

The "SOS: Support Public Broadcasting" Coalition

Minister of Communications  
General (Ret) Siphwe Nyanda  
iParioli Office Park  
399 Duncan Street  
Hatfield  
Pretoria  
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Cc. The Acting Director General of Communications – Mr. Harold Wesso

21 July 2010

Dear General (Ret) Nyanda

**REQUEST FOR EXTENSION TO THE DEADLINE FOR COMMENT ON THE ICASA AMENDMENT BILL TILL END OF AUGUST 2010**

The SOS Campaign representing a number of trade unions (including Cosatu, Fedusa and Bemawu), a host of NGOs (including Media Monitoring Africa, the Freedom of Expression Institute and Misa-SA), CBOs (including the Freedom of Expression Network), industry related bodies (including the South African Screen Federation), academics and freedom of expression activists notes the vigour and commitment of the Department of Communications to find solutions to regulatory problems in the communications sector. In particular we note the publication of the proposed ICASA Amendment Bill. Coalition members believe that there are certainly a number of positive proposals in the Bill but that there also numerous constitutionality concerns. Further, there are a number of process problems.

In terms of Constitutionality issues, the Coalition notes that the Office of the Minister of Communications has been given significant new powers that could potentially be legally challenged for violating the broadcasting regulator's constitutionally-required independence. These new powers include:

- ICASA must implement policy and policy directives issued by the Minister.
- The Chairperson of Council must "perform such functions as the Minister may determine, subject to prior notification being given to Parliament".
- The Minister will determine what roles councillors play on Council.
- The evaluation of councillors will be conducted by a panel constituted by the Minister in consultation with Parliament. The panel must be chaired by the Minister or someone delegated by the Minister.
- The Complaints and Compliance Committee members will be nominated by the Minister in consultation with Parliament.

Potentially this creates a situation where ICASA will effectively operate as an extension of the Department of Communications. Not only is this at odds with South Africa's Constitution, it also runs counter to South Africa's international obligations in terms of international protocols and agreements signed by South Africa - such as the Windhoek Charter on Broadcasting in Africa, 2001 and the Declaration of Principles of Freedom of Expression in Africa adopted by the African Commission on Human and People's Rights in 2002

Further, in terms of process issues, SOS notes the lack of a prior policy-making process. SOS maintains – as it did in the Public Broadcasting Bill process - that good law-making requires appropriate PRIOR policy development. Consequently we urge the Department of Communications to review present policy contained within the Broadcasting White Paper, 1998 in

a transparent, consultative and participative policy process before proceeding to introduce new legislation.

Also, in terms of process issues we note that stakeholders have been given a mere 30 days to comment on the Bill as the Bill was published on 25 June and the deadline for written submissions has been set for 25 July. Needless to say, this time period is wholly inadequate and will in particular impact the effective participation of poorer, more marginalised civil society stakeholders. The Coalition thus urgently requests that the Department:

- Organise a number of provincial consultation sessions with stakeholders;
- Shift the deadline for comment to, at the very earliest, the end of August 2010 to ensure substantive, meaningful inputs.

The Coalition notes that this is the second letter we have sent the Ministry and Department on these issues. The first letter was dated 15 July 2010. We received acknowledgement of receipt of this letter but no further correspondence. We look forward to receiving your response to this and to our previous letter at your earliest convenience. The deadline for submission is now only 4 days away.

Yours sincerely

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