



**SUBMISSION BY NAB IN RESPONSE TO THE NOTICE
IN RESPECT OF THE DEFINITIONS OF UNIVERSAL SERVICE, UNIVERSAL ACCESS
AND UNDERSERVICED AREAS AND THE DETERMINATIONS IN RESPECT OF
NEEDY PERSONS¹**

7 NOVEMBER 2008

¹ Please note that where amendments are proposed to text supplied in the Notice by the Agency, insertions are indicated by underlining and deletions by brackets and bolding text.

1 INTRODUCTION

- 1.1 The National Association of Broadcasters ("**NAB**") thanks the Universal Service and Access Agency of South Africa ("**the Agency**") for the opportunity to make written submissions to the Agency on the Notice published in terms of section 82(3) and sections 88(2), (3) and (4) of the Electronic Communications Act 36 of 2005 ("**EC Act**") in respect of the definitions of universal service, universal access and underserved areas and the determinations of needy persons ("**the Notice**").²
- 1.2 The NAB wishes to place on record that it would like to be given the opportunity to make oral representations should the Agency deem it fit to hold oral hearings with regards to the Notice.
- 1.3 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:
- Three public television broadcasting services, and eighteen public sound broadcasting services, of the South African Broadcasting Corporation of South Africa ("the SABC");
 - All the commercial television and sound broadcasting licensees;
 - Both the licenced common carrier and the selective and preferential carrier broadcasting signal distributors;
 - Over thirty community sound broadcasting licensees, and one community television broadcasting licensee, Trinity Broadcasting Network (TBN)
- 1.4 The Notice poses a number of questions pertaining to the manner in which universal service and universal access should be defined as well as the manner in which underserved areas and needy persons should be determined.
- 1.5 As NAB's response is focused on serving the interests of it's membership, it has not addressed all of the Agency's questions in the Notice but has focused mainly on those questions which pertain to broadcasting services.

² Notice 987 of 2008 published in Government Gazette No 31333 dated 15 August 2008.

2 EVOLVING CONCEPTS - ADDING BROADCASTING TO THE MIX

- 2.1 It is the view of NAB that the inclusion of broadcasting in the concept of Universal Service and Universal Access should not be approached purely as a legislative requirement. It is the view of the NAB that the inclusion of broadcasting must have sound theoretical underpinnings as part of the continuing evolution of the concepts of Universal Access and Universal Service.
- 2.2 Historically, the term Universal Service existed before Universal Access. Universal Service for telephones described the concept of affordability of telephone services, as well as its universal availability for households wanting that service. Universal Access focussed on public, community or shared access to telecommunications.
- 2.3 Universal Service and Universal Access have grown into distinct concepts in the era of telecommunications and ICT market liberalisation. Universal Service refers to the service at the individual or household level, for example a telephone in every home, whereas Universal Access refers to the publicly shared level of service e.g. public payphones or Internet Cafes. Despite this distinction they still remain linked together as Universal Access can be seen as a precursor to Universal Service.
- 2.4 In the past Universal Service was reserved for basic voice communications, but then Universal Service and Access developed beyond telephony to include data and Internet communications. Increasingly in the past decade policies have begun to focus on broadband communication as well. Traditionally, broadcasting has not been part of a Universal Service and Universal Access regime, but as the underlying technologies and delivery mechanisms of telecommunications and broadcasting are converging in a digital world, attempts have begun to develop models to include broadcasting.
- 2.5 The struggle in developing Universal Service and Access models that include broadcasting is that broadcasting laws generally have fundamentally different requirements that go beyond affordable access and service. The focus in broadcasting is about pluralism, diversity in providers and content, providing local content and prohibiting harmful broadcast content.

- 2.6 Another difference is that broadcasting policies, regulations and licences often have coverage requirements and restrictions, but usually without specifics about actual access, whether by public means or for private subscribers. Universal Service and Universal Access regimes often specify this in detail to ensure that the service is fit for purpose. In other words, the service needs to be accessible and affordable as well as available.
- 2.7 The transition about to commence in South Africa from analogue to digital broadcasting transmission obviously has the ability to create new digital divide issues and as such the access issue in digital terrestrial broadcasting can be divided into issues relating to:
- (a) access to signal; and
 - (b) access to content
- 2.8 It is against this background that the NAB will be making its submission on the inclusion of broadcasting into the Universal Service and Universal Access regime in South Africa.

3 THE PROPOSED DEFINITION FOR UNIVERSAL SERVICE

3.1 Do you agree with the proposed definition? If not, what should it be replaced by?

3.1.1 The Agency has proposed the following definition for universal service –

"A reliable connection, from any part of the country, to a defined minimum set of electronic communications services and broadcasting services, at an affordable rate regardless of geographic location including no less than voice, data and broadcasting services."

3.1.2 NAB is of the view that the proposed definition as currently drafted is primarily focused on traditional telecommunications services, with broadcasting services being added in as an afterthought. The word "connection" is limiting when considered in the broadcasting sense and when the words "a reliable connection" are used the meaning that can be assigned in the context of broadcasting is unclear. This lack of clarity would make it difficult for the Agency to monitor compliance in the broadcasting sector with the proposed definition for universal service.

3.1.3 NAB proposes that the Agency definition be amended as follows–

"Access [A reliable connection, from any part of the country,] to a defined minimum set of electronic communications services and broadcasting services, free or at an affordable rate, regardless of geographic location [including no less than voice, data and broadcasting services]."

3.1.4 If the NAB amendments are adopted, the definition would read as follows:

Access to a defined minimum set of electronic communications services and broadcasting services, free or at an affordable rate, regardless of geographic location

3.2 **Do you agree with the targets? If not, what do you suggest they should be?**

3.2.1 In terms of the Notice, universal service definition targets based on a minimum set of services have been proposed according to the types of service. In respect of broadcasting, the proposed target is that *"every household and public access point with a television should be able to receive the service of a sound and television news station in at least English and one other relevant SA local language"*.

3.2.2 NAB believes that it is necessary to clarify the nature and type of broadcasting services which will constitute the minimum set of broadcasting services. The drafting of the target is confusing as it only mentions a home with television receiver, yet then refers to both sound and television services. It is important to distinguish between television and sound broadcasting services as generally speaking, sound broadcasting enjoys a higher household penetration than television in South Africa. This is most probably due to the lower purchase price of radio receivers compared to higher prices for television sets.

3.2.3 The introduction of digital terrestrial television (DTT) will also pose new challenges in that households with a television set will now also require additional customer premise equipment in the form of a set top box decoder in order to access digital free-to-air broadcasting services. This is particularly relevant to universal service as a study undertaken by the Digital Broadcasting Migration Working Group identified that 4.4 million television households may not be able to migrate to DTT based on the cost of the set top box decoder alone. This prompted a recommendation to the Minister of

Communications that government subsidies may be required during the switchover from analogue to digital broadcasting ("digital switchover") in South Africa.

3.2.4 NAB recommends that the Agency should have a separate inquiry specifically on DTT to determine exactly how the Universal Service Fund can assist in the digital switchover.

3.2.5 Accordingly the following amendments are proposed to the broadcasting target:

*"every household and public access point with a radio or a television set should be able to receive **[the service of]** a television or sound broadcasting service [and television news station] in at least English and one other relevant SA official language"*

3.3 **What constitutes universal service, with reference to the definition of universal service and section 82(3)(a) (ii) of the EC Act?**

3.3.1 It is not clear to NAB why the Agency is asking this question. Universal service is defined in section 1 of the EC Act as *"the universal provision of electronic communications services and broadcasting services as determined from time to time in terms of Chapter 14."* Section 82(3)(a)(ii) of the EC Act requires the Agency to determine what constitutes *"the universal provision for all persons in the Republic of electronic communications services and access to electronic communications networks, including any elements or attributes thereof."*

3.3.2 The definition of universal service is limited to the universal provision of electronic communication services (ECS) and broadcasting services, therefore universal service as defined and when read in conjunction with section 82(3)(a)(ii) of the EC Act excludes *"access to electronic communications networks, including any elements or attributes thereof."* It is the NAB's interpretation that the latter part of section 82(3)(a)(ii) is dealing with the Agency's obligations in respect of universal access and not universal service. .

3.4 **What would be considered a "minimum set" of services in relation to Broadcasting?**

The Agency is referred to NAB's comments in paragraphs 3.2.4 and 3.2.5 of this submission. It should be noted that in the context of digital broadcasting

one might want to consider to what extent the minimum “basket” of public broadcasting services should also include broadcasting data services such as basic teletext or information services which may form part of the broadcasting signal. It is envisaged that with the ongoing development in the digital broadcasting platform, there will be a growth of additional data offerings which relate to the direct broadcasting services.

3.5 Does universal service still mean the provision of only voice telephones? There are a wide range of other services now, such as digital lines, tone dialing, broadband, fax/modem capacity, operator services, directory enquiries, call line identification, emergency services, itemised billing, call forwarding, multi-party lines and voice mail. Does the scope of all the services need to be defined in this process?

3.5.1 Globally, the electronic communication sector is going through dramatic changes. In part because of the rapid development of the Internet, which has evolved into a serious alternative to traditional electronic communication forms. The traditional broadcasting and telecommunication industries have co-evolved with the Internet, but new technological developments based on digital technologies is making the distinction between the three sectors difficult to maintain. In fact, people now talk about convergence which is the process of fusion of content, service, infrastructure, and end-user equipment between these previously separate sectors. In South Africa, this convergence led to the promulgation of the EC Act which sought to place the licensing and regulation of these sectors into a single regulatory regime.

3.5.2 Convergence while exciting also raises a number of challenges, including the risk of creating imbalances in access for the public, to the information carried by these new systems. This is not a new issue, it happened when telephones were introduced and in the context of the Internet it led to the coining of the term “digital divide”.

3.5.3 Traditionally, broadcasting because of scarce frequency resources, has had its content regulated based on national/cultural considerations and resulting in public service obligations aimed at providing the majority with access to certain content. However, infrastructure convergence may now lift the limit imposed by frequency scarcity and result in an explosion of new service offerings to the public.

3.5.4 Infrastructure convergence and the variety of delivery networks to reach the consumer thus introduces something new to the regulation of broadcasting –

namely what are the rights of consumers in regard to basic services and access in a digital era characterised by a proliferation of broadcast content and services. The traditional regulatory framework concentrates on what is in the public interest, the focus is on the common good. In contrast universal service looks at how to create basic and non-discriminatory universal service conditions for individuals.

- 3.5.5 NAB is of the view that there is thus a need for any definition of universal service to be reviewed in the context of new technological developments. Universal service targets for broadcasting should be set at first securing acceptable penetration levels for basic broadcasting services before extending universal service targets to new broadcasting data services.

3.6 How can the concept of universal service be defined in a converged environment that would be ideal for the local context?

- 3.6.1 Convergence enables the offering of services over a number of different networks to a number of different devices. NAB believes it is possible then that convergence may offer ways to overcome the digital divide, at least to a limited extent, by providing Internet access via other devices, such as television and mobile handsets.

- 3.6.2 NAB is of the view that such access will increase the cost of the device and possibly entail a cost for the consumer for the service, but ways in which this can be done affordably with assistance from the Universal Service Fund should be explored as a means of increasing accessibility to the knowledge economy.

3.7 How should the concept of affordability be measured and addressed?

- 3.7.1 In the context of broadcasting services there is a broad range of public and commercial broadcasting services which are provided free-to-air as their funding model is based on advertising revenue. So affordability is not really a relevant issue in the context of broadcasting services.

- 3.7.2 However, international studies suggest that in digital broadcasting there is, in some cases, a trend towards transactional services to increase the revenue base of free-to-air broadcasters and make them less susceptible to fluctuations in advertising revenue. These new revenue streams are mostly based on broadcasting data services and in a digital broadcasting environment might raise questions around affordability and whether there

should be a minimum basket price in a manner that would be affordable for low income groups in South Africa.

- 3.7.3 NAB is of the view that it is premature to look at such a minimum 'basket' now, although when digital broadcasting is introduced in South Africa such a step might be required to ensure that new digital divides are not created in the provision of broadcasting services to the public.

3.8 What is the significance, if any, of no mention of ECNS in the definition of universal service in the EC Act?

- 3.8.1 It is the view of NAB that the goals of Universal Access, which includes electronic communication network services (ECNS), should always be pursued at first in a specific area, as Universal Access introduces the infrastructure which is a prerequisite for the provision of ECS and broadcasting services. As the definition of universal service in the EC Act does not include ECNS, this means that universal service obligations and targets can only be set in respect of ECS or broadcasting services.

- 3.8.2 This does mean that the Agency will have to ensure that in defining and setting universal service targets, they are achievable when viewed against universal access definitions and targets, i.e. no infrastructure, no service.

3.9 What is the significance, if any, of no mention of BS in section 82(3)(a)(ii) of the EC Act?

- 3.9.1 Any Act of Parliament is subordinate to the Constitution and in section 192 of the Constitution it provides that "*National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society*". This national legislation is the Independent Communications Authority of South Africa Act, Act 13 of 2000 (as amended), and it provides that the Authority makes recommendations to the Minister on matters pertaining to broadcasting. If section 82(3)(a)(ii) sought to give a similar power to the Agency it might have resulted in a conflict with section 192 of the Constitution. However, as it stands now there is no conflict as no mention is made of broadcasting services in section 82(3)(a)(ii) of the EC Act.

- 3.9.2 It is the view of NAB that the Agency is not empowered to make recommendations to the Minister in regard to what constitutes the universal

provision of broadcasting services and if the Agency were to do so, it would be exceeding the powers provided under section 82(3)(a)(ii) of the EC Act.

3.10 How should the Authority from time to time determine the minimum set in order to give effect to the definition through regulation?

NAB has indicated in paragraph 3.5.5 of this submission, that the minimum set of universal service targets should be continuously reviewed in the context of new services offerings and in the context of the achieving universal service targets.

3.11 What are innovative methods and mechanisms to deliver affordable universal service that can be considered by the Agency?

3.11.1 In the context of broadcasting services, NAB recommends that the Agency consider ways in which the Universal Service Fund can assist community television and sound broadcasters, in order to promote access to local content and languages, as well as promoting social cohesion in communities.

3.11.2 Initiatives to assist community broadcasters could be done in conjunction with the Media Development and Diversity Agency, and would be in line with the concept of joined-up thinking in government.

4 THE PROPOSED DEFINITION FOR UNIVERSAL ACCESS

4.1 Do you agree with the proposed definition? If not, what should it be replaced by?

4.1.1 The Agency proposed a definition for universal access in the Notice that reads as follows –

"Universal access means that every person, within their area, has reasonable (in terms of distance) and affordable access to publicly available electronic communications network services, electronic communications services, and broadcasting services on a non-discriminatory basis."

4.1.2 NAB disagrees with the proposed definition for universal access on the basis that it is too broad for broadcasting services, therefore the following amendments are proposed:

*"Universal access means that every person, within their geographical area, has reasonable (in terms of distance) and affordable access to publicly available electronic communications network services[,]and electronic communications services, **[and]** as well as public/community broadcasting services, on a non-discriminatory basis"*

- 4.1.3 If the NAB amendments are adopted the definition would read as follows:

Universal access means that every person, within their geographical area, has reasonable (in terms of distance) and affordable access to publicly available electronic communications network services and electronic communications services, as well as public/community broadcasting services, on a non-discriminatory basis

- 4.2 **Do you agree with the targets? If not, what do you suggest they should be?**

- 4.2.1 The proposed universal access targets for broadcasting, is that each district municipality has a community radio in their preferred language; a public sound broadcasting service in the preferred language and a public broadcasting television channel of their preference.

- 4.2.2 NAB is of the view that it is not appropriate to include "*preferred language*" or "*channel of their preference*". Language is a matter specified by ICASA when licensing a broadcasting service for a specific geographical area and channels are limited to the coverage area specified in the licence, inserting the concept of preference into the definition may make achieving the target difficult in some areas where communities may be divided on what the preferred language should be and a preferred channel might not hold a radio frequency spectrum licence.

- 4.2.3 NAB proposes that the target should simply specify that each district municipality should have access to a community sound broadcasting service and a public television and sound broadcasting service.

- 4.3 **Are "areas" synonymous with "communities" as that term is used in section 82(3)(a)(i) or is there some other meaning to be attached to communities?**

- 4.3.1 NAB does not believe that "*areas*" are synonymous with "*communities*" as that term is used in section 82(3)(a)(i) of the ECA, if they were synonymous the legislator would not have felt compelled to use both.

- 4.3.2 NAB proposes that the word "area" can be interpreted as meaning a district, municipality or region. Whilst, "communities" can be seen as being the plural of the word "community" which is already defined in section 1 of the EC Act as meaning:

"includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest;"

- 4.4 **How should access to broadcasting services be defined in relation to the concept of universal access?**

NAB has indicated in paragraph 4.1.2 and 4.1.3 of this submission how access to broadcasting services should be defined.

- 4.5 **Should access to broadcasting services include access in a language of choice?**

NAB has indicated in paragraph 4.2.1 and 4.2.2 of this submission that language is matter contained in the broadcasting service licence issued by ICASA and should not form part of the universal access target based on measurement of an open-ended criteria such as "choice" or "preference".

- 4.6 **Does the proposed definition provide adequate measures to be able to monitor and evaluate universal access?**

NAB cannot comment on this question as the Notice did not provide details on the methodology the Agency would use to monitor and evaluate adherence to the definition of universal access.

5 THE PROPOSED DEFINITION OF UNDERSERVICED AREAS

- 5.1 Before going into the definition in detail, it is important to note that similar to sections 82(3)(a)(i) and 82(3)(a) (ii) of the EC Act, section 90 thereof which deals with "Competitive tender for universal service and access projects" makes no relevance at all to broadcasting services and refers only to electronic network communication services.

- 5.2 For purposes of availability and accessibility of broadcasting services, an under-serviced area would primarily be defined by the extent of clear signal coverage and secondarily by access to and reception of at least one free-to-air broadcasting service. To the extent that the majority of a defined community is

unable to receive at least one free-to-air broadcasting service because of non-availability of at least one free-to-air broadcasting service signal in that geographic area (or because of issues of affordability in relation to access to reception of at least one free-to-air broadcasting service), such an area would then qualify to be classified as an underserved area licence.

5.3 In the definition of such an area, cognizance would then need to be taken of:

- Absolute levels together with relative measures such as populations density (Teledensity was in fact a measure that was used under the telecommunications Act whenever the minister declared areas as under-served areas); and
- Economic levels, particularly poverty levels.

6 THE PROPOSED DEFINITION OF NEEDY PERSONS

THE AGENCY HAS PROPOSED THE FOLLOWING DEFINITION FOR NEEDY PEOPLE:

“Needy persons” is defined as persons, who qualify through the application of an agreed means test, who cannot afford to obtain Electronic Communications Services or Broadcasting Services at commercial rates- for reasons of income, other factors in relation to income, including geography, age, disability or other similar factors.

7 Do you agree with the proposed definition? If not what should it be replaced by?

7.1 The NAB proposes the following changes to the proposed definition:

“Needy persons” is defined as persons, who qualify through the application of an agreed means test, who cannot afford to obtain Electronic Communications Services Broadcasting Services [at commercial rates]- for reasons of income, other factors in relation to income, including geography, age, disability [or other similar factors]

7.2 Radio is prevalent in penetration and has the abilities to reach the most rural areas. Regional radio stations together with community radio stations are primarily designed to meet the needs of marginalised communities, in terms of language and reach to the areas in which they are licenced to broadcast.

7.3 As opposed to the telecommunications services, broadcasting services, whether radio or television are provided free-to-air to, without any cost, with the exception of subscription broadcasting. It is therefore unnecessary to

include “at commercial cost” to the proposed definition, as this does not apply to broadcasting services.

- 7.4 It must be borne in mind that the concept of needy people in relation to broadcasting services, is not only limited to financial lack or absolute indigence. The unavailability of network coverage also plays a role in contributing to the needs of the people, as a result, the impending migration of broadcasting services from analogue to digital broadcasting poses yet another need, which the NAB believes the Agency is well suited to address.
- 7.5 Currently, approximately 9% of the South African population cannot receive analogue broadcasting services, while approximately 14% of the nation does not have access to sound broadcasting services. This may be attributed to by a number of factors, which include among others, poor signal to areas situated in the periphery of television or radio coverage.
- 7.6 Further more, in order to receive digital broadcasting, viewers need to purchase set-top-boxes, which will assist with the reception of the digital signals. Recommendations were made by the Broadcasting Digital Migration Working Group (BDMWG), to the Minister that subsidies will be required in order to avail the set-top-box to the poorest of the poor. This recommendation has been adopted into the Broadcasting Digital Migration Policy (BDMP), as the Minister has stated that there shall be 70% state subsidy to the poor. In addressing issues of needy people, it is therefore recommended that people disadvantaged by lack of coverage should also be considered.

8 Do you agree with needy persons being defined through the application of an agreed “means test”? If not, what do you suggest should be used to define needy people?

- 8.1 The term “means test” refers to an investigative process undertaken to determine whether or not an individual or family is eligible to receive certain types of benefits from the government. The test can consist of quantifying the party's income, or assets, or a combination of both which generally must be below a certain value in order to qualify.³
- 8.2 While the NAB is supportive of the application of an agreed means test, as it will provide a coordinated framework, which will guide the Agency in determining the needs based on set criteria, the NAB wishes to point out to the Agency that the means test will only assist in addressing the needs of those

³ http://en.wikipedia.org/wiki/Means_test accessed 23 October 2008

people who are financially indigent, while marginalizing the needs of the geographically disadvantaged and the needs of people with disabilities. The NAB therefore recommends that in addition to the means test, the Agency should devise a test that will focus on meeting the needs of the geographically disadvantaged and people with disabilities.

- 8.3 It should be borne in mind that apart from it being costly for broadcasting licencees to reach the marginalised persons be-it due to income, geographic limitations or disability, the historical roll-out of transmitters was focused only on the metropolitans, hence excluding the rural areas. In order therefore to bridge this divide, it is important for the Agency to start addressing issues of the past relating to the roll-out of transmission infrastructure.

9 What criteria can the agency consider in determining the “means test” LSM, income or household expenditure, social grant recipients?

- 9.1 In determining the means test, the Agency should not only be guided by LSM, income, or household expenditure, as adopting this route alone will produce undesired results. As indicated earlier, needs are not only attributed to by financial lack.
- 9.2 The Agency should draw on established government initiatives charged with administering social grants, such as the Department of Social Development (DSD). The DSD is responsible for administering social grants for old age pensioners, disability grant recipients, and war veteran pensions.
- 9.3 The Department of Local and Provincial Government (DPLG), also has an established framework for basic service provision for indigent people. This framework provides for an identified criteria and national indigent register, which serves as a means of disseminating assistance to qualifying individuals. The DPLG also have mechanisms for providing infrastructure grants, from which the Agency can benchmark for administering broadcasting infrastructure grants.

10 How should USAASA determine whether certain criteria have been met, e.g. Use of an income test, household expenditure, LSM, social grant recipients?

Refer to response above.

11 Who should be able to apply (needy individuals and/or other persons on behalf of needy persons such as licensees or representative entities/or needy communities) for subsidies?

- 11.1 All persons that have been identified as needy people should qualify for subsidies.

12 Should USAASA consider handset subsidies for persons with disability now or be considered on the next review of the definitions for needy persons?

- 12.1 In the case of broadcasting services, unlike in the telecommunications sector, the provision of the end-user equipment such as television sets and radio sets is not the duty of the broadcasting licensee. However, for purposes of universal service and access in respect of digital migration, USAASA should channel the subsidies for set-top-boxes and remote-controls for people with disabilities. This subsidy should be considered in this process, as it will be vital for the digital migration.

13 In what manner should the subsidies be paid?

- 13.1 In addressing the needs of people with disabilities, there is a need to avail ongoing programming that is suitable for people with disabilities, for instance programming with sign language and subtitling. This could necessitate ongoing subsidies to meet this need.
- 13.2 Similarly, in order to meet network deficiencies, broadcasting licensees need to get subsidies in order to roll-out infrastructure in the marginalized areas. The subsidies should also be channelled to subsidizing the digital set-top-boxes, and this will be a once off subsidy to the needy people.

14 CONCLUSION

The NAB would like to thank the Agency for the opportunity to respond to the discussion document in respect of the definitions for universal service, universal access, and underserved areas, and the determination of needy persons. The NAB hopes its inputs will assist the Agency to achieve its goals.