



**THE NAB'S SUBMISSION  
ON ICASA'S CODE FOR PERSONS WITH DISABILITIES  
REGULATIONS**

**15 December 2014**

## 1 Introduction

1.1 The NAB welcomes the opportunity to comment on the Draft Code for Persons with Disabilities published by the Authority on 14 November 2014 (“**current Draft Regulations**”).

1.2 The NAB is the leading representative of South Africa’s broadcasting industry. The current NAB membership includes:

1.2.1 the three television services and 18 radio services of the SABC;

1.2.2 licensed commercial radio broadcasters (including: Primedia, Kagiso Media, Tsiya Group, AME, MSG Afrika, Classic FM, Kaya FM and YFM);

1.2.3 licensed commercial television broadcasters (e.tv, Multichoice, M-Net, StarSat);

1.2.4 a host of community radio broadcasters and one community television broadcaster TBN;

1.2.5 both the licensed broadcast signal distributor and the selective and preferential broadcast signal distributors, Sentech and Orbicom.

1.3 The NAB is committed to working with the Authority to develop an appropriate regulatory framework to improve accessibility to broadcasting services by persons with disabilities. An appropriate framework will have to balance the needs of persons with disabilities with the needs of the broadcasting sector.

1.4 Unfortunately, the current Draft Regulations do not strike this balance. Our members advise that the current Draft Regulations are:

1.4.1 Unworkable;

1.4.2 Incapable of implementation; and

1.4.3 Financially unfeasible.

1.5 In our assessment, what has been lacking from this process to date is an evidence-based approach to regulation making. The Authority has never assessed the direct and indirect costs and benefits of its proposals, neither has it explored alternative mechanisms for achieving the stated objectives.

- 1.6 The NAB therefore recommends that the Authority conduct a Regulatory Impact Assessment (“**RIA**”) on the provision of broadcasting services to persons with disabilities. We refer the Authority to the RIA guidelines issued by the Presidency in 2012<sup>1</sup> which affirms the role of RIAs as part of an evidenced based approach to the making of policy and regulations. A RIA will enable the Authority to understand all the consequences of the proposed regulation and the NAB believes that a RIA is critical to the success of this process. As explained in the RIA Guidelines, a RIA will help the Authority to:
- 1.6.1 think through the full impact of proposals;
  - 1.6.2 identify alternative options;
  - 1.6.3 assess options (regulatory and non-regulatory);
  - 1.6.4 ensure that consultation is meaningful and reaches the widest possible range of stakeholders;
  - 1.6.5 determine whether the benefits justify the costs;
  - 1.6.6 determine whether particular sectors are disproportionately affected; and
  - 1.6.7 determine whether the proposed measure will address the objectives.
- 1.7 We urge the Authority to immediately commence a RIA on this issue and to withdraw the current Draft regulations, and start afresh once the RIA has been completed. In the meantime the current Code and reporting by licensees on their programmes and initiatives in meeting the needs of persons with disabilities should continue.

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<http://www.thepresidency.gov.za/MediaLib/Downloads/Home/Publications/RegulatoryImpactAssessment/Guidelines2/Regulatory%20Impact%20Assessment%20Guideline%20February%202012.pdf>

## 2 Specific proposals

- 2.1 Notwithstanding our view that the process should not proceed without a RIA, we wish to draw the following issues to the Authority's attention:

The objectives could be achieved through a voluntary Code, rather than regulations

- 2.2 A recent ITU report entitled "Model ICT Accessibility Policy Report" (**"the ITU Report"**)<sup>2</sup> contains the following observation about a regulatory approach to accessibility:

*"...in many instances and in particular with reference to disability policy framework, 'soft law' or voluntary initiatives, negotiated roadmaps, codes of conduct, and compliance can also be effective in promoting equitable access to information and communications technologies for persons with disabilities in a fast changing technology environment..."*

- 2.3 Section 70 of the EC Amendment Act <sup>3</sup>(**"the EC Act"**) enjoins ICASA to prescribe regulations setting out a Code for persons with disabilities on matters relating to all categories of licences. Yet, based on the current draft, it would seem the Authority is intent on publishing regulations.

- 2.4 The NAB believes that in line with best practice and, as suggested by the ITU, the Authority should adopt a Code of Conduct for broadcasters on this issue.

The limitations of analogue technology and the migration to digital terrestrial television should be taken into account

- 2.5 All the accessibility services proposed by the Authority in the draft regulations cannot be implemented by analogue broadcasters, because analogue technology does not permit for the provision of some of these services.

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<sup>2</sup> Published in November 2014

<sup>3</sup> Act 1 of 2014: Electronic Communications Act 2013, published on 7 April 2014 in government gazette 37563.

2.6 The ITU Report recognises that, the migration from analogue to digital television will facilitate the provision of access to persons with disabilities, but recommends that policy should enable licenced broadcasters to plan for access services as part of their migration strategies.<sup>4</sup>

2.7 The Authority has not considered the limitations of analogue technology and has not permitted broadcasters to plan the roll out of access services as part of their migration strategies.

The effective date needs to be realistic

2.8 While the NAB understands that the previous draft Regulations did not specify a commencement date, and that the Authority was prompted by concerns to specify it in the current draft Regulations<sup>5</sup>, we believe that the proposed date of 1 April 2015 is wholly unreasonable.

2.9 Broadcasters undertake their financial planning and budgeting processes way ahead of the commencement of the financial year and require at least 18 months to prepare for and implement the regulations.

The regulations cannot be applied across all channels

2.10 In terms of the current draft Regulations, when the regulations come into effect all channels must provide access services. The Authority has made no concessions for any types of channels or programmes. This proposal is not feasible, particularly in a multichannel environment.

2.11 It is our view that the Authority should consider determining priority programmes, genres and identify public interest programming, on which access services may be rolled out.

2.12 A further challenge arises for multi-lingual broadcasting services. The Authority must give consideration to the challenge of availing access services in all official languages,

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<sup>4</sup> At page 66 of the ITU Report.

<sup>55</sup> At page 18 of the Explanatory Memorandum on the Decision to amend the draft code for persons with disabilities regulations

in particular the public broadcaster. The 2011 ITU report stipulates that regulators need to take language diversities into account when setting out policy and regulatory frameworks for access services. The Report further identifies that in rolling out access services in various languages, in order to recoup their return on investment, regulators and broadcasters ought to ensure that as many citizens as possible can understand a given programming through access services.

#### The targets should be flexible

- 2.13 While the NAB recognises that there is an improvement from the targets set in the previous draft regulations, the proposed targets are still excessively onerous. The requirement to roll out 10% of access services from year one for subtitles, audio captioning, audio description and close captioning, at the same level is not implementable. Our members advise that the costs of providing these services amount to millions per channel per year and that these costs are not recoupable from any source.
- 2.14 The Ofcom approach that the NAB presented to the Authority as a guide, does not provide a standard approach to the implementation targets; it considers each access service separately with a specific percentage for each year on year. The subtitling requirement in the UK starts at 10% in year one to reach 80% by year ten, whilst, audio description starts at 2% in year one to reach 10% in year ten.
- 2.15 The NAB submits that a range of factors inform the percentages that are ultimately set by regulators such as Ofcom, and it cannot be standard across the board application. The NAB urges the Authority to review best practice models and to be mindful of the unique circumstances facing South African broadcasters.
- 2.16 The NAB recommends that the Authority should opt for a more flexible set of guidelines which allow for a phased-in approach, which will enable gradual and steady implementation by broadcasters.

### Fines should be reduced

2.16.1 The NAB is concerned that the Authority has not revised the fine to be imposed, despite our proposal that this be reviewed. The NAB is concerned that the Draft Regulations incorporates a Contraventions and Penalties Clause which imposes a fine not exceeding R1 000 000.00 (should broadcasters not comply with the regulations). Both the time-frames and the penalties would need to be revisited in consultation with licensees.

## **3 Conclusion**

3.1 The members of the NAB are committed to serving the needs of persons with disabilities.

3.2 The NAB believes that the issue of accessibility should be addressed meaningful way and that this can only be done if the Authority fully understands the social, financial and economic consequences of its proposals for all affected stakeholders. We reiterate our proposal that the Authority should immediately commence a RIA, and that the current draft regulations should be withdrawn in their entirety until the RIA is complete.

3.3 The NAB thanks the Authority for the opportunity to make its written representation and looks forward to further engagements with the Authority on this issue.