



ICASA

**Public Hearing for Individual
Commercial Free-To-Air
Broadcast Services**

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KWESE TV

Chairperson: You may introduce the panel and then kick-start with your presentation thank you

Mgqibelo Gasela: Thank you very much chairperson and thank you for the opportunity to present. My name is Mgqibelo Gasela. I am from KWESE TV, I'm accompanied by Zolile Ntukwana, on my right is the executive for regulatory and policy issues at KWESE, on my left we have Siphso Tsotetsi who is our legal advisor from Tsotetsi and Associates Incorporated. On Siphso's immediate left is Mandi Krebs from Hogan and Lovells and Abri Marais also from Hogan and Lovells and they will be the ones taking you through the questions that we had raised previously, thank you.

Siphso Tsotetsi: Chairperson thank you very much for this opportunity. One is quite humbled by this opportunity. It actually reminds me of a question that my late father once asked me that how are you going to react when you get home and you are not sober and then you find your kids, nephews and nieces having a party at your home? It feels like some of my colleagues that I have been working with here reminds me of that question. I did not answer my father but now it feels real. Chairperson thank you very much. Given the fact that the chair is not taking an easy approach with respect to time, I'm just going to go straight into our routine representations. I'm not going to regurgitate what we have indicated or stipulated in our written representations, I will just take you through the silent point of our representations and when we come to the question-answer sessions I will definitely rely on my colleagues on my left to assist me in that regard. Chair on the 13th of March 2018, the Authority caused a notice to be published in the gazette inviting members of the public to submit written representations in respect of the applications that it received for the composite ITA that it published. We took this opportunity to make our submissions in this regard not to embarrass our competitors but simply to assist the authority in adjudicating this particular process and arrived at well informed decisions. Chair there are 4 areas that we have raised as matters that authorities need to take into account with respect to Infinity Media, a number of items that fall, the number of items that we have raised but I will focus mainly on 4 because other ones I believe that the authority will take the opportunity to engage with Infinity Media during the question-answer session. The first question that we have raised chair was with respect to the corporate status or legal status of Infinity Media. In terms of the application you will see that in terms of the Organogram that we have from Infinity Media, it has been indicated chairperson that, sorry, Loading Docks owns 90% of Afro Tone Media and Super projects own 10% of AfroTone Media which is the holding company that established I think a special proposed vehicle to bring this application to the authority. We would like to refer the authority to the shareholder agreement that has been submitted by the applicant in this regard and in particular we would like to refer the authority to clause 4 of the

shareholders agreement which clearly indicates that there are certain actions that must be taken before the shareholding structure of the applicant could be finalised. There had to be a transaction chairperson, I'm not going to read the actual clause word by word. There was supposed to have been a transaction where the assets that were previously owned by Sahara were supposed to have been sold to AfroTone and part of the conditions that were attached to that particular transaction was that a certain particular percentage was going to be, in terms of equity, was going to be allocated to OakBay Investments (Pty) Ltd and Mabengela Investments (Pty) Ltd. Chair in terms of the applicant or the shareholder and the applicant that has been submitted to the authority, we note that that transaction appears not to have taken place or if it has taken place, the question that we are asking in this regard is, who is the applicant that is sitting in front of the authority because if we also check the shareholders agreement again chair, there is a clause that prevents the further allocation of shares to any entity within Infinity until such time that the conditions that were attached, the sale of the assets referred to, that is the New Age and the AN7 to AfroTone. Before those conditions are actually met. So the question that is actually still stands today chairperson is that what exactly is the structure of the applicant that is appearing before the authority to hear from Infinity Media. We are not privy to any information relating to any structured or restructuring of the shareholding. If you look at the written response by Infinity media, they made reference that they've submitted certain information to the authority that seeks to correct that situation. We have not seen that information but even if there is that information that has been submitted, the question still stands to say who is in front of the authority? Is it Afro Tone in the form of 90% shareholding by Loading Docks and 20% by Super Projects (Pty) Ltd or do we still have Oak Bay Investments and Mabengela still going to be allocated shareholding in this regard? I think one of the questions that also needs to be taken into account is that given the fact that there is no clarity in terms of who the shareholders of the applicant is in this regard, we would want the applicant to further clarify as to whether there is any shares that have been pledged or that are unencumbered from the side of Loading Docks or Afro Tone chairperson. One of the issues that has also been raised in our written submission chairperson was the fact that by its own admission, the applicant has indicated that it has failed to submit a BEE verification report. I am told as I was growing up that what you know and what you are able to prove are 2 different things. In its response what Infinity states is that they are at level 1 of BEE status. I think in this regard it should be noted that the authority requires that information in order to be able to satisfy itself that indeed the applicant has met the threshold of the 30% HDI as required by the Act and the ITA and in this regard chairperson we are of the view that failure by Infinity Media to submit this BEE report is a blatant contradiction and lack of compliance with the ITA and we believe that in this regard the authority should not consider the application by Infinity Media or this should be seen as

one of the areas of non-compliance in this regard. The other issue chair that we are raising in this regard was the issue of New Age, whether as...when the application was submitted to the authority, did the applicant meet the requirements of section 66? We know that the story around New Age Media but at some point in time the business was comatose and later on there was a decision to unplug the life support system so that it can die its natural death for lack of a better word chairperson. So in this regard we are saying that whilst the issue of the participation...the issue of the shareholders agreement in relation to the sale of shares is still relevant in terms of the authority determining who is the applicant before it. Within this context we leave it to the authorities to whether or not they believe that given the fact that New Age Media is no longer existing or it's no longer operational, whether they still believe that the issue of section 66 or the issue of limitation of, the cross media limitation is still applicable in this regard? Chair we leave, (speaking to colleague) my colleague is reminding me that I said 4 questions instead of saying 4 topics that we are addressing ourselves to. Apologies chair. Chair I will not deal with the issue of the expertise because I think the applicant has tried to explain what is currently happening at the station but we believe that the authority still has the right to satisfy itself that the applicant before it has the requisite experience and expertise for them to be able to deal with the license if granted in their favour. With respect to chairperson, the issue from a technical point of view, at the time when the application was launched, the applicant indicated that it wanted to broadcast or carry 11 channels. At that stage it was not apparent or clear as to whether those channels are going to be on an SD or HD platform and in that regard that was going to make it difficult for the authority to establish or determine whether or not the applicant was going to be using the frequency allocated to it or the capacity allocated to it in a proper manner. Chair the last issue that I want to raise is with respect to, from page 135 to 42 of the applicant, issues relating to promises of performance, you will see from all those promises of performance that are outlined in volume 2 of the applications from page 135 that those promises of performance have no specific timelines. They have no specific quota's that are supposed to be met by the applicant. We believe that...although there has been promise of performance made, those cannot be measured and we believe that they should not be taken into account by the authority in considering this particular application. Chair I'm not sure whether any of my colleagues would want to add in this regard before I hand over to you? Thank you chair

Mgqibelo Gasela: Thank you chair, I think this concludes our presentation in respect of this unless there are any questions of clarity that chairperson could want from our submission?

Chairperson: Thank you very much KWESE. At this point in time the panel does not have questions, in terms of the programme, we are supposed to go into a break

session but I'm realising that we still have time. Then we will invite SOS and MMA if they're ready to come and make their representation and thank you very much for your presentation. Then Infinity will then be given an opportunity to respond to all your questions after MMA and SOS has presented. Thanks.