



**NATIONAL ASSOCIATION OF BROADCASTERS SUBMISSION TO THE
INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ON
THE INQUIRY INTO REGIONAL TELEVISION AND THE INQUIRY INTO
LOCAL TELEVISION**

29 SEPTEMBER 2003

1. Introduction and Background to and Context of the NAB's Submissions

- 1.1 The National Association of Broadcasters ("the NAB") is the leading representative of South Africa's broadcasting industry. It aims to further the interests of the broadcasting industry in South Africa by contributing to its development. NAB members include:
 - 1.1.1 The three television and the eighteen radio stations of the Public Broadcaster, the South African Broadcasting Corporation ("the SABC");
 - 1.1.2 All licensed commercial sound broadcasters;
 - 1.1.3 E-TV and M-Net as licensed commercial television broadcasters;
 - 1.1.4 Both the common carrier and the selective and preferential carrier licensed signal distributors; and
 - 1.1.5 Over 40 community television and radio broadcasters.
- 1.2 In Notice 2245 published in Government Gazette 25376 dated 22 August 2003, the Independent Communications Authority of South Africa ("ICASA") published its Notice of Publication of the Discussion Paper on the Inquiry into Regional Television ("the RTV Discussion Paper"). Interested parties were invited to submit written representations on the RTV Discussion Paper to ICASA by 29 September 2003.
- 1.3 In Notice 2246 published in Government Gazette 25377 dated 22 August 2003, ICASA published its Notice of Publication of the Discussion Paper on the Inquiry into Local Television ("the LTV Discussion Paper"). Interested parties were invited to submit written representations on the LTV Discussion Paper to ICASA by 29 September 2003.
- 1.4 In terms of section 192 of the Constitution, ICASA is established "to regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society". Further, ICASA is guided by the

objects enunciated in sections 2 of the Independent Broadcasting Authority Act, 1993("the IBA Act") and the Broadcasting Act, 1999 ("the Broadcasting Act") which include:

- 1.4.1 Promoting the provision of a diverse range of sound and television broadcasting services on a national, regional and local level¹;
 - 1.4.2 Encouraging ownership and control of broadcasting services by persons from historically disadvantaged groups;²
 - 1.4.3 Promoting the empowerment and advancement of women in the Broadcasting Services;³
 - 1.4.4 Ensuring that broadcasting services are not controlled by foreign persons;⁴
 - 1.4.5 Ensuring that commercial and community broadcasting licences, are controlled by persons or groups of persons from a diverse range of communities in the Republic;⁵
 - 1.4.6 Encouraging investment in the broadcasting industry;⁶ and
 - 1.4.7 Promoting the stability of the Broadcasting Industry.⁷
- 1.5 Both the LTV Discussion Paper and the RTV Discussion Paper (collectively "the Discussion Papers") were published in accordance with Section 28 of the IBA Act which empowers ICASA to conduct inquiries, from time to time, into any matter relevant to:

¹ Section 2(a) of the IBA Act

² Section 2(f) of the IBA Act

³ Section 2(gA) of the IBA Act

⁴ Section 2(h) of the IBA Act

⁵ Section 2(i) of the IBA Act

⁶ Section 2(q) of the Broadcasting Act

⁷ Section 2(r) of the IBA Act

- 1.5.1 The achievement of the objects and application of the principles enunciated in Section 2 of the IBA Act; and
- 1.5.2 The exercise and performance of its powers, functions and duties in terms of the IBA Act.
- 1.6 Against this background, the RTV Discussion Paper is a preliminary step towards ICASA fulfilling its obligations in terms of the objects of the IBA Act and the Broadcasting Act and its stated purpose is to:
 - 1.6.1 Solicit public participation and input in developing the regulatory framework for regional television in South Africa; and
 - 1.6.2 Generate discussion on the appropriate policy and licensing framework for the introduction of regional television in South Africa.
- 1.7 Similarly, the LTV Discussion Paper is a preliminary step towards ICASA fulfilling its obligations in terms of the objects of the IBA Act and the Broadcasting Acts and its stated purpose is:
 - 1.7.1 To solicit public participation and input in developing the regulatory framework for local television in South Africa;
 - 1.7.2 To generate discussion on the appropriate policy and licensing framework for the introduction of local television in South Africa.
- 1.8 The NAB wishes to contribute to the process and thanks ICASA for the opportunity to make representations on both the LTV and RTV Discussion Papers. As the contributions made with respect to both local television ("LTV") and regional television ("RTV") by the NAB are substantially the same, the NAB has chosen to submit a single representation which addresses the issues raised in the Discussion Papers in a single document. To this end, the NAB does not intend to deal with every issue raised in the Discussion Papers. Instead, it wishes to focus on a range of key issues that it considers important for the formulation of policy and licensing frameworks.

1.9 The NAB wishes to state that while this submission represents the views of a wide range of members of the NAB, it does not purport to represent all the different opinions that the NAB members may hold on a particular issue. Where a particular member has a different view to that of the NAB on a specific issue, the individual member shall make its own submissions on the Discussion Paper to ICASA.

1.10 The NAB hereby requests an opportunity to make oral representations at the hearings to be conducted by ICASA in terms of Section 28 of the IBA Act, in relation to both the LTV Discussion Paper and the RTV Discussion Paper. The NAB shall augment its written submissions at the hearings in regard to certain key proposals.

2. THE FORMULATION OF POLICY

2.1 The NAB's vision for the Broadcasting Industry is that of a flexible, vibrant and growing broadcasting sector, which is necessary for socio-economic development of the country by creating jobs and increasing and promoting participation of historically disadvantaged persons and women. The NAB believes that the social goals set out in the Broadcasting Act, such as empowerment, diversity of services, universal access, and growth of local content, cannot be achieved without a thriving and a growing industry. It is therefore imperative that ICASA balance its social objectives with ensuring the viability and growth of the South African Broadcasting Industry. The NAB submits that it is not opposed to the licensing of LTV broadcasters or RTV broadcasters, and acknowledges the statutory requirements placed on ICASA in this regard. It is the NAB's view however that ICASA must proceed with caution for the reasons set out below.

2.2 The NAB has in the past, expressed its concern about formulating regulatory policy in a piece-meal manner. At present the NAB is aware that ICASA is:

2.2.1 Drafting its Position Paper on its Review of Ownership and Control of Broadcasting Services and Existing Sound Broadcasting Licenses as well as the feasibility of issuing commercial sound broadcasting licenses in secondary towns;

- 2.2.2 Conducting an inquiry into, inter alia, the viability (both in funding and expertise) of issuing low power sound broadcasting licences;
- 2.2.3 Conducting an inquiry into licensing subscription broadcasting services;
- 2.2.4 Preparing for the amendment of the radio and television licenses of the SABC and the imposition of appropriate license conditions where they are necessary in order to reflect the re-organisation of the SABC into the public service division and the commercial service division.
- 2.3 In addition to the matters affecting broadcasters set out above, there is also a shift to digital broadcasting and it is anticipated that during the course of 2003 legislation will be drafted to deal with the convergence of telecommunications and broadcasting. The migration of broadcasters from analogue to digital is very much a current issue, and it is becoming more and more evident that broadcasting licenses should be technologically neutral, so that broadcasters can change their broadcasting platform without such shift prompting an amendment to licence conditions.
- 2.4 In the light of the above, it is concerning that no additional impact study has been done in respect of the feasibility or necessity for RTV or LTV. Having regard to ICASA's objects, particularly where ICASA is required to promote and conduct research into broadcasting policy⁸, encourage investment⁹ in and promote the stability¹⁰ of the broadcasting industry, the NAB believes that it is imperative for ICASA to undertake a study in order to assess whether RTV and LTV will be viable, and to assess the impact RTV and LTV would have on the existing broadcasting industry. In section 15 of the RTV paper ICASA states:

“However, the introduction of new services will also fragment the audiences further and intensify competition of market share and advertising cake. The introduction of new entrants could therefore increase the speed at which the SABC and M-Net are losing their current share of advertising revenue and could also negatively impact on e-tv's growth.”

⁸ Section 2(p) of the IBA Act

⁹ Section 2(q) of the IBA Act

¹⁰ Section 2(r) of the IBA Act

The NAB respectfully submits that the view expressed by ICASA above is key to the viability of RTV and LTV and demonstrates the difficulty that ICASA faces in determining whether such services will be viable. It is in this light that the NAB recommends that ICASA undertake an economic impact study.

2.5 In its Position Paper for the Introduction of the First Free-to-Air Private Television Service in South Africa, ICASA concluded in Part 2 of Annexure 5 that regional television stations would not be viable and stated that “the economics of television in specific regional markets (eg. Kwa-Zulu Natal) is uncertain”. Further, on page 6 of the RTV Discussion Paper, it is stated that during 1996/1997 ICASA conducted a “national consultative process, which led to the decision that at that point in time regional networked stations were not “economically feasible”. The NAB submits that by using the results of the 1996/1997 study as a benchmark a new study will provide ICASA with information on how the circumstances or factors have changed since then so as to make RTV more viable, if at all.

2.6 The NAB submits that it is undesirable for broadcasters to operate in an uncertain regulatory environment, or worse, in a regulatory vacuum. The example of Trinity Broadcasting is an example at hand. A Position Paper setting out the regulatory parameters in which existing and future community television broadcasters may operate would be invaluable.

2.7 The NAB has noted ICASA’s research on different foreign jurisdictions but respectfully submits that it would be a mistake for ICASA to implement any one particular international model as these are simply not appropriate to the South African context and the NAB is not in a position to state that any specific model has worked perfectly in its particular jurisdiction.

2.8 Whilst the NAB is encouraged by the extent of the research into international benchmarking conducted by ICASA, the NAB respectfully submits that prior to the licensing of RTV and/or LTV broadcasters, ICASA must undertake a comprehensive study of the South African broadcasting environment in order to ascertain, amongst other things:

2.8.1 The demand for RTV and LTV;

2.8.2 The viability of licensing RTV and LTV licensees;

- 2.8.3 What “regional” and “local” means in a South African context (in other words are the distinctions one of culture and language, or geographical, or otherwise);
- 2.8.4 The impact that the introduction of new broadcasters will have on existing broadcasters.
- 2.9 The NAB submits that in the absence of such a study, many of the questions as set out in the Discussion Papers cannot adequately be addressed.
- 2.10 The NAB respectfully submits that in formulating regulatory policy, ICASA ought to recognise the importance of having regulatory environments that form a coherent whole. In this regard, the NAB believes that ICASA’s approach in regulating the industry ought to be a holistic one which is fair and consistent with respect to its treatment of all broadcasters;
- 2.11 The NAB trusts that its contribution will assist ICASA in creating a regulatory environment that is stable and conducive to local and foreign investment in the industry whilst ensuring the diversity of views and the socio-economic development of South Africa.

3. FREQUENCY ASSIGNMENT

- 3.1 The scarcity (or availability) of frequencies should not drive the licensing of broadcasting in South Africa. The granting of licences to local and regional television broadcasters should be based on the economic viability of such licences and only once a thorough due diligence exercise has been completed by ICASA, should a determination be made as to how many licences can be issued in a particular area. However, it should also be borne in mind that should ICASA accept a recommendation not to assign any more frequencies in the 800 MHz band, additional pressure will be placed on the remaining UHF television spectrum that could severely inhibit any expansion of analogue services. Considering that one or two analogue channels per site will be required for digital transmissions in the migration to a fully digital service, in addition to the existing analogue channels in use, the NAB submits that ICASA will be required to balance the frequency

requirements of RTV and LTV against current frequency allocations of existing broadcasting, and future frequency requirements.

3.2 In the absence of a national policy on digital broadcasting it is impossible to say whether the anticipated Convergence Bill will have any impact on frequency allotment as it has not yet been determined whether allotment or assignment planning will be used. The NAB respectfully submits that the Discussion Papers does not fully distinguish the issues of frequency allocation, assignment and allotment.

3.3 Question 16e of the LTV Discussion Paper asks: "Should South Africa consider international precedents and limit ERP for LTV?" The only international precedent quoted in the LTV Discussion Paper where e.r.p limits are quoted is that of the USA where there is a limit of 150 kW on UHF stations. As ICASA is aware, many of the SABC national public broadcasting services have a maximum e.r.p of only 10kW. The USA example is therefore not applicable to the South African context. Furthermore, whether and/or how the e.r.p. of LTV should be limited will also be determined by the manner in which these services are defined and the objectives they are required to meet.

3.4 Question 3d of the RTV Discussion Paper asks:

"In the advent of digitalisation how should frequencies be categorised?"

Currently, frequencies are licensed to broadcasting licensees and this will continue to happen as long as analogue broadcasting prevails. However, in a digital, multi-channel environment frequencies will, of necessity, have to be licensed to network service providers and not content providers. A single frequency in the digital environment will be capable of carrying multiple content streams that could include public, commercial and community programming. The NAB respectfully submits that in a digital environment the need to categorise frequencies does not exist.

4. **MODEL FOR RTV/LTV**

4.1 The NAB submits that in order to provide universal access to a public broadcasting service the most effective and cost effective means of broadcasting and receiving a

signal must be identified. For a number of reasons, including costs, the NAB respectfully submits that in the present environment, DTT and/or free-to-air RTV/LTV on satellite may not be the most appropriate means of broadcasting public RTV as these technologies are currently expensive when compared to analogue free-to-air broadcasting and are not accessible to all segments of our population. If these technologies were to be utilised, the NAB is of the view that they may be a barrier to entry to new licensees, and could possibly be commercially unviable in the initial stages. It is also unclear as to how satellite broadcasting services could effectively be used in order to broadcast to a “region” of South Africa. In weighing up these various considerations, ICASA must strive to balance the interests of viewers and different categories of broadcasters.

- 4.2 The NAB respectfully submits that it is not in a position to stipulate the financial model that should be imposed on public, commercial or community RTV or LTV services. It must be pointed out that broadcasters’ share of advertising spend may not grow as a result of the introduction of RTV or LTV broadcasters. New broadcasting licensees may have the effect of fragmenting television advertising spend on the broadcasting sector as a whole. Furthermore, Section 22A(3) of the Broadcasting Act states that the public service RTV service provided by the SABC “must be funded by money appropriated by Parliament and may draw revenues from grants, donations and sponsorships”.
- 4.3 Administrative fees relating to licence applications, the issuance of licenses, applications for amendment to licence conditions and applications for renewal of licences are set by ICASA in its discretion in terms of sections 41 and 78 of the IBA Act. The NAB believes that administrative fees should be formulated in the most consistent and fair manner possible having regard to the actual administration costs incurred by ICASA. As regards an annual licence fee, which is not dealt with in the RTV Discussion Paper, the same criteria apply.
- 4.4 ICASA’s SA Content Position Paper and Regulations¹¹ regulates the production of South African Content. Regulations could be amended if necessary to reflect the particular demands of RTV and LTV, otherwise specific requirements for RTV and LTV broadcasters could be contained in licence conditions insofar as ICASA wish to ensure that all or any part of the programming broadcast by such broadcasters

¹¹ 15 February 2002

are sourced within their licensed area. The NAB respectfully submits that ICASA should be consistent with respect to the South African content quota insofar as it relates to the obligations of broadcasters.

5. REGIONAL TELEVISION

5.1 The Broadcasting Amendment Act 64 of 2002 (“the Broadcasting Amendment Act”) inserted section 22A of the Broadcasting Act. Section 22A(1) places an obligation on the SABC, in performance of the SABC’s public service mandate as set out in sections 10(1)(a) and (b) of the Broadcasting Act, to apply for a regional broadcasting licence within nine months of the commencement of the Broadcasting Amendment Act. The Broadcasting Amendment Act came into effect on 7 March 2003. Therefore, the SABC’s application for a regional broadcasting licence must be made by 8 December 2003.

5.2 Sections 10(1)(a) and (b) of the Broadcasting Act provide that the public service of the SABC must “make services available to South Africans in all the official languages” and must “reflect both the unity and diverse cultural and multilingual nature of South Africa and all of its cultures and regions to audiences”.

5.3 It would seem that the legislature intended the SABC to meet the above objectives, by the SABC broadcasting regionally, as an obligation is placed on the SABC to apply for a regional broadcasting licence. It is unclear whether the obligation on the SABC in terms of section 22A(1) of the Broadcasting Act, places a reciprocal duty on ICASA to grant a regional broadcasting licence to the SABC, notwithstanding the non-viability thereof.

6. LOCAL TELEVISION

As there is no legislative obligation on ICASA to consider the granting of LTV licenses, the NAB respectfully submits that the licensing of LTV broadcasters should follow the completion of the impact study proposed by the NAB above.

7. CONCLUSION

The NAB thanks ICASA for the opportunity of making submissions on the Discussion Papers. The NAB wishes to reiterate the importance of a detailed economic feasibility study before embarking on new licensing processes. The growth of the broadcasting industry is in the interest of all stakeholders and it is therefore the NAB's view that the licensing of RTV and LTV is dependant on the viability and sustainability of the industry as a whole. As a leading industry representative, the NAB trusts that ICASA will consider its submissions carefully. The NAB is available to assist ICASA on any matter raised in the Discussion Papers.