



**The National Association of Broadcaster's
Written submission to ICASA
On the Draft General Licence fees**

5 December 2012

1. INTRODUCTION

- 1.1. On 24 October 2012, the Independent Communications Authority of South Africa ("**ICASA**") published in Government Gazette number 35819, a notice of its intention to amend the ICASA General Licence fees Regulations, 2009¹ ("**the 2009 Regulations**") . The draft regulations are open for public comment, and the closing date is 5 December 2012.
- 1.2. The National Association of Broadcasters ("**the NAB**") would like to be given the opportunity to participate in oral hearings.
- 1.3. The NAB is the leading representative of South Africa's broadcasting industry. It aims to further the interests of the broadcasting industry in South Africa by contributing to its development. The NAB members include:
 - 1.3.1. Three television public broadcasting services, and eighteen sound public broadcasting services, of the South African Broadcasting Corporation of South Africa ("the SABC");
 - 1.3.2. All the commercial television and sound broadcasting licensees;
 - 1.3.3. Both the major licensed signal distributors (electronic communications network service operators), namely Sentech and Orbicom;
 - 1.3.4. Over thirty community sound broadcasting licensees, and one community television broadcasting licensee, namely, Trinity Broadcasting Network ("TBN").

2. RATIONALE FOR THE AMENDMENT

- 2.1. According to the Explanatory Memorandum, the rationale for amending the 2009 Regulations is to levy annual licence fees based on an *annual turnover* derived from *licenced activities as well as introducing increases in the administrative fees to take into account inflationary pressures*.

¹ General Licence Fees Relations, published on 1 April 2009, in Government Gazette 32084.

- 2.2. The NAB welcomes the increase the authority is introducing in relation to the administrative fees, as this is in keeping with the inflationary increases. Apart from the changes to the administrative fees, from the NAB's point of view, the 2009 Regulations do not necessarily require any further amending, as they are reasonable in their current form.
- 2.3. The proposed amendments to the annual licence fees are problematic, as they introduce new terminology, that was not used in the 2009 Regulations:

2.3.1. Annual Turnover

- 2.3.1.1. In the draft Regulations, the Authority departs from calculating annual licence fees based on Gross profit, and opts for annual turnover. While the NAB does not object to this principle, the NAB is of the view that the definition ascribed to turnover is unreasonable, as it overlooks the necessary deductions that are standard practice in the broadcasting industry. Consequently, if the Authority decides to rather base the annual fees on "turnover" then the NAB proposes that the Authority should amend the definition of turnover to the following:

"total revenue generated from Licensed Services per annum less service provider discounts, agency fees, interconnection and facilities leasing charges, government grants and subsidies".

- 2.3.1.2. This definition in our view is generally accepted, and is in line with the definition ICASA ascribed to turn-over in its Regulations for Private Television Broadcasting Service Licence Fees². The South African Music Rights Organisation (SAMRO) also recognises the need to allow for these deductions, for purposes of calculating

² Private Television Broadcasting Service Licence Fees Regulations published on 5 September 1997 in government gazette number 18271.

music royalties. These deductions are broadcasting related and standard practice in the industry.

2.3.2. *Percentage of annual turnover*

2.3.2.1. In the draft Regulations, the Authority departs from calculating annual licence fees on 1.5% of gross profit to 0.75% of annual turnover. As the ECA does not prescribe the percentage the Authority should base annual licence fees on³ but only gives the authority the power to prescribe regulations setting out applicable licence fees, the NAB believes that the Authority has the discretion to set a reasonable and justifiable percentage.

2.3.2.2. The Authority has had to utilise its discretion to set a percentage, when promulgating the USAF Regulations, and pegged the USAF contributions to 0.2% of annual turnover. We therefore believe that the Authority should employ its discretion in this very matter.

2.3.2.3. The NAB submits that in comparison with 1.5%, the proposed percentage of 0.75% might appear reasonable, however when 0.75% is applied to the current definition of turnover (without any deductions being made to the turn-over), the outcome could result in greater payments than those based on the formula outlined in the 2009 Regulations. The NAB therefore proposes that the Authority should keep the percentage as low as possible. Consequently the NAB proposes the percentage be reduced to 0.2%, in line with the 2011 USAF Regulations.

2.3.3. *Definition of "Licenced Services", and the term "Licenced Activities"*

³ Section 5(7)(a)(iii) of the ECA

2.3.3.1. According to the 2009 Regulations, licence fee calculations are based on licenced services, and these are defined as *"ECS, ECNS and BS provided pursuant to a licence issued to a licensee in terms of Chapter 3 and 9 of the Act"*. Virtually the same definition is used in the 2011 USAF Regulations. The NAB submits that the Authority ought to be consistent in the way in which it defines a term which is used in various regulations, and accordingly proposes that in the draft Regulations, the definition of "Licenced Services" remain as it is in the 2009 Regulations, namely as quoted earlier in this paragraph.

2.3.3.2. The NAB also proposes that the term "Licensed Services" be used in the definition of "Turnover" – again to ensure consistency and to ensure that important terms in the Regulations are defined.

3. CONCLUSION

3.1. The NAB welcomes the opportunity to make its written submission. In our view, the 2009 Regulations do not require amending, as they are reasonable, and easily implementable.

3.2. The NAB strongly proposes that the authority should try and retain consistency in its regulations, by applying similar calculation principles and terminology. The NAB therefore proposes as follows:

The current definition of "Licenced Services" in the 2009 Regulations be retained;

3.2.1. The definition of turnover must take into account the necessary deductions, such as agency fees and discounts;

3.2.2. The percentage of annual turnover on which licence fees should be levied should be 0.2%, in line with the USAF Regulations.