



**National Association of Broadcasters
written submission to the Department of
Communications Draft South African National
Frequency Spectrum Policy**

19 October 20009

1. Introduction

1.1. On 18 September 2009, the Department of Communications, (the Department) published for public comment, in General Notice number 1275 of 2009, government gazette 32577 a notice of its intention to make South African National Radio Frequency Spectrum Policy (the draft policy). The notice was published in terms of section 3(1) of the Electronic Communications Act (the EC Act). Interested parties were requested to furnish their written submissions within 30 calendar days of the date of publication of the notice in government gazette. The Department subsequently set the closing date on 19 October 2009, as 30 calendar days ended on 18 October 2009, a Sunday.

1.2. The National Association of Broadcasters (the NAB) would like to thank the Department for the opportunity to make its written submissions. The NAB would like to be afforded the opportunity to participate in oral hearings, should the Department decide to hold same.

1.3. 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);
- Five licenced commercial television and seventeen sound broadcasting licencees;
- Both the licenced broadcast signal distributors, Sentech and Orbicom;
- Over thirty community sound broadcasting licenseees, and one community television broadcasting licensee, Trinity Broadcasting Network (TBN).

2. NAB support for the draft Policy

2.1. The NAB in principle supports the principles advanced by the draft policy, as it seeks to advance the orderly management of the radio frequency spectrum. This draft policy further seeks to carry out the objective of the EC Act, which is to promote the efficient use of the radio frequency spectrum.¹ However the NAB would like to draw attention to

¹ The Electronic Communications Act 36 of 2005, Objective (e).

some issues that need the Department's attention before the draft policy is finalised. Hence in the subsequent sections, the NAB will outline its comments on the draft policy.

3. Radio Frequency spectrum Fees

- 3.1. In the draft policy, the Department makes mention of the fact that where there are competing applications or demand for spectrum, "market approaches" for the allocation or assignment of the frequencies may be applied. Indeed, in South Africa we are realizing instances where demand for spectrum exceeds the available spectrum. In 2006, the Independent Communications Authority of South Africa (ICASA) embarked on the process of drafting procedures and criteria for awarding radio frequency spectrum licences for competing application or instances where there is insufficient spectrum available to accommodate demand.² In the notice, ICASA identified two frequency bands where demand exceeded the available bandwidth, and those were 3400-3600MHz (3.5 GHz) and 2500-2690MHz (2.6GHz). Further to this the Minister issued a policy directive to ICASA to consider prescribing procedures and processes for awarding frequencies in instances of scarcity.³
- 3.2. The NAB perceives the need to outline criteria and procedure of allocating spectrum in policy as a matter of priority. In so doing, the policy must seek to balance the national and public interests. In the draft policy the department states that "market approaches" must be adopted when making a determination. From the NAB point of view this term is loaded and requires to be broken down by the department. It is therefore the view of the NAB that the department should conduct a study to ascertain what these market approaches are, and these must take into account the circumstances prevailing in South Africa.
- 3.3. Various models of spectrum allocations have been employed worldwide, and these are spectrum auctioning and the so-called beauty contest approach. In South Africa the beauty contest approach has been followed because it allows for interested parties to be judged on merit and not the size of their wallets. It also allows for a more transparent process and equitable access to spectrum.

² General Notice 1530, Government Gazette 29351 published on 2 November 2006

³ General Notice 876 Government Gazette 30308 published on 17 September 2007

3.4. The NAB's view is that this practice should continue, with the exception in those areas where spectrum scarcity has been identified through regulation and a public process.

3.5. The NAB advocates that the policy must go further and exempt broadcasting service licencees from the payment of spectrum licence fees. This is due to the fact that, unlike other licencees, broadcasting service licensees carry public interest obligations through the broadcasting of news, programming with local content, and these are in effect payment for use of the spectrum in addition to general licence fees they already pay.

4. Promotion of national interests

4.1. The Department recognises that as a result of digital migration excess spectrum will be realised, and therefore advocates for additional services such as community broadcasting services, and the introduction of new electronic communications services in spectrum previously exclusively be allocated to broadcasting.

4.2. The NAB views the singling out of community broadcasting service as additional services that will be accommodated on the digital dividend to be misleading. There are a myriad of broadcasting services that can be introduced on the spectrum dividend. The government has alluded to the need to avail e-government services; commercial and public broadcasting services can further more introduce new services and technologies such as HDTV and Mobile TV. Undoubtedly, the NAB is not opposed to developments and innovation in the ICTs, however the NAB is of the view that broadcasting services should be prioritized when allocations are made on these frequencies.

4.3. Furthermore, making specific reference to wireless applications and reserving the digital dividend for their exclusive use is not in the National interest. Technological developments in ICTs and broadcasting might necessitate a shift from this policy in future. The NAB suggests that the policy be technology neutral in this regard but continue to provide for some of the dividend to be used for the implementation of new broadcasting services.

5. Review

5.1. The NAB supports the view that the Department shall review the policy after every World Radio Conference (WRC). This will enable the policy to be a living and flexible document. However in so doing, the Department must be consistent in prioritizing, and

balancing national and international policies, because in certain instances the country may not be ready to implement the WRC policy.

6. Conclusion

6.1. The NAB would once again like to thank the Department for the opportunity to make its written submission, and is indeed in support of the initiative. In summary the NAB would like to highlight the following to the Department:

6.1.1. Due to the various economic situations licencees face, the sector is currently not ready to employ spectrum auctioning. As a result, the department must guard against the likely misinterpretation of the term market approaches to be construed as covering spectrum auctioning;

6.1.2. When prescribing policy on how to make allocations on the digital dividend, the Department must give priority to broadcasting service licencees.

6.2. The NAB is available to provide any further information the Department might require to assist in finalising the policy.