



**THE NATIONAL ASSOCIATION OF BROADCASTERS WRITTEN SUBMISSION ON  
THE DRAFT GENERAL LICENCE FEES REGULATIONS**

05 DECEMBER 2008

## **1. BACKGROUND**

1.1. On 24 November 2008, the Authority published draft regulations in respect of General Licence Fees (draft regulations), in Government Gazette 31542, General Notice 1305 of 2008 (the Notice). The draft regulations are drafted in terms of section 4(1) (c)(iv-v) and 5(7)(a)(iii) of the Electronic Communications Act. (The EC Act). The closing date for written submissions being 22 October 2008.

1.2. The NAB thanks the Authority for the opportunity to make its written submission. 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 one community television broadcasting licensee, Trinity Broadcasting Network (TBN)

## **2. COMMENT ON THE DRAFT REGULATIONS**

2.1 In making its comments to the draft regulations, the NAB will follow the numbering adopted in this submission, and will deal with issues in the draft regulations according to the headings and subheading in the draft regulations.

### 3. LICENCE FEE FRAMEWORK

3.1 In the draft regulations, the Authority states that previously licence fees were based either on Gross Revenue or Net Income, and further the Authority proposes that calculating payable licence fees should be calculated based on adjusted Gross Revenue. Consequently:

3.1.1 Annual licence fees by broadcasting licencees have always been and are to date calculated based on the annual turnover from advertising revenue.

3.1.2 The Authority does not provide the rationale for departing from calculating annual licence fees on annual turnover, and to the NAB's knowledge no turn of events has occurred justifying the departure.

3.2 It is therefore worth pointing out to the Authority that, whilst the draft licence fee regulations may not be a dramatic shift for telecommunications licencees as they are currently paying their annual licence fees based on either Gross Revenue or Net Income, the draft regulations do pose a shift for broadcasting licencees.

### 4. DEFINITIONS

#### 4.1 **Gross revenue:**

4.1.1 The NAB is of the view that the definition ascribed to gross revenue is problematic. In the proposed definition, the Authority tabulates activities from (a) to (m) that are regarded as licenced activities, most of which the NAB regards as falling outside of the correct understanding of Licensed activity.

4.1.2 Currently the regulations on Prescribed Contributions by Licencees on Universal Service and Access (the USF Regulations)<sup>1</sup>, define licenced activities. The USF Regulations

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<sup>1</sup> Prescribed Contributions by Licencees on Universal Service and Access published on 10 October 2008, in government gazette 31499

among others, define “licence activity” as *...activities that require an individual and class licence in terms of section 5 of the Act*”

4.3 It is therefore the NAB’s contention that, when defining gross revenue, the Authority should narrow it down, as widening it poses a risk of including activities falling out of licenced activities.

4.4 **Licenced activity:**

4.4.1 NAB is of the respectful view that licenced activity should not be defined in these draft regulations, as the EC Act does define the broadcasting service licence, electronic communications services licence and electronic communications network services licence. However should the Authority wish to proceed any definition imposed must be consistent with the EC Act. Preferably, and for consistency, the Authority should adopt the deflection in the USF Regulations.

5. **APPLICATION AND EXEMPTIONS**

5.1 The NAB notes that in granting exemptions to ECNS licencees from paying licence fees for the first three years from the date on which the licence is issued, both television and commercial sound broadcasting licencees have been excluded. The NAB requests that the Authority should accord similar exemptions to both newly licenced television and sound broadcasting licencees.

5.2 The costs associated with starting a broadcasting service are prohibitively high, and inhibit licencees from realizing profits immediately. The exemptions will assist the newly licenced broadcasting licencees to break barriers to entry, and start generating income.

5.3 In addition the three year exemption should also be extended to television licencees who will be broadcasting in dual illumination during the three year digital migration period.

## 6. **PAYMENT OF FEES**

6.1 The provisions of draft regulation 4(1)(a) and (b) are ambiguous, although it appears the intention is to implement a quarterly payment regime in place of the current annual payment regime. If that is the intention, NAB would submit that this may result in an unintended administrative burden on both licensees and the Authority. The NAB requests the Authority to clarify its intentions in this regard so that the NAB can submit comments after proper consideration.

## 7. **SCHEDULE 1**

### 7.1 **INDIVIDUAL LICENCES**

7.1.1 The main concern the NAB generally has with Schedule 1 is the fact that the proposed fees in respect of applications for licence amendments and licence transfers do not make a distinction between television and sound broadcasting, needless to say the leap in the application fees for amendment of licences to R250,000 is an excessive increase compared to the current fees broadcasting licensees are paying.

7.1.2 Currently, for instance, an applicable fee for the amendment of a sound broadcasting service licence is R30 000.

The NAB is baffled by the decision to lump television and sound broadcasting services together. For all intents and purposes, the Authority has always classified television and sound broadcasting licensees separately.

7.1.2.1 In terms of their licence coverage area, television broadcasting licensees have national licences, while the licensed area of most commercial sound broadcasting licensees is regional,

7.1.2.1 in terms of the current Regulations Regarding Standard Terms and Conditions for Individual Broadcasting Service Licences<sup>2</sup>, Sound broadcasting licences have a duration of 10 years, while the duration period for television broadcasting licences is 15 years

7.1.3 The NAB therefore requests that, based on the points raised, the Authority should retain the status quo. The proposed fees for licence amendments must take into account the disparities that exist between television and sound broadcasting. The Authority should further provide an explanation for the inflated fees.

## 8. SCHEDULE 2

8.1 Currently, commercial sound broadcasting service licencees pay an annual licence fee of 1% of their turnover, while television broadcasting licencees pay 2% of the annual turnover. However, in terms of draft regulation 3(1), read with schedule 2, the Authority proposes that with effect from 1 April 2009 individual commercial broadcasting service licencees must pay an annual licence fee of 2.5% of Gross Revenue.

8.2 The NAB is concerned about the exorbitant increase by 150% in annual licence fees for sound broadcasting service licencees, and a 100% increase in respect of television broadcasting licencees. The Authority must bear in mind that apart from paying licence fees, broadcasting licencees are liable to pay a certain percentage of their annual turnover in the form of levies to other bodies, namely the Universal Service and Access Fund (the USAF), Media and Diversity Development Agency (the MDDA South African Music Performance Rights Association (SAMPRA), the South African Music Rights Organisation (SAMRO), and many more.

8.3 It is therefore clear that the Authority's proposal to increase the percentage of the annual turnover payable towards licence fees, will be

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<sup>2</sup> Regulations Regarding Standard Terms and Conditions for Individual Broadcasting Service Licences Regulations, published on 30 November 2007 in Government Gazette No. 30530, Notice 1138

prejudicial to the broadcasting industry. Instead of achieving the objectives of the EC Act of encouraging investment and innovation in the communications sector<sup>3</sup>, the proposed increase contradicts the legislative objectives.

## **9. CONCLUSION**

- 9.1 The NAB welcomes the opportunity to make its written submission to the Draft General Licence Fees Regulations.

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<sup>3</sup> Section 2(d) of the EC Act