

Chairperson,

Signal Distribution Committee

Email: [signaldistribution@icasa.org.za](mailto:signaldistribution@icasa.org.za)

10 April 2022

Dear Chairperson

RADIO PULPIT'S SUBMISSION ON THE SUPPLEMENTARY DISCUSSION DOCUMENT ON THE MARKET ENQUIRY INTO SIGNAL DISTRIBUTION SERVICES IN SOUTH AFRICA

## 1. INTRODUCTION

- 1.1 In Notice 2298, published in government Gazette number 50059 dated 2 February 2024 (the Notice), Icasa published its Supplementary Discussion Document on the Market Enquiry into Signal Distribution Services in South Africa (the Supplementary Discussion Document). It called for written submissions within 45 working days (with the date being 10 April 2024).
- 1.2 Radio Pulpit NPC (RP) is a class community sound broadcasting service licensee which broadcasts on medium wave and makes use of Sentech Soc Limited's (Sentech's) signal distribution services.
- 1.3 Radio Pulpit has already participated In Phase 1 (Market Study) and made written and oral representations on the first Discussion Document. It thanks ICASA for the opportunity of commenting on the Supplementary Discussion Document and requests an opportunity to make oral representations at any public hearings on the Supplementary Discussion Document.
- 1.4 In making these written submissions, RP does not make general comments on the Supplementary Discussion Document but instead confines itself to particular issues of concern to it. We trust that Icasa will find these helpful.

## 2. SUBMISSIONS

### 2.1 Ad paragraph 4.3 read with paragraph 4.4

- 2.1.1 RP notes and is pleased that Icasa has acknowledged the need to consider important differences in technical requirements and barriers to entry in respect of FM and AM, as is stated at paragraph 4.3 (page 16).

**Your daily companion • Jou daaglikse reisgenoot**

A handwritten signature in black ink, appearing to be 'K.V.', is located in the bottom right corner of the page.

- 2.1.2 However, RP is disappointed that Icasa states that “as the competitive dynamics of the two markets [FM and AM]... are similar, we aggregate them for analysis” as is stated at paragraph 4.4 (page 21). RP is of the respectful view that this statement is not correct for a number of reasons, including:
- 2.1.2.1 the cabling required to be installed at an AM transmitter site is very different from that used at an FM site;
  - 2.1.2.2 AM transmitter sites are notorious for causing interference with fixed line telecommunications systems;
  - 2.1.2.3 the environmental impacts of AM transmitter sites are much more serious than those of FM transmitter sites and obtaining environmental impact assessment approvals for AM sites is time consuming and extremely difficult;
  - 2.1.2.4 the sound quality on AM is much worse than FM, meaning that the broadcasting of music is extremely difficult;
  - 2.1.2.5 most consumers have the dials of their radios tuned to FM and this constitutes a consumer behavioural barrier to entry in the market; and
  - 2.1.2.6 RP is not aware of a single instance where Icasa has agreed to recognise the difficulties faced by AM community sound broadcasters and grant them an alternative FM frequency.
- 2.1.3 Consequently, RP is of the view that it cannot be said that “the competitive dynamics of the two markets [FM and AM] are similar”.
- 2.1.4 RP respectfully requests Icasa to reconsider its stance on this issue and for the results of this further consideration to be set out fully and in detail in the findings document to be developed and released by Icasa.
- 2.2 Ad paragraph 5.1.3 read with 5.2:
- 2.2.1 Icasa notes RP’s contention that self-provision of AM was not technically feasible at paragraph 5.1.3 (on page 23) of the Supplementary Discussion Paper. However, Icasa then fails to address what such a contention means in that specific market, in RP’s respectful opinion.

2.2.2 In particular, Icasa fails to address the issue of self-provision of AM in its discussion of community broadcasting self-provision of signal distribution at paragraph 5.2 (page 25) of the Supplementary Discussion Paper. Consequently Icasa's acknowledgement that there is some self-provisioning of signal distribution by community broadcasters with a "localised reach", the fact that all of these broadcast on FM only is entirely ignored. The fact is that not a single community sound broadcasting service broadcasting on AM is able to or does self-provide and RP respectfully submits that Icasa must take cognisance of this fact and deal with the issue in the findings document forthwith.

### 2.3 Ad paragraph 7

2.3.1 ICASA is extremely concerned at the wording of this paragraph which seems to suggest that ICASA may decide not to commence the regulations-making process after the finalisation of this inquiry.

2.3.2 As RP has stated previously, it had been hoping to find proposed regulations as envisaged in section 67(4) of the ECA and in particular to find proposed regulations that:

2.3.2.1 set out the proposed pro-competitive licence conditions to be imposed on Sentech to remedy the market failure as provided for in section 67(4)(d) read with section 67(7) of the ECA and in this regard, RP particularly hoped to see "rate regulation for the provision of specified services, including without limitation price controls on wholesale and retail rates as determined by the authority, and matters relating to the recovery of costs" as is specifically envisaged in section 67(7)(f) of the ECA. This is because of the hugely high costs of MW MTS relative to FM MTS (which charges are many multiples of FM MTS charges) and which are proving to be an enormous challenge to the financial viability of class community sound broadcasting services that broadcast on MW. (Our emphasis). In this regard, RP has already provided Icasa with its confidential information regarding its own signal distribution costs as charged by Sentech;

2.3.2.2 set out a schedule in terms of which the authority will undertake periodic reviews of the markets and market segments taking into account subsection (9) and the determination in respect of the effectiveness of competition and application of pro-competitive measures in those markets; and

2.3.2.3 provided for monitoring and investigation of anti-competitive behaviour in the relevant market and market segments. In this regard, RP shares the concerns raised by the SABC at paragraph 5.1.4 (page 24) of the Supplementary Discussion Document regarding Sentech's failure to agree to

K.V.

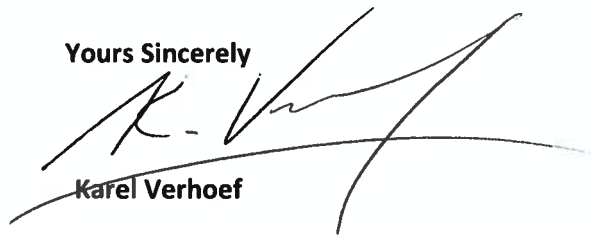
appropriate penalty clauses for missed key performance indicators of contractual compliance by it and respectfully suggests that this particular issue be addressed in the draft regulations too.

2.3.3 RP respectfully submits that not engaging in regulation making in terms of section 67(4) read with section 67(7) would be *ultra vires* Icasa's powers in terms of the ECA because section 67(4) demands, as a peremptory statutory obligation, that Icasa make such regulations once it has determined (as it already has) that there is insufficient competition in a market and that one of the competitors holds Significant Market Power.

3. RP thanks Icasa for the opportunity of making these additional submissions and trusts that its suggestion for the draft regulations to be contained in the findings document will be taken up by Icasa.

Thank you

Yours Sincerely

A handwritten signature in black ink, appearing to read 'K. Verhoef', is written over a horizontal line. The signature is fluid and cursive.

Karel Verhoef

RP Station Manager