



**NAB SUBMISSION ON ICASA'S NOTICE OF INTENTION TO MAKE
REGULATIONS IN RESPECT OF END-USER AND SUBSCRIBER
SERVICE CHARTERS FOR POSTAL, BROADCASTING, ELECTRONIC
COMMUNICATIONS NETWORK SERVICES AND ELECTRONIC
COMMUNICATIONS SERVICES LICENCEES**

24 AUGUST 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 851 of 2007, published in government gazette number 30073, dated 13 July 2007 (the notice). In the notice, ICASA invites interested persons to submit written representations to its intention to make regulations in respect of end-user and subscriber service charters for postal, broadcasting electronic communications network services and electronic communications services licencees (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 consumer interests with regard to price, quality and the variety of electronic communications services.¹
- 2.2 ICASA states in the draft regulations that the regulations are made in respect of the end-user and subscriber service charter for postal, broadcasting, electronic communications network service and electronic communications service licensee, in terms of section 69(5) of the ECA, and section 81(c) of the Postal Services Act 124 of 1998 (the PSA).
- 2.3 However, when perusing the PSA, section 81 is totally unrelated to issues of regulations, and further more section 81 does not have part (c). ICASA is required to clarify if there has been a typographic error when stating the applicable sections of the PSA, and if that is the case, the applicable section must be cited.
- 2.4 Further more, in section 1 of the ECA, service charter is defined as thus:
- “A document, developed by the licensee after consultation with its staff, subscribers and end-users which sets out the standards of service subscribers can expect and is a performance measurement and accountability tool that focuses on subscriber service outcomes.”*
- 2.5 The definition of a service charter, envisages a participative and consultative process among licencees and their staff members, end-users and subscribers before a service charter can come into being.

¹ Section 2(n) of the ECA

It is the NAB's opinion that in issuing these draft regulations, ICASA overlooked the consultation process. In addition, to the NAB's understanding, the contents of the service charter have to be determined by the licensee, its staff members, end-users and subscribers, as opposed to imposing the un-negotiated prescriptive conditions set out in the draft regulations on licensees, end-users and subscribers, as ICASA is seeking to do in this process. The NAB is therefore of the view that the draft regulations are overly prescriptive, and need to confine themselves to the bare minimum conditions that need to be in an end-user service charter. This will allow the consultative process envisaged in the Act around the drafting of service charters by licensees to take place.

- 2.6 However, should ICASA decide to continue with publishing the draft regulations for end-user and subscriber service charter for postal, broadcasting, electronic communications network service and electronic communications service, without affording licensees, staff members, end-users and subscribers the opportunity to negotiate the service charter, the NAB wishes to raise some comments, and changes to be made to the draft regulations.

3. NAB SUBMISSION TO PARTICULAR PROVISIONS OF THE PROPOSED REGULATIONS

3.1 Section A

3.1.1 Definitions

The NAB submits that, the definition section must be set out in alphabetical order. Further more, there are certain technical terms, which appear in the body of the draft regulations, which have not been defined. The NAB proposes that the definitions of the following terms be provided in the definition section:

- 3.1.1.1 **Caller line identification (CLI):** refers to the information generated by an electronic communications system that identifies the calling number in its entirety;
- 3.1.1.2 **Complaints and compliance Committee (CCC):** refers to the committee established by the Authority in terms of section 17A of the ICASA Act as amended;
- 3.1.1.3 **End user:** refers to a subscriber(s) and/or person(s) who use services of a licensee
- 3.1.1.4 **Subscriber:** refers to a person who lawfully accesses, uses or receives a retail service of a licensee for a fee or the retail services of a person providing a service pursuant to a licence exemption. ²

3.1.2 The NAB further requests ICASA to provide definitions for the following terms:

- 3.1.2.1 **Average time to repair (ATTR);**
- 3.1.2.2 **Average time to install (ATTI);**
- 3.1.2.3 **SPAM.**

3.2 **Section B**

3.2.1 **Accessibility**

In the draft regulations, provisions dealing with accessibility are limited only to people with disabilities. The NAB is of the view that issues dealing with people with disabilities should not be addressed in the draft regulations, but should be dealt with in the specific regulations addressing the needs of people with disabilities, and licensees should refer to the regulations for people with disabilities when dealing with their needs. The NAB proposes that the draft regulations should deal with access in general terms.

² Refer to chapter 1 of the ECA

4. MERGER OF CERTAIN PROVISIONS

- 4.1 There are certain provisions that are of generic application, which affect all licencees alike, but have been addressed in piecemeal in the proposed regulations. The NAB therefore proposes that for ease of application, and proper interpretation, general provisions must be lumped together. It is therefore proposed that the following provisions should be merged:
- 4.2 Section 6 under postal services licencees and section 6 under electronic communications Licencees³ deal with the keeping of subscriber complaint records. These sections must form part of the section dealing with monitoring requirements on page 17 of the draft regulations.
- 4.3 Sections 7 and 8 dealing with staff attitude and customer attitude⁴ must be merged. The two sections have been separated, but when reading through them, the message conveyed address similar issues.

5. COMMENT ON THE LEGISLATIVE REQUIREMENTS

- 5.1 Section 69(5) of the ECA sets out matters, which ICASA may take into account when drafting end-user and subscriber regulations. These are mere guidelines for ICASA. The NAB will address the matters individually:

5.1.1 The protection of private end-users and subscriber information

³ pages 7 and 9 of the draft regulations respectively.

⁴ On page 7 of the draft regulations.

The spirit of section 69 (5) (c) is to guarantee end-users and subscribers confidentiality in as far as their information and identity is concerned. The NAB submits that, paragraphs 11 and 12⁵ should be merged, as they address similar issues.

5.1.2 Complaints and compliance for postal and electronic communications licencees

5.1.2.1 Section 69(5)(e) of the ECA, requires the regulations to outline procedures and remedies available to address matters at issue. Further more, Section 17C of the ICASA Act requires that:

“A person who has reason to believe that a licensee is guilty of any non-compliance with the terms and conditions of his licence or this Act or the underlying statutes may lodge a complaint with the Authority within 60 days of becoming aware of the alleged non-compliance.”

5.1.2.2 Section 54 (1) of the ECA directs ICASA to establish a Code of Conduct for broadcasting services. Section 54 (3) of the ECA, goes further to provide that a broadcasting licensee who is a member of a body which has proved to the satisfaction of ICASA that its members subscribe and adhere to a code of conduct enforced by that body by means of its own disciplinary mechanisms, provided such code of conduct and disciplinary mechanisms are acceptable to the Authority, such licensee may not be required to adhere to the code of conduct of broadcasters.

⁵ On pages 10 and 11 of the draft regulations.

- 5.1.2.3 The NAB acknowledges that ICASA has the power to receive complaints of non-compliance by licencees, as articulated by the ICASA Act. However, the NAB wishes to highlight that the Broadcasting Complaints Commission of South Africa (BCCSA) is a body whose disciplinary procedures are recognized by ICASA, and it was established to adjudicate on broadcasting content complaints raised against members of the NAB. The NAB therefore recommends that the draft regulations must stipulate that any query related to broadcasting content must be referred to the BCCSA for adjudication. The BCCSA procedures should be applicable and be followed.
- 5.1.2.4 In fact it may be even better to exclude content issues totally, as they fall outside of the scope of the service regulations, contemplated under section 69 (3) of the ECA. More to the point, these provisions around content issues (record keeping, etc) and content-related complaints represent a duplication of other provisions in the ECA, broadcasting regulations and/or broadcasting licence conditions, increasing the risk of conflict between these regulations and the Act and/or other regulations issued by the Authority.
- 5.1.2.5 The provisions of section 69(6) should then be imposed where the complainant is not satisfied with the findings of the BCCSA.

5.1.3 Sample announcement

The NAB recommends that the sample announcement should be attached as an appendix to the draft regulations, rather than having it in the body of the draft regulations. This will allow for flexibility, and assist with alleviating the lengthy process of having to amend the regulations when the sample announcement has to be amended.

6. 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.