



**THE NATIONAL ASSOCIATION OF BROADCASTERS WRITTEN SUBMISSION ON
THE SECOND DRAFT OF THE GENERAL LICENCE FEES REGULATIONS**

20 MARCH 2009

1. BACKGROUND

- 1.1. On 24 October 2008, the Authority published draft regulations in respect of General Licence Fees (draft regulations), in Government Gazette 31542, General Notice 1305 of 2008 (the Notice). The draft regulations were drafted in terms of section 4(1) (c)(iv-v) and 5(7)(a)(iii) of the Electronic Communications Act. (The EC Act). The closing date for written submissions was 05 December 2008.
- 1.2. Subsequently, the Authority held public hearings on 13 to 15 January 2009, in which the National Association of Broadcasters (the NAB) participated.
- 1.3. On 06 March 2009, the Authority published in government gazette 31992, a second draft of the draft General Licence Fees Regulations (the second draft), inviting written submissions by 20 March 2009. In conjunction with the second draft, the authority published a position paper on the general licence fees (the position paper).
- 1.4. The NAB welcomes the amendments introduced in the second draft, in so far as they address fundamental issues that the NAB and other stakeholders raised on the first draft of the draft regulations. The NAB further welcomes the opportunity to make further comments on the second draft, as this presents an opportunity for further modifications to the draft regulations. The NAB would like to be given the opportunity to make oral representations should ICASA deem it fit to hold oral representations with regards to this process.
- 1.5. 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:
 - 1.5.1. Three television public broadcasting services, and eighteen public sound broadcasting services, of the South African Broadcasting Corporation of South Africa ("the SABC");
 - 1.5.2. All the commercial television and sound broadcasting licencees
 - 1.5.3. Both the licenced common carrier and the selective and preferential carrier broadcasting signal distributors;

- 1.5.4. Over thirty community sound broadcasting licensees, and one community television broadcasting licensee, Trinity Broadcasting Network (TBN)

2. EXEMPTIONS

- 2.1. In its written submission on the first draft of the draft regulations, the NAB requested the Authority to extend the three year exemptions to television licencees who will be broadcasting in dual illumination during the three year digital migration period¹. This request is premised on the fact that such broadcasting licencees will be carrying double costs for broadcasting both in analogue and digital, while the revenue streams will most likely stay the same.
- 2.2. The exemption will not only encourage broadcasting licencees to migrate, but will also guarantee a less cost intensive process for broadcasting licencees. As a result, the NAB requests the Authority to give due consideration to the proposal.

3. SCHEDULE 1

3.1. ADMINISTRATIVE FEES: INDIVIDUAL LICENCES

- 3.1.1. In its submission on the first draft of the draft regulations, the NAB had proposed that, the Authority make a distinction between television and sound broadcasting services when levying on administrative fees². For all intents and purposes, the Authority has always classified television and sound broadcasting licencees separately. However, in this instance such a distinction has been overlooked. Consequently, the Authority has not given a rationale for departing from this practice in the position paper.
- 3.1.2. As stated in the NAB submission, the duration of the licence term of television broadcasting licences and sound broadcasting licences play a distinguishing role. Consequently, sound broadcasting licences have duration of 10 years, while the duration period for television broadcasting licences is 15 years.³

¹ Page 4 of the NAB Submission on General Licence Fees 05 December 2008

² Page 5 of the NAB Submission on General Licence Fees 05 December 2008

³ Page 6 of the NAB submission on the general licence fees regulation 05 December 2008

- 3.1.3. Hence it would be unreasonable to levy the same amount of administrative fees on television and sound broadcasting licencees.
- 3.1.4. The NAB therefore reiterates its proposal that the Authority should make the distinction between television and sound broadcasting licencees, and levy administrative fees in accordance with the disparities.

4. SCHEDULE 2

4.1. ANNUAL LICENCE FEES

- 4.1.1. The NAB appreciates the fact that the percentage to be levied on gross profit has been reduced. Furthermore, the NAB welcomes the findings of the study conducted by the Authority, which revealed amongst others that during the four year period commencing 2004/05 to 2007/08, the Authority over-collected on revenue. The NAB further supports the finding that levying annual licence fees based on 1.5% of gross profit would still amount to an over-collection on the part of ICASA⁴.
- 4.1.2. In the second draft of the draft regulations, the Authority proposes to levy annual licence fees on 1.5% of gross profit; this is despite the conclusion that levying 1.5% of gross profit will amount to over-collecting. The NAB is of the view that the proposed percentage is still onerous on broadcasting licencees.
- 4.1.3. The Authority should bear in mind that broadcasting licencees are not only liable to pay annual licence fees, but also pay levies in respect of royalties to levy collecting societies⁵. In addition, based on the impending economic meltdown and the uncertain impact it will have on the broadcasting industry, the NAB requests the Authority to have regard to the prevailing circumstances, the NAB therefore proposes that the Authority should set the levy at 1% of gross profit.

⁴ Page 10 of the ICASA position paper on general licence fees 06 March 2009

⁵ Page 6 of the NAB submission on Draft General Licence Fees

5. CONCLUSION

- 5.1. The NAB welcomes the opportunity to make its written submission to the second draft of the Draft General Licence Fees Regulations.
- 5.2. The NAB commends the Authority for the improvements made in the second draft of the draft regulations. The NAB believes that the second draft of the draft regulations affords the opportunity to make further improvements in the final regulations.
- 5.3. The NAB hopes the Authority will bring clarity on the status of the position paper, and believe the proposals raised by the NAB will add value to the findings of ICASA in this regard.
- 5.4. The NAB trusts that its written submission will assist the Authority to reach a decision in finalising the draft regulations.
- 5.5. The NAB once again thanks the Authority for the opportunity of making its written submission, and the NAB is available to assist the Authority on any matter raised in its submission on the Draft General Licence Fees Regulations.