



**NAB WRITTEN QUERIES TO ICASA ON THE ITA FOR A RADIO
FREQUENCY SPECTRUM LICENCE TO PROVIDE MOBILE
BROADBAND WIRELESS ACCESS SERVICES FOR URBAN AND
RURAL AREAS USING THE COMPLEMENTARY BANDS 700MHZ,
800MHZ AND 2.6GHZ**

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1. Introduction

1.1. The National Association of Broadcasters (the NAB) is the 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 current NAB members are:

- 1.1.1. the three television services and 18 radio services of the SABC;
- 1.1.2. licensed commercial radio broadcasters (including: Primedia, Kagiso Media, Tsiya Group, AME, MSG Afrika, TMG, Classic FM, Kaya FM, YFM, Smile FM and Vuma FM);
- 1.1.3. licensed commercial television broadcasters (e.tv, Multichoice, M-Net, StarSat);
- 1.1.4. a host of community radio broadcasters and community television broadcaster, Faith Terrestrial;
- 1.1.5. both the licensed broadcast signal distributor and the selective and preferential broadcast signal distributors, Sentech and Orbicom;
- 1.1.6. associate members, including training institutions.

2. Procedural concerns

2.1. The NAB supports national policy objectives on affordable broadband deployment however the NAB is concerned with the Authority's process of awarding the high demand spectrum. The NAB is of the view that the Authority ought to consider engaging stakeholders in a formal forum, to present a transparent and feasible timeline toward the licensing of high demand spectrum. The Authority is further reminded that it is through the successful migration of broadcasting services from analogue to digital broadcasting that this much sought after spectrum can be realised. The NAB is as a result concerned that the Authority's focus appears to be shifting from digital migration to the licencing IMT.

2.2. On 15 July 2016, the Independent Communications Authority of South Africa (ICASA), published an invitation to apply for a radio frequency spectrum licence to provide mobile broadband wireless access services for urban and rural areas using the complementary bands 700MHz, 800MHz and 2.6GHz (the ITA). The ITA was published in government gazette number 40145. Ahead of the closing date of the ITA, interested persons are

invited to submit enquires by no later than 16H00 Thursday 4 August 2016, 14 calendar days from the publication in the government gazette.

- 2.3. The NAB appreciates the opportunity to submit its enquires to this process, and appreciates that it is probably the first time the Authority invites enquiries prior to officially accepting application on an ITA, we are however concerned about the short period (14 calendar days) afforded interested parties to submit their enquiries. The Authority should be aware that this process is of national importance and needs to be approached rigorously, with reasonable time being afforded interested parties to respond.
- 2.4. The NAB further notes that even though the Authority invites enquiries, it does not stipulate whether or not it will respond to the queries. We are of the view that depending on the nature of queries received, the Authority may need to incorporate the queries/inputs into the ITA and possibly re-issue a revised ITA. The NAB notes with concern that the Authority has published the ITA without considering the NAB and its individual members concerns as repeatedly raised regarding issues affecting both the 700MHz and 800MHz bands. To this end, the NAB requests that this submission be read in conjunction with its written submission to the Authority dated 16 October 2015, on the Authority's *Information to Prospective Applicants Intending to Apply for the Radio Frequency Spectrum Licenses within the Designated Frequency range 2.6MHz, 800MHz and 700MHz, for Purposes of Providing National Broadband Wireless Access Services* ("the Information Memorandum"). Although interested parties were invited to submit written comments to the Information Memorandum, it is concerning that the Authority has not responded to the submissions received, instead advised parties wishing to access these written inputs to access them at the Authority's library, on payment of a fee¹.
- 2.5. The request for a fee in the Information Memorandum does not accord with the Authority's normal practices for public consultation processes and in our view, limits citizens' constitutional right to access to information provided for by section 32 of the Constitution as well as the Promotion of Access to Information Act 2 Of 2000 (PAIA). The NAB therefore urges the Authority to:

¹ At page 3 of 154 of the Information Memorandum.

- 2.5.1. publish its findings on the Information Memorandum, demonstrating to what extent inputs received have been incorporated into the ITA;
- 2.5.2. provide new timelines incorporating a period when the Authority will provide its findings on the queries received on the ITA.

3. Historic context to NAB concerns

3.1. IMT Roadmap

The NAB participated in the International Mobile Telecommunications Roadmap (IMT Roadmap) Inquiry that the Authority initiated on 27 August 2014. On 14 November 2014, within a period less than three months from receipt of written comments on the IMT Roadmap, the Authority published the final (draft) IMT Roadmap- none of the NAB inputs were incorporated into the final (draft) IMT Roadmap.

3.2. The Radio Frequency Spectrum Assignment Plan (RFSAP)

On 14 November 2014, the Authority simultaneously published the RFSAP for public comment. The invitation to comment stipulated that due to the public interest nature of this project, the Authority will publish the RFSAP for fourteen (14) days only for comments. The NAB raised its concerns on the short response period afforded the process, however, the Authority proceeded with the process. The final RFSAP was subsequently published in March 2015. On 9 February 2015, the NAB met with the Authority to address its concerns regarding the RFSAP. Following this meeting, and after the publication of the final RFSAP, the NAB wrote a letter to the Authority highlighting its concerns, as none of the concerns were incorporated into the final RFSAP². The Authority published an Erratum to the RFSAP and further promised to publish a “Reasons Document”, which has not been published to date.

3.3. The ITA

²NAB letter to the chairperson of ICASA dated 22 April 2015

3.3.1. Regrettably, the issues the NAB raised in both the IMT Roadmap and the RFSAP have not been addressed, and therefore persist in the ITA. Without being repetitious, the NAB would like to highlight key issues which have consistently been the subject of the NAB's submissions:

3.3.1.1. **Earmarked frequency bands:** The Authority is proposing to auction frequency bands 700MHz and 800MHz. Both these frequency bands are currently occupied by broadcasters and the Authority should be aware that these frequency bands will not be immediately available even after ASO, as digital to digital migration or spectrum restacking still needs to take place before the bands can be cleared. It is only after these processes have taken place that the frequencies can be used by other services.

3.3.1.2. **Funding the broadcasting digital migration:** The NAB proposes that the Authority engages government and National Treasury to ensure that the proceeds of the auction are ring-fenced for industry specific initiatives. More specifically, the NAB proposes that a portion of the proceeds be earmarked to ensure effective broadcasting digital migration.

3.3.1.3. The Information Memorandum among others made proposals that successful licensees should support the migration by funding set-top-boxes. While the NAB supports all forms of assistance towards digital migration, the NAB made specific recommendations on the support by successful licensees. It is concerning that these proposals are not incorporated in the ITA. The NAB hereby re-states the proposed conditions for STB support:

- 3.3.1.3.1. The need to have "free" STBs co-ordinated with government's own efforts to provide subsidised STBs;
- 3.3.1.3.2. Consideration be given as to whether these STBs will be DTT or DTH or both
- 3.3.1.3.3. Consideration for who would be responsible for the procurement, warehousing, distribution, warranties etc. on these STBs;

3.3.1.3.4. Consideration for who would determine the consumers who qualify for these STBs, and what the criteria would be.

3.3.1.4. The NAB therefore urges the Authority to consider incorporating the STB support as a licence condition of successful licensees.

3.3.1.5. **Time lines for commencement of new operations:** In terms of the timeframe for the award process stipulated in the ITA, the Authority will issue the licences on 28 March 2017³. It is not clear whether or not the successful licensees will be expected to use the spectrum immediately. It is common practice for the Authority to “grant but not issue” licences, particularly in instances where spectrum is unavailable. As already stated, both the 700MHz and 800MHz bands are not ready for immediate occupation, and given that the Minister has not yet gazetted the ASO and the digital to digital migration has not yet started, it is unlikely that broadcasters would have vacated the bands by 28 March 2017. The NAB therefore proposes that the commencement date for the new operations should be post a successful digital migration by broadcasters, in other words, the Authority may grant the licences on 28 March 2017, but issue the licences post the migration.

4. Conclusion

4.1. The NAB welcomes the opportunity to submit its queries to the ITA. In summary, the NAB proposes that prior to proceeding with the ITA, the Authority must:

- 4.1.1. Publish the RSFAP Reason Document;
- 4.1.2. Develop a systematic migration plan for clearing the 700MHz and 800MHz bands;
- 4.1.3. Publish its Findings Document to the Information Memorandum;
- 4.1.4. Publish the ITA Findings Document and republish a revised ITA, incorporating inputs received;

³ At page 18 of 58 of the ITA.

- 4.1.5. Engage with government and National Treasury for purposes of ring-fencing auction proceeds for effective digital migration;
- 4.1.6. Incorporate the STB support, in line with the proposed NAB criteria as a licence condition for successful licensees;
- 4.1.7. Issue licenses to successful licensees post the digital migration (including the digital to digital migration).

4.2. The NAB supports national policy objectives on affordable broadband as well as universal service and universal access of broadcasting.

4.3. We trust our inputs are of assistance to the Authority, and we look forward to a robust public consultation process.