



Independent Communications Authority of South Africa
350 Witch-Hazel Avenue
Eco Point Office Park,
Eco Park, Centurion.

By email: vmolete@icasa.org; pcokie@icasa.org.za

Attention: Ms Violet Molete

15 March 2019

Dear Ms Violet Molete,

**INVITATION TO PROVIDE WRITTEN COMMENTS ON THE DRAFT SPORTS
BROADCASTING SERVICES AMENDMENT REGULATIONS, 2018**

- 1 On 14 December 2018, the Independent Communications Authority of South Africa (ICASA) published a notice inviting comments on the Draft Sports Broadcasting Services Amendment Regulations, 2018 (Draft Regulations). Interested persons were initially given until 4 February 2019 to submit written inputs, the deadline was subsequently extended to 15 March 2019.
- 2 The National Association of Broadcasters (NAB) is a leading representative of South Africa's broadcasting industry representing the interests of all three tiers of broadcasters. Our members include the public broadcaster SABC, commercial radio media groups Primedia, Kagiso Media, Tsiya Group, AME, MSG Afrika, as well as independents, Classic FM, Kaya FM, YFM, Smile FM; all the licensed commercial television broadcasters e.tv, Multichoice, M-

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The NAB is a voluntary industry association funded by its members

Net, and StarSat-ODM; a host of community radio broadcasters and community television broadcaster, Faith Terrestrial. The NAB membership also extends to the training institute NEMISA and the broadcast signal distributors, Sentech and Orbicom.

- 3 Regulation 7(1)(a) of the current Sports Broadcasting Services Regulations¹ provides that the criteria used in the listing of national sporting events and the list of national sporting events will be reviewed after every four years. While the NAB has no objection to a review of regulations from time to time, it is concerning to the NAB that the Draft Regulations have been published without a Discussion Paper to unpack the key issues including the rationale underlying the proposed tiered approach and how the proposed regulations will achieve the advancement of equality and human dignity through access to sport of national interest as the stated objective of the Draft Regulations.
- 4 The NAB is further concerned that the Draft Regulations have been proposed in the absence of any Regulatory Impact Assessment (RIA). As the NAB has noted on previous occasions, evidence-based regulation requires impact assessments so that the effectiveness of prior interventions can be gauged. In this case, a RIA would have allowed ICASA to better understand the practice of sports broadcasting and sports rights, since the implementation of the regulations. A RIA would also give guidance on the implementation of new regulations seeking to amend the current regulatory framework. It is essential that this process be conducted with due consideration of the current and future broadcasting landscape.

¹ Published on 7 April 2010

The Draft Regulations are a significant departure from the current approach

- 5 The NAB notes that the Draft Regulations seek to amend the current Sports Broadcasting Regulations by introducing *inter alia* a new listing of sporting events categorised into three groups:
 - 5.1 Group A which lists the compulsory national sporting events for Free-to-air licensees with full coverage;
 - 5.2 Group B which lists the national sporting events to be offered to a subscription broadcasting licensee on a non-exclusive basis under sub-licensing conditions; and
 - 5.3 Group C which lists the minority and developmental sporting events to be broadcast by subscription and Free-to-air broadcasters.
- 6 The NAB further notes that whereas the current regulations only provide one list of national sporting events, the Draft Regulations propose a new categorisation of sporting events and codes and new obligations in respect thereof on Free-To-Air (FTA) and subscription broadcasting service licensees respectively.
- 7 It is not clear whether FTA broadcasters are required to acquire the rights to broadcast *all* of the Group A sporting events, or whether they may select from the list. Furthermore, the Draft Regulations prescribe that the sporting events listed in Group B must be offered to a subscription broadcasting licensee on a non-exclusive basis under sub-licensing conditions (although it is not clear who must sub-license to whom). The NAB is concerned that poorly drafted regulations have the potential to negatively affect the sector.
- 8 The draft regulations are likely to impact broadcasters both financially and operationally. There is no clear indication in the explanatory memorandum

on whether ICASA considered the acquisition costs of sports rights and the feasibility of these in ensuring the commercial viability of broadcasters.

- 9 Of further concern is whether ICASA considered the impact of these Draft Regulations on Community FTA broadcasters, as well as aspirant FTA services that ICASA may license in the future. The unintended consequences of these regulations could arguably result in a barrier to entry in the FTA broadcasting market.
- 10 In addition to promoting competition and stability within the ICT sector, ICASA is mandated to protect the viability and integrity of the public broadcaster which plays a critical role in the broadcasting industry. ICASA must therefore ensure that in all its processes, it enables the development and growth of a sustainable three tier broadcasting system across both television and radio.
- 11 The NAB respectfully recommends that in this instance, given the range of concerns and uncertainty, that ICASA ought to first assess the financial and operational implications of the proposed framework on the entire broadcasting sector. This will also provide ICASA with the opportunity to assess the impact on sports bodies and sporting codes who rely on the sale of their broadcast rights to broadcasters in order to continue investing in sports development. The NAB supports the objective of making a variety of sports widely available across different broadcasting services, however, this necessitates a careful balancing of the interests of broadcasters, sports bodies and audiences.



Broadcasters already face challenges from Over-the-top services

- 12 Advancements in technology have introduced new competing entities in respect of sports rights. Over-the-top (OTT) services and in particular subscription video-on-demand services are beginning to acquire sports rights in direct competition with traditional broadcasters. However, unlike traditional broadcasters, these platforms do not have the same regulatory compliance costs and do not bear similar operational and transmission expenses. The NAB urges ICASA to bear in mind the challenges which all broadcasters face from OTT services.

Conclusion

- 13 In conclusion, the NAB thanks ICASA for the opportunity to contribute to this process, and we look forward to further engagements.

Yours faithfully.

A handwritten signature in dark ink, appearing to read "Nadia Bulbulia", is written over a horizontal line.

Nadia Bulbulia

Executive Director

