



**National Association of Broadcasters' submission
on the Department of Communications'
Draft Health Content Policy Framework for Television Broadcasting
in South Africa**

1 November 2012

1. INTRODUCTION

1.1 The National Association of Broadcasters ("the NAB") is the leading representative of South Africa's broadcasting industry. It aims to further the interests of the broadcasting industry in South Africa by contributing to its development. The NAB members include:

1.1.1 Three television public broadcasting services, and eighteen sound public broadcasting services, of the South African Broadcasting Corporation of South Africa ("the SABC");

1.1.2 All the commercial television and sound broadcasting licensees;

1.1.3 Both the major licensed signal distributors (electronic communications network service operators), namely Sentech and Orbicom;

1.1.4 Over thirty community sound broadcasting licensees, and one community television broadcasting licensee, namely, Trinity Broadcasting Network ("TBN").

1.2 On 2 October 2012, the Minister of Communications published in Government Gazette number 35734, a proposed Health Content Policy Framework for Television Broadcasting in South Africa ("the draft Health Content Policy"). The draft Health Policy is open for public comment, within 30 calendar days of the date of its publication.

1.3 The NAB welcomes the opportunity to make its written representation, and hope that its inputs will assist the Department of Communications ("the DOC") in concluding this process. The NAB would like to participate in oral hearings, should the DOC conduct them.

2. Overview

2.1 From the NAB's reading of the draft Health Content Policy, the rationale for publishing the draft Health Content Policy, is namely to carry out "the directives outlined in the Broadcasting Digital Migration Policy of 2008("the BDM Policy") (as amended).

2.2 Specifically, the BDM policy (as amended), states as follows:

“the public broadcaster shall cater for regional television channels as well as channels prioritising education, health, youth, sports, SMME, Parliamentary and government and interactive services needs.”

- 2.3 The policy calls on the public broadcaster to cater for channels which prioritise “education, health, youth, sports, SMME, Parliamentary and government and interactive services needs”. The policy does not propose the establishment of a dedicated television channel for health, nor does it require the promulgation of regulations by ICASA or the creation of a Health Broadcasting Committee it is therefore the NAB’s view that the proposals contained in the draft Health Content Policy go beyond anything contemplated in the BDM Policy (as amended) and, more importantly, the proposals intrude into the independent regulation of broadcasting which is constitutionally protected.

3. Independent Regulation of Broadcasting

- 3.1 Section 2 of the Constitution of South Africa provides that the Constitution is "the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled". On the regulation of broadcasting, section 192 of the Constitution mandates that, "national legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and diversity of views broadly representing the South African society".
- 3.2 The Independent Communications Authority of South Africa Act 13 of 2000 as amended (“the ICASA Act”) provides in section 3(3) that ICASA "is independent, and subject only to the Constitution and the law, and must be impartial and must perform its functions without fear, favour or prejudice".
- 3.3 The Electronic Communications Act 36 of 2005 (“the EC Act”) safeguards the independent regulation of broadcasting which is protected by the Constitution. To this end, the EC Act, provides the Minister with the power to make policies and issue policy directions in terms of section 3(1) and (2) of the EC Act, whilst at the same time preserving the independence of the regulator, by not making these policies and policy directions binding upon the regulator. In terms of section 3(4) of the EC Act, ICASA only has to “consider” such policies and policy directions in exercising its powers and performing its duties in terms of the Act.

3.4 Content issues are critical to the regulation of broadcasting and for this reason, ICASA is the only body empowered to regulate content, by virtue of it being an independent authority established to regulate broadcasting.

3.5 There are specific instances where the EC Act empowers ICASA to deal with issues of content regulation:

3.5.1 Section 54 (1) and (2) requires ICASA to prescribe regulations setting out a code of conduct for broadcasting service licensees to which all broadcasting licensees must adhere. The Code envisaged in section 54 is in place and was promulgated on 6 July 2009.

3.5.2 Section 54(3) recognises that broadcasting service licensees who are members of a body which has proved to the satisfaction of ICASA that its members subscribe and adhere to a code of conduct enforced by the body will not be covered by the ICASA Code of Conduct. Such a body is the Broadcasting Complaints Commission of South Africa (the BCCSA).

4. Governance Structures

4.1 The draft Health Content Policy framework proposes the formation of a Health Content Broadcasting Committee, which will “guide all digital content production for health to ensure that health digital content is produced in-line with the Local and Digital Content Development Strategy for South Africa.”

4.2 The NAB has numerous concerns about this proposal:

4.2.1 The Local and Digital Content Strategy is still in draft form, and has not yet been approved by Cabinet. It seems premature to start envisaging sub-committees that shall form part of the Local and Digital Advisory Body, when the strategy has not yet been adopted and the Body not yet constituted.

4.2.2 Once the Local and Digital Content Strategy is approved by Cabinet, it will not be binding on broadcasters and there is accordingly no need to establish a

committee to “guide production” and ensure that content is developed in line with the strategy;

4.3 The draft Health Content Policy suggests that the Committee will have a monitoring and oversight role in relation to the production of health content, this is impermissible.

5. Conclusion

5.1 The BDM policy requires the public broadcaster to cater for channels which prioritise certain kinds of content, including health content.

5.2 A further policy in the form set out in the draft Health Content policy is not required and, in its current form, makes serious intrusions into the independent regulation of broadcasting content.

5.3 The NAB urges the Department to reconsider the current proposals, in particular the establishment of the Health Content Advisory Committee.