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| **NAB WRITTEN SUBMISSION ON ICASA’S** **DISCUSSION DOCUMENT** **ON REGULATORY FRAMEWORK FOR COMMUNITY** **BROADCASTING SERVICES****2 JUNE 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.
	1. On 3 March 2017, the Independent Communications Authority of South Africa (ICASA), published in government gazette number 40660, an invitation to interested parties to submit their written representations on the Discussion Document on the Regulatory Framework for Community Broadcasting Services (the Discussion Document). The closing date for written representations has been moved from 10 May 2017 to 2 June 2017. The NAB welcomes the opportunity to make its written representation.

# Background

* 1. The NAB in principle supports the Discussion Paper. In our view, the publication of the Discussions Paper is timely, and accords with timelines the Authority set itself in its Review of Broadcasting Regulatory Framework Towards a Digitally Converged environment in South Africa. In carrying out this process, the Authority is further encouraged to coordinate its efforts with the Department of Communications (DoC). To that end, the NAB would like to highlight the following processes to be noted:

## **Review of Broadcasting Regulatory Framework Towards a Digitally Converged environment in South Africa. [[1]](#footnote-1)**

* + 1. In June 2013, the Authority published theReview of Broadcasting Regulatory Framework Towards a Digitally Converged environment in South Africa (the Review of the Broadcasting Framework). One of the purposes of the Review of the Broadcasting Framework was to review, through public consultation, existing broadcasting regulations and determining which broadcasting regulations were outdated, and needed repealing and/or amending, in order to align them with the digitally converged environment. By way of the Review of the Broadcasting Framework, the Authority tabulated regulations to be prioritised towards 2020. The Authority committed to initiating an Inquiry into Community Broadcasting Regulatory and Licensing Framework for the 2013-2016 timeframe.[[2]](#footnote-2)
		2. In carrying out the Review Process, the Authority noted two critical comments emanating from the community broadcasting sector, firstly; the concern around the undue interference by local government representatives who seek to influence the administration and operations of stations. The Authority observed that if not managed properly by community broadcasters, accepting local government funding might exacerbate such a trend.
		3. Secondly, the Authority noted concerns raised by stakeholders that the community broadcasting sector does not attract sufficient advertising and sponsorship to ensure financial viability. This has led to financial difficulties for many community broadcasters and thus a challenge in sustaining viable community broadcasters, especially in rural provinces. The Authority therefore recognised the urgent need to review and update its position paper and regulations on the community broadcasting sector. The Authority further committed to continue to engaging with the industry and the Department of Communications on these matters.[[3]](#footnote-3)
		4. The NAB is therefore encouraged to note that the Authority has commenced discussions on the Community broadcasting regulatory framework.

## **Draft Community Broadcasting Support Scheme Final Policy Paper**

* + 1. On 22 to 23 February 2017 the DoC, held a community broadcasting support strategy consultative workshop. The purpose of the consultative workshop was to engage stakeholders on the draft policy options contained in the draft Community Broadcasting Support Scheme Final Policy Paper (the Final Policy Paper). Key stakeholders including the Authority as well as members of the community broadcasting sector were in attendance. The Authority also made a presentation at this workshop.
		2. The NAB supports the publication of the Final Policy Paper, as it brings the much-needed clarity on the policy position regarding the financial support for the community broadcasting sector. The NAB encourages the Authority to work collaboratively with the DoC in finalizing this Discussion Document, as certain of the questions posed in the Discussion Document are policy issues, and relate to the financial viability and governance of community broadcasting services.

# Response to questions- Section A: Introduction

* 1. **Question 1**

*Are there any other issues that the Authority should consider in instituting this review?*

* 1. **Answer:**

In our view, the Authority has covered important issues in this review. Other issues the NAB would like the Authority to consider are: timing of the Moratorium on the registration of community broadcasting services, and the role of community broadcasting service licensees in a digitally converged environment. As it stands, the Moratorium does not have an end date, and has as a result created some stagnation in the registration of new community broadcasting services. This is notwithstanding the Authority’s amendment of the Processes and Procedures Regulations for Class Licenses[[4]](#footnote-4) which among others seek to regularise the registration process, by empowering the Authority to receive registrations during the months of February and October, pursuant to the publication of an invitation to apply (ITA) for community broadcasting registrations.[[5]](#footnote-5)

The discussion document will also need to address the role of the community broadcasting services in the digitally converged environment, in line with the foundation laid by the 2012 Digital Migration Regulations[[6]](#footnote-6) as well as the 2014 Promotion of Diversity and Competition on Digital Terrestrial Television Regulations.[[7]](#footnote-7) The Discussion Document should further address issues of digital radio and should recognise the important role that digital radio (both DAB+ and DRM) can play to further develop community sound broadcasting services.

# Section B: The South African Community Broadcasting Landscape

* 1. **Question 2**
* *Do you agree with the way in which the community broadcasting market has been described?*
* *If not, provide details of how the market should be viewed including the reasons behind such* descriptions?
	1. **Answer**

With convergence and the emergence of various platforms and devises via which people consume radio, it is important for the Authority to consider factoring these other emerging platforms in its description of the community broadcasting market. The methodology for example, employed by the Broadcasts Research Council of South Africa (the BRC) embraces the changing landscape. Not only does the data capture listenership on the traditional platform, but it also measures listenership across other devises such as cell phone, car radio, television as well as via computers and tablets –the market of community broadcasting therefore goes beyond traditional radio and television. Figure 1 below depicts the listenership patterns across other platforms.[[8]](#footnote-8)

**Figure 1**

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | **Total** | **Total Community - One Week Cume** |
| **Total** | ***Audience (000)*** | 38 254 | 5 737 |
|   | ***%Col*** | 100.0 | 100.0 |
| **Device: Radio - One Week Cume** | ***Audience (000)*** | 29 892 | 4 923 |
|   | ***%Col*** | 78.1 | 85.8 |
| **Device: Cell Phone - One Week Cume** | ***Audience (000)*** | 13 577 | 2 539 |
|   | ***%Col*** | 35.5 | 44.3 |
| **Device: Car Radio - One Week Cume** | ***Audience (000)*** | 9 914 | 1 505 |
|   | ***%Col*** | 25.9 | 26.2 |
| **Device: TV Set - One Week Cume** | ***Audience (000)*** | 3 279 | 494 |
|   | ***%Col*** | 8.6 | 8.6 |
| **Device: Computer - One Week Cume** | ***Audience (000)*** | 845 | 144 |
|   | ***%Col*** | 2.2 | 2.5 |
|  |  |  |  |

 *Source: BRC February 2017 RAMS data*

* 1. **Question 6**

*Given the time and resources that the Authority expands in addressing compliance problems arising from the above operational challenges in the community sector, what mechanisms/tools should the Authority consider?*

* 1. **Answer:**

From the NAB’s point of view, the Authority has sufficient policy and legislative mechanisms/tools to enable it to deal with non-compliance issues. The role of ICASA is to develop, monitor and enforce compliance by licensees of licence conditions. [[9]](#footnote-9) The Authority further has avenues available to it to deal with licence conditions contraventions and defaults by licensees, which includes referring such transgressions to the Complaints and Compliance Committee (the CCC) of ICASA.[[10]](#footnote-10) Furthermore, the various regulations passed by the Authority prescribe contraventions and outline applicable penalties for defaulting licensees.

While the NAB notes that the Authority expends time and resources in addressing compliance problems, from our point of view, there are inefficiencies in the compliance and monitoring arm of the Authority. Our members have advised that it is very seldom that they are contacted by compliance officers and as far as they are aware, they do not have any compliance officers allocated to their respective stations.

On the issue of institutional support for community stations[[11]](#footnote-11), as the Authority may be aware, the DoC Support Scheme deals sufficiently with institutions in support of community broadcasting. The Support Scheme seeks to strengthen these institutions by redefining their respective roles and proposes that the DoC should only be responsible for policy formulation while other roles should be allocated to the respective institutions, in support of community broadcasting. The Support Scheme proposes the following policy position:

“the position of the Department on the scope of support is to transfer the community broadcasting support to entities, by allocating equipment roll-out budget which will be managed and distributed by the MDDA; programme production to be managed by NEMISA/ Inesi; and Signal distribution subsidy budget will also be migrated to Sentech for easy and equal distribution of funds”

It is expected that should this policy proposal be adopted, some of the challenges facing the community broadcasting sector will be alleviated. The NAB also notes that the GCIS has committed to channelling ad-spent specifically to community broadcasting, given the wide reach for targeted government information. Furthermore, ICASA may be aware that an independent impact study on the effectiveness of the MDDA over the last 10 years is being finalised. The outcome of the study will no doubt be shared with the Authority.

# Section C: Policy and legislative framework

* 1. **Question 7**

*In your opinion, other than the principles outlined above, what other factors should the Authority consider in defining features of a community broadcasting service?*

* 1. **Answer**

The principles and features of community broadcasting outlined in the Discussion Document are couched in legislation. The Authority is reminded that it is through legislative amendments, and amendments of licence conditions that the scope and ambit of community broadcasting can be increased. Both the Broadcasting Act and the Electronic Communications Act (the ECA) define community broadcasting services as:

A broadcasting service which-

* Is fully controlled by a non-profit entity and carried on for non-profit purposes;
* Serves a particular community;
* Encourages members of the community served by it or persons associated with or promoting the interest of such community, to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and
* May be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned.

The NAB is of the view that the features as stipulated in legislation clearly ‘define’ the community tier of broadcasting. However, it seems there have been challenges over the years with monitoring and compliance to ensure that community broadcasters adhere to these distinctive features.

The Authority is also aware that the broadcasting Policy framework was formulated during South Africa’s emergence into democracy, with key policy recommendations made in the Triple Enquiry Report (1995), and the publication of a White Paper on Broadcasting Policy followed by the publication of the Broadcasting Act in 1998. It suffices to say these policy documents were formulated in the analogue dispensation, and since then, there have been some notable developments within the community broadcasting sector. Given these developments, the Authority will have to focus more specifically on the provisions made for community broadcasters during digital migration and whether the distinctive features (including geographic boundaries) of community broadcasting will be affected.

* 1. **Question 9**

*Some have advocated for a national community of interest station, given the fact that the interest communities are nationally based, what considerations should the Authority bear in mind in approaching these proposals?*

* 1. **Answer**

In terms of section 30 of the ICASA Act, the Authority “controls, plans, administers and manages the use and licensing of radio frequency spectrum…”

Section 34(2) further empowers the Minister to approve the national radio frequency plan developed by the Authority, which must set out the specific frequency bands designed for use by particular types of services …”

Before consideration for a national community of interest stations can be entertained, the Authority would have to make the necessary radio frequency assignments for “a national community of interest station”. Furthermore, these assignments would have to accord with the applicable standards and requirements of the ITU and radio regulations, as agreed and adopted by the Republic”. [[12]](#footnote-12)

From our understanding, one of the reasons the Authority placed a moratorium on the licensing of community broadcasting services was due to the scarcity of frequencies. So, a consideration for a national community of interest station should be carefully thought through against community broadcasting policy objectives as currently couched in legislation.

* 1. **Question 10**

*As indicated above ICASA’s approach is mainly directed by the legislation in light of new developments is there a need to propose revisions to legislation or are these sufficient?*

* 1. **Answer**

Should the Authority see the necessity to re-define community of interest stations and geographic stations, this would require a legislative amendment. The NAB cautions that such an amendment must be evidence based, as well as a regulatory impact assessment (RIA) demonstrating the economic and social impact such an amendment would have on the community radio market.

However, should the Authority wish to retain the status quo in relation to the 2 types of community broadcasting services, in our view it is within the Authority ‘s right to prescribe specific regulations for community of interest stations and geographic regulations.

* 1. **Question 13**

*Other than the measures contained in the standard terms and conditions what measures can the Authority adopt to mitigate against commercial imperatives diluting community broadcasting mandate and objectives as well as to ensure that stations retain editorial control. What mechanisms should the Authority consider to counter-balance management companies’ undue influence over licensees operational and editorial control?*

* 1. **Answer**

Sustainable funding has always been an issue for community broadcasting services, whether radio or television. It is precisely for this reason that the DoC has had to review its Subsidy scheme in order to bridge the funding gap. The Subsidy scheme observes:

“With the increasing demand for the support amid declining public funds, clarity has to be provided regarding the objective, nature and criteria for the support as well as a clear value proposition for public funding. It is on these basis that the support is being reviewed so as to set out a clear framework for providing support to community broadcasting in South Africa.”[[13]](#footnote-13)

The Authority is encouraged to harmonise its efforts and possible restrictions on the funding of community television with proposals made in the DoC Subsidy Scheme. One other undertaking the DoC makes in the Subsidy Scheme is to mobilise NGPOs to support community broadcasting.[[14]](#footnote-14)

* 1. **Question 14**

*Countries’ approach to community television and funding is determined by their regulatory and licensing framework. Which of the above elements can be applied to South Africa?*

* 1. **Answer**

In our view, community television broadcasting services must continue to receive funding from donations, grants, sponsorships and advertising or membership fees, as envisaged by section 2 of the ECA and the Broadcasting Act.

* 1. **Question 16**

*Given the higher set up and operational cost associated with community television, should the Authority apply similar regulatory requirements and obligations to both community radio and community television?*

* 1. **Answer**

The Authority is referred to the DoC Subsidy Scheme as it makes detailed policy recommendations on the funding of community television broadcasting services. Furthermore, the Subsidy Scheme does recognise the high start- up costs for radio and television services.

* 1. **Question 17**

The revised regulations make provision for two window periods for the submission of class registration applications. They also allow for the Authority to issue an ITA. Are these measures sufficient to address the concerns raised by stakeholders?

* 1. **Answer**

The NAB notes the distinction legislation makes in the application process of an individual licence and the registration process for a class licence. The registration process for class licences has been simplified and is less cumbersome than earlier processes. The NAB is of the view that Section 19 of the ECA read with Processes and Procedures Regulations as amended, address licences renewal processes. Furthermore, the Authority is fully empowered to;

To develop, enforce licence conditions consistent with the objects of this Act and the underlying statues for different categories of licenses[[15]](#footnote-15)

Must grant renew, amend, transfer and revoke licenses[[16]](#footnote-16);

May make regulations on any matter consistent with the objects of this Act and underlying statue.[[17]](#footnote-17)

* 1. From the NAB’s point of view, the measures and interventions put in place for the registration of class licences are feasible. However, the effectiveness of this process will be determined once an ITA is published and the moratorium is lifted.
	2. **Question 18**

*Given the amendments to regulations, would a revision of section 16, 17, and 18 of the EC Act be necessary to facilitate orderly and strategic licensing of community broadcasting service?*

* 1. **Answer**

The NAB does not think that sections of the ECA should to be amended. This is because section 16(2) stipulates a registration of a class licence may be submitted at any time in the manner prescribed by the Authority. In our view, the Authority acted within its powers when prescribing that the registrations of class licences may be submitted twice a year and where necessary pursuant to an ITA.

* 1. **Question 19**

*What is your opinion of the contentions that the Moratorium on licensing of community radio services spectrum has no legal basis, as it is in contradiction to the EC Act licensing process which only makes provision for a registration process?*

* 1. **Answer**

The concern the NAB has regarding the moratorium is that it has been in place for a long time.

* 1. **Question 20**

*In the light of challenges raised by some stakeholders regarding lack of rigour of class registration process, how do you propose the Authority remedies this?*

* 1. **Answer**

The broadcasting industry has grown significantly over the last two decades. However there has been concern with the “proliferation of community stations”. Arguably, this could be as a result of ICASA not responding to a registrant within the stipulated 60 days - resulting in an applicant being deemed to have a license by day 61. With the changes introduced by regulations, the Authority is encouraged to ensure that it assesses and carefully evaluates each registration and provides feedback timeously to the registrant. More importantly, however, is the need for the Authority to determine whether registrants are from areas that are under-served, or areas where there is an “over-supply” of stations. The Authority ought to be considering key issues of sustainability, diversity and access.

* 1. **Question 21**

*The Authority currently does not regulate signal distribution tariffs; what mechanisms can be applied to ease the burden of signal distribution on community broadcasting services?*

* 1. **Answer**

The Authority is encouraged to conduct an enquiry to explore the feasibility of prescribing signal distribution tariffs. In so doing, the Authority is reminded that in terms of the ECA, the Authority may not interfere in commercial activities of licensees.[[18]](#footnote-18) The Authority is also encouraged to work with the DoC in this exercise, as the DoC has been responsible for providing signal distribution subsidies to community broadcasting licensees.

# Section D: Community Broadcasting Sustainability Strategies

* 1. **Governance, management and operational capacity**

With regards to governance, management and operations issues, as well as sustainability strategies, the NAB proposes that the Authroty liaises with the DoC, as these are policy issues and are addressed in the DoC Subsidy Scheme. Furthermore, the DoC hosted a Corporate Governance Indaba in September 2012, with the objective to capacitate community radio stations on governance issues and promote adherence to corporate governance and regulatory compliance. As observed at the Indaba, the NAB is of the view that five years later, there is still a need to provide corporate governance skills, as the lack thereof has led to the demise of most community radio stations. To this end the NAB recommended that specially packaged and affordable training be arranged regionally, to fast-track the training of station board members on the principles of governance and fiduciary duties of boards.

It is widely accepted that the community radio sector is a source of job creation, and developing on-air talent as well as technical skills for the commercial and public broadcasting tiers. It is our view that existing public training institutes such as NEMISA remain relevant and have a critical role to play in providing the requisite radio skills.

# Conclusion

* 1. The NAB welcomes the opportunity to make its written submission.
	2. We wish to the given an opportunity to participate in oral hearings, should the Authority decide to hold any.
	3. The NAB encourages the Authority to confer with the DoC on policy issues, and possibly make proposals for the amendment of the relevant legislation to accommodate changes in the community broadcasting landscape.
1. Published in government gazette 36598 on 25 June 2013. [↑](#footnote-ref-1)
2. At page 60 of the Review of Broadcasting Regulatory Framework. [↑](#footnote-ref-2)
3. At page 41 of the Review of Broadcasting Regulatory Framework. [↑](#footnote-ref-3)
4. Published in government gazette 39874 on 30 March 2016. [↑](#footnote-ref-4)
5. Regulation 7 [↑](#footnote-ref-5)
6. Published in government gazette 36000 on 14 December 2012. [↑](#footnote-ref-6)
7. Published in government gazette 37929 on 22 August 2014. [↑](#footnote-ref-7)
8. <http://www.brcsa.org.za/brc-ram-february-release-presentation-february-2017/> [↑](#footnote-ref-8)
9. Section 4 of the Independent Communications Authroty Act of South Africa Act 13 of 2000 as amended. [↑](#footnote-ref-9)
10. Section 17B of the ICASA Act. [↑](#footnote-ref-10)
11. On page 36 of the Discussion Document. [↑](#footnote-ref-11)
12. Section 30(2)(a) of the ECA. [↑](#footnote-ref-12)
13. At page 8. [↑](#footnote-ref-13)
14. At page 14 [↑](#footnote-ref-14)
15. Section 4(3)(d) of the ICASA Act. [↑](#footnote-ref-15)
16. Section 4(3) (e) of the ICASA Act. [↑](#footnote-ref-16)
17. Section 4(3)(j) of the ECA. [↑](#footnote-ref-17)
18. Section 2(y) of the ECA. [↑](#footnote-ref-18)