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To:

Ms Nditsheni Hangwani, (Code for Persons with Disability Project Leader)
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Independent Communications Authority of South Africa

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From:

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DRAFT CODE FOR PERSONS WITH DISABILITIES REGULATIONS FOR FURTHER PUBLIC COMMENTS

With respect to the notice given in terms of sections 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act"), regarding its intention to prescribe a Code for Persons with Disabilities Regulations and invitation for further public comment, we hereby submit our written representation on the Draft as an interested party. We are available to provide clarification in person, should it be required.

Our organisation

AudioDescribe (PTY) Ltd. T/A ADI (Audio Describe International) is an innovative social enterprise company incorporated in 2010 and the only one specialising in audio description services in South Africa. Shakila Maharaj the founder and director is a global disability strategist and recipient of numerous awards for her enforcement of disability rights and her social entrepreneurship. Later joined as directors are: Dr William Rowland a global leader of disability movements, former president of the World Blind Union and author of several books, including "Nothing About Us Without Us", and Harriet Meier an award winning script writer and producer. ADI's vision is to enhance the quality of life of visually disabled persons through the creation and promotion of audio description services, achieved through shaping policy, consumer and industry awareness, skills training and audio description services.



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ADI in 2014 provided written submissions to the draft Code and in 2019 made presentations to the Committee For the Code For Persons With Disabilities. We acknowledge with appreciation that the Authority has embarked on this initiative and its effort to align South Africa with international developments. The written representation that follows herein is drafted by Shakila Maharaj of ADI and is further endorsed and supported by:

DAISY South Africa (Digital Accessible Information Systems)

Association for Hearing Loss Accessibility and Development (AHLAD) (represented by Dr Diane Bell)

COMMENTS AND RECOMMENDATIONS

Section 1 Definitions

The definition of audio description (AD) is incomplete and must be expanded to include the following meanings - real time/ live audio description which applies to real time and past events whereby, an audio describer providing audio description commentary as the event is occurring. Examples include current affairs, breaking news, sports, official events, concerts etc. In addition, AD includes reading of subtitles in the case of foreign language content.

The AD part of the definition regarding the delivery of AD is also incomplete and must be expanded to include in addition concurrent with the playing sound track or matched to external delivery platforms. The amended definition on AD could possibly read as follows:

“Audio Description” means oral commentary that gives a viewer who is blind or partially sighted a verbal description of what is happening **visually** on the television screen at any given moment. It is provided as an aid to the understanding and enjoyment of the programme. The delivery technique may include a second pre-recorded sound track, live/real time concurrent with the present sound track or external aligned platforms that gives a description of the scene and the on-screen action and voicing subtitles in the case of foreign language content.”

“Captioning” means that words are displayed on a television, computer, mobile device, or movie screen, providing the speech or sound portion of a program or video via text. Captions allow viewers to follow the dialogue and the action of a program simultaneously. Captions are created from the program’s script or audio file. A caption writer translates the dialogue into captions and makes sure that the words appear in sync with the audio. Computer software encodes the captioning information and combines it with the audio and video to create a new master tape or digital file of the program. The



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captions should appear near the bottom or top of the screen—not in the middle, where misplaced captions can cover the newscaster’s face.

Captions may be “open” or “closed.” Open captions are always in view and cannot be turned off by the user, whereas closed captions can be turned on and off by the user (for example, by changing the menu settings on the TV’s remote).

Closed captioning is available on digital television sets, including high-definition television sets, manufactured after July 1, 2002. Some digital captioning menus allow the viewer to control the caption display, including font style, text size and color, and background color.

Closed captions are not entirely embedded in the video display of the visual presentation, and are capable of being turned on or off. Accordingly, for the use of closed captions the viewer has to have access to a system that enables them to turn the captions on or off, such as with a DSTV decoder, Netflix or YouTube.

Open captions, however, are completely embedded in the video display of the visual presentation and are therefore a material part of the video display and cannot be turned off.

The definition of disability for the purpose of this Code should be expanded to include cognitive disabilities since the need of the photosensitive viewer is also addressed in the Code. The amended definition could possibly read as follows:

“Disability” For the purpose of these regulations, Disability refers to a long-term or recurring hearing, visual and cognitive impairment.”

The definitions of closed captioning and subtitling is not clearly differentiated and fully explained in terms of its relevance to language. The definition should further clarify the conversion of speech to text in closed captioning occurs in the original language of the video. Subtitling however, is the text display of the translation or transcription of the original language of the video into another language e.g. French to English or isiZulu to English and vice versa. Please note that subtitling



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is not specifically a provision for persons with hearing disabilities as it typically enables access to foreign language content through translations for diverse audiences.

“Subtitles” means a service whereby the text display at the bottom of the screen (and not in the middle) is a direct translation of the original language of the video into another language e.g. French into English etc. Subtitling does not necessarily assume that the viewer is deaf or hearing impaired but assumes that the audience is able to hear the audio part of a video display. Accordingly, subtitles only describe the spoken word and not the surrounding noises or background tracks, as captioning does. Sub-titles are normally used where an audience is of a foreign language and the sub-titles translate the spoken word into a language that the audience understands.

Section 3 BASIC STANDARDS FOR BROADCASTING SERVICE LICENSEES

UNDER ACCESSIBILITY SERVICES

Point 1 should also include other channels e.g. news sports etc.-- not just “applicable channels”. Since we have included “breaking news” this regulation should be aligned to accommodate this provision.

Point 2 Audio Description

Include the words “visual content”. It should read— “The objective of Audio Description is to provide access to visual content and so aid the understanding and enjoyment of a television programme.”

Point 3 is not clear and I suspect the intention is to promote high quality AD. If so it should read instead -- “A broadcasting service licensee must provide quality Audio Description, created by experienced service providers compliant with international standards and best practice. This is essential for ensuring that visually impaired audiences using broadcasting services benefit from them”.



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Point 5 Subtitling. I suspect that this regulation is referring to closed captioning. Please clarify if these terms are being used interchangeably as they are not the

same concept as previously stated. There is no item addressing closed captioning under Accessibility Services. Refer to correct definition for Captioning provided.

We are missing point (d) Closed Captioning – this section should take into account both closed and open captioning and differentiate the two as per correct definition provided

Section 4: GENERAL REQUIREMENTS FOR COMMUNICATION AND INFORMATION **PROVISION TO PERSONS WITH DISABILITIES FOR BROADCASTING SERVICE LICENSEES**

UNDER PROVISION OF BREAKING NEWS AD SHOULD BE INCLUDED FOR VISUALLY IMPAIRED AUDIENCES. PROPOSED REWORDING— “ A television broadcasting service licensee must provide for a news text strapline and accompanying voice over , in case of breaking news across channels.

UNDER SECTION 4 A television broadcasting service licensee may make broadcasting services more accessible to persons with Disabilities by doing the following:

Please include the promotion of accessible equipment i.e. televisions, remote controls, decoders with tactile cues, voice activation and voice over capability allowing visually impaired users to operate them independently. These are already available in international markets.

Section 6 A television broadcasting service licensee must implement the minimum level applicable to Accessibility Service relevant to its broadcasting service licence category--

This is a critical regulation and core to the Code as it has the potential to genuinely transform the industry and bring real value to persons with disabilities socially and economically. In our experience as the disability sector in South Africa



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“minimum” is commonly implemented to be “maximum” and service providers whether state owned or private rarely move beyond “the minimum”. The BBEE Code is a typical example. Hence, with this in mind, our comments and

recommendations are provided.

With respect to the minimum percentages for subtitles, please clarify whether we are referring to foreign language content to English or foreign content to local languages, or local languages to English or English to local languages? These

distinctions have different implications. All foreign language should be 100% or should not be aired on SA television. If it is the latter two then varying percentages could apply depending on the target market.

With respect to audio description the minimums are far too low and should be increased across the various categories of broadcasters. Particularly, for “public” year 1 and year 2 to 5% respectively and year 3 to 10%. This is still way below countries like the UK, USA Europe Canada where consumer demand has driven AD to levels exceeding 40%. “Subscription” should be 25, 50, 75% as this is a paid service and the market will influence this through supply and demand. Currently Netflix is in excess of 60% and increasing, and are capturing the visually impaired market in SA and globally.

With respect to closed captioning, these percentages should be increased. This provision has been available on SA television for many years and should be encouraged to grow rather than stagnate. These percentages should be as indicated for Subtitles (which should be 100%).

General comments related to percentages are that clarification must be provided for the term “onwards”. Does it mean that the broadcaster retains year 3 indefinitely or is this left to other forces to influence growth? Is the rational for



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the low percentages to cushion the broadcasters from penalties being applied?

In the case of the public broadcaster are the low percentages related to the fact that it has not yet become digital? The speed at which AD delivery platforms are being developed and coming on the market compensates for this gap. The public broadcaster should be encouraged to grow their AD content as it can tap into these external delivery sources while it is analogue and waits to become fully digital/terrestrial. This model is again being applied in several countries.

Section 5 Basic standards **FOR ELECTRONIC COMMUNICATIONS SERVICE LICENSEES**

(INCORRECT NUMBERING. SHOULD BE SECTION 7.)

With respect to point 3 related to visual aid compatibility requirements for mobile handsets. Please clarify if this refers to locally designed and manufactured mobile phones? If so the regulation should include that best global practice be adopted. Embracing, the accessibility standards set by global techno giants such as Apple, Samsung Google, Microsoft etc. with their IOS and android systems. These include the requirements mentioned in the Code and much more. Local providers must engage widely with their consumer base to understand needs, match requirements and promote innovation. Visually and hearing impaired talent must form the accessibility teams employed at such service providers to enable cutting edge developments as is already the case with the global techno giants. Accessibility is now core to design and delivery and has moved beyond the concept of assistive technology.

Section 7 to 13 comments and recommendations are as follows

General requirements for communication and information regulations appear comprehensive. However the focus is largely on the needs of deaf consumers. The consumer needs of the visually impaired and other disabilities require to be



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expanded and factored in.

Under “promotion of awareness and compliance

We welcome the 3 year accessibility plan and the annual reporting regulation. Since 3 years is short term and a limited timeframe in which to implement the accessibility plan, we recommend that a long term component be included in the

plan 5 to 10 years allowing for broadcasters to also realise their vision and share their strategic direction. The administrative, monitoring and evaluation process and responsible structures should be included and unpacked.

Under “transitional arrangements “

we find this provision highly problematic, unacceptable and a major flaw in the Code. The public broadcaster is relieved from compliance with the Code and is freed from penalties indefinitely. Compliance is made dependent on the switch off of analogue and the switch on of digital/terrestrial. All key regulations contained accessibility services, minimum percentages, submission of accessibility plans, annual reporting that are core to achieving disability inclusion are required only to be mandatory once the public broadcaster migrates to digital/terrestrial. There is no indication as to the date or timeframe when this will be implemented. We have been waiting for years for this to occur and there is still no light at the end of the tunnel. The public broadcaster as a government entity funded by taxes has a stronger moral obligation to promote equitable service delivery and uphold the rights of its citizens with disabilities. It should lead by example. Instead this provision sends out the wrong message to the industry and renders the Code powerless. Our recommendations are that this “transitional arrangements” provision must be removed. All regulations applicable to licenced broadcasters must be equally applicable to the public broadcaster. Accessible services are achievable in its current form of analogue delivery and is already in practice to a limited extent. Closed captioning, subtitling, photo sensitive alerts already exists and audio description may be provided concurrent at dedicated times or coupled with external delivery-platforms as previously



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explained. Hence, under analogue it can still provide accessible services and comply with the Code.

Under “short title and commencement”

We suspect that the “2020” year in the title may change given the date of finalisation. We propose that the commencement timeframe be revisited as it

appears vague and open ended. As it stands it will take several years for implementation to commence. Bearing in mind that the first Code took 7 years to be reviewed, the second Code 3 years and the third another 3 years, we conjecture that the present round of public comments will also take a similar time. Allowing for the sign off by the Minister, gazetting and the further 18 months before implementation, means we may wait up to 5 years before the Code takes effect.

We recommend therefore that the Code come into effect 6 months after being gazetted as it is the only clear time indicator available. Information and Communication technologies are developing at a rapid pace. We require to promote innovation, growth and not delay implementation. The Code will be further outdated by that time. The disability sector has been left far behind in South Africa and there is a great deal of catch-up that needs to take place.

Concluding Remarks

It is to be commended that ICASA has embarked on formulating a Code for persons with disabilities and for persevering 13 years towards its finalisation. We acknowledge the commitment of the Committee on the Code For Persons With Disabilities which provides hope of accessible services being within our reach. Notwithstanding, our written representation concludes with important overarching observations that we wish the Authority to be cognisant of in its finalisation of the Code.

The Code in general demonstrates a stronger leaning and greater understanding of the needs and requirements of the hearing impaired sector. Provisions for the visually impaired sector is weak and reflects limited insight by comparison.

The Code has adopted a carrot and stick approach, except there is no carrot, just a stick! This approach has missed totally the positive catalytic, systemic influence it potentially has to achieve social cohesion and economic mainstreaming for the disability sector. Government’s priority is the attainment of the Sustainable Development Goals. The Code by its very nature and impact can catapult the disability sector into the 4th industrial revolution, transforming



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our productive participation in all spheres of society. AI and Smart ICTS are already opening our world and impacting the lives of persons with disabilities in ways never experienced before. Access to information, instant communication, global connectivity are transforming and levelling the playing fields. The Code requires to recognise these transformative contributions that it could facilitate via the communications industry. . Instead the Code focuses on ruling through fear instituting severe penalties for noncompliance without a balance of instituting awards for achievement.

Given ICASA's role in the influencing of availability and cost related to internet capability, speed of connectivity, broadband, data and on ICT technologies we appeal to the Authority to review its current models and establish affordable and quality connectivity in South Africa. Internet connectivity is an infra structure provision and not a value add to effective functioning.

Kind Regards

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Additional comments and recommendations on- Annexure:

National Relay System Specifications Applicable to Video

A parallel document should be developed to address the visually impaired user in the context of accessing services through interfacing with touch screens, videos and systems to acquire essential and emergency services.

Visually impaired users are operating smart ICT devices designed with touch screens, Screen readers, voice over, voice recognition, AI object recognition, virtual assistance to mention but a few. To support effective communicative interface on any device, we must ensure the provision of fast reliable connectivity, low cost data and wide availability of smart technologies, smart phones, tablets computers etc.

In the case of accessing essential and emergency services on automated systems, the key requirement is that a high quality voice prompt and recognition capability must be developed as is the case for example in the USA. The visually disabled user struggles with simultaneously listening to the audio/ voice output coming from the mobile or telephone device and concurrently having to activate key strokes on touch screens and select numbers to activate optional services or choices provided. The blind user should be able to use their voice to make these selections and achieve the desired result of securing the service they are intending to reach.

Voice prompts would require clear instructions and appropriate pause time for the visually disabled user to provide a response. It should also allow for verification of the voice response before moving on to the next step. The automated voice on the output side should be clear, replicating perfect human quality. There should always be the option to make corrections if the choice has not been recognised. There must be the option to select human support if the automated voice prompts are not working effectively.

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