

**M-NET AND MULTICHOICE
REPRESENTATIONS ON THE DRAFT CODE
FOR PERSONS WITH DISABILITY
REGULATIONS**

January 2018

Introduction

- 1 M-Net and MultiChoice thank the Authority for this opportunity to make written representations on the Draft Code for Persons with Disabilities Regulations (“the Draft Code”), gazetted on 20 November 2017¹.
- 2 M-Net and MultiChoice are committed to improving access to our broadcasting services by people with disabilities. As we stated in earlier submissions on the previous draft Codes, we take accessibility to our broadcasting services very seriously and we invest substantial time, money and resources to promote access to our services. This work is frequently undertaken in close consultation with organisations representing persons with disability.
- 3 We note that there are significant improvements in this Draft Code from the previous drafts published by the Authority in 2014. We welcome these changes. In particular, we support the differentiation of obligations among the different tiers of broadcasters and the phased-in approach for new obligations.
- 4 In our view, the Code now provides a much better basis for the implementation of accessibility initiatives by licensees. However, we believe there are some areas which can still be further refined in order to allow licensees, especially television broadcasters, greater flexibility in achieving accessibility and simultaneously improving access to our services by persons with disabilities in a meaningful way. We therefore make a handful of targeted drafting proposals in this submission.
- 5 M-Net and MultiChoice request an opportunity to make oral submissions, should public hearings be convened.

Accessibility quotas

- 6 Regulation 4 details "Basic Standards for Broadcasting Service Licensees" in which minimum percentage requirements are specified for sub-titling, audio-

¹ Notice number 629, Government Gazette number 4126

captioning, audio-description and closed captioning. These requirements are increased annually from year 1 to year 10.

- 7 Notwithstanding our over-arching concerns about the setting of quotas, explained below, we note that the percentage requirements are more pragmatic than those previously proposed by the Authority in the 2014 drafts of the Code. As we stated in our earlier submissions, the previous proposals were completely unworkable and would have had ruinous financial consequences for the entire broadcasting sector. Specifically, we welcome the new approach wherein the quotas now:

- 7.1 Set differing percentage requirements for the different types of accessibility services;

- 7.2 Differentiate between the obligations set for different tiers of broadcasting services;

- 7.3 Recognize that it is not feasible to impose accessibility quotas on certain kinds of content; and

- 7.4 Increase the obligations on broadcasters more gradually.

- 8 Although we welcome the improved approach, as a matter of principle, M-Net and MultiChoice do not believe quotas are necessarily the best way to drive the achievement of regulatory goals such as accessibility to services by persons with disability. Quotas are inherently inflexible and are inappropriate (and even damaging) in a Code in the fast changing communications environment.

- 9 The Authority needs to also be mindful of the current environment where television broadcasters compete with OTT services which provide audio-visual services to consumers but have no regulatory obligations, including no accessibility requirements. This position is exacerbated in the Draft Code where quotas are effectively set for only one category of licence – television broadcasters. (Radio broadcasters are unable to provide sub-titling, closed captioning, audio description etc.). In stark contrast to the broadcasting quotas,

no quotas are set for other licence classes, even though many ECS licensees also provide audio-visual services to consumers.

- 10 This approach is unfair to television licensees who will have to expend significant resources to meet the annual quotas. As stated in previous submissions, we estimate the combined production costs to provide all the accessibility services for 100 minutes of content (e.g. a single movie) is over R160 000.
- 11 In our view the Authority should rethink its approach to the setting of quotas in the Draft Code, possibly reformulating the quotas as targets. However, it goes without saying that, whether the requirements are quotas or targets, it is M-Net and MultiChoice's firm intention to promote the accessibility of their broadcasting services to persons with disability. We have been doing this anyway in the absence of quotas.
- 12 Should the Authority persist with setting accessibility quotas for television broadcasters, we recommend two simple but important amendments to the Draft Code:
 - 12.1 First, the definition of applicable channels should exclude genres such as music and unscripted content, and should also give broadcasting licensees the flexibility to designate third party channels, where accessibility services on those channels may be available.
 - 12.2 Second, rather than set requirements for each kind of accessibility service (e.g. closed captioning, subtitling etc.) in duplication, set broad requirements for Hearing Impaired Accessibility Services and Visually Impaired Accessibility Services and allow broadcasters to themselves determine which accessibility services they will use to achieve the quotas.
- 13 We provide further details on these proposals below.

Definition and scope of "Applicable Channels"

- 14 M-Net and MultiChoice welcome the introduction of the concept of Applicable Channels in the Draft Code as it acknowledges that providing accessibility on every single channel will be an impossible task. However, we are concerned that the Code should allow sufficient flexibility for a licensee to designate more Applicable Channels to achieve maximum compliance and maximum benefit for persons with disabilities.
- 15 Other forms of audiovisual content which do not easily lend themselves to accessibility services are music and programming which is not scripted. We accordingly propose that channels which consist predominantly of such content also be excluded from the definition of "Applicable Channels".

- 16 M-Net and MultiChoice recommend that the definition of Applicable Channels is amended as follows:

"Applicable Channels means all audio-visual channels broadcast by a licensee except a third party channel(s) and channels consisting predominantly of live or unscripted content such as news, reality, sport or music; unless voluntarily designated by the licensee."

Remove duplication of substantially similar obligations

- 17 M-Net and MultiChoice support the principle articulated in Regulation 4(1), which essentially requires broadcasting licensees to implement accessibility services on Applicable Channels to promote accessibility to (i) visually impaired persons and (ii) hearing impaired persons.
- 18 In this regard, we welcome the requirement in Reg. 4(1)(b) to provide "Subtitles, Audio Captioning or Close Captioning...".
- 19 This is a sensible approach, as it avoids a licensee having to duplicate different kinds of accessibility services for the same disability, with each duplicated service having marginal benefit but incurring significant additional cost.

- 20 However, Regulations 4(4), (5), (6) and (7) create the impression that the Draft Code sets four separate, but overlapping, quotas for sub-titling, closed captioning, audio-captioning and audio description, even though three of these are intended to promote accessibility for hearing impaired persons and are substantially similar. This issue arises because the opening lines to Regulations 4(4), (5), (6) and (7) say "*A broadcasting service licensee which provides [subtitles/audio captioning/audio description/closed captioning] must implement the following minimum percentages of [each such accessibility service].* Contrary to Reg. 4(1), this seems to suggest that as soon as a licensee provides a particular accessibility service, it must comply with the quota for that specific accessibility service notwithstanding compliance with the quota for other services to promote accessibility for the same disability.
- 21 In so doing, the Draft Code duplicates requirements for accessibility services which have a substantially similar function and purpose. For instance, sub-titling and closed captioning are substantially similar services, intended to promote access to broadcasting services by hearing impaired persons.
- 22 We do not believe that this was the intention of the revised Regulations, as it would disincentivise the provision of additional accessibility services.
- 23 M-Net and MultiChoice recommend that the approach be simplified and that the Code set out one quota for each of the following broad areas, namely:
- 23.1 One quota for Hearing Impaired Accessibility Services; and
- 23.2 One quota for Visually Impaired Accessibility Services.
- 24 This approach allows broadcasting licensees the flexibility to utilise multiple accessibility solutions to meet disability needs and does not tie the broadcaster to particular solutions. As technology develops and new solutions become available, this approach allows broadcasters to utilise new, improved accessibility methods.
- 25 We suggest the drafting amendments in the table below to give effect to this proposal:

Reg. number	Topic	Current wording	Proposed change	Proposed wording
1	Definition of "Accessibility Services"	"'Accessibility Services' means a service such as Audio Description, Audio Captioning, Audio-visual Content, Closed Captioning and Subtitles".	"Accessibility Services" means a <u>Hearing Impaired Accessibility Service and/or a Visually Impaired Accessibility Service such as Audio Description, Audio Captioning, Audio-visual Content, Closed Captioning and Subtitles.</u>	"Accessibility Service" means a Hearing Impaired Accessibility Service and/or a Visually Impaired Accessibility Service.
1	New definition of Hearing Impaired Accessibility Service	-	" <u>Hearing Impaired Accessibility Service</u> " means a facility such as Subtitles, Audio Captioning, Closed Captioning, or a combination thereof, provided in order to <u>make programming accessible to a deaf or hearing impaired person</u>	"Hearing Impaired Accessibility Service" means a facility such as Subtitles, Audio Captioning, Closed Captioning, or a combination thereof, provided in order to make programming accessible to a deaf or hearing impaired person
1	New definition of Visually Impaired Accessibility Service	-	" <u>Visually Impaired Accessibility Service</u> " means a facility such as Audio Description provided in order to <u>make programming more accessible to a blind or visually impaired person</u>	"Visually Impaired Accessibility Service" means a facility such as Audio Description provided in order to make programming more accessible to a blind or visually impaired person
4(1)	Basic standards for broadcasting service licensees (Quota requirement)	(1) A broadcasting service licensee must implement the following Accessibility services on Applicable Channels - (a) Audio Description, as prescribed in these Regulations; and (b) Sub-titles, Audio Captioning or Close Captioning, as prescribed in these Regulations.	(1) A broadcasting service licensee must implement the following <u>a Hearing Impaired Accessibility Service and a Visually Impaired Accessibility Service</u> on Applicable Channels.- (a) Audio Description, as prescribed in these Regulations; and	(1) A broadcasting service licensee must implement a Hearing Impaired Accessibility Service and a Visually Impaired Accessibility Service on Applicable Channels as prescribed in these Regulations.

			(b) Sub-titles, Audio Captioning or Close Captioning, as prescribed in these Regulations.	
4(2)	Basic standards for broadcast service licensees (Quota requirement per licence category)	(2) A broadcasting service licensee must implement the minimum level applicable to the relevant Accessibility Service applicable to its broadcasting service licence category, as prescribed in these Regulations.	(2) A broadcasting service licensee must implement the minimum levels applicable to the relevant <u>Hearing Impaired Accessibility Services and Visually Impaired Accessibility Services</u> applicable to its broadcasting service licence category as prescribed in these Regulations.	(2) A broadcasting service licensee must implement the minimum levels applicable to Hearing Impaired Accessibility Services and Visually Impaired Accessibility Services applicable to its broadcasting service licence category as prescribed in these Regulations.
4(4)	Subtitles quota	(4) A broadcasting service licensee that provides Subtitles must implement the following minimum percentages of total Subtitles, measured across its broadcasting service on Applicable Channels: [Table]	<u>Minimum levels for Hearing Impaired Accessibility Services</u> (4) A broadcasting service licensee that provides Subtitles must implement the following minimum percentages of total Subtitles <u>Hearing Impaired Accessibility Services</u> measured across its broadcasting service on Applicable Channels: [Table].	Minimum levels for Hearing Impaired Accessibility Services (4) A broadcasting service licensee must implement the following minimum percentages of total Hearing Impaired Accessibility Services measured across its broadcasting service on Applicable Channels: [Table].
4(5)	Audio Captioning quota	Audio Captioning (5) A broadcasting service licensee which provides Audio Captioning must implement the following minimum percentages of total Audio Captioning, measured across its broadcasting service on Applicable Channels: [Table]	<u>Audio Captioning</u> (5) A broadcasting service licensee which provides Audio Captioning must implement the following minimum percentages of total Audio Captioning, measured across its broadcasting service on Applicable Channels: [Table]	<i>[Deleted, covered by Reg. 4(4), which now deals with all hearing impaired accessibility services, at the higher quota in the table that previously applied to subtitles]</i>
4(6)	Audio Description Quota	Audio Description (6) A broadcasting service licensee which provides Audio Description must	<u>Audio Description Minimum levels for Visually Impaired Accessibility Services</u>	Minimum levels for Visually Impaired Accessibility Services

		implement the following minimum percentages of total Audio Description, measured across its broadcasting service on Applicable Channels: [Table]	(6) A broadcasting service licensee which provides Audio Description must implement the following minimum percentages of total Audio Description <u>Visually Impaired Accessibility Services</u> , measured across its broadcasting service on Applicable Channels: [Table]	(6) A broadcasting service licensee must implement the following minimum percentages of total Visually Impaired Accessibility Services, measured across its broadcasting service on Applicable Channels: [Table]
4(7)	Closed Captioning quota	Closed Captioning (7) A broadcasting service licensee that provides Closed Captioning must implement the following minimum percentages of total Closed Captioning, measured across its broadcasting service on Applicable Channels: [Table]	Closed Captioning (7) A broadcasting service licensee that provides Closed Captioning must implement the following minimum percentages of total Closed Captioning, measured across its broadcasting service on Applicable Channels: [Table]	<i>[Deleted, covered by Reg. 4(4), which now deals with all hearing impaired accessibility services, at the higher quota in the table that previously applied to subtitles]</i>

Conclusion

- 26 We thank the Authority once again for the opportunity to comment on the revised draft Code.
- 27 We believe that our proposals will, if implemented, result in a workable and practical approach which strikes the appropriate balance between broadcasting licensees and the needs of persons with disabilities.