



**NATIONAL ASSOCIATION OF BROADCASTER'S WRITTEN REPRESENTATION  
TO ICASA'S PROPOSED REGULATIONS IN RESPECT OF THE ELECTRONIC  
COMMUNICATIONS, BROADCASTING AND POSTAL SECTORS TO MEET THE  
NEEDS OF PEOPLE WITH DISABILITIES**

20 JULY 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 765 of 2007, published in government gazette number 29986, dated 14 June 2007 (“the notice”). In the notice, ICASA invites interested persons to submit written representations to its intention to make regulations in respect of the Electronic Communications, Broadcasting and Postal sectors to meet the needs of people with disabilities (“the proposed regulations”).
- 1.2. The NAB would like to be given the opportunity to make oral representations should ICASA deem it fit to hold oral representations with regards to this process.
- 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”);
  - 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)

- 1.4. This submission will focus primarily on the broadcasting-related provisions of the proposed regulations. In order to assist the Authority, the NAB has also made drafting proposals regarding certain of the provisions contained in the regulations.

## **2. PRINCIPLES GUIDING THE NAB SUBMISSION**

- 2.1. The NAB supports the objects of the proposed regulations, by seeking to prescribe the Code on people with disabilities to be adhered to by all licence categories licenced in terms of Chapter 3 of the ECA, as well as the Postal Services Act 124 of 1998. In making its submission, the NAB's discussions will be guided by the following principles, as enunciated by public interest goals and by the Electronic Communications Act 36 of 2005:

- 2.1.1 the need to ensure equal treatment of all licencees;
- 2.1.2 the importance of ensuring fair presence, portrayal and participation of people with disabilities;
- 2.1.3 the right of people with disabilities to be able to access broadcasting services;
- 2.1.4 to promote an environment of open, fair and non discriminatory services, electronic communication networks and to electronic communications services;
- 2.1.5 to promote the empowerment of historically disadvantaged persons, including Black people, with particular attention to the needs of women, opportunities for youth and challenges for people with disabilities;
- 2.1.6 to ensure the financial viability of the sector.

## **3. CODES OF GOOD PRACTICE FOR BROADCASTERS TO MEET THE NEEDS OF PEOPLE WITH DISABILITIES**

- 3.1 Before going into discussions around the proposed regulations, the NAB wishes to outline the background behind the issue of the Code of good

practice for broadcasters regarding meeting the needs of people with disabilities.

- 3.2 In March 2006, the NAB and its members, namely the South African Broadcasting Corporation (“the SABC”), etv, Mnet and the National Community Radio Forum (“NCRF”) became signatories to the Code of Good Practice for the Broadcasting Industry for Meeting the Needs of People with Disabilities.
- 3.3 The Code did not seek to impose legal obligations on broadcasters. It was indented to serve to provide guidelines on the approach that should be adopted by broadcasters in providing services to people with disabilities, specifically needy people who form part of the public they serve.<sup>1</sup> Further more, the Code had a suspensive condition, which provided that the Code would terminate once regulations had been promulgated in terms of the ECA.<sup>2</sup> The empowering ECA provisions for ICASA to draft the proposed regulations are, section 70 read with section 4(1), as well as section 2(h) of the Postal Services Act<sup>3</sup>.

#### **4. STRUCTURE OF THE PROPOSED REGULATIONS**

- 4.1 In order to address and accommodate the needs of people with disabilities, licencees ought to take into cognisance a wide range of issues affecting people with disabilities. These may be specific to a particular sector, while others can have a generic application to all licencees.
- 4.2 It is therefore important that when promulgating the proposed regulations, ICASA should consider structuring the regulations in such a manner that the generic provisions apply to all licencees. This will assist in alleviating duplication of provisions, which is apparent in the proposed regulations, whereby provisions are repeated under the various licence categories.

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<sup>1</sup> ICASA, Meeting the needs of People with Disabilities, Code of Good Practice for the Broadcasting Industry, at page 6

<sup>2</sup> On page 12

<sup>3</sup> Act 124 of 1998

4.3 The NAB proposes that ICASA should consider structuring the regulations in the following manner:

- SECTION 1: Definitions
- SECTION 2: Purpose of the Regulations
- SECTION 3: Application of the Regulations
- SECTION 4: Employment Equity and Human Resource Development
- SECTION 6: Broadcasting
  - 6.1: Access to Broadcasting Services
  - 6.2: Portrayal and Stereotypes
  - 6.3: New Technologies
- SECTION 7: Electronic Communications Services
- SECTION 8: Postal Services

## **5. THE SPIRIT AND TONE OF THE PROPOSED REGULATIONS**

5.1 Technology is evolving rapidly, by being overly prescriptive, the Authority has left little room for licensees to innovate. The NAB is concerned about the mandatory tone portrayed by the proposed regulations. The wording of the code was accommodating, and leaving room for broadcasters to find alternative means of meeting the requirements of the code. The NAB proposes that less rigid words such as “may” should replace “must”, and phrases such as “where possible” should be employed in the proposed regulations.

5.2 The NAB therefore humbly requests that in promulgating the regulations for people with disabilities, ICASA should adopt a more accommodating spirit rather than be mandatory.

## **6. THE NAB'S SUBMISSIONS ON THE PARTICULAR PROVISIONS OF THE PROPOSED REGULATIONS**

6.1 The NAB will in this section comment on the different sections of the proposed regulations. The changes are aimed at making the regulations more flexible and allowing broadcasters to explore alternative solutions to ICASA's requirements.

### 6.1.1 Definition of People with Disability

The NAB notes that the definition of people with disabilities contained in the proposed regulations was derived from the South African Human Rights Commission (SAHRC) of November 2002 titled “Towards a Barrier-Free Society”. In terms of the report, the definition of people with disabilities includes “transitory disability”. However, the NAB is of the view that the definition should be more in line with the definition in pieces of legislation closely related to the subject of people with disabilities such as, the Employment Equity Act’s<sup>4</sup>. In the Employment Equity Act, the definition of disability excludes transitory disability. The NAB therefore proposes that ICASA should adopt the definition reflected in the Employment Equity Act. The NAB suggests the following definition:

*“People with disabilities mean: People who have a long term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement, in employment.”*

### 6.1.2 Section 4: Employment Equity and Human Resources Development

The NAB is of the view that the issue of employment equity for people with disabilities should not be addressed in the proposed regulations. The NAB believes that there is adequate legislation addressing this issue, for instance, in the Employment Equity Act, the Promotion of Equality and Prevention of Unfair Discrimination Act<sup>5</sup>. Broadcasters should rather look to these pieces of legislation when considering issues of employment equity for people with disabilities. The

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<sup>4</sup> Act 55 of 1998

<sup>5</sup> Act 4 of 2000

NAB is therefore of the view that issues dealing with employment equity should be removed from the regulations.

### **6.1.3 Section 6: Broadcasting**

The NAB is concerned about the repetitions, and inconsistencies in the proposed regulations. As initially suggested, issues of common interest to all licencees should be discussed under a single, generic heading, rather than outlining them individually.

#### **6.1.3.1 Access to broadcasting services**

The NAB is of the view that provisions dealing with access to broadcasting services in the regulations should be captured under a single heading. Currently, the provisions are duplicated in various provisions of the regulations. Having single section makes it easier to interpret, apply and enforce. You need not reference particular clauses.

#### **6.1.3.2 Portrayal**

In the proposed regulations, the issue of portrayal has been dealt in two different sections, in sections 6 and 8. The NAB is of the view that these two sections be merged. The essence of these provisions is to eliminate stigmatization of people with disabilities as a result of their conditions.

## **7. CONCLUSION**

The NAB would like to thank ICASA for the opportunity of making these written representations, and believes will add value in the finalisation of ICASA's proposed regulations in respect of the Electronic Communications, Broadcasting and Postal sectors to meet the needs of people with disabilities.