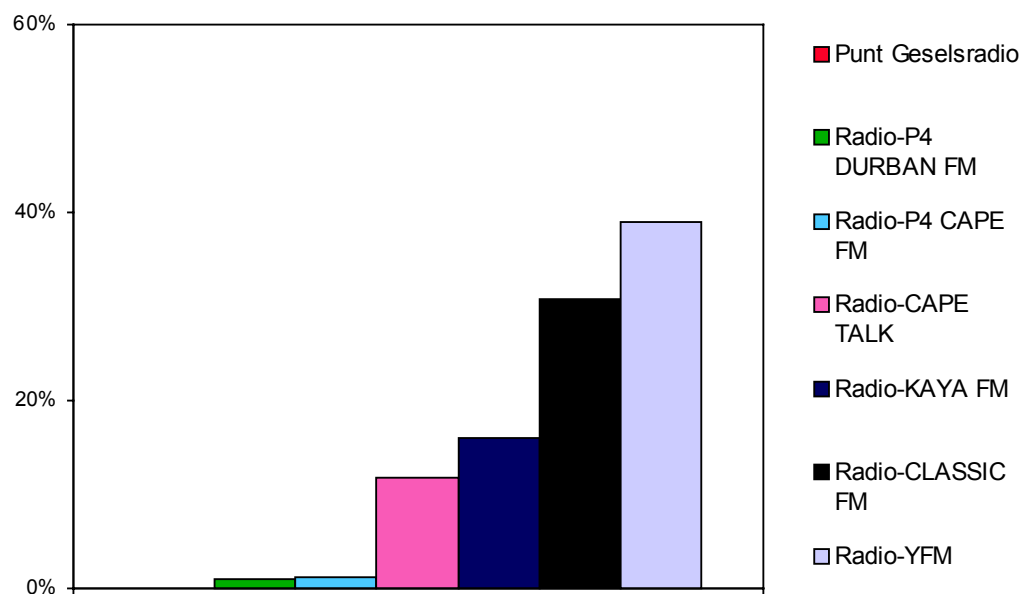


Figure 16 : Total Adspend for Greenfield Stations <sup>118</sup>



<sup>117</sup> AC Nielsen 1996 – 2002.

Figure 17 : Greenfields Station Performance <sup>119</sup>

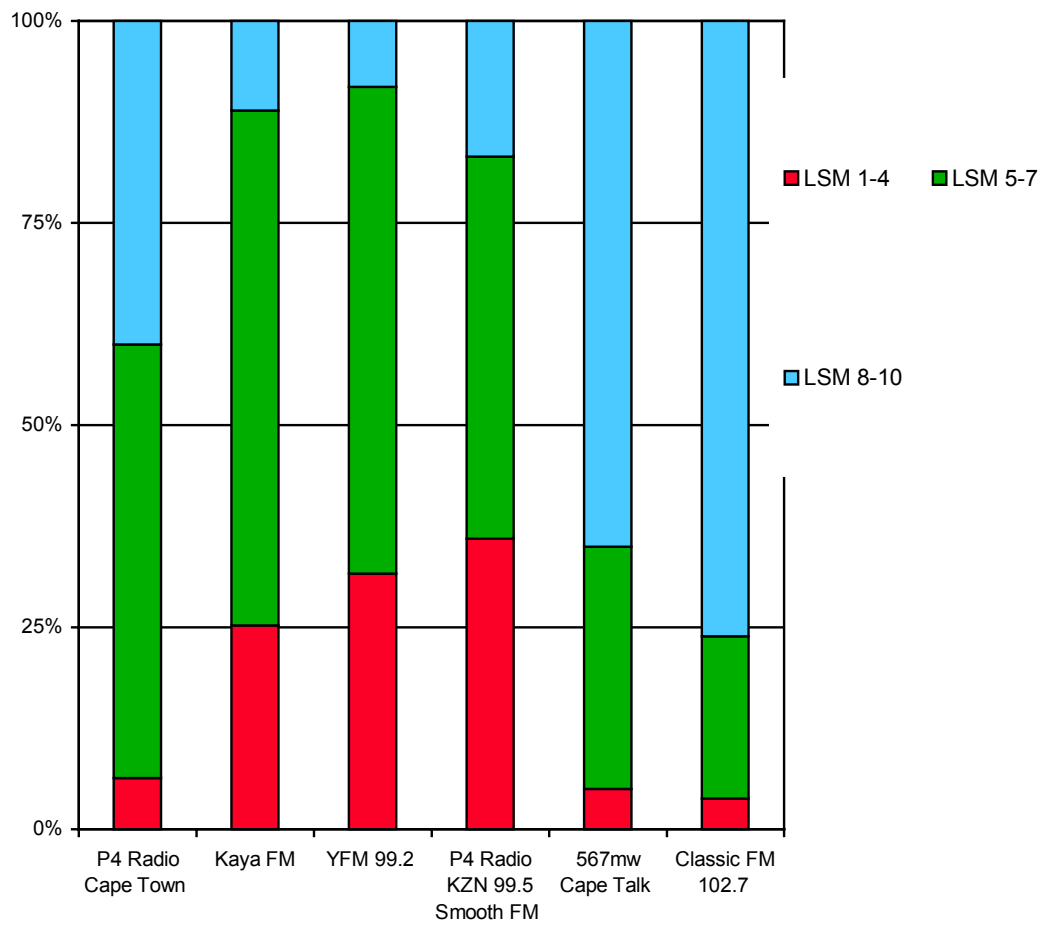


<sup>118</sup> Year on year comparisons for Greenfields stations are not possible as AC Nielsen only started to collect data for these stations from 2001.

<sup>119</sup> AC Nielsen (2002).



Figure 18 : Greenfields Station Audience Profile by LSM



## ANNEXURE D

### THE SOUTH AFRICAN BROADCASTING INDUSTRY – AN ECONOMIC ANALYSIS

PREPARED BY KPMG CONSULTING

1. The value of the local broadcasting industry (including advertising spend, subscription and licence fees) is estimated at R14 billion. Total annual growth of the sector from 1996 onwards was estimated to be in the region of 12%. Figures for 2001 for all media advertising spend (excluding subscription and licence fees) are R9.7 billion, with 42% directed at television and 13% at radio. Market capitalisation of media sector companies listed on the JSE Securities Exchange (JSE) totalled R 14 billion by H1 2002.
2. Advertising revenue is driven mainly by two factors:
  - 2.1 **Audience size:** Larger audiences generally attract higher advertising revenues, due to the perceived increased coverage the advertiser receives per Rand spent. Rate cards are pro-rated accordingly, indicating quality and degree of coverage.
  - 2.2 **Audience profile:** Traditionally in South Africa, demographics have been determined according to the LSM index. Consisting of gradings from LSM1-LSM8 until 2000, and, from 2002 onwards, to LSM11, this provides an indication of audience / market potential, and hence, spending power, as it divides the market according to factors such as habitation, area, running water, electricity, appliance ownership etc.
3. The perception of advertisers in the market is that the higher the percentage of listeners in the higher LSM groupings, the higher the potential return on advertising spend – given the disposable income of the audience / target market. For example, 94.7 Highveld Stereo, with an audience of only 1 million people (but 73.5% of whom are in the LSM7-10 categories), attracted the highest ad-revenue for a radio station in

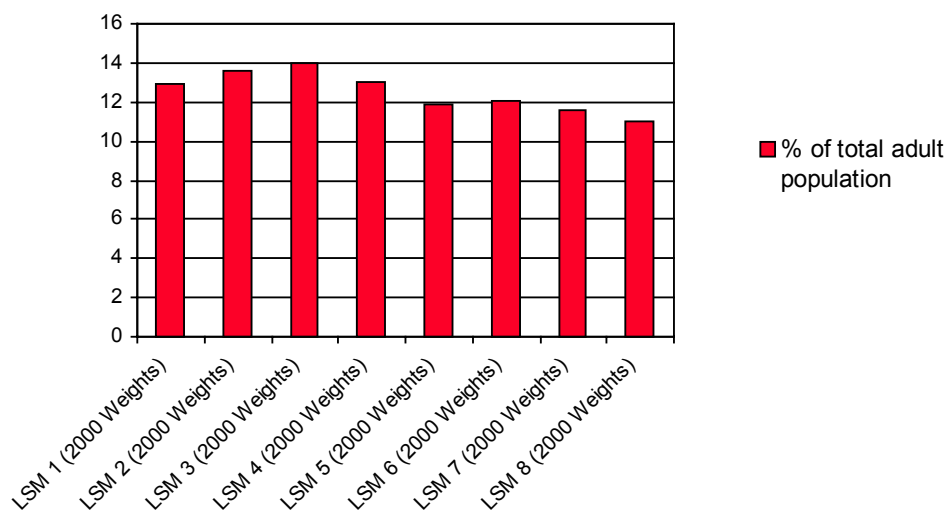
2001. By contrast, Umhlombo Wenene is a good example of a radio station that generates high ad-revenue with a large audience (5.3 million) although its audience consists mainly of people in the lower LSM groupings (73% in LSM 1-4).

#### 4. South African market demographics reveal the following:

4.1 Currently, the South African consumer market consists of approximately 28.5 million adults (16+) of a total population of 40.58 million, 54% of which are based in urban areas.<sup>120</sup> The large majority of the population (66%) has monthly household incomes below R2 500. Literacy levels are low. A total of 22.5% of the South African market is concentrated in the higher income groups, with the majority (77.5%) located in LSM groups 1-6, with 26.7% located in the lowest income categories, namely LSM groups 1 and 2. (See Figure 6.1 below).

4.2 Between 1998 and 2000, the absolute numbers of consumers situated in LSM groups 1-3 increased to 40% of the South African adult population. Commensurate with this increase has been a steady decline in the absolute numbers of consumers situated in the higher income LSM groups 6-8.

Figure 19 : Distribution of Adult Population per LSM [2000] weightings



<sup>120</sup> Statistics South Africa, Census 96.

5. An analysis of media advertising spend highlights the following:

- 5.1 Total media advertising spend grew from R5 129 million in 1996 to R9 705 million in 2001 at a compound annual average growth rate (CAGR) of 11.2%.

<sup>121</sup>

- 5.2 Although economic growth in South Africa remained slow over the period 1996-2001, and unemployment increased, the growth in media-spend over that period was driven by a number of factors, most significantly the licensing of new radio and television stations.

Figure 20 : Total All Media Advertising Spend (1996 – 2001) <sup>122</sup>

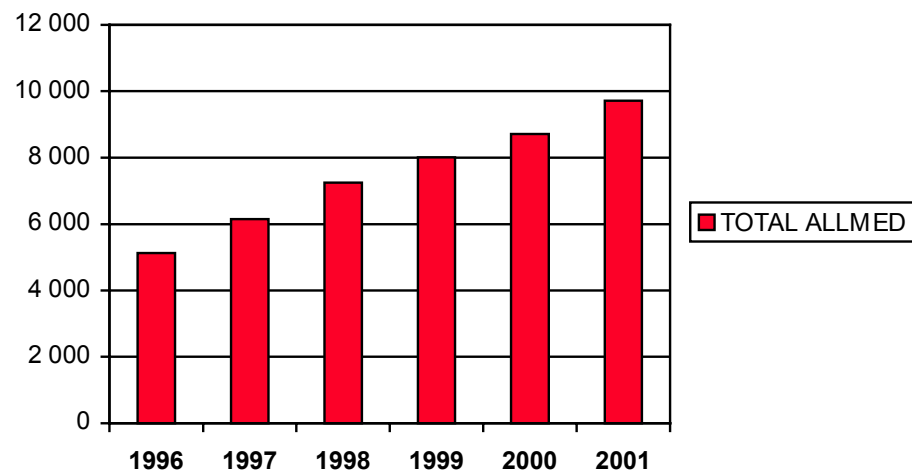
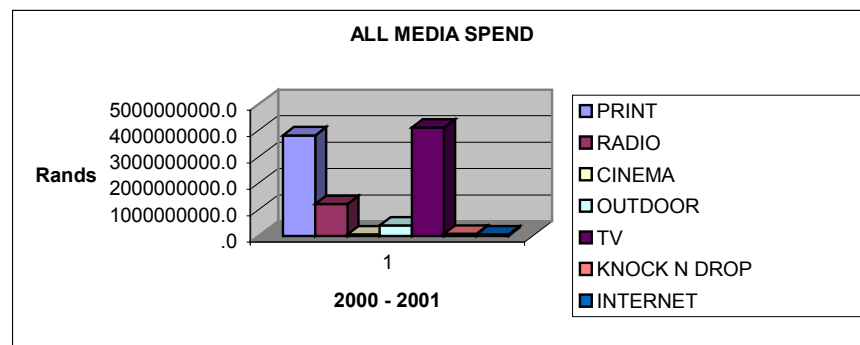


Figure 21 : All media spend by media type 2001 <sup>123</sup>



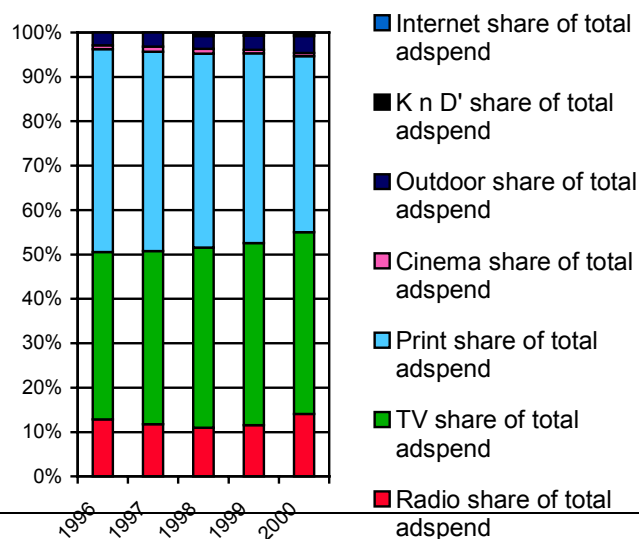
<sup>121</sup> Nielsen AdIndex (2001).

5.3 As appears from Figure 21 above and Figure 22 below, 42% (R4.1bn) of this spend went to television; 39% (R3.8bn) to print; 12% (R1.2bn) to radio; 4% (R391m) to outdoor and 0.5% (R55m) to cinema. Knock and Drop and Internet with 0.7% and 0.5% respectively appear to have shaved small amounts off other media categories.

Figure 22 : Total Adspend (1996 – 2001) by Media Type <sup>124</sup>

Media Type	1996 R'm	2000 R'm	2001 R'm	2001 R'm exc. K'n'd & internet	CAGR (1996 – 2000)
Total Print	2338	3720	3811	3811	10%
Television	1938	3572	4116	4116	13%
Radio	658	1224	1206	1206	13%
Outdoor	149	326	391	391	17%
Cinema	47	69	55	55	8%
Knock 'n' Drop			74		
Internet			53		
<b>TOTAL</b>	<b>5130</b>	<b>8911</b>	<b>9706</b>	<b>9579</b>	<b>12%</b>

5.4 As appears from Figure 22 above, the CAGR for all media adspend for the period 1996-2000 totalled almost 12%, with fastest growth occurring in the Outdoor category. As appears from Figure 24, overall broadcasting spend (television and radio) increased by 4.6% from just over 51% in 1996 to just under 55% of adspend in 2001.



<sup>122</sup> A C Nielsen (2002).

<sup>123</sup> AC Nielsen (2002).

<sup>124</sup> AC Nielsen (2002).

Figure 23 : Market share of total advertising spend by media type (1996- 2000) <sup>125</sup>  
 Figure 24 : Share of adspend per media type (1996 – 2001) <sup>126</sup>

Market Share	1996	2000	2001	2001 exc k'n'd & internet	CAGR (1996 – 2000)
Print	46%	42%	39%	39%	-2%
Television	38%	40%	42%	42%	1%
Radio	13%	14%	12%	12%	1%
Outdoor	3%	4%	4%	4%	5%
Cinema	1%	1%	.5%	.5%	-3%
Knock 'n' Drop			.7%		
Internet			.5%		
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	

<sup>125</sup> AC Nielsen (2001).

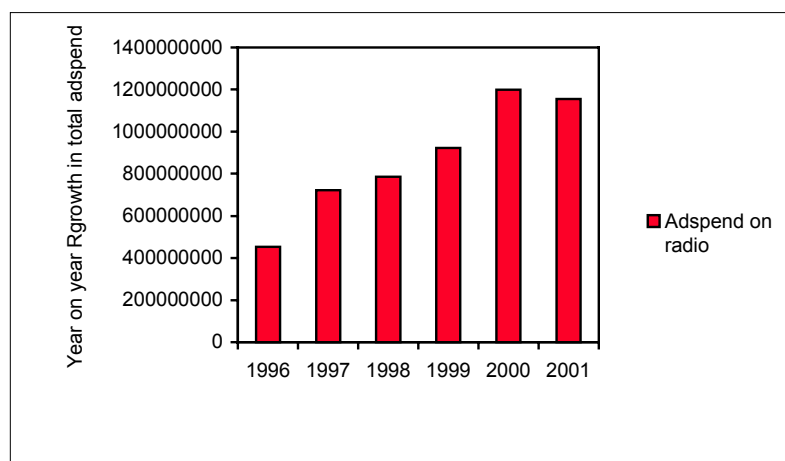
<sup>126</sup> AC Nielsen (2002).

## SOUND BROADCASTING – ECONOMIC TRENDS

PREPARED BY KPMG CONSULTING

1. The SABC recorded that, in 2000, just over 18.2 million people tuned in to SABC radio on a daily basis, with 14.9 million tuning in to the nine ALS stations.<sup>127</sup> SAARF 2001 indicates a reach by ALS stations of 18.8 million people – or 65% of the population - by 2001.<sup>128</sup> The Radio Audience Insights Survey of 2000 indicates that 66% of the almost 22 million South Africans who tune into radio every day regard themselves as medium to heavy users, spending 43 hours or more per week listening to radio.<sup>129</sup> Ukhozi was top of all stations in audience size in 2001, with 6.6 million (22.9%) of listeners; Metro was second with 5,4 million (18.7%); Umhlobo Wenene third with 4.5 million (15.6%).
2. Radio experienced slightly negative growth during 2001, resulting in a decline in absolute adspend on radio – from just below R1.2 billion to R1.1 billion. However, adspend levels remained at higher levels than the 1998 level of R800 million – which, in turn, was almost double 1996 level of R400 million.

Figure 25 : Total advertising spend on radio<sup>130</sup>



<sup>127</sup> SABC Annual Report 2000 / 2001.

<sup>128</sup> SAARF RAMS (2001) B.

<sup>129</sup> SABC Annual Report 2000 / 2001.

3. Of all four radio categories, public service and public commercial radio stations experienced the largest decline in year-on-year growth in 2001. Commercial stations experienced a surge in advertising over the period 2000 to 2001 – some of which might be attributed to better marketing on the part of the stations. More specifically, a number of Greenfields stations were included in the statistics for the first time in 2001, with the concomitant effect of increased year-on-year growth for Greenfields stations.

Figure 26 : Total advertising spend on radio per year <sup>131</sup>

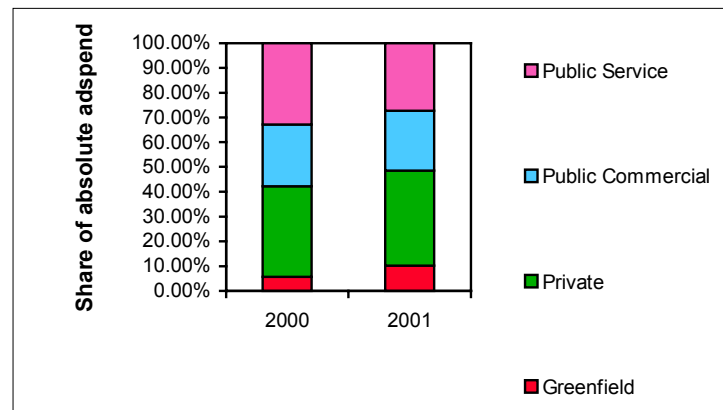
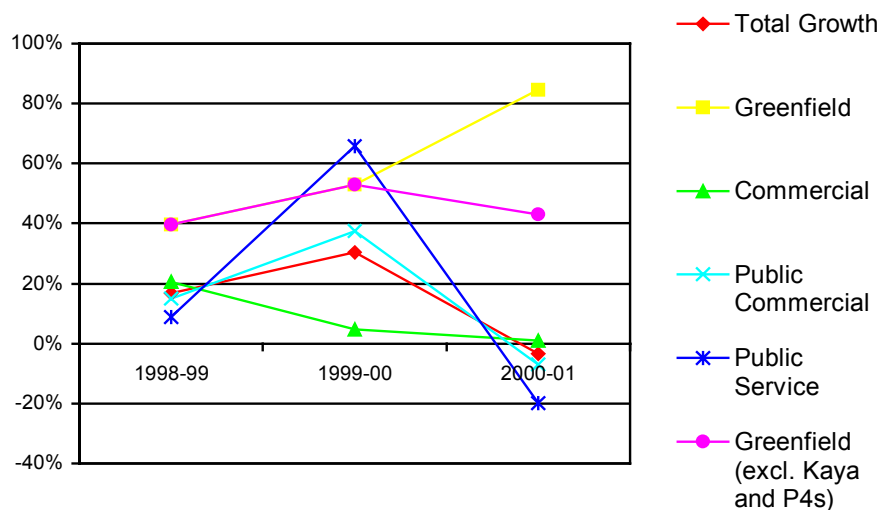


Figure 27 : Growth in Advertising Spend per sound broadcasting category (1998 – 2001) <sup>132</sup>



<sup>130</sup> AC Nielsen (2002).

<sup>131</sup> AC Nielsen (2002).

<sup>132</sup> AC Nielsen (2002).



4. Since privatisation, 94.7 Highveld Stereo has been the dominant earner, followed in recent years by East Coast Radio and Metro FM. Of note is that, while 94.7 Highveld Stereo is positioned according to demographics and not pure numbers (LSMs, region and format), the top ten radio earners are not dominated by commercial stations. Metro FM, at joint second place, is followed by two other SABC stations, 5FM (a PCBS) and Ukhozi (a PBS ALS station). RSG and Umhlobo Wenene, also SABC stations, feature in the top ten. Other commercial stations include East Coast Radio, which has a strong regional and brand profile. Similarly, KFM and YFM are also strong "personality" stations with clear demographic, regional and format appeal.
5. Aside from branding, format and "personality" issues, the prevailing advertising revenue trend primarily indicates that the stations which attract the higher LSMs in wealthier, urban regional markets (e.g. 94.7 Highveld Stereo) command the highest level of advertising spend per listener, while the stations attracting audiences in the lower LSMs, with less disposable income, have to deliver higher audience levels for comparable advertising spend (e.g. Ukhozi FM). Radio stations whose share of advertising exceeds their share of audience, have audiences that are largely located in LSMs 8-10.

### **SECONDARY TOWNS – FEASIBILITY STUDY**

PREPARED BY KPMG CONSULTING

#### **1. Methodology**

1.1 A brief preliminary analysis of secondary towns reveals the following:

1.1.1 The amount of data available for secondary towns has limited the level of quantitative analysis which it is possible to undertake. (There are not disaggregated audience figures for secondary towns).

1.1.2 We have therefore been able to determine, to a limited extent, the demand for a particular station and format in each secondary town, which has given us an indicative idea of station performance in the towns.

1.1.3 Using financial and analysts reports, Advantage and AC Nielsen, we have also been able to undertake an overall quantitative and qualitative performance review of all commercial sound stations in secondary towns, and combined this with the above analysis in order to obtain a deeper understanding of the impact of secondary town licenses on existing stations.

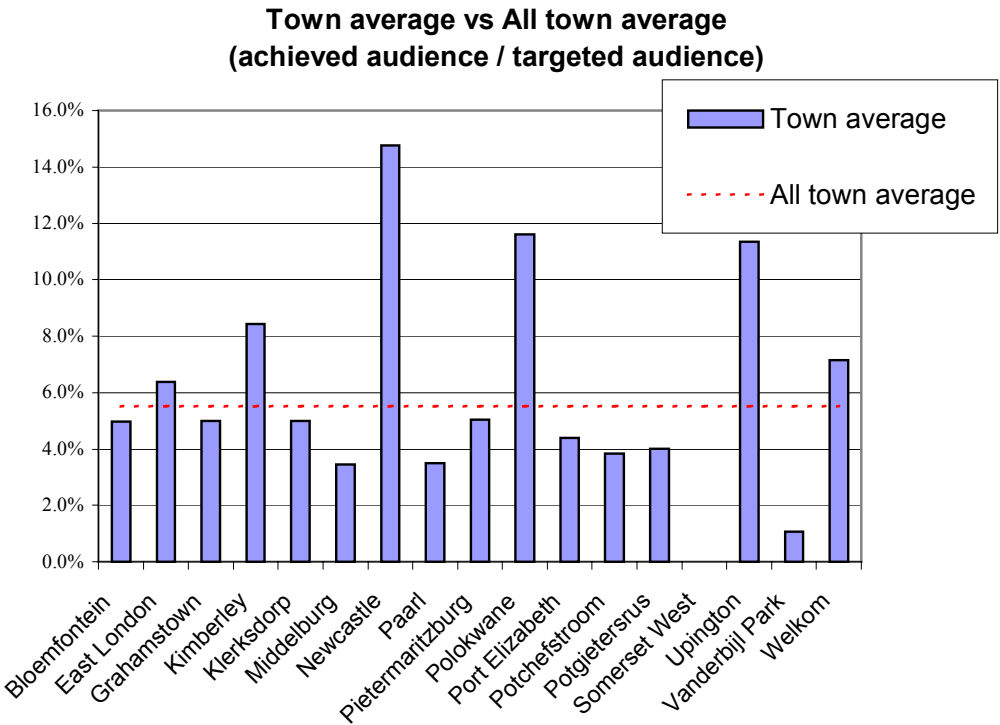
1.1.4 There are a total of 24 secondary towns from the list of secondary towns which we were given by ICASA. We have only been able to analyse 17 of these towns due to available listenership statistics and LSM information per town. We have not been able to include more detailed findings for Rustenburg, Polokwane, Kroonstad, De Aar, Standerton, Bethal and Hout Bay, as information has not been collected for these towns by AMPS or others.

1.1.5 Listenership statistics indicate that stations broadcast beyond the confines of the Frequency Plan (ICASA, 1999). The analysis of the 17

towns was performed using the Frequency Plan as a basis. As a result of this, there are instances where a town receives a signal which has a recorded listenership (AMPS) but because the signal is not on the Frequency Plan for that town, it has not been analysed in terms of its audience reach, and its comparison to other secondary towns.

1.2 Our analysis should, therefore, be treated with caution, as we are aware that it is incomplete due to the lack of available data. We strongly advise that more detailed feasibility analyses be undertaken per secondary town, so as to more accurately determine the feasibility of issuing additional licenses in these towns, and the likely impact of these licenses on existing licenses, particularly Greenfield, commercial and community stations.

2. All secondary towns



2.1 We have looked at the reach which stations reflected on the Frequency Plan have achieved in relation to their target market in order to understand the market in these towns and market demand. We need to emphasise that we

have measured listenership and not ad revenue –as firstly there is not disaggregated ad revenue figures for secondary towns, nor is their ad revenue available for community stations.

2.2 Therefore, good reach does not necessarily mean profitable businesses – and each town has to be assessed in relation to quantitative information on hand.

2.3 From our overall analysis it would appear that East London, Kimberley, Newcastle, Polokwane, Upington and Welkom have performed above the town average in terms of reach of their stations. On closer analysis we find that:

2.3.1 East London has three stations which performed above the "all town average" namely 5FM, CKI FM and Umhlobo Wenene, with the latter particularly dominating the market;

2.3.2 Apart from two stations, all six stations in Kimberley performed above the all town average, with high listenerships in Motwedding FM, Radio Teemaneng, Radio Oranje and RSG;

2.3.3 Newcastle was dominated by two stations namely Ukhozi FM and East Coast Radio, both of which had high listenerships;

2.3.4 Polokwane which has a small total population had strong listenership in its local community stations and to a lesser extent Thobela FM;

2.3.5 Upington, like Kimberley, had four strong stations – Radio Oranje, Radio Riverside, RSG and Umhlombo Wenene – with community station Radio Riverside dominating all others;

2.3.6 Welkom had a single very strong station, namely Lesedi FM with only 5FM being the other above average station.

2.4 A tentative conclusion from our findings is that each town which has performed above the all town average has the dominance of at least one African Language Station, which points to market demand in this area, and the

potential for further growth in this market. Each of these stations, namely Umhlobo Wenene, Ukhozi, Lesedi and Motsweding also have sufficient ad revenue to suggest profitable businesses. In most cases however, there are community stations which are targeting the same markets, which do not have either the same reach or (presumably, in the absence of community ad revenue figures) the same revenue income. Issuing additional licenses in these towns could therefore adversely affect these existing community stations.

- 2.5 A second tentative conclusion is that the commercial radio stations which are found (East Coast, OFM, Jacaranda and Algoa) do tend to dominate their target markets (as opposed to national stations) therefore indicating the success of these stations at this regional level. Two stations namely East Coast (owned by Kagiso) and Jacaranda (owned jointly by NAIL and Kagiso) are good ad revenue stations, and two stations Algoa and OFM (both owned by AME) have performed poorly, leaving us to conclude that the financial success of the stations would appear to be a combination of local disposable income, management and marketing performance.

### **3. The impact of secondary town licences on Greenfields stations and other commercial sound broadcasting stations**

#### **3.1 Greenfields licensees**

3.1.1 There are no Greenfields stations in any of the secondary towns which we looked at apart from YFM's presence in Vanderbijlpark (98 000 listeners compared to Metro FM's audience of 101 000, Lesedi FM of 278 000 and Motsweding FM with 85 000).

3.1.2 The only other significant Greenfields audience which we can see in secondary towns is P4 in Pietermaritzburg with an audience of 11 000.

3.1.3 Numbers of other Greenfields stations which can be picked up in secondary towns are insignificant and in the 2000 or less mark.

3.1.4 Apart from Vanderbijlpark and YFM, and to a lesser extent P4 in Pietermaritzburg, the impact of secondary licences on existing Greenfields stations would be insignificant.

## **3.2 Other commercial sound broadcasting stations**

3.2.1 As we have seen from our town analysis, commercial sound stations would potentially be negatively impacted by the issuance of a further set of licenses.

3.2.2 There are four commercial sound stations which operate in the secondary towns, namely East Coast Radio, Jacaranda 94.2, OFM and Radio Algoa. All four stations have significant reach within their respective markets and often dominate these markets. The former SABC stations, namely East Coast and Jacaranda have been successful in generating healthy ad revenue streams, whilst OFM and Radio Algoa, have not. If licences were issued in the towns where OFM and Radio Algoa operate, this could very well affect their revenues, likewise for East Coast and Jacaranda, who are less vulnerable.

3.2.3 We have also noted that there are some successful community stations in some of the secondary towns, most notably Upington and Kimberly, which could also be adversely affected should additional licences be issued.

3.2.4 On the whole though, ALS and national stations still dominate secondary towns and whilst secondary licences could impact negatively on these audiences and reach, it could be argued that some markets would be big enough to accommodate another license, albeit on a case by case basis.