
EXPLANATORY NOTE



INTENTION TO CONDUCT REGULATORY IMPACT ASSESSMENT ON THE ICASA MUST-CARRY REGULATIONS, 2008

1. The Independent Communications Authority of South Africa ("the Authority") hereby issues an explanatory note of its intention to conduct a Regulatory Impact Assessment ("RIA") on the ICASA Must Carry Regulations, 2008 published in Government Gazette No. 31500 of 10 October 2008 ("Must Carry").
2. The Must Carry Regulations were promulgated in terms of section 60(3) of the Electronic Communications Act No.36 of 2005 ("the ECA"), which states that:

"The Authority must prescribe regulations regarding the extent to which subscription broadcast services must carry, subject to commercially negotiable terms, the television programmes provided by a public broadcast service licensee".

3. The Must Carry Regulations provide for terms and conditions under which the Subscription Broadcasting Service ("SBS") licensees will carry the programmes of the Public Broadcasting Service ("PBS") licensee; determine the transparent, equitable and reasonable terms and conditions under which the PBS licensees may offer its programmes to the SBS

licensees; and provide exemptions for certain SBS licensees from compliance with these regulations.

4. The 2008 Ministerial Policy Directive on Digital Migration, published in Government Gazette No. 31408, provides that the *"must carry"* arrangements continue in the new digital environment, fulfilling the important aspect of providing public broadcasting services to all citizens.
5. At the Parliamentary hearings on the Digital Migration Progress reports held from 21-22 September 2011, Top TV questioned the relevance of the Must Carry Regulations within a digital environment¹. The South African Broadcasting Corporation ("SABC") has, in various presentations to Parliament, presented the Regulations as imposing an onerous burden on its finances². Multichoice and sport rights holders raised concerns that, due to the Must Carry Regulations, the sport rights sold to the SABC make it possible for their competitors' subscribers to view their exclusive content, without them paying remuneration to the underlying owners of copyright³.
6. The Authority is conducting a RIA of the Must Carry Regulations to determine whether or not the Regulations have fulfilled the intended objectives. The RIA will look at both economic and non-economic factors.
7. The ultimate goal of the RIA is for the Authority to determine if there is a need to review the current Must Carry Regulations.
8. Following this explanatory note, the Authority will follow the steps outlined below in conducting the RIA:
 - 8.1. publish a questionnaire, on the Authority's website, to be completed by all stakeholders;

¹ A Review of the Broadcasting Regulatory Framework towards a Digitally Converged Environment, Government Gazette No. 34828, 8 December 2011. (page 60)

² South African Broadcasting Corporation (SABC). 2010. South African Broadcasting Corporation Limited Corporal Plan: MTEF 2010-2013 (page 10). South African Broadcasting Corporation Limited, Auckland Park.

³ Department of Broadband, Communications and the Digital Economy, 2011 :29

8.2. publish a Final Impact Assessment Report on the Authority's website.

9. Any enquiries in relation to this explanatory note must be submitted in writing (e-mail) to:

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