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Mr Stephen Rathai
Department of Labour
PRETORIA
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Dear Sir

**PROPOSED AMENDMENTS TO SECTION 200 OF THE LABOUR RELATIONS ACT,
1995 AND SECTION 83 OF THE BASIC CONDITIONS OF EMPLOYMENT ACT, 1997**

Attached is the submission by the National Association of Broadcasters (NAB) on the above amendments. The NAB has approximately 70 members including all public and commercial broadcasters and a number of community stations. The attached submission represents the views of the association. In some cases, individual members may also have made their own submissions.

Yours faithfully

LARA KANTOR
(Executive Director)

PROPOSED AMENDMENTS TO SECTION 200 OF THE LABOUR RELATIONS ACT, 1995 AND SECTION 83 OF THE BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

1. Our comments below relate to the proposed amendments to section 200 of the Labour Relations Act 66 of 1995 ("LRA") and section 83 of the Basic Conditions of Employment Act 75 of 1997 ("BCEA").
2. Our representations pertain specifically to the utilisation of independent contractors by broadcasters for Disc Jockey ("DJ") and presenter positions. These are a category of individuals within the broadcasting industry who cannot on any analysis be described as "vulnerable workers" who require the protection of labour legislation. On the contrary, DJ's and presenters are usually in an extremely powerful bargaining position when negotiating the terms and conditions of their contract for services with broadcasters. It also cannot be said that they are "in a position of dependence" on the broadcasters to which they provide services. In fact, most DJ's and presenters prefer to be independent contractors so that they can derive further income by pursuing other work.
3. Broadcasters typically engage DJ's and presenters as independent contractors as they require the flexibility to terminate their contracts on notice like any other commercial contract, without having to follow any pre-dismissal procedures. The reason for this is that the success of broadcasters is predicated largely on keeping their audience satisfied. Based on any number of assessments, a radio or TV station may determine that it needs immediately to bring in a new DJ or presenter in order to maintain and grow its audience and, consequently, its advertising revenue. The introduction of the proposed amendments to section 200 of the LRA and section 83 of the BCEA will severely hamper broadcasters in terminating their agreements simply on notice, as at least one of the factors listed in the proposed sections 200A of the LRA and 83A of the BCEA is present in the relationship between broadcasters and their DJ's / presenters.
4. The introduction of section 200A into the LRA and section 83A into the BCEA will result in broadcasters having to face the costly and lengthy process of proving to the Commission for Conciliation, Mediation and Arbitration ("CCMA") or the Labour Court that the person whose services were terminated was an independent contractor and not an employee. Creating a set of rebuttable presumptions in proposed sections 200A of the LRA and 83A of the BCEA will not protect broadcasters which utilise true independent contractors from being dragged into litigation by opportunistic independent contractors, who claim to be covered by the labour laws only when it suits them. This will be exacerbated by the fact that the CCMA and Labour Court seldom award costs when determining disputes. Consequently, broadcasters, which

in good faith negotiate with DJ's and presenters who are in strong bargaining positions, will be unlikely to recover their litigation costs on successfully rebutting the presumption that these persons are employees.

5. In light of the above, the National Association of Broadcasters submits that the proposed amendments to section 200 of the LRA and section 83 of the BCEA be:
 - 5.1. revised to include a list of categories of workers within specific industries (i.e. DJ's and presenters within the broadcasting industry) who will be excluded from the application of proposed sections 200A of the LRA and 83A of the BCEA;
 - 5.2. alternatively, revised to include a procedure (similar to that set out in section 50 of the BCEA) whereby persons utilising the services of independent contractors can apply to the Minister of Labour for any worker or category of workers to be exempt from the application of the proposed sections 200A of the LRA and 83A of the BCEA.