



**NAB SUBMISSION TO ICASA ON THE
INFORMATION MEMORANDUM FOR THE RADIO
FREQUENCY SPECTRUM PROSPECTIVE LICENCE TO
PROVIDE MOBILE BROADBAND WIRELESS ACCESS
SERVICES FOR URBAN AND RURAL AREAS
USING THE COMPLEMENTARY BANDS
700MHz, 800MHz and 2.6GHz**

16 October 2015

Background

- 1.1. The National Association of Broadcasters (“the NAB”) is the leading representative of South Africa’s broadcasting industry, established over 20 years ago. The NAB aims to further the interests of the broadcasting industry in South Africa, by contributing to its development. The current NAB members are:
 - 1.1.1. the three television services and 18 radio services of the SABC;
 - 1.1.2. licensed commercial radio broadcasters (including: Primedia, Kagiso Media, Tsiya Group, AME, MSG Afrika, Classic FM, Kaya FM, YFM, Smile FM and Vuma FM);
 - 1.1.3. licensed commercial television broadcasters (e.tv, Multichoice, M-Net, StarSat);
 - 1.1.4. a host of community radio broadcasters and community television broadcaster, Faith Terrestrial;
 - 1.1.5. both the licensed broadcast signal distributor and the selective and preferential broadcast signal distributors, Sentech and Orbicom;
 - 1.1.6. associate members, including training institutions.
- 1.2. On 11 September 2015, the Authority published in government gazette number 39203, a notice to provide information to prospective applicants intending to apply for the radio frequency spectrum licenses within the designated frequency range 2.6MHz, 800MHZ and 700MHz, for purposes of providing national broadband wireless access services (“the Information Memorandum”).
- 1.3. The NAB welcomes the opportunity to make its written submission to the Draft Information Memorandum, and we request to be given an opportunity to participate in oral hearings should these be conducted.

2. NAB Support for National Objectives

- 2.1. The NAB supports the objects of the Broadband Policy (“SA Connect Policy”)¹, which among others; *“aims to remove the policy constraints, regulatory bottlenecks and other hurdles that have constrained the diffusion of broadband, and to identify*

¹ Published on 20 November 2013.

mechanisms to release high demand spectrum required for broadband extension².”

The NAB further recognises the importance of bridging the digital divide through the roll out of broadband, and ensuring 100% broadband penetration by 2020, as envisaged by the National Development Plan (“the NDP”).

2.2. Whilst the NAB supports the SA Connect Policy objectives, the NAB is concerned that the manner in which the Authority is proceeding is premature and could lead to confusion and uncertainty for aspirant licensees, this is based on the following:

2.2.1. the 700MHz band is currently still occupied by TV broadcasting service licensees, and not available for immediate occupation by IMT services;

2.2.2. the process has the potential of raising expectations by prospective applicants, who are eager to apply for the spectrum;

2.2.3. the Authority is mandated to ensure that the concerns of broadcasters (particularly those occupying the applicable spectrum bands) are carefully considered and weighed up and that a clear migration plan (with timelines and clarity on who will be footing the bill for migration) is in place in advance of licensing IMT services.

2.3. The NAB notes that the Authority commenced the process of attempting to licence high demand spectrum as far back as in 2011 and this process was subsequently stopped. The reason for this was to ensure that the Minister's policy direction on high demand spectrum is finalised and taken into consideration. The NAB is concerned that the Authority is restarting the process despite the fact that the Minister's policy directive on high demand spectrum has still not been finalised, and no pronouncement has been made by the Minister on the allocation of high demand spectrum and the digital dividend. The Policies and Policy Directions by the Minister published on 16 April 2010³ rightfully observed:

“to date there has not been a national policy on spectrum usage. This has resulted in piecemeal decisions being taken on the spectrum usage in South Africa that have often been driven by commercial considerations only. To ensure efficient use of the radio frequency spectrum in South Africa, it is necessary for Government to issue policies and policy direction in order to

² At page 12 of SA Connect Policy.

³ Published in government gazette 33116

ensure that this resource is used in the best interest of the Republic of South Africa”

- 2.4. It is concerning that the Authority is proceeding with some haste in this process in the absence of a finalised Ministerial policy directive and the NAB respectfully cautions the Authority to guard against being persuaded by interests that do not balance the needs of both broadcasters and telecommunications providers.
- 2.5. The NAB is of the view that public interest objectives must inform the Authority and to that end that, the NAB recommends that the Authority suspends this process until such time that TV broadcasting licensees have successfully migrated to digital broadcasting and a clear Ministerial policy direction has been provided.
- 2.6. We raise our issues on the Information Memorandum below.

3. WRC15 Outcome on 700MHz Band

- 3.1. The Information Memorandum appears to pre-empt the ITU's WRC15 process which concludes at the end of this year, where the allocation of frequency band 700MHz band will be determined internationally. The Information Memorandum ignores TV broadcasting service licensees who are still to migrate to digital broadcasting and who in the main still occupy the 700MHz frequency band. The Authority is reminded of among others, the provisions of Agenda Item 1.1 of the WRC15, which deal with the identification and allocation of spectrum for IMT services in the frequency band 700MHz. This position still needs to be discussed and endorsed by the WRC15.

3.2. IMT Roadmap and the RFSAP

- 3.3 On 30 March 2015, the Authority published its final IMT Roadmap as well as the final Radio Frequency Spectrum Allocation Plan Regulations (“the RFSAP”). This was notwithstanding the NAB’s concerns raised on the timing of the draft IMT Roadmap and the RFSAP. Other concerns the NAB raised related to the fact that these processes ought to have regard for the imminent digital migration process, as incumbent TV broadcasting licensees would be adversely impacted by the IMT Roadmap and the RFSAP.⁴ The Authority subsequently published an Erratum which in particular stipulated in section 9.4 that *“matters related to spectrum management geared at minimizing and/or prevent harmful interference during the transitional arrangement period are to be managed by the Authority which will develop a systematic implementation plan during the transmission”*.
- 3.4 The Authority further made an undertaking to publish a Reasons Document to explain among others; transitional arrangements and timelines to migrate TV broadcasting licensees to accommodate IMT services. It is regrettable that the Reasons Document has to date not been published. To this end, the NAB urges the Authority to publish the Reasons Document to allow for deliberations on transitional arrangements to continue.

4. Coverage Obligations

- 4.1. In terms of the Information Memorandum, the Authority plans to place coverage obligations on “spectrum winners” of packages which contain low-frequency spectrum. To this end licensees will be required to rollout 70% of the broadband network in identified areas before rolling out in the cities. The NAB supports the principle of universal service and universal access, and endorses the view that underserved areas should receive priority in the roll out of broadband services, as this is in line with the SA Connect Policy.

⁴ NAB Written Submission to ICASA on the draft IMT Roadmap dated 7 October 2014.

4.2. The NAB is encouraged that the Authority will not allow any roll-out in cities until the roll-out in identified areas has been completed. In order to avoid the e-rate failures, where electronic network service licensees (“ENS licensees”) pleaded for concessions from the Authority on their obligations to roll out internet connectivity to rural schools and the failures in delivery by under serviced area licences (“USAL”). The NAB therefore recommends that this process must be closely monitored, and the Authority must apply more stringent measures in ensuring that licensees adhere to their coverage obligations for the roll out of broadband services in rural areas. The NAB proposes that the Authority should among others:

- 4.2.1. Incorporate the obligations into the winning licensees’ licenses as promises of performance;
- 4.2.2. In addition to the 3 year period within which a licensees should roll-out services to identified areas, the Authority should also stipulate the time period within which the roll out to cities should be implemented, as failure to do so may encourage procrastination, and spectrum hoarding;
- 4.2.3. The Authority must invoke a “ use it or lose it” principle to licensees who hoard the spectrum;
- 4.2.4. Closely monitor compliance, and receive regular updates from licensees on progress made;
- 4.2.5. non-compliance should attract a fine, in line with the findings and recommendations of the Complaints Compliance Committee (“the CCC”) of ICASA.

4.3. Digital Terrestrial Television (DTT) Obligations

4.4. The NAB welcomes any efforts that do not compromise incumbent TV broadcasting licensees by the Authority to fast track DTT. To this end, while the NAB is in principle in favour of proposals that successful licensees should support the migration process in some way, we believe the specific proposal that they should provide free set-top-boxes (“STBs”) needs to be considered in more detail. To this end, the following must be explored:

- 4.4.1. The need to have “free” STBs co-ordinated with government’s own efforts to provide subsidised STBs;
- 4.4.2. Consideration as to who would be responsible for developing the specifications for these STBs;

- 4.4.3. Consideration be had as to whether these STBs will be DTT or DTH, or both;
 - 4.4.4. Consideration for who would be responsible for the procurement, warehousing, distribution, warranties etc. on these STBs;
 - 4.4.5. Consideration for who would determine the consumers who qualify for these STBs, and what the criteria would be.
- 4.5. The NAB also reminds the Authority that there are other areas of digital migration requiring support such as, dual illumination costs, the digital to digital migration costs and the costs to re-stack frequencies. The NAB would therefore propose that the Authority consider whether “winning licensees” should rather make contributions in these areas. The NAB had also requested that the Authority provide licence fee holidays to TV broadcasting licensees who will be migrating, and we still hold this view.

5. The Award Process

- 5.1. The Information Memorandum further talks to the issue of timelines for the completion of the auction, but does not outline the timelines. In light of the fact that there is no policy directive for high demand spectrum, and also taking into account that the digital migration has not yet commenced, the NAB urges the Authority to provide an indication of the envisaged timelines. In our view, the process of licencing the 700MHz and 800MHz frequency bands should only commence once the incumbent TV broadcasting licensees have successfully migrated.
- 5.2. The NAB is concerned that while the SA Connect Policy requires that broadband objectives should be met by 2020, the Authority’s focus appears to be shifting from the broadcasting digital migration process that has been underway for a number of years. The successful realisation of the digital dividend and, and subsequent licencing thereof is dependent of a smooth and seamless digital migration.

6. Auction

- 6.1. The Information Memorandum stipulates that the most effective way of assigning spectrum where demand exceeds supply is by way of auctions. We note that the Authority has considered a number of auction formats, including the Simultaneous Multiple-Round Auction (“SMRA”) and the Combinatory Clock Auction (“CCA”) with generic lots. The Authority then concludes that it shall follow the SMRA format.
- 6.2. The NAB is concerned that there is currently no national policy recognising auctions as a form of licencing spectrum. The Authority has the obligation to licence and regulate spectrum in the public interest, and ensure fairness and diversity of views broadly representing South African society.
- 6.3. The NAB is neither aware of any evidence based study conducted by the Authority supporting the viability of auctioning spectrum in South Africa, nor is there evidence that a robust financial impact assessment has been conducted to test the sustainability and viability of the proposed model.
- 6.4. There is also no clarity on whether the auction process seeks to deliver on specific national treasury objectives to raise funds for the national fiscus and what oversight mechanisms will be put in place to ensure that the proposed auction process is audited. The NAB therefore recommends that the Authority conducts a robust Regulatory Impact Assessment and a Socio-Economic Impact Assessment.

7. Conclusion

- 7.1. The NAB supports the implementation of the SA Connect Policy toward bridging the digital divide by 2020.
- 7.2. In line with the Broadcasting Digital Migration Policy, the NAB proposeS that the Authority should focus on ensuring a smooth and seamless migration for TV broadcasting licensees from analogue broadcasting to digital broadcasting.
- 7.3. The NAB welcomes proposals that successful spectrum licensees should support the broadcasting digital migration process in some way but recommends that the exact means of such support be given further consideration.

7.4. The NAB welcomes the opportunity to make its written submission, and we are available to provide further assistance that the Authority may require in finalising this process.