

## 1. INTRODUCTION

- 1.1. On 29 November 2000, the Government Communications and Information Service (GCIS) published a Draft Position Paper on the proposed Media Development and Diversity Agency (MDDA). The National Association of Broadcasters (NAB) thanks the GCIS for the opportunity to respond to this important paper.
- 1.2. The National Association of Broadcasters (“the NAB”) is the leading representative of South Africa’s broadcasting industry. NAB members include:
  - 1.2.1. all television broadcasters;
  - 1.2.2. 19 SABC stations, 14 commercial radio broadcasters and over 30 community radio broadcasters;
  - 1.2.3. the common carrier and the selective and preferential carrier licensed signal distributors.
- 1.2. The NAB counts among its aims the promotion of development and diversity in the broadcasting sector and much of our work has focused on realising this goal. As such, we believe we are well-placed to comment on the impact of such an agency on the broadcasting industry.
- 1.3 The NAB supports initiatives to promote development and diversity in broadcasting. In particular, we welcome proposals to support community broadcasters and to promote the establishment of community broadcasters in under-serviced rural areas through funding and/or subsidisation.
- 1.4 However, we are concerned by some proposals in the Draft Position Paper. In particular, our concerns relate to the following:
  - 1.4.1. the mandate of the MDDA as reflected in Chapters 4, 5 and 6 of the Draft Position Paper;

- 1.4.2. the MDDA's budget as reflected in Chapter 10.1 and Annexures 7 and 8 of the Draft Position Paper;
  - 1.4.3. the MDDA's funding model as stated in Chapter 10.2 and 10.3;
  - 1.4.4. the independence of the MDDA from government.
- 1.5 Our submission is confined to these major concerns. Comments on other aspects could follow if the opportunity arises.
- 1.6 The NAB submits that the interests of development and diversity in the broadcasting arena can be better achieved by a more focused approach which does not duplicate or undermine the functions, independence and effectiveness of the Independent Communications Authority of South Africa (ICASA) and other bodies.
- 1.7 We submit that a more focused mandate could be achieved on a reduced budget.
- 1.8 We will show that broadcasters already make significant financial and other contributions in the interests of broadcasting development and diversity.
- 1.9 We will also show that broadcasters face increasing financial pressure. We will therefore submit that broadcasters should not be compelled to make additional financial contributions to this initiative.

## **2. MANDATE OF THE MDDA**

- 2.1. The NAB is concerned that the mandate of the MDDA, as reflected in Chapters, 4, 5 and 6 of the Draft Position Paper is too wide and inevitably overlaps with, duplicates and potentially undermines the functions of other bodies.
- 2.2. The NAB notes that there is a need for a thorough analysis of the failures and successes of existing systems, interventions and institutions aimed at

ensuring broadcasting development and diversity. In this regard, the NAB submits that the peculiarities of the broadcasting environment and the massive transformation which has occurred over the last six years, due to a high level of regulatory intervention, must be taken into account.

2.3 According to the Draft Position Paper, the MDDA will be a multi-functional body which will perform a very wide variety of functions aimed at media development and diversity (see, for example, paragraphs 4.2, 4.3, 4.4, 5, 6.2, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9 and 6.10). The proposed functions which are of major concern to the NAB, include:

2.3.1. the making of policy recommendations to various bodies including the regulator;

2.3.2. the taking of proactive interest in media competition issues;

2.3.3. the evaluation and making of recommendations around media training curricula and codes of conduct;

2.3.4. the conducting of research on a number of issues including ownership and control patterns, the advisability of foreign ownership restrictions and new media and convergence; and

2.3.5. the monitoring and lobbying of the public broadcaster in the fulfilment of its mandate.

2.4. The NAB is concerned that one or more of the proposed functions to be undertaken by the MDDA will overlap with and result in the duplication of the functions of:

2.4.1. self-regulatory institutions which currently serve as watch-dogs and complaints referral bodies for their respective sectors, namely, the Broadcasting Complaints Commission of South Africa (BCCSA), the Press Ombudsman and the Advertising Standards Authority;

- 2.4.2. a substantial number of institutions which are currently involved in training activities, which include a number of training institutions, the National Electronic Media Institute of South Africa (NEMISA), and the Media Advertising Print Packaging and Publishing (MAPPP) SETA;
- 2.4.3 ICASA, which is already tasked with creating and promoting development and diversity in broadcasting.
- 2.4.4 In terms of the IBA Act, ICASA is responsible for, among others:
  - 2.4.1. regulating competition in the broadcasting industry through the imposition of ownership, control, and cross media control conditions;
  - 2.4.2. encouraging ownership and control of broadcasting services by persons from historically disadvantaged groups;
  - 2.4.3. evaluating and monitoring the performance of broadcasting licensees with regard to compliance with obligations aimed at ensuring media development and diversity;
  - 2.4.4. promoting the empowerment and advancement of women in the broadcasting services;
  - 2.4.5. ensuring fair competition between broadcasting licensees;
  - 2.4.6. encouraging investment in the broadcasting industry;
  - 2.4.6. ensuring that broadcasting services reflect the diverse cultural, language and religious interests and needs of various groups; and

2.4.7. promoting and conducting research into broadcasting policy and technology.

2.5. The NAB submits that some of the proposed functions of the MDDA amount to an erosion of ICASA's mandate to regulate broadcasting.

2.6 The NAB notes that this is cause for concern as the independence of broadcasting regulation is constitutionally enshrined. Our concern that the independence of the regulator might be undermined is exacerbated by statements in the Draft Position Paper, namely:

2.6.1 "The MDDA will work closely with ICASA to ensure that broadcasting licences are issued according principles of media development and diversity" (p46).

2.6.2 "The MDDA will empower communities and individuals to apply for and receive broadcasting licences from ICASA" (p46).

2.6.3 "The MDDA will work very closely with ICASA throughout the pre-licence empowerment phase" (p46).

2.7 The above references imply that the MDDA will influence ICASA's decision making on the issuing of licences. The NAB submits that this would be highly irregular.

2.8 The NAB submits that where ICASA has difficulties in fulfilling its mandate of promoting development and diversity in broadcasting, these difficulties – budgetary or otherwise - should be addressed.

2.9 The NAB submits that the inability of ICASA to fully perform on its mandate does not provide sufficient justification for another agency to perform these functions. The NAB therefore does not support the mandate laid out in the Draft Position Paper to the extent that there is an overlap of functions and an erosion of ICASA's independence. At the very least, the NAB is concerned that an overlap of

functions will amount to an inefficient and unsustainable use of tax payers' money. The NAB therefore submits that:

2.9.1 ICASA is obliged by statute to perform a host of the activities proposed in the Draft Position Paper and must be empowered to do so through adequate budgets and resources;

2.9.2 there should be a clear division of roles between any new agency and ICASA and other institutions involved in media development;

2.9.3 any new agency should be tasked only with those functions that ICASA or any other institution involved in media development, is not mandated to perform.

2.10 The NAB therefore further submits that the agency be given a more limited and focused mandate.

2.11 The NAB would support a mandate focused solely on funding community broadcasting.

### **3. THE PROPOSED MDDA BUDGET**

3.1. The NAB is concerned that the proposed MDDA budget of R300 million over five years as reflected in Chapter 10 of the Draft Position Paper, is very high. The budget of the Broadcasting Division of ICASA which is responsible for regulating the entire broadcasting industry, is by comparison much lower.

3.2. The budgets for the Broadcasting Division of ICASA, for the financial years 1999/2000 and 2000/2001, were R33 865 332 and R29 857 124 respectively.

3.3. It should be noted that a large portion of the MDDA's annual budget is to be allocated to community radio. The amount of R46 million, for the first year, is based on the number of community radio stations that the MDDA will support. The Draft Position Paper estimates a community radio sector of 221 stations.

- 3.4 The NAB submits that it is extremely unlikely that the community radio sector will comprise 221 stations within this time period. As four-year licences are issued, existing temporary licensees in those provinces are shut down. The 80 or so existing temporary licences will therefore be replaced by four-year licences. The number of four-year licences issued so far is fairly low at approximately 38 in six provinces.
- 3.5 It should also be noted that the pace of issuing these licences is also very slow. It has taken ICASA over two years to issue licences in the six provinces.
- 3.6. The difficulty of issuing four-year community radio licences has frequently been attributed to ICASA's budgetary constraints.
- 3.7. There is a strong argument, therefore, that presently the greatest obstacle to broadcasting diversity is the inability of the regulator to properly deliver on its mandate to roll out new services, due to its financial constraints.
- 3.8. The NAB submits that this matter should be addressed as a matter of urgency before funding is diverted to an additional agency.
- 3.9 The NAB submits that the R60 million annual budget of the MDDA should be substantially reduced once:
- 3.9.1. the mandate of the MDDA is focused and no duplication of the functions of other institutions occurs;
  - 3.9.2. the budget is aligned to the number of stations that ICASA can realistically licence.

#### **4. FUNDING**

- 4.1. The NAB agrees that government needs the active participation of the media industry for it to succeed in its initiative to promote media development and diversity.

- 4.2 The NAB submits that through compliance with ICASA's policies, regulations and licence conditions, many broadcasters are already promoting development and diversity.
- 4.3 In addition, many broadcasters have embarked on initiatives beyond their licence requirements to promote diversity.
- 4.4 The NAB therefore does not agree with the proposals set out in the Draft Position Paper on industry funding for an agency.
- 4.5 In particular, the NAB does not support the proposal of increasing the MIT levy to 1.5%. In this regard, the NAB is concerned that the broadcasting industry is currently over-burdened with royalties, taxes and/or levies. In particular, broadcasters:
- 4.5.1. currently pay between 1 and 2 % of their respective annual turnover as annual licence fees to ICASA to the value of approximately R25m annually;
  - 4.5.2. pay Skills Development levy to government;
  - 4.5.3. contribute 1% of their advertising sales to the Market Industry Trust ("MIT");
  - 4.5.4. pay large sums of money to:
    - 4.5.4.1. the South African Musical Rights Organisation;
    - 4.5.4.2. the South African Recording Rights Association Limited; and
    - 4.5.4.3. the National Organisation for Reproduction Rights in Music.
  - 4.5.5. In addition, broadcasters may have to pay an additional 'needletime' levy to producers and performers of music, in line

with the Department of Trade and Industry's proposals to amend the Copyright Act. This levy could be as high as an additional 5% of turnover.

4.5.6 Broadcasters also make a number of other contributions towards development and diversity in their compliance with ICASA regulations. These obligations are generally not faced by businesses in other sectors. These include:

4.5.6.1 **Compliance with local content quotas**

The quotas range from 20-50% and are presently being revised. This review could result in the quotas being set as high as 50% for all broadcasters. Given the supply and cost constraints faced by broadcasters in flighting local material, this could have a significant effect on the financial viability of broadcasters.

4.5.6.2 **Compliance with extensive programming obligations**

Broadcasters' licences specify extensive programming obligations including conditions relating to language, childrens' programming and news. The conditions relate to the quantity of programming to be provided, the allocation of resources to this programming and the time at which this programming is broadcast.

4.5.6.3 **Extensive empowerment obligations at the level of staff, management and board**

Upon application for a licence, broadcasters must show ICASA that their station is broadly representative of the population at all levels. Many licenses have been refused where the Authority has not been convinced that an applicant is complying with this policy imperative.

4.5.6.4 **Compliance with strict ownership limitations**

The IBA Act lays out a number of ownership restrictions which exist precisely to promote diversity in the sector. In terms of these restrictions the number of broadcasting services which can be controlled by one entity is restricted, foreign shareholding in broadcasters is limited and print media may not control broadcasting services.

**4.5.6.5 Coverage obligations**

Broadcasters' licence conditions also specify the level of coverage they must reach. Broadcasters are obligated to roll-out infrastructure to ensure audiences are reached.

**4.5.6.6 Code of Conduct and audience complaints**

The IBA Act allows for the industry to regulate itself on matters related to the code of conduct. In this regard, the NAB constituted the BCCSA to deal with audience complaints. Over 2000 complaints are received and administered annually by this structure. The costs are borne by the industry to the tune of approximately R650 000 per annum.

4.6 In addition to these contributions, broadcasters frequently make additional contributions which are captured in their licences as promises of performance. These include:

4.6.1 extensive training obligations over and above the obligations under the Skills Development Act, including, in some cases, the payment of a certain percentage of turnover towards training; and

4.6.2 additional payments into other funds such as language and bursary funds.

4.7 The commitment of broadcasters to promoting diversity is also evidenced by the financial support they give to music and production industries, for which no regulatory credit is given. In a recent research study undertaken by KPMG, it is estimated that South African radio stations contributed

approximately R20m in support of South African music during 2000. Similarly, television channels spend over 70% of their programming budget commissioning local product. Both radio and television therefore make significant financial contributions to local music and production industries, in support of increased diversity.

- 4.8 It can be seen that broadcasters already make significant financial and other contributions in the interests of development and diversity.
- 4.9 In light of the number of levies already paid and the extensive commitments asked of broadcasters, any additional obligations such as envisaged in the Draft Position Paper may affect the viability of broadcasters, many of whom are empowerment ventures and some of whom are already facing considerable financial difficulties.
- 4.10 An additional levy may also affect the extent to which broadcasters are able to continue their support for training initiatives, bursary schemes and the music and production industries.
- 4.11 An additional levy is also likely to contribute to a perception among investors that broadcasting is not an attractive sector for investment. In a study published last year, PricewaterhouseCoopers showed that there has been a decline of 34% in the return on invested capital of South Africa's entertainment and media companies for the period 1995 to last year and that broadcasting is not perceived as an attractive area for investment.
- 4.12 In light of the above, the NAB respectfully submits that alternative funding mechanisms for the agency be considered. One such mechanism could involve diverting a portion of the ICASA licence fees (which are currently paid into the National Revenue Fund) to funding an agency.

## **5. INDEPENDENCE**

- 5.1. The NAB welcomes the Draft Position Paper's proposal that the MDDA should be independent of government, the industry and its donors. However, the NAB is concerned that the Draft Position Paper proposes that the agency

will operate on the basis of government policy and guidelines (fifth paragraph on page 6), but is silent and/or unclear on how such independence will be ensured and safeguarded, particular on issues of policy decisions and interferences from government. The NAB submits that this issue must be given attention.

- 5.2. The NAB is supportive of the Draft Position Paper's suggestion that the MDDA under the Public Finance Management Act, 1 of 1999 (paragraph 4.5 on page 36). The NAB views this as a simple and cost-effective mechanism which avoids unnecessary and lengthy processes of passing new enabling legislation.
- 5.3. In this light, the NAB also submits that it may not be necessary for a separate entity to be established. In this regard, the NAB submits that the agency could be housed within one of the similar existing funds which also fall under the Public Finance Management Act such as the Independent Development Trust or the State Information Technology Agency. Further investigation on the appropriateness of these agencies would need to be conducted.

## 6. CONCLUSION

- 6.1. In closing, the NAB wishes to reaffirm its support of initiatives aimed at creating an enabling environment for media development and diversity.
- 6.2. The NAB submits that adequate funding for ICASA is critical to ensure development and diversity in the broadcasting sector.
- 6.3. The NAB is concerned that aspects of the MDDA's mandate amount to an overlap and erosion of ICASA's mandate. The NAB is particularly concerned by any attempt to influence ICASA in the issuing of licences.
- 6.4. In order to reduce this overlap, the NAB proposes that such an agency focus solely on funding and subsidising community radio. The NAB submits that this could be achieved on a reduced budget.

- 6.5. The NAB submits that due to the high level of contributions which broadcasters presently make in the interests of development and diversity, and due to the increasing financial pressure that many broadcasters face, they should not be compelled to make any further financial contributions to the agency's budget.
- 6.6. The NAB submits that any further levies on broadcasters may affect the viability of broadcasting services.
- 6.7. The NAB therefore proposes that alternative funding mechanisms be investigated.
- 6.8. The NAB submits that it may not be necessary for a separate agency to be created but that the funding of community radio could form part of the mandate of an existing agency. The NAB proposes that further research in this regard be undertaken.
- 6.9. Finally, the NAB proposes that an effective way to take this matter forward would be to constitute a working group consisting of senior representatives from industry and government, with the aim of resolving issues of concern and developing a plan of action.
- 6.10. The NAB appreciates the opportunity that it has been given to present its written submissions on the MDDA Draft Position Paper and trusts that its concerns raised in this submission will be considered carefully. In this regard, the NAB is available to make oral representation, should it be required to do so.