



**National Association of Broadcasters' submission
on the
Independent Communications Authority of South Africa Amendment
Bill, (B18-2013)**

16 August 2013

1. INTRODUCTION

1.1 The National Association of Broadcasters ("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 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 The NAB welcomes the opportunity to submit its written representations to the Parliamentary Portfolio Committee of Communications ("PPCC") on the Independent Communications Authority of South Africa Amendment Bill (B18-2013) ("the Bill"). The NAB hereby requests the opportunity to make oral representations, in the event that the PPCC decides to hold hearings in respect of the Bill. The NAB will confine its comments on the Bill primarily to amendments that directly impact on broadcasters.

1.3 On 23 November 2012, the Department of Communications ("DoC") gazetted a draft Bill and requested stakeholders to make written representations. In its written submission, the NAB pointed out that there were a number of draft amendments which we proposed should not form part of the amendment process. Such proposed amendments sought to limit the Constitutional Independence of ICASA as well as the introduction of the Complaints and Compliance Commission. It is with great appreciation that the NAB notes that the Department heeded the majority of the concerns raised. The Department has also had regard to the 2005 Asmal Report as

well as the historical reasons for deeming ICASA to fall within section 181 of the Constitution¹, for which we commend the Department.

- 1.4 As there is a lot of synergy between the EC Act and the ICASA Act, the NAB applauds the initiative by the Department of introducing the two amendment bills into Parliament at the same time, as this will ensure that the necessary amendments can be effected at the same time.
- 1.5 Notwithstanding the improved version of the Bill, the NAB believes that there are certain provisions in the Bill which should be brought to the attention of the PPCC, and these are outlined below.

2. REVIEW OF DECISIONS BY THE AUTHORITY

- 2.1 The Bill proposes inserting subsection 5 in section 3 of the Bill, which provides that; any person affected by any action, finding or decision of the Authority may apply to a court with competent jurisdiction for the review of that action, finding or decision.
- 2.2 From the NAB's point of view, it is not necessary to have such a provision in the Bill, as it is a known principle of administration of justice that a party has the right to a reasonable and procedurally fair administration of justice. The Promotion of Administrative Justice Act, 2000 already contains detailed law of general application regarding, amongst other things, the judicial review of administrative action. The NAB therefore proposes that subsection 5 of section 3 be deleted from the Bill.

3. REDUCTION OF TIME PERIODS

- 3.1 The Bill proposes that the period of comment set out under section 4B of the ICASA Act be reduced from 60 to 30 days. According to the Clause by Clause Analysis of the Bill², the proposed amendment seeks to shorten the time period within which inquiries may be conducted and concluded by the Authority "to accommodate concerns that such inquiries should render results more quickly in the interest of all involved". From

¹ Page 14 para 1.7 of the ICASA Amendment Bill 2013

² Page 16 para 2.4 of the ICASA Amendment Bill 2013

the NAB's point of view, this reduction of time would significantly reduce the amount of time to make written comments, which could inhibit interested persons' ability to contribute meaningfully to such inquiries. The NAB is of the view that it is in the interest of all involved to retain the comment period as is, to enable maximum input by all affected persons. The NAB is further of the view that the conducting of a section 4B inquiry constitutes administrative action and in the interests of reasonable and timeous notice it is proposed that the period of 60 days be retained.

4. TERM OF OFFICE FOR COUNCILLORS

- 4.1 The NAB supports the principle set out in section 7(6) of the ICASA Act, which excludes councillors from undertaking other remunerative employment. This is consistent with the provisions requiring councillors to serve ICASA in a full-time capacity.
- 4.2 We are concerned about the proposed addition of section 7(7), which permits a councillor to accept other work and permits them to receive payment for such work, provided the payment takes the form of an honorarium and is declared.
- 4.3 In our view, the demands of ICASA are such that councillors should not undertake other work. We accordingly oppose the addition of Section 7(7).

5. MINUTES OF COUNCIL AND COMMITTEE MEETINGS

- 5.1 Section 11A(3) proposes that minutes of the Council and Committees of the Council be made public and be availed on the website and the library of the Authority. It is the NAB's view that in the performance of its duties, certain confidential information regarding licensees' trade secrets and other confidential information gets disclosed and communicated to the Council. The NAB cautions that when minutes of the Council are made public, confidential information in the minutes should not be disclosed, and the NAB accordingly supports the last sentence of draft section 11A(3), which provides that "any information determined to be confidential in terms of section 4D must be removed prior to such publication or availability" The same proviso should apply to the proposed insertion of section 11A(4), namely in respect of any decision regarding a licensing or regulatory matter by the Council.

6. APPOINTMENT OF EXPERTS

- 6.1 In line with the Authority's powers to appoint experts, the Bill proposes for the amendment of section 14A, and requires ICASA to obtain Ministerial approval to appoint an expert that is not provided for in the ICASA budget for as particular year.
- 6.2 From the NAB point of view, obtaining Ministerial approval for such appointments will not only delay the Authority in carrying out its operational matters, but also creates an opportunity for political interference and compromise the independence of the Authority.
- 6.3 It is our belief that the ICASA Council has the mandate and powers to review and amend its annual budget when justifiable, in strict accord with the Treasury Regulations and the PFMA³ processes.
- 6.4 The NAB therefore strongly believes that the proposed amendment to section 14A is onerous, and should be deleted from the Bill.

7. CONCLUDING REMARKS

The NAB supports the work of the PPCC with regard to various amendments which are required and looks forward to participating in any hearings which are held.

³ The Public Finance Management Act 1 of 1999