

22 November 2017

Mr Paris Mashile
Acting Chairperson
ICASA
164 Katherine Street
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Email: chairperson@icasa.org.za

Dear Mr Mashile

SABC REQUEST FOR URGENT ICASA REVIEW AND AMENDMENT OF REGULATIONS: EXTENT TO WHICH SUBSCRIPTION BROADCASTING SERVICES MUST CARRY THE TELEVISION PROGRAMMES PROVIDED BY THE PUBLIC BROADCAST SERVICE LICENSEE (“THE MUST CARRY REGULATIONS”) SET OUT IN GAZETTE NO. 31500 ON 10 OCTOBER 2008

1. The SABC correspondence to the Authority dated 21 November 2017 refers.
2. The SABC has made various contentions about the Must Carry Regulations, 2008 (“the Regulations”) and the need for the Regulations to be amended urgently. We do not address all these arguments below.
3. However, we must indicate that we are not in agreement with the SABC that the Regulations have failed to protect the integrity and viability of public broadcasting services.
4. MultiChoice is sympathetic to the financial difficulties currently faced by the SABC. However, we believe it is opportunistic for the SABC to use these difficulties to motivate now for the urgent amendment of Regulations which have after all, been in force for some time. As the SABC itself acknowledges, the main causes of its current financial crisis lie elsewhere. It is also disingenuous for the SABC to seek an urgent amendment of the Regulations on the basis that they are ultra vires, nine years after their coming into operation, in circumstances where the SABC failed to review them in the courts of law.

5. Further, we take exception to the singling out of MultiChoice in paragraph 5, as having commercially benefitted from the Regulations at the expense of the public broadcaster. The Must Carry Regulations govern all pay TV broadcasters that carry 30 or more channels.
6. Globally, the purpose of must carry obligations is to extend universal access to public interest content. As the Authority and various policy documents have stated, the must carry obligation is critical to universal access and the objective of providing public broadcasting services to all citizens, rather than for the purpose of funding the public broadcaster. In South Africa, there has undoubtedly been great benefit both to the public at large and to the public broadcaster, from having the SABC channels available country-wide on pay TV platforms, including on DStv. Carriage of the public broadcasting services in terms of the Regulations gives the SABC 100% geographical cover and service availability throughout the country. Not only do consumers benefit from this, but the SABC benefits from extended coverage, larger television audiences and increased advertising revenue at no extra cost.
7. We believe the Regulations create the appropriate balance between ensuring universal access to public broadcasting services by all and the imposition of carriage obligations on subscription broadcasting services, and we do not believe that an amendment of the Regulations is necessary.
8. That said, ICASA may of course choose to review and amend the Must Carry Regulations as it amends other regulations from time to time, having regard to the consultation process required by s4 of the Electronic Communications Act. However, we urge the Authority to be mindful of the broader policy environment as it considers the SABC's request.
9. In particular, we refer the Authority to the ICT White Paper process where the Must Carry issue was debated in depth. Must Carry and other broadcasting related policy matters were subsequently referred to the Department of Communications for consideration. We understand that the policy on Must Carry is likely to be considered once again in a forthcoming Department of Communications Draft White Paper on Audio-Visual and Digital Content.
10. MultiChoice is of the view that this policy process must run its course, before ICASA initiates an inquiry to review and amend the Regulations. This is especially so as the Draft White Paper process is likely to consider the changing nature of television and whether new OTT operators should also be subject to regulation, including the Must Carry Regulations. The funding of the public broadcaster will be dealt with comprehensively in that process.

11. MultiChoice is available to provide further information the Authority may require and we reserve the right to address the SABC correspondence more fully, should the need arise.

Yours sincerely



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GM: Regulatory Affairs

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