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12 February 2015

**RE: NAB SUBMISSION ON THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA'S DRAFT REGULATIONS ON THE CODE OF CONDUCT FOR PREMIUM RATED SERVICES**

Dear Ms Makhafola,

**1. Introduction**

- 1.1. On 15 December 2015 the Independent Communications Authority of South Africa ("ICASA") published draft regulations on the code of conduct for premium rated services ("draft Regulations") for public comment. The NAB notes that on 17 December 2015 the Authority published an explanatory document on the draft Regulations and confirmed that the closing date for written inputs is 12 February 2016.
- 1.2. It is understood that the draft Regulations were developed to protect the interest of the public and consumers of premium rated services, promote transparency and set out minimum standards to be observed by licensees in the provision of premium rated services.

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*The NAB is a non-profit industry association funded by its members*





- 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 all three tiers of broadcasting as well as signal distributors and associate members.

## **2. Scope of and application of the regulations**

- 2.1. The NAB notes that the draft Regulations apply to the electronic communications service ("ECS") and electronic communications network services ("ECNS") licensees, and it is our understanding that the draft Regulations do not apply to broadcasting services. To this end the Electronic Communications Act 36 of 2005 ("the ECA") defines ECS as:

*"any service provided to the public, sections of the public, the State, or the subscribers to such service, which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic network, but excludes broadcasting services".*

- 2.2. In line with the definition for ECS, which excludes broadcasting services, the draft Regulations do not apply to broadcasting services.

## **3. Compliance with the ASA Code**

The draft Regulations stipulate that all promotions and advertising of premium rated services must comply with the Advertising Code, of the Advertising Standards Authority of South Africa ("the ASA Code")<sup>1</sup>. While it is our understanding that the draft Regulations do not apply to broadcasting services, the Authority might want to revisit section 55 of the ECA in its entirety in light of the provision in the draft regulations for ECS and ECNS licensees to adhere to the ASA Code.

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<sup>1</sup> Clause 14 of the draft Regulations, at page 14.



#### **4. The Film and Publications Act**

The draft Regulations require licensees to ensure that their children chat-room services conformed to section 24C (2) of the Film and Publications Act (“FPA”)<sup>2</sup>. As the Authority may be aware, the Film and Publications Board (“the FPB”) has published its draft Online Policy Regulations (“the Online Policy”) for public comment. One of the key objectives of the draft Online Policy is to set a regulatory framework for the classification of online content. Furthermore the Parliamentary Portfolio Committee on Communications is due to consider the Film and Publications Amendment Bill which will soon be published for comment, and section 24 therein is also up for proposed amendment. The Authority is therefore cautioned to pay attention to the FPB processes when formulating these draft Regulations, and avoid duplication of efforts in having to review the Regulations once there is policy certainty regarding online content and classification.

#### **5. Transitional Arrangements**

The draft Regulations make provision for agreements concluded prior to the promulgation of the Regulations to be aligned with the Regulations within one (1) month of the Regulations coming into effect. The NAB submits that this timeframe might not be feasible for licensees and therefore recommends that the period be extended to three (3) months.

#### **6. Conclusion**

The NAB welcomes the opportunity to make its written submission and believe our inputs will assist in shaping the final outcome of this process.

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<sup>2</sup> Clause 13 of the draft Regulations, at page 13.