**THE NATIONAL ASSOCIATION OF BROADCASTERS'
SUBMISSION TO
THE DOC ON THE PROPOSED ICT POLICY REVIEW
FRAMING PAPER 2013**

15 JUNE 2013

1. **INTRODUCTION**

   1.1 The National Association of Broadcasters ("the NAB") would like to take this opportunity to thank the Department of Communications ("the DOC") for the opportunity to make a written representation to notice number 429 of 2013, published in government gazette number 36408, dated 24 April 2013. In the notice, the DOC invites interested parties to submit written submissions on the proposed ICT Policy Review framing Paper ("the Framing Paper").

   1.2 The NAB would like to be given the opportunity to make oral representations should the DOC deem it fit to hold oral representations with regards to this process.

   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 sound broadcasting licensees;
   - Both the licensed common carrier and the selective and preferential carrier broadcasting signal distributors;
   - Over thirty community sound broadcasting licensees, and community television broadcasting service, Trinity Broadcasting Network (TBN).

2. **NAB SUPPORT FOR THE POLICY PROCESS**

   2.1 The NAB wishes to record its support for an ICT Policy Review based on a Green and White Paper process. The NAB further commends the DOC for the first step in that process, the publication of a Framing Paper which is aimed at developing principles that will support the ICT Policy Review and guide policy making decisions.

2.2   In general, the NAB supports the 14 principles as spelt out in the paper, although we have proposed that some of the principles be reworded and that there needs to be an international benchmarking exercise to determine best practice with regards to principles for ICT Policy. We have also proposed that further principles, be added to the Framing Paper.

3. GLOBAL ICT IMPERATIVES

3.1   The NAB does have some questions though on why a national focused rights based approach was adopted in the Framing Paper for reviewing National ICT Policy, especially at a time when most 2nd generation or 21 st Century ICT Policies in other countries appear to be taking into consideration global imperatives. In particular, there was no reference in the Framing Paper of the first World Summit on the Information Society (WSIS) Declaration of Principles (2003) where the countries involved, including South Africa, committed to building a:

> "people-centered, inclusive and development orientated Information Society where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life."[1]

3.2   The then Minister of Communications, Dr Ivy Matsepe Casaburri, in her address at the World Summit perfectly summed up what South Africa's focus would be going forward, namely the two interrelated challenges of bridging the digital divide and building an inclusive Information Society for the future.[2]

3.3   Dr Casaburri provided practical examples of focus areas to bridge the digital divide, namely:

> "…developing special measures for the marginalized such as women and youth; providing special equipment for people with disabilities; facilitating the provision of opportunities for the re-training of workers;

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[1] http://www.itu.int/wsis/docs/geneva/official/dop.html

[2] http://www.itu.int/wsis/geneva/coverage/statements/south-africa/za.html

creating special laws to protect children from harmful uses of ICTs; using public institutions such as post offices and libraries as access points; creating programmes specially designed for rural and remote communities; rolling out ICT projects to link health centres and introducing school curriculum that incorporates ICT training."[3]

3.4   In contrast to the reactive measures to be used to address the digital divide, Dr Casaburri pointed out the need for pro-active measures to build the information society, such as the:

> "… the creation, from the start, of conditions that eliminate a differentiated approach. It is characterized by planning, developing policies, measures and strategies with clear time lines; ensuring the development and deployment of technologies that meet the requirements of interoperability, universal use, relevance, accessibility and affordability; creating not only special laws but also incorporating measures to protect children from harmful uses of ICTs in the technology design; reforming institutions such as post offices and libraries to be reflective of e-environment, mainstreaming ICTs into the entire health and education systems and economic-political participation as part of the development plan."[4]

3.5   These principles were re-affirmed when the second phase of WSIS took place in 2005, resulting in the Tunis Commitment and the Tunis Agenda for the Information Society, and the creation of the Internet Governance Forum. Following from this we can conclude that the two main principles guiding the ICT Policy Review should be that of Digital Inclusiveness, and access to information and knowledge.

3.6   It is strongly recommended that before finalizing the principles that will guide the ICT Policy review an international benchmarking exercise should be conducted focusing on countries that not only are world leaders in ICT, such as the United Kingdom, but also developing nations that match South Africa in terms of size, economic structure as well as stage of development of the National ICT Policy and strategies.

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[3] http://www.itu.int/wsis/geneva/coverage/statements/south-africa/za.html
[4] http://www.itu.int/wsis/geneva/coverage/statements/south-africa/za.html

3.7   A great deal has changed in South Africa and the world since the last White Papers were drafted, one development has been the liberalization of the telecommunications market leading to lower access costs, increased competition and increased global competitiveness of countries that embarked on policies of liberalization. Another major trend has been the phenomenal growth of mobile telephony that have surpassed fixed lines, leading to the substitution in some cases for fixed line services, as well as the increased mobility achieved through mobile phone usage.

3.8   ICT policy trends in countries like Jamaica, Malaysia, Singapore and Australia indicate a focus on developing the quality and availability of physical infrastructure as well as the necessary human development to exploit the opportunities offered by increased ICT availability and use. In most of these countries ICTs are seen as tools to achieve national goals rather than as an outcome in themselves, and instead focus on methods by which ICTs can assist in increasing productivity in the public and private sectors through e-commerce and developing Small and Medium Enterprises (SMEs). To achieve this there is a strong focus on broadband strategy that creates universal access to a nation-wide broadband network, promotes affordability, mobilises public resources to establish sustainable market for the private provision of ICT services, promotes connectivity between public agencies, schools and hospitals to increase access to ICT services.[5]

3.9   It is clear from just a brief look at other countries similar in size and level of development as South Africa that the biggest boost for ICT development will arise from the roll-out and access to high-speed nation-wide broadband networks. The economic and social impact of broadband is well researched and documented. An increase in broadband penetration has a greater impact on economic development than a concomitant increase in access to any other telecommunications services. The World Bank estimates that in low and middle-income countries such as Kenya, every 10-percentage point increase in broadband penetration accelerates economic growth by 1.38 percentage points.

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[5] World Bank (2006). Information and Communications for Development 2006: Global Trends and Policies. Washington D.C: World Bank.

3.10   The economic impact of broadband is wide – it positively impacts innovation, job creation and employment, as well as software and manufacturing industries (see Figure 1 below). It promotes access to information. Going forward in South Africa to reach a 2030 vision will require policy makers, regulators and industry stakeholders to actively seek ways to increase high-speed broadband coverage and increase usage. In seeking these goals human capacity must be considered to promote the use of these networks through the development of skills that will result in the creation of content and applications that will promote the use of broadband networks for economic and social usage.

Figure 1: Broadband deployment impact on ICT Development[6]
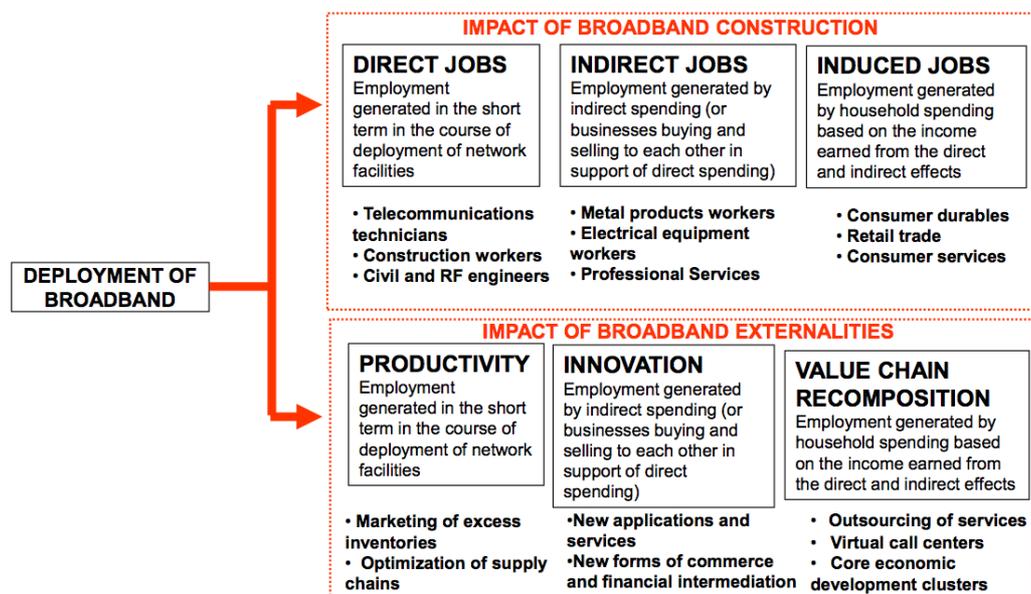
3.11   In the United Kingdom when preparing the Digital Britain Report, government identified 5 key objectives for public policy:

- Modernizing and upgrading the wired, wireless and broadcasting infrastructure to sustain Britain's position as a leading digital economy;

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[6] Katz, R.L. "The Impact of Broadband on the Economy: Research to Date and Policy Issues". Presentation made at 10th Global Symposium for Regulators - Enabling Tomorrow's Digital World, Dakar, Senegal, 10 November 2012

- Providing a favourable climate for investment and innovation in digital content, applications and services;

- Securing a range of high quality public service content, particularly in news;

- Developing the nation's digital skills at all levels; and

- Securing universal access to broadband, increasing its take-up and using broadband to deliver more public services more effectively and more efficiently.

3.12   These objectives speak to South Africa's developmental needs as well, although one could also add objectives around Cyber-Security and protection of Intellectual Property Rights to this list of objectives. There is clearly a wealth of experience that can be obtained by looking at relevant international experiences in developing ICT Policy. Another reason to consider the global arena is to take into consideration the number of international and regional agreements that impact on ICT development and to which South Africa is a signatory. There are also economies of scale benefits for ICT Policies that focus on regional approaches to ICT development and promote sharing of infrastructure and costs in the region.

4   FUTURE OF BROADCASTING

4.1   Globalisation, convergence, the proliferation of delivery options and the fragmentation of the market raise a number of important issues for broadcasters who will need to be available on a number of platforms in future. Broadcasters will need to critically analyze the potential of content distribution network options to fulfill their requirements (e.g., coverage, capacity, reception mode, and the type of service) taking into account any conditions and constraints that may be imposed by regulation, market forces, potential evolution of the usage, and available funding.

4.2   It is fairly clear that in order to remain viable in the long term, the terrestrial platform must be migrated to digital as soon as possible. Growth of broadband is expected to continue, driven by policy incentives, consumer demand and media services. It is anticipated that high-speed fixed broadband networks in South Africa may be able to deliver in the near future both linear

and non-linear broadcast services for fixed and portable indoor reception. Broadcast and broadband technologies can then be used in a truly complementary way to enable the delivery of a full range of linear and non-linear services for both shared and personal usage context and to a plethora of user devices (tablets, smartphones, games consoles, or connected TVs).

4.3   The current Hybrid Broadcast Broadband TV[7] (HbbTV) solutions in Europe combine broadcast and broadband delivery in connected TV receivers, and can operate over different broadcasting technologies such as satellite, cable and terrestrial networks. These provide both a broadcast and a Broadband TV option to the viewer. In contrast, after the conversion from analogue to digital broadcasting in South Africa, viewers will initially perceive little change in the core broadcasting service or service providers. There will be a few more channels and the availability of additional audio services and some applications, such as games. The additional value of going digital, like internet access, video on demand, and High Definition TV will not be available initially unless radio frequency spectrum is allocated for broadcasting use to roll-out those services.

4.4   The policy and regulatory preparations for the migration from analogue to digital have taken a decade and we have still not started the digital migration. Similarly, we are now at the beginning of a new change in the broadcasting sector and it too will span 10 to 15 years. The new change will be initiated by the convergence of the Internet, when it supports adequate quality video services, and consumer electronics that will make video consumption pervasive. When this occurs, viewers will have new consumption options and new video service providers, e.g. Google, Apple, Netflix, Amazon, YouTube and Facebook will enter the market in competition with broadcasting services.

4.5   In order for local broadcasters to be able to compete against these international competitors there will need to be proportionate regulation and access to fixed and wireless broadband infrastructure to enable competitive hybrid and broadband TV options domestically. Ideally, broadcasters should have access to radio frequency spectrum in 700 or 800 MHz for the purposes of providing return path services to STBs and connected TVs, especially as

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[7] ETSI TS 102 796

broadcasters in other countries are already tapping into the growth of mobile smartphones and tablets to play content anytime, anyplace and from any device. These services are not a substitute for linear broadcasting, but rather a complementary service provided by broadcasters to enhance the viewing experience through time-shifted viewing, catch-up TV, second screen options and facilitating Social TV.

5 PRINCIPLES FOR POLICY OBJECTIVES

There is a great deal of overlap in some of the principles, articulated in the Framing Paper. Accordingly when responding to the principles and questions raised in the Framing Paper this submission has taken the approach of clustering similar principles under broader objective headings.

5.1 Freedom of Expression

5.1.1　The NAB is in agreement that freedom of expression is one of the core principles or objectives that should guide the policy review process. South Africa is party to a number of international and regional protocols relating to freedom of expression. In many respects though, South Africa's Constitution, Bill of Rights and laws protect the freedom of expression far more strongly than many of the international agreements. However, where a law may be lacking, the Constitution indicates that international law can be considered in making any determinations.

5.1.2　In this regard it is useful to consider the Declaration of Principles on Freedom of Expression in Africa, which was adopted in 2002 by the African Union, of which South Africa is a member, to provide detailed interpretation for member states of the rights to freedom of expression outlined in the African Charter. Of particular interest, is that the Declaration details how such freedom of expression should be realized in relation to broadcasting.

5.1.3　In Article IV it provided how state and government controlled broadcasters should be transformed into public service broadcasters and what principles should guide such public service broadcasters;

- Article II dealt with how freedom of expression placed an obligation on government to take positive measures to promote diversity;

- Article V dealt with how community broadcasting should be encouraged to promote freedom of expression; and

- Article VII provided that broadcasting and telecommunications regulatory authorities should be independent and "adequately protected against interference, particularly of a political or economic nature".[8]

5.1.4 It is evident from the above, that freedom of expression also gives rise or finds expression in some of the other principles that have been proposed by the DOC, such as those based on the right to access to information.

5.1.5 It should be kept in mind when developing ICT Policy that any restrictions on freedom of expression must be in accordance with the Constitution and serve a legitimate public interest in a democratic society.

5.2 Freedom of access to information and incentivizing local content development

5.2.1 A second core principle that should guide the policy review process is the basic issue of freedom of access to information and incentivizing local content development. Under this heading we have clustered discussion on the questions posed under the headings of:

South Africans have the right to access a diverse range of content;
South Africans have a right to access a broad range of information, opinion and news of relevance to their communities and lives;
South Africans have a right to celebrate their cultural heritage in the language(s) of their choice; and
South Africans are entitled to communication services that reflect, respect and uphold constitutional and community standards and values.

5.2.2 The purpose of the right to information is for every member of the public to have the freedom to secure access to information, consistent with the public interest, just as with any other right enshrined in the Bill of rights there are

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[8] Article 19, *Declaration of Principles on Freedom of Expression in Africa*, 22 October 2002, available at: http://www.refworld.org/docid/4753d3a40.html [accessed 5 June 2013]

exclusions or limitations. The right to information and fair use, for example, has to be balanced against Intellectual Property Rights and the need to protect these rights against digital content piracy.

5.2.3   Television and radio for the past century have been the dominant form of mass media leading to content regulation. This was achieved for some time by direct state ownership of broadcast stations. Later when commercial broadcasters were licensed regulation was justified by the idea of spectrum as a scarce resource, to be utilized by a country for the collective benefit of the public. This resulted in public interest programming being required, such as documentaries, news reporting, or educational children's programming. It also led to undesirable content being restricted.

5.2.4   The Framing Paper correctly poses the question of whether access to content over a range of platforms, channels, services and devices, in a converged world, affects the current focus of the right to diverse content as an imposed obligation. The answer is that although the scarcity of and demand for radio frequency spectrum has not changed, the unique role of broadcasting as the primary modern mass media is dwindling amongst a veritable cornucopia of alternative sources of audio-visual content and transmission media. This is especially true of television, as radio at this point in time remains the primary (but not exclusive) mobile mass medium in the motor vehicle. The number of viewers who still rely solely or primarily upon over-the-air signals for their electronic information and entertainment is shrinking in developed countries and urban areas of developing countries. The status of broadcasting in rural areas certainly requires that signal transmission continue in those communities, but this does not justify a distinct regulatory structure, for broadcasting content in the long term.

5.2.5   This fact has already been alluded to in the National Development Plan where it was stated:

> "As broadcast and other ICT technologies converge, setting quotas for local content on television and radio promotes local production, but also has the potential to increase broadcasting costs. This could make

it difficult for regulated broadcast services to compete against content providers on unregulated services such as the Internet.[9]

5.2.6   This is an elegant statement of the conundrum faced by broadcasters who will be facing increasing competition from foreign over-the-top (OTT) TV operators providing video-on-demand and streaming channels over the unmanaged broadband Internet in South Africa.   Examples of OTT TV operators are Google, Amazon and Sony, there will also be an influx of foreign Video-on-demand services such as Netflix, Apple iTunes and Samsung Video Hub on connected TVs.

5.2.7   Clearly, the implication is that you can no longer treat broadcasting separately which then raises the further question, of whether the traditional regulation of TV and radio stations should be extended to television-like content on other media, or should the existing regulations be removed or reduced to address broadcasters facing competition from television-like content on broadband platforms.

5.2.8   There are examples of attempting to apply a standardized regime such as the Audio-Visual Media Services Directive (AVMSD), introduced by the European Union, which applies to both to traditional broadcasting as well as to audio-visual signals distributed by other means. A good starting point would be a principle that there should be equivalence in the regulation of traditional television and television-like content on the Internet/broadband networks.

5.2.9   Clearly, there needs to be some form of content regulation that applies across platforms, including the Internet, to deal with prohibited content, such as pornography, violence against children and other groups at risk, racism, religious intolerance, and incitation to violence and hatred.

5.2.10 As the Framing Paper made clear, the Constitution does limit certain kinds of speech, specifically hate speech which constitutes incitement to cause harm. Flowing from this, there are a number of mechanisms already in place in the broadcasting environment that provide for codes of conduct to protect children and limit content which constitutes hate speech.   The NAB is

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[9] South Africa. National Development Plan 2030, National Planning Committee in the Presidency p. 194.

supportive of such limitations provided that the centrality of freedom of expression is not undermined. The NAB submits that reference to "community standards and values" is vague and open to potential abuse. Accordingly, the NAB proposes that the principle that addressed this issue be amended to read "*South Africans are entitled to communication services that reflect, respect and uphold Constitutional values.*"

5.2.11 In addition, the NAB notes that, as broadcasting moves into a digital environment where time shifted viewing will become more commonplace, and as more and more content of a broadcasting-like nature becomes available not only on mobile devices, but also on connected Televisions, the current tools used to control what is seen and watched such as the watershed period will no longer be effective.

5.2.12 There are other tools such as PIN protection that could be used, but this would have to be accompanied with consumer education to make parents and viewers more responsible for policing their own viewing. However, since there will be a number of internet based services not based in South Africa, available on connected TVs and other devices it will become practically impossible to enforce certain measures. This raises the question of whether it is time for parents and viewers to take increased responsibility for their own viewing, especially in respect of content that is time-shifted and downloaded. In this regime, the primary responsibility of broadcasters would be to ensure that there are proper advisories available for programmes and blocking tools for viewers to use.

5.2.13 As mentioned in the Framing Paper, there are policies and regulations for the broadcasting sector, in addition to prohibiting content, that require the airing of local content and music and, in the case of the public broadcaster to broadcast in all the official languages. These policies were developed for an analogue broadcasting environment and cannot practically be implemented in the new digital multi-channel broadcasting environment. Any review of this local content policy and the local content regulations will have to take into consideration the broader range of access by viewers to audio-visual content provided by broadband Internet and other networks.

5.2.14 Rather than focusing on using prescriptive quotas, which would not be practically enforceable on the Internet platform, consideration should be given to instead incentivizing content development. There are international examples of National Policies, such as Thailand, that recognize and encourage the creation of local content in indigenous languages that have become a cornerstone of the knowledge society. This is because although English is language of the global Internet, it may not assist in meeting the ICT objective of digital inclusiveness. These incentives to produce such content increase the potential value of the Internet and assist local companies to compete against foreign companies as they can make available information and applications that are locally appropriate, user-friendly and promote digital inclusiveness for those whose first language is not English. This is not limited to developing nations, larger industrialized countries such as Canada and France have focused on incentivizing the development of local content for the Internet, e-publications and film production through a range of schemes, including public-private partnerships, for the purposes of promoting cultural sovereignty.

5.2.15 There is a need for policies that create the incentives for content providers, especially the local media, the government, the education and research community, as well as the private sector, to establish their presence in local languages and to create local content. One of the reasons to switch from prescriptive quotas to incentives is that the majority of local content and language will be delivered not by traditional media sources of production, but from user originated content as a direct result of access to broadband Internet. YouTube, for example, has become a first point of research for people seeking answers to medical problems and "how to" videos to solve problems they are facing. It is has also become a revenue generator for people who previously had no access to traditional channels of content distribution.

5.2.16 Despite the anticipated growth in broadband Internet and user generated local content, there will still be those persons who will not have access to such new media and this raises the question of who should continue to bear some public service obligations against the background of the three-tier system of public, commercial and community broadcasting in South Africa. In most countries, it is public broadcasters who are funded with public monies

for this purpose and who primarily drive these obligations. A key element going forward in South Africa is therefore not only going to be what are the appropriate public service obligations in a future broadcasting or audio-visual content environment in South Africa, but also how such obligations will be funded?

5.3 Access to Infrastructure/Networks (Universal Service and Universal Access)

- The third core principle or objective that should guide the policy review process is access to affordable high-speed broadband networks. This is essentially the next generation of universal service and universal access regimes. Under this heading we have clustered discussion on the questions posed under the headings of:
- South Africans have the right to equal universal access to communication services and infrastructure;
- Government has the responsibility to maximize the overall public benefit derived from the use of public resources.

5.3.1   In the context of broadcasting and telecommunications, universal service and universal access remains a principle that should be addressed, especially with regards to high-speed broadband Internet. However, there are some aspects that need to be carefully considered when applied in an era of convergence and evolution of broadcasting services. The inclusion of broadcasting in the concept of Universal Service and Universal Access, for example, should have sound theoretical underpinnings as part of the continuing evolution of the concepts of Universal Access and Universal Service. In the past, Universal Service was reserved for basic voice communications, but then Universal Service and Access developed beyond telephony to include data and Internet communications.

5.3.2   Traditionally, broadcasting was not part of a Universal Service and Universal Access regime, but as the underlying technologies and delivery mechanisms of telecommunications and broadcasting are converging in a digital world, attempts have begun to develop models that include broadcasting. When the Electronic Communications Act was developed, the thought was that convergence meant that the different regimes of telecommunications and

broadcasting would be merged. Subsequently, it has become clear that although there might be at some point convergence in terms of networks, this does not necessarily entail convergence in policy goals or outcomes.

5.3.3   The problem with attempting to develop Universal Service and Access models that include broadcasting, is that broadcasting laws generally have fundamentally different requirements that go beyond affordable access and service. The focus in broadcasting traditionally has been about pluralism, diversity in providers and content, providing local content and prohibiting harmful broadcast content.

5.3.4   Another difference is that broadcasting policies, regulations and licences often have coverage requirements and restrictions, but usually without specifics about actual access, whether by public means or for private subscribers. Universal Service and Universal Access regimes often specify this in detail to ensure that the service is fit for purpose. In other words, the service needs to be accessible and affordable as well as available.

5.3.5   The transition about to commence in South Africa from analogue to digital broadcasting transmission obviously has the ability to create new digital divide issues and as such the access issue in digital terrestrial broadcasting can be divided into issues relating to access to signal and access to public service broadcasting content. These issues have been addressed in the context of the Broadcasting Digital Migration Policy, but also need to be considered in the context of the future digital broadcasting environment after analogue switch off has taken place. A key element going forward for broadcasters to deliver on next generation universal service and universal access will be their own access to radio frequency spectrum and high-speed broadband networks (wired and wireless) for the purposes of providing the public with multi-screen audio-visual content services anywhere, anyhow and to any device.

5.3.6   The Framing Paper highlighted the key objective of affordability, given that the cost to communicate has always been the barrier to access and consequently universal service. In the context of broadcasting services this has tended to not be the case, as there are a range of analogue public and commercial broadcasting services that are provided free-to-air as their

funding model is based on advertising revenue. The objective is obviously to ensure that this diverse range of free-to-air broadcasting services remain viable and accessible to the public after migrating to digital broadcasting platforms. A key ICT Policy objective would therefore continue to be ensuring the viability of free-to-air broadcasting services in the long-term, and this would be greatly facilitated by ensuring a rapid transition to digital platforms.

5.3.7 The Framing Paper also indicated that there was a principle that government had the responsibility to maximize the overall public benefit derived from the use of public resources. This principle refers to "public resources", but presumably it is radio frequency spectrum, which is contemplated here, and not other kinds of public resources. As the radio frequency spectrum comprises a key element of wireless infrastructure and backbone for wired infrastructure, the NAB has placed it under the objective of access to infrastructure, although spectrum policy could also be a standalone component of ICT Policy.

5.3.8 The NAB agrees that the radio frequency spectrum is a public resource and that it should be used in a manner which maximizes overall public benefit. However, the NAB notes that, in terms of the ECA, Government's role in managing radio frequency spectrum is limited and that ICASA has a central responsibility in "controlling, planning administering and managing the radio frequency spectrum" (section 30 (1) of the ECA). This is consistent with the Constitutional provisions on the independence of the Broadcasting Regulator. Accordingly the NAB proposes that this principle should be reworded to state "The *public benefit derived from the use of radio frequency spectrum should be maximized"*

5.3.9 A key principle that should be acknowledged in policy on radio frequency spectrum is that public benefit and maximum value is not only met through monetary value, it is also met through social benefits. This is particularly important when considering the use of freed-up radio frequency spectrum after analogue switch-off and that frequency spectrum should not merely be sold off to the highest bidder to the detriment of the broadcasting needs of the South African public.

5.3.10 Any policy or legislative changes to how spectrum is allocated for broadcasting should recognize the importance of the medium for the public. Spare frequency capacity needs to be set aside for all three tiers of broadcasting, public, commercial and community to meet future broadcasting needs.

5.3.11 Changes to spectrum allocated to broadcasters should adhere to some key principles. Firstly, the public should retain access to offerings currently provided by broadcasters and they should not be denied access to the full benefits of digital migration in respect of digital incentive services that will be offered by existing broadcasters on the capacity assigned by the Digital Migration Regulations, 2013. Secondly, the public should not lose access to TV based on signal strength degradations or limitations, as a result of allocating Digital Dividend to wireless broadband and/or mobile services. Thirdly, the public should not lose access to quality TV because of new spectrum fees (increased spectrum fees would make it difficult to finance local content or purchase new programming). Finally, the public should still benefit from access to innovations such as HDTV, 3DTV and Hybrid TV on the terrestrial frequency platform.

5.4 Digital Inclusion and economic development

5.4.1 The fourth core principle or objective that should guide the policy review process is that of digital inclusion and economic development. Under this heading we have clustered discussion on the questions posed under the headings of:
- South Africans have a right to quality communication infrastructure and services which enable economic growth, employment and wealth creation;
- South Africans have a right to benefit from the ability of the communications sector to facilitate social development and improve the quality of life for individuals and communities; and
- All sections of the population have a right to equally enjoy and benefit from communication services.

5.4.2 Access to quality communication infrastructure and services which enable economic growth, employment and wealth creation is an important objective.

ICTs can have an important impact on lives and on economic activity, but these opportunities only develop to the extent that the regulatory framework, as implemented, supports and fosters both investment in and widespread diffusion of ICTs. Without these conditions, the full promise of ICTs is unrealized. If the appropriate conditions are not in place, the outcome can have the unintended consequence of further exacerbating the digital divide. Although the digital divide is narrowing due primarily not to ICT policy, but rather the rise of Internet-enabled mobile phones and applications. This is causing a new broadband divide that governments may need to address in the future between those hyper-connected users who have access to the Internet on all platforms and users who only have expensive mobile internet access.

5.4.3   This principle has been captured in legislation on a number of occasions, however, it should be noted that economic growth tends to occur where there are less regulatory obstacles impeding innovation and business development. The focus should be on how to make it easier to do business in South Africa to promote development, especially in nurturing new platforms and services, such as Hybrid TV and broadband TV in the context of the broadcasting sector.

5.4.4   There is also the other aspect of digital inclusion, namely the ability of the communications sector to facilitate social development. Ensuring the full participation of all in the Information Society is a major policy goal, the implementation of which brings all the benefits and transformational opportunities of ICTs. For example, WSIS set the ambitious goal of connecting all villages of the world to ICTs by 2015, including establishing community access points, and connecting universities, schools, libraries, post offices, health centers, and local governments.

5.4.5   The objective that all sectors of the population have the right to equally enjoy and benefit from communication services has been adequately captured in legislation and regulations. It is critical, however, that everyone has the support, confidence, skills and equipment to allow them to use the internet and participate in the digital economy. Unless they are able to get online, or access e-services or digital broadcasting services many will be unable to

access the public services, information and entertainment that are a growing feature of everyday life across the world.

5.4.6   In the case of broadcasting services, unlike in the telecommunications sector, the provision of the end-user equipment such as television sets and radio sets is not the duty of the broadcasting licensee as no modifications are required for the device to be used by persons with disabilities. However, for purposes of universal service and access in respect of digital migration, USAASA could channel subsidies for Set-top-box remote-controls for people with disabilities.   Similarly, as mentioned in the Framing Paper, there is a need to avail on-going programming that is suitable for people with disabilities, for instance programming with sign language and subtitling. This can be a costly exercise, and thought should be given to the provision of subsidies for community broadcasters channeled through USAASA or MDDA to assist with this requirement.

5.5 Protection of users and the public

5.5.1   A fifth objective that has been raised by principles in the Framing Paper is that of protection of users and the public. Under this heading we have clustered discussion on the questions posed under the headings of:

- South Africans have a right to privacy and protection of personal information;
- South Africans citizens and consumers are entitled to maximum transparency in how services are delivered and the conditions under which they are delivered; and
- South Africans have the right to an environment that is not harmful to their health or well-being.

5.5.2   The NAB holds the view that there is no need for specific provisions on privacy and personal information in sector legislation, as The Protection of Personal Information Bill is currently before Parliament and will be addressing these issues in detail.

5.5.3   Similarly, the NAB holds the view that the current provisions in the Electronic Communications Act and the Consumer Protection Act ensure that consumer

interests are protected. There is no need for consumer protection to be specifically included in the sector policy other than as a principle.

5.5.4   The NAB is also of the view that there are sufficient health and safety laws in place to protect consumers. In future perhaps some consideration could be given to the concept of Green ICTs, which is aimed at protecting the environment from e-waste.

5.6 Communication sector should be regulated in a manner that that facilitates quality communication systems, innovation, fair competition and equitable treatment of all role-players

5.6.1   A sixth objective is that of regulating the sector in a manner that facilitates quality communication systems, innovation, fair competition and equitable treatment of all role-players. Under this heading we have clustered discussion on the:

- Right to an independent regulator;
- A tech-neutral licensing approach; and
- Net Neutrality;

5.6.2   The NAB is supportive of the policy and legislative framework that is in place both in general and sector specific legislation to support innovation, fair competition and equitable treatment. However, the NAB submits that the concepts of quality communication systems, innovation, fair competition and equitable treatment of role-players are outcomes of regulatory practice. The NAB therefore proposes that this principle be reworded as follows: "*The communications sector should be regulated in a manner that facilitates quality communication systems, innovation, fair competition and equitable treatment of all role-players*".

5.6.3   The right to an independent regulator in South Africa is a Constitutional right. Section 2 of the Constitution of South Africa provides that the Constitution is "the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled". Furthermore, section 192 of the Constitution mandates that, "national legislation must establish an independent authority to regulate broadcasting in the public interest, and to

ensure fairness and diversity of views broadly representing South African society". Consequently, the ICASA Act provides in s3(3) that ICASA "is independent, and subject only to the Constitution and the law, and must be impartial and must perform its functions without fear, favour or prejudice".

5.6.4   There is clearly a constitutional presumption that the regulation of broadcasting needs to be seen as independent. It is an important principle that needs to be clearly set out in policy. In order to guarantee the existence of independent and autonomous media in the broadcasting sector, adequate and proportionate regulation is required. However, to guarantee the freedom of the media, whilst at the same time ensuring a balance between the freedom and other legitimate rights and interests an independent regulator is needed to preserve broadcasting as part of the democratic process.

5.6.5   Another key regulatory principle is the technology neutral approach to licensing and regulation of communications services, which is central to the achievement of converged services and is listed as an object of the ECA. The NAB submits that although ICASA has gone a long way to implement a technology neutral approach, the full benefits of convergence won't be seen unless the principle of technology neutrality remains central to communications policy going forward. This is particularly important as technological developments mean there will increasingly be a plethora of "broadcasting like" services competing with traditional broadcasting services.

5.6.6   A third regulatory principle that needs to be addressed in the ICT Policy review process is the policy approach to Net Neutrality. Net neutrality is the principle that Internet service providers and governments should treat all data on the Internet equally, not discriminating or charging differentially by user, content, site, platform, application, type of attached equipment, and modes of communication. The main concern is about the ability of broadband providers to use their last mile infrastructure to block Internet applications and content (e.g. websites, services, and protocols), and even block out competitors. Broadcasters, specifically, are concerned that broadband providers may use deep packet inspection to discriminate against over-the-top broadcasting services or applications.

6   CONCLUDING REMARKS

6.1 The NAB supports the development of an ICT Review Policy by the DOC. It is NAB's understanding that the Framing Paper is the first step in the process toward a Green Paper (by October 2013) and a White Paper (anticipated March 2014). The main purpose of the Framing Paper is to elicit views on general principles. A sector diagnostic review will be done to inform the Green Paper, and substantive submissions by the sector will be made during that process.

6.2 In that second process, NAB will deal will a number of broadcasting issues which members have raised in discussions in the substantive submission. The areas that will be covered at that point will be the need for the ICT Policy Review process to address:

- the need to re-visit what broadcasting and television are in the new digital environment;
- the development of a new model/system of broadcasting/content distribution and access;
- the right to fair open and transparent complaints processes;
- exploring regulatory regimes appropriate for the converged environment (self-regulation, co-regulation etc);
- addressing overlapping/duplication of legislation and policy erosion of ICASA mandate in respect of frequency spectrum;
- providing stability and predictability to enable investment, innovation, growth;
- review of ownership and control and foreign ownership;
- plan for the future of content regulation across multi-channel/platform environments; and
- developing a broadcasting roadmap for the future that is sustainable and fosters innovation.

6.3 The NAB would like to thank the DOC again for the opportunity to comment on the Framing Paper. The NAB trusts that the DOC will take into consideration the submissions made in this representation as they pertain to broadcasting in South Africa.