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| **THE NAB WRITTEN SUBMISSION ON ICASA’S DRAFT REGULATIONS**  **ON THE USE OF TELEVISION WHITESPACES**  **19 MAY 2017** |

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# **INTRODUCTION**

* 1. The National Association of Broadcasters (“the NAB”) is a leading representative of South Africa’s broadcasting industry, established in 1993. The NAB aims to further the interests of the broadcasting industry in South Africa, by contributing to its development. The NAB members include:

* + 1. the three television services and 19 radio services of the SABC;
    2. licensed commercial radio broadcasters (including media groups and independents: Primedia, Kagiso Media, Tsiya Group, AME, MSG Afrika, Classic FM, Kaya FM, YFM, Smile FM and Times Media Ltd-Vuma FM );
    3. licensed commercial television broadcasters (e.tv, Multichoice, M-Net, StarSat-ODM);
    4. a host of community radio broadcasters and community television broadcaster, Faith Terrestrial;
    5. both the licensed broadcast signal distributor and the selective and preferential common carrier broadcast signal distributors, Sentech and Orbicom;
    6. a range of associate members, including training institutions.

# **PROCEDURAL CONCERNS**

* 1. Relatively, given the space of time the Authority normally takes to commence and complete an enquiry process on any given subject matter, the NAB commends the Authority for the speed and vigour with which the Television White Spaces (TVWS) process has been conducted. This on the other hand is concerning to the NAB. The NAB reiterates its concerns that “the Authority appears to be shifting its priorities from a successful and timely broadcasting digital migration (“BDM”), to other projects, which success is primarily dependent on a successful migration”. [[1]](#footnote-1)
  2. The TVWS process commenced in 2015, when the Authority published a notice regarding the discussion paper on the draft framework for dynamic and opportunistic spectrum management for public comment (the Discussion Paper) on 19 October 2015. Subsequently, the Authority published a Findings Document on the Framework for Dynamic and Opportunistic Spectrum Management (the Findings Document) on 17 June 2016. In its conclusions and way forward, the Authority noted all stakeholder inputs and indicated that all were considered in the findings document, and would be taken into account when formulating a position. The Authority further concluded by stating:

“In parallel to developing the required positions, the Authority will support further studies on these topics identified in the discussion document as well as the additional topics proposed by the respondents.”[[2]](#footnote-2)

* 1. On 7 April 2017, the Authority published a Positon Paper on the Framework for Dynamic and Opportunistic Spectrum Management (the Position Paper), in government gazette number 40772. Subsequently, on 28 April 2017, the Authority published in government gazette number 40815, a Notice Regarding Regulations on the Use of Television White Spaces for public comment (the draft TVWS Regulations). The closing date for written comments is 19 May 2017. The NAB wishes to raise the following procedural concerns:
     1. The regulations have been drafted in a policy vacuum, as to our knowledge, there is no national policy on TVWS in place, nor is there evidence that the Authority has consulted with the Policy maker in taking these steps. The ITU has encouraged countries to participate actively in studies on the deployment and use of cognitive radio systems (CRS) such as the TVWS[[3]](#footnote-3) and has implored on countries participating in these studies to take into account that any radio system implementing CRS technology needs to operate in accordance with the provisions of the ITU Radio Regulations. It further notes that the use of CRS does not exempt countries from their obligations on the protection of stations of other countries operating in accordance with the Radio Regulations.
     2. The Authority indicates it conducted extensive research and studies on DSA and possible use of TVWS[[4]](#footnote-4). In our view it would be useful for the Authority to make the results of the research and studies available, in order to assist interested parties in making inputs to this process. On the other hand there is no evidence that the Authority has “supported further studies on topics identified in the discussion document” as it undertook to do so in its Findings Document. Our view is that the Authority should start investigating prospects of utilising telco frequencies for this purpose as well. From our understanding, the TVWS tests conducted have been based on theory and done among existing analogue television broadcasters;
     3. Other interested parties had implored the Authority to learn from regulators that have TVWS regulatory frameworks in place,[[5]](#footnote-5) however there is no evidence that the Authority conducted any benchmarking exercise to inform the draft Regulations. Should such studies be available, the NAB requests that they be made publicly available to interested parties;
     4. There is no evidence that in promulgating these regulations, the Authority has had regard for orderly spectrum management principles as the identified frequency bands (470-694MHz) for TVWS are currently occupied by broadcasting service licensees who are migrating to digital terrestrial television (DTT). The NAB is of the view that the implementation of the TVWS ahead of a successful Broadcast Digital Migration (BDM) will result in uncontrolled interference to the primary incumbents when digital migration is finally completed.

# **CONCERNS ON THE REGULATIONS**

## **The protection of primary users and interface monitoring**

* + 1. The NAB in principle supports the notion that primary users be protected at all costs from harmful interference by TVWS. While this is so, the Position Paper and the draft Regulations have not mapped out processes and procedures of how harmful interference will be safeguarded. There is further no direction as to how interface will be monitored and what penalties will be meted towards operators of white space devises that cause harmful interference to broadcasters.
    2. The NAB is deeply concerned about the protection for primary users, as they are currently licenced television broadcasters, and interference with these services in effect means potentially interfering with 14 million South African television households. The NAB proposes that an all-inclusive task team, coordinated by the Authority, comprising of representatives from members of the NAB, white space device owners, and other affected parties, be formulated. This task team will among others be responsible to monitor and instruct the switching off of any device that interferes with primary services.
    3. The NAB further proposes that the interference monitoring criteria, to be developed by the said task team be published for public comment before it is implemented.

## **The** **geo-location spectrum database**

* + 1. As according to the draft Regulations and the Position Paper, the geo-location spectrum database (GLSD), is the key element that will ensure avoidance of harmful interference to primary services in the band under consideration. The NAB therefore advocates for a reliable and transparent GLSD and proposes that prior to proceeding with the GLSD, the following must be met:
       1. the database must be published for public comments before being finalised;
       2. the frequencies for SAB/SAP should be included in the database in order for the services to be protected.
       3. Online and real time access to the GLSD will also be important in order to ensure that any necessary updates to the database such as the implementation of a DTT gap filler station for example can be done without delays.
       4. The agreed DTT frequencies along the boarders need to be included in the GLSD in order to avoid harmful interference with our neighbouring countries. The DTT frequencies and SAB/SAP frequencies must also be included in the neighbouring countries’ GLSD.[[6]](#footnote-6)

## **The geo-location spectrum database operator**

* + 1. From the NAB’s point of view the Authority would need to develop the qualifying criteria for the licensing/registration/authorisation of geo-location spectrum database operators (GLSDO). To this end, the NAB needs clarity on the authorisation criteria for the GLSDO, whether the GLSDO will be licenced or authorised as such, the number of GLSDO to be licenced/registered, and the regulatory parameters within which such operators will operate. At this stage, the NAB believes this process is premature and needs to be well thought through before implementation.

## **Offences, contraventions and penalties clause**

* + 1. It is not clear why the Authority has decided to impose a fine not less than R100 000 but not exceeding R1 000 000 and or imprisonment not less than a month but not exceeding six months.[[7]](#footnote-7) The proposed penalty is not commensurate to the contravention envisaged. In terms of section 17H(3) of the ICASA Act, a person who provides a service without a licence or registering as required or fails to obtain prior written permission of the Authority is guilty of an offence, and liable for a fine not exceeding the greater of R5 000 000 or 10% of the licensees turn-over for every day or part thereof during which the offence continues. The NAB is therefore of the view that “operations in the TVWS without authorisation and in contravention of these regulations”[[8]](#footnote-8) be penalised as stipulated above.
    2. The NAB further proposes that an additional penalty for harmful interference be introduced, to discourage intentional and repeated harmful interference by operators of TVWS. The applicable fine should be in terms of section 17H3(d) and (e) of the ICASA Act, which prescribes a fine of not exceeding R5 000 000.

## **Short title and commencement**

* + 1. According to clause 23 of the draft Regulations, the Regulations will come into force upon publication in the government gazette. From the NAB’s point of view, this draft Regulation is problematic. On the backdrop of DTT not yet being completed, the NAB proposes that the effective date of these regulations be post the digital switch over. The NAB further believes the Authority needs to allow broadcasting licensees and all affected parties sufficient time to prepare for compliance with the Regulations once passed. An immediate effective date will not assist licensees to effectively budget, and where necessary recruit, or upskill the necessary pool of skills to deal with the issue of TVWS.

# **CONCLUSION**

* 1. The NAB welcomes the opportunity to make its written submission.
  2. The NAB would like to be given the opportunity to participate in oral hearings should the Authority be holding any.
  3. The NAB is of the view that this process is premature and needs to be considered after the country has successfully implemented BDM.
  4. The NAB believes a proper roadmap of the processes and procedures for the setting up of the GLSD, and the consequent licencing/registration/authorisation of the GLSDO must be mapped out before engaging in the regulation process.

1. NAB response to ICASA’s notice regarding the discussion paper on the draft framework for dynamic and opportunistic spectrum management dated 18 December 2015. [↑](#footnote-ref-1)
2. At page 16 of the Findings Document. [↑](#footnote-ref-2)
3. Recommendation 76 0of the Radio Regulations. [↑](#footnote-ref-3)
4. At page 9 of the Positon Paper. [↑](#footnote-ref-4)
5. At page 11 of the Position Paper [↑](#footnote-ref-5)
6. SABC written submission on the draft Regulations on the use of TVWS. [↑](#footnote-ref-6)
7. Draft Regulations 22of the draft Regulations. [↑](#footnote-ref-7)
8. Clause 22 of the draft Regulations. [↑](#footnote-ref-8)