



**THE NATIONAL ASSOCIATION OF BROADCASTER'S SUBMISSION TO THE
DEPARTMENT OF TRADE AND INDUSTRY ON THE PROPOSED CONSUMER
PROTECTION REGULATIONS**

31 JANUARY 2011

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 membership includes:

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 licenced 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 On 29 November 2010, the Department of Communications (the DTI) published in Government Gazette 33813, notice 1099 of 2010, a notice in terms of section 120(2)(a) of the Consumer Protection Act 68 of 2008 (the CPA), outlining its proposed Consumer Protection Regulations (the proposed regulations). The proposed regulations are open to public comment, and the closing date for written comments is 31 January 2011.

1.3 The NAB welcomes the opportunity to make its written comments. The NAB would like to be given the opportunity to participate in oral hearings should the DTI decide to hold oral hearings.

2 SECTOR REGULATION

2.1 The Electronic Communications Act 36 of 2005 (the ECA)¹, as well as the ICASA Act² empower ICASA to pass regulations pertinent to both the broadcasting and telecommunications sectors. In particular, Chapter 12 of the ECA dealing with

¹ Section 4 of the ECA

² Section 4 of the ICASA Act

consumer issues mandates ICASA to prescribe regulations setting out a code for licencees in relation to consumer issues³. The NAB believes the ECA has made attempts to regulate consumer issues. We however believe that where there is a lack in the provisions of the ICASA regulations in so far as regulating consumer issues, the CPA and the proposed regulations will augment such a lack.

2.2 Furthermore, in addition to ICASA, the ECA further recognises the existence of a self-regulatory body for broadcasting services, namely the NAB. The NAB through the Broadcasting Complaints Commission of South Africa (the BCCSA) is empowered by the ECA to administer its own code.

2.3 The NAB welcomes the opportunity afforded regulatory authorities such as ICASA by the CPA to apply to the Minister for an industry-wide exemption from one or more provisions of the CPA⁴. The NAB sees the need for ICASA to apply for the envisaged exemption, as failure to do so may yield unnecessary clashes between the proposed regulations and the ICASA regulations. The NAB as the leading representative of the broadcasting industry in South Africa, will endeavour to work hand in hand with ICASA to apply for the exemption.

3 SPECIFIC COMMENTS

The NAB supports the spirit of the proposed regulations, however, we wish to note that certain provisions of the CPA as well as those of the proposed regulations repeat provisions of existing sector regulations. We therefore believe that before promulgating the proposed regulations, there are certain provisions which require further consideration by the DTI. The NAB will therefore in this section outline its concerns on specific provisions of the proposed regulations.

4 Promotional Competitions

4.1 Draft clause 14(1) of the proposed regulations stipulate that “...a promoter of a promotional competition requiring a consumer to enter the competition by way of a short message service or multimedia messaging service...may not charge a fee for that service or application exceeding the minimum fee normally payable by the

³ Section 69(1) of the ECA

⁴ Section 5(3) of the CPA.

general public on the network or via the service provider chosen by the consumer in respect of an ordinary SMS or MMS”.

4.2 From the NAB’s point of view, the provisions of draft clause 14(1) of the proposed regulations are overly prescriptive, and cover what is already covered by the ICASA Regulations on the Code of Conduct for broadcasting service licensees (the ICASA Code).⁵

4.3 Regulation 15 of the ICASA Code stipulates as follows:

- (1) Broadcasting service licencees must make known during a broadcast the full cost of a telephone call or SMS, where audiences are invited on air to react to a programme or competition.*
- (2) Broadcasting service licencees must specify the proportion of the cost of the call or SMS as the case may be, which is intended for any specified charitable cause.*
- (3) Broadcasting service licencees must ensure that audiences who are invited to compete in any competition are made aware on air of the rules of the competition. Such rules include the closing date and the manner in which the winner is to be determined.*

4.4 Section 16 of the BCCSA Code, which is formulated for broadcasting licencees who are members of the NAB, similarly recognises the need for consumers to be informed about the cost of a call or SMS prior to entering any competition. From the NAB’s view point the provisions of both the ICASA Code, and the BCCSA Code do sufficiently inform consumers and protect them from any unscrupulous behaviour by broadcasters in that consumers are afforded the opportunity and choice to make informed decisions when entering into promotional competitions. The NAB further believes that restricting the call or SMS or MMS rate to the minimum fee normally payable by the general public is an unfair limitation.

4.5 The NAB notes that the provisions of draft regulation 14 repeat the provisions of the CPA; hence the NAB proposes that broadcasting service licencees be exempted

⁵ Regulations regarding the Code of Conduct for broadcasting service licensees issued in terms of section 54 published in government gazette 32381 dated 06 July 2009. This code applies to broadcasting licencees who are not members of the NAB.

from the provisions of section 14 of the ACP, as equivalent provisions are already in place through the ICASA Code and the BCCSA Code.

4.6 Similarly, the requirement to have a chartered accountant (CA), a registered auditor or an admitted attorney or a commissioner of oaths present at all competitions as per the provision of draft regulations 14(4) is prohibitively onerous on broadcasting services licencees. The NAB believes these provisions place unnecessary red tape on the broadcasting of competitions. This requirement is even more problematic with on air competitions as the DJ normally conducts the competition. This would require the DJ to be a CA, registered auditor, admitted attorney or a Commissioner of Oaths. Alternatively the CA, a registered auditor or an admitted attorney or a commissioner of oaths would have to be called in every time a competition is broadcast. From the NAB point of view, this is impractical and costly. The NAB believes that promotional competitions are currently carried out in a transparent manner and do not require further regulation.

4.7 Draft Regulations 14(5) and (6) contain a set of very onerous record keeping provisions related to promotion competitions. Given the sheer volume of competitions conducted by the members of the NAB alone, compliance with these proposed regulations will be costly and time-consuming.

4.8 In addition to the extensive records which are required to be kept, the regulations require that these records be kept for a period of 5 years. The costs of collecting and storing data for this period will be prohibitive. The NAB submits that consumers will not be prejudiced in any way if this period is reduced.

5 CONCLUSION

5.1 The NAB welcomes the opportunity to make its written comments on the proposed regulations. The NAB further wishes to express its commitment to this process.

5.2 The NAB believes that the intention of the CPA as well as the proposed regulations is not to duplicate already existing initiatives established by other pieces of legislation such as the ECA. We therefore believe our efforts in highlighting areas of duplication to the DTI will assist the DTI in reaching a well informed finality to this matter.