



*NAB written submission*  
*on the draft Radio Frequency Spectrum Licence*  
*Fees Regulations*

## **1. Introduction**

1.1. On 16 March 2009, the Independent Communications Authority of South Africa (ICASA) published for public comment, in notice number 304 of 2009, government gazette 32029 (the first Notice), a notice inviting comments regarding draft radio frequency spectrum fee regulations. Simultaneously, ICASA published in notice 305 of 2009, government gazette 32029, (the second Notice), draft Radio Frequency Spectrum Licence Fees Regulations. The two notices were open for public comment on or before 30 April 2009.

1.2. Subsequently, ICASA published a General Notice on 29 April, informing stakeholders about the extension of the due date for the submission of written comments from 30 April 2009 to 29 May 2009. The NAB welcomes ICASA's first and second notices. The NAB would like to be given the opportunity to make oral representations, in the event that ICASA may decide to hold public hearings.

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 television public broadcasting services, and eighteen sound public broadcasting services, of the South African Broadcasting Corporation of South Africa (the SABC);
  - All the commercial television and fifteen 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)

## **2. Preliminary comments**

2.1. Although broadcast spectrum is exempt from the application of the draft regulations, certain aspects of the contribution value chain such as satellite links, micro wave links and studio-to-transmitter links are not exempt in terms of these regulations and those elements of broadcasting are therefore subject to these regulations, whether or not it was ICASA's intention. Clarity is therefore sought as to what the intention of the Authority is in this regard.

2.2. Furthermore, most of the NAB members were issued licenses by ICASA to operate this equipment but to date these licenses have not been converted as required by the EC Act.

### **2.3. Fixed licence fees versa formulae**

2.3.1. The NAB is of the view that by departing from the former regime of levying radio frequency spectrum fees on a fixed rate and introducing a formula system, the Authority is introducing a complicated system. The NAB is of the view that the status quo be retained as it was a workable and less problematic system. The fixed rate approach was easy to implement, and did not present any administrative hurdles.

2.3.2. The NAB's concerns stem from the possible administrative difficulty the Authority might encounter when calculating and invoicing licensees for their spectrum fees. Furthermore, the proposed formula introduces further challenges for the Authority in monitoring and enforcing these fees.

### **2.4. Self-providing signal distribution**

2.4.1. Section 63(3) of the EC Act envisages that a broadcasting service licensee who self-provides their own broadcasting signal distribution must first obtain a radio frequency spectrum licence. Over and above the traditional broadcasting radio frequency spectrum, there are links, relevant for broadcasting, which broadcasting service licensees utilize. However, these links are used purely as part of a value chain in broadcasting.

2.4.2. The NAB proposes that in prescribing radio spectrum fees, the Authority must have regard for the different business models of broadcasting service licensees who carry out ECNS for purposes of providing broadcasting services, versus that of an ECNS licensee. In the case of broadcasting service licensees, this equipment is solely for the purpose of contribution feeds to be included in the final broadcast, and not sold on as a service to a third party, and we are of the view that the Authority should capture this distinction in the spirit of the draft regulations.

- 2.4.3. The sole purpose for the existence of a ECNS licensee is to derive profit out of the business of providing ECNS and or broadcasting signal distribution, while for a broadcasting licensee holding an ECNS licence, this forms part of the value chain of providing a broadcasting service, and no revenue is derived there from. As a result, the NAB proposes that the Authority must give preferential consideration when prescribing radio spectrum licensee fees for broadcasting licensees who hold ECNS licences.
- 2.4.4. Furthermore, the NAB reiterates its submission made to the Authority on 19 September 2007, in response to the Authority's draft regulations on the general terms and conditions of licences<sup>1</sup>, wherein the NAB proposed that the term of radio frequency spectrum licences should coincide with the term of the broadcasting services licence for broadcasting licensees who self provide broadcasting signal distribution. The NAB still holds this view. Synchronizing the licence terms will be beneficial for both the Authority and licensees as it will alleviate the administrative burden of disjoined licence renewals and invoicing.
- 2.4.5. Seeing that the Authority drafted the draft regulations not having regard for broadcasting service licensees who are issued with radio frequency spectrum licences, the NAB's understanding is therefore that the licence fees payable by broadcasting service licensees who are holders of frequency spectrum licences are still to be prescribed by the Authority by way of separate regulations aimed for this purpose, and not in the current process.

## **2.5. Auctioning of spectrum**

- 2.5.1. The Authority proposes in the discussion document that where there is perceived to be competition for a given frequency and the demand is greater than the supply the Authority may choose to assign the frequency on a competitive basis where the annual radio frequency spectrum fee will be determined by an auction process. Consequently, the Authority has not included this thinking in the draft regulations, and the NAB therefore assumes that the issue of spectrum auctioning is not for discussion in the draft regulations, and therefore not an issue to belabour in this process.

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<sup>1</sup> Published in government gazette 30246, Notice 1084, dated 20 August 2007.

2.5.2. Furthermore, the NAB believes that the Authority will conduct a thorough consultative process when addressing the issue of awarding radio frequency spectrum licences in instances of scarcity as enunciated by section 31(3) of the EC Act. Having said that the NAB reserves its right to make further representation on this issue should its understanding not be in line with the thinking of the Authority.

2.5.3. Consequently, the NAB's preliminary views are :

2.5.3.1. The Authority should retain the *status quo*, and levy radio frequency spectrum licence fees on a fixed rate rather than introduce complex formulae;

2.5.3.2. Separate regulations shall be promulgated by the Authority to set out radio frequency spectrum licence fees for broadcasting licencees who do their own broadcasting signal distribution.

2.5.3.3. In the event that the Authority is not in agreement with the preliminary proposals made, the NAB has the following comments to make on the draft regulations, for the Authority's consideration:

### 3. Comments on the draft regulations

#### 3.1. Definitions: Draft regulation 3

3.1.1. **“BW”**: The draft regulations define BW as “Bandwidth expressed in MHz paired”. From the NAB point of view, the definition is ambiguous, and requests the Authority to unpack the term “paired” as used in the definition. The Authority needs to be specific and break down the term to down-linking and up-linking, if that is what the intended meaning of “paired” is.

3.1.2. **“MAX”**: The Authority makes reference to the term MAX in the proposed formula for Satellite Hub Ground Station<sup>2</sup>, without defining it in draft regulation 3 of the draft regulations. Furthermore, the worked examples outlined in the discussion document do not shed some light as to what MAX represents, because no worked example for the Hub Ground Station Satellite formula has been made<sup>3</sup>. The NAB therefore proposes that the Authority should define this term, as it is an uncertain factor in the formula, and hence renders the formula ineffective.

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<sup>2</sup> Page 28 of the draft regulations

<sup>3</sup> Page 23 of the Discussion Document

### **3.2. Exemptions: Draft regulation 5(3)**

3.2.1. In terms of draft regulation 5(3), "...broadcast services are not subject to the radio frequency spectrum fees". From the NAB's point of view, the proposed exemption is loaded with ambiguity, and needs to be broken down. It is not clear to the NAB, which part of the broadcasting value chain is exempted by the draft regulations.

### **3.3. Formulae: Draft regulation 6**

3.3.1. In its attempt to meet its mandate of regulating the radio spectrum frequency as effectively as possible, the Authority has introduced some formulae to be used in calculating licence fees. However the NAB perceives the formulae as impracticable, cumbersome, hence being counter-productive. As stated initially, the NAB recommends that the status quo of levying radio frequency licence fees on a fixed rate be retained. The NAB will in this section outline its comments on the various formulae:

3.3.2. **Point to Point Formula:** As already pointed out, the NAB supports a regime of levying spectrum fees on a fixed rate. From the NAB point of view, the proposed point to point formula is complex, and introduces an administrative burden on both the Authority and licencees. Furthermore, the formula has a potential of yielding billing errors if not implemented with caution.

3.3.3. In formulating the point to point formula, the Authority has overlooked the issue of temporary and permanent links. The NAB proposes that the point to point formula be revised to take this into account. The distinction is important in that: in certain instances, broadcasting service licencees utilise temporary links from a location to the studio for purposes of broadcasting a special event, while other links are permanent, for instance a microwave link from a radio station to a tower. In this instance, the applicable licence fees should not be calculated based on the same formula as the licenced activities are not the same.

3.3.4. **Satellite Hub Ground Station Formula:** From our understanding, the proposed formula addresses radio frequency spectrum licence fees in respect of single satellite antennae, and does not take into account a situation where there is a

teleport configuration. Therefore, if the formula is to be applied to individual satellites making up a teleport, then the licence fees payable would not make business sense to the licensee as they would be exorbitant. This will further defeat the object of the EC Act which seeks to promote the interests of consumers with regards to price quality and the variety of electronic communications services as well as spectrum efficiency which a teleport configuration promotes.<sup>4</sup>

3.3.5. As articulated in draft regulations 10 of the draft regulations, wherein the Authority proposes a discounted scheme for multi-year licences, the NAB perceives the issue of licence fees for teleports as equally deserving of the discounted scheme. The NAB therefore urges the Authority to avail a discounted scheme for licensees operating teleports, otherwise licensees would be forced to extinction as a result of the high fees.

### **3.4. Annexure A**

3.4.1. In terms of annexure A, the unit price per MHz is set at R2000.00 paired. The NAB has raised an issue with the use of the word paired as it is loaded with ambiguity. However the NAB outlined its understanding of this term to refer to up-linking and down-linking. However the Authority needs to confirm this. That being the case, the NAB perceives the proposed unit price as problematic due to the following:

3.4.1.1. If the Authority levies a unit price of R2000.00 for both up-linking and down-linking, then this presents a problem for those licensees who do either of the two, and not both. The NAB is therefore not clear as to whether the R2000.00 would be halved to accommodate the single link. The NAB requests the Authority to be specific about its intentions.

3.4.1.2. While we appreciate the fact that the Authority has gone to great length defining what unit price is in the discussion document,<sup>5</sup> the Authority has not outlined how the unit price of R2000.00 has been arrived at. From the NAB's point of view, the proposed unit price is excessive and unreasonable. The unit price is a common factor in all the formulae proposed, and hence has a crucial impact on the payable licence fees.

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<sup>4</sup> Object (n) of the EC Act

<sup>5</sup> Page 21 and 22 of the discussion document

The NAB is not aware of any economic impact assessment study conducted by the Authority to ascertain the impact the proposed unit price would have on the financial viability of licencees. In the absence of the economic impact assessment study to substantiate the proposed unit price, the NAB remains convinced that the fee is excessive.

### **3.5. Conclusion**

- 3.5.1. The NAB once again thanks the Authority for the opportunity to make its written submission. The NAB believes its inputs will add value to the final regulations to be promulgated by the Authority. The NAB is forever available to assist the Authority.