



**NAB SUBMISSION ON ICASA'S NOTICE OF INTENTION TO PRESCRIBE
INTERCONNECTION REGULATIONS IN TERMS OF SECTIONS 38 AND 4
OF THE ELECTRONIC COMMUNICATIONS ACT, 36 OF 2005**

07 SEPTEMBER 2007

1. INTRODUCTION

1.1 The National Association of Broadcasters (the NAB) would like to take this opportunity to thank the Independent Communications Authority of South Africa (ICASA) for the opportunity to make a written representation to notice number 898 of 2007, published in government gazette number 30091, dated 24 July 2007 (the notice). In the notice, ICASA invites interested persons to submit written representations to its intention to prescribe interconnection regulations (the draft regulations).

1.2 The NAB is the leading representative of South Africa's Broadcasting industry. The NAB aims to further the interests of the broadcasting industry in South Africa by contributing to its development. The NAB membership includes:

- Three television public broadcasting services, and eighteen sound public broadcasting services, of the South African Broadcasting Corporation of South Africa ("the SABC");
- All the commercial television and sound broadcasting licensees;
- Both the licenced common carrier and the selective and preferential carrier broadcasting signal distributors;
- Over thirty community sound broadcasting licensees, and the only licensed community television broadcasting service, Trinity Broadcasting Network (TBN)

2 THE OBJECT OF THE DRAFT REGULATIONS

- 2.1 The NAB, in principle, supports the object of the draft regulations in so far as it seeks to promote the objects of the Electronic Communications Act 36 of 2005 (the ECA), which among others encourage the promotion of the convergence of telecommunications, information and broadcasting technologies, the development of interoperable and interconnected electronic networks and to create a technology neutral licensing framework.¹
- 2.2 ICASA states the purpose of the draft regulations to facilitate the conclusion of Interconnection Agreements as well as to specify a dispute resolution process in the event of interconnection disputes.

3 OBLIGATION TO INTERCONNECT

- 3.1 Section 37(1) of the EC Act states:
- Subject to section 38, any person licensed in terms of Chapter 3 must, on request, interconnect to any other person licensed in terms of this Act and persons providing service pursuant to a licence exemption in accordance with the terms and conditions of an interconnection agreement entered into between the parties, unless such request is unreasonable.*
- 3.2 Section 37(2) of the EC Act states:
- For the purposes of subsection (1) a request is reasonable where the Authority determines that the requested interconnection-*
- a) is technically and financially feasible; and*
 - b) will promote the efficient use of electronic communications networks and services.*

¹ Section 2(n) of the ECA

- 3.3 The NAB notes and acknowledges that strict reading of these sections of the EC Act requires all licensees to interconnect, on request, to any other person licensed in terms of the EC Act. This by default includes broadcasting services and broadcasting signal distribution, as defined in Chapter 1 of the EC Act.
- 3.4 However, the NAB submits that the inclusion of broadcasting services and broadcasting signal distribution in the obligation to interconnect is erroneous and also not technically possible.
- 3.5 Although the definition of 'interconnection' contained in Chapter 1 of the EC Act specifically includes broadcasting, the definition of 'electronic communication service' specifically excludes broadcasting services.
- 3.6 Furthermore, Chapter 1 of the EC Act provides a specific and separate definition for 'broadcasting signal distribution'. Chapter 9 of the EC Act further distinguishes broadcasting from Electronic Communication Services and Electronic Communication Network services with very specific obligations for broadcasting activities only.
- 3.7 The NAB submits that for the purposes of interconnection these distinctions are very relevant and points to the difficulty of interconnecting every licensee.
- 3.8 Interconnection provisions and obligations are aimed at ensuring that the public and users of service providers utilising a specific network are able connect to other users utilising different service providers and/or other networks. It speaks to the objectives of promoting universal provision of electronic communication networks and services as well as connectivity for all.

- 3.9 The NAB submits that in the case of broadcasting these obligations are not relevant nor are they technically possible.
- 3.10 Provisions contained in the EC Act and licence conditions of broadcasting services provide for specific coverage areas and reach. These limitations are deliberate to ensure that the objectives of diversity as well as cultural and language development are met. Requiring broadcasters to interconnect with each other is not only impracticable but it is in conflict with these objectives.
- 3.11 Furthermore, where an electronic communications network is utilized for the purpose of broadcasting signal distribution, the same arguments would apply. Not only do broadcasting services make use of standards unique to broadcasting that complicates interconnection on a technical level, but the frequencies allocated for broadcasting signal distribution have been allocated for that sole purpose to ensure orderly frequency management. Allowing other services to interconnect with a broadcasting signal distribution network and using that network for purposes other than broadcasting signal distribution would be in violation of International Telecommunications Union and South African regulations.
- 3.12 Finally, broadcasting signal distribution networks and electronic communications networks are not compatible or interoperable. Therefore unacceptable levels of interference, network collapse and content loss are of great concern to the NAB.
- 3.13 The NAB submits that for the reasons outlined above, broadcasting services and electronic communication networks used for the

purpose of broadcasting signal distribution should not be included in the obligation to interconnect.

4 **CONCLUSION**

The NAB would again like to thank the Authority for the opportunity to comment on the proposed regulations. The NAB trusts that the Authority will take cognisance of the submissions made in this representation, in formulating a regulatory framework for broadcasting in South Africa.