



Independent Communications Authority of South Africa  
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By email: [nthangwani@icasa.org.za](mailto:nthangwani@icasa.org.za)

Attention: Ms Nditsheni Hangwani,  
Code for persons with disability project leader  
CC: Councillor Botlenyana Mokhele - [BMokhele@icasa.org.za](mailto:BMokhele@icasa.org.za)

17 January 2018

Dear Ms Hangwani,

## INVITATION TO PROVIDE WRITTEN COMMENTS ON THE DRAFT CODE FOR PERSONS WITH DISABILITIES REGULATIONS

- 1 On 20 November 2017, the Independent Communications Authority of South Africa (ICASA) published in the government gazette number 41265 an invitation for the public to comment on the draft code for persons with disabilities regulations (regulations). Interested persons were given 21 working days from the date of publication to submit their written comments. ICASA subsequently acceded to requests for an extension and provided interested parties until 17 January 2018 to make written submissions.

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*The NAB is a voluntary industry association funded by its members*





- 2 The National Association of Broadcasters (NAB) is the leading representative of South Africa's broadcasting industry, representing the interests of all three tiers of broadcasters. Our members include licenced public, commercial and community broadcasters, as well as signal distributors, training institutions and industry associates.
- 3 The regulations seek to ensure that persons with disabilities have access to broadcasting and electronic communications services. The NAB supports the purpose of the regulations and our members are committed to working together with ICASA and disability organisations to ensure that the needs of persons with disabilities are addressed in a feasible manner. To this end the NAB thanks ICASA for the opportunity to make inputs as outlined in the paragraphs below. The NAB further requests an opportunity to make oral submissions, should hearings be held.
- 4 Whilst we support the principles underpinning the regulations and welcome improvements made to the previous draft regulations, we are still concerned with whether ICASA has sufficiently assessed the feasibility of the provisions of the draft regulations and the cost implications thereof. In our submission on the previous draft regulations which were published on 14 November 2014, we expressed the same concern. Although the proposed requirements set out for broadcast service licensees are now much lower, broadcasters will still have to incur high procurement costs for specialist services and equipment in order to comply with the regulations once they come into effect. These costs are in addition to the other costs borne by the broadcast service licensees in compliance with other terms and conditions of their licences.
- 5 Secondly, the NAB is concerned about some of the terminology used in the draft Regulations. The definition of "audio description" is vague as the

regulations are silent on what constitutes “key visual elements”. The definition of “closed captioning” makes reference to “other production” without giving an indication of what would constitute such for purposes of these regulations, therefore making it difficult to determine what would qualify as ‘other content’. In terms of the scope of application, the regulations are applicable to broadcasting licensees. However, it is clear from the obligations set in terms thereof that they are intended to apply only to television broadcasting licences. Therefore, to avoid any confusion we propose that the definition of “applicable channels” be revised to refer to television channels and not audio-visual channels, and that the regulations should specifically refer to television broadcasting service licensees to align with the intention of ICASA as inferred from the provisions of the regulations.

- 6 We also wish to draw ICASA’s attention to what may have been typographical errors in one of the tables. The percentages in the audio description table for public broadcasters go from 8% in year 4 to 20% in year 5 and drops to 10% in the following year 6. Similarly, the percentage for commercial free to air broadcasters goes from 2% in year 2 to 5% in year 3 and then goes down to 3% in the following year 4. We request that ICASA clarify and confirm what the proposed targets actually are.
- 7 Furthermore, it is not clear whether the licensee referred to in clauses 7,8 and 9 is a broadcasting service licensee or an electronic communications service licensee as the regulations apply to both categories. We request that there be specific citation through the regulations in order to avoid any confusion and most importantly, to ensure that the obligations pursuant to these regulations are clearly defined in respect of each licence category.

- 8 It is with concern that we note that the fine for non-compliance has increased from R1 million (as per the draft regulations published in 2014) to R5 million notwithstanding previous submissions on this point. We are especially concerned that the manner in which clause 10 is phrased, implies that ICASA may impose a fine for non-compliance from the very first year of the regulations coming into effect. We request that the fines be imposed only from year three at the earliest, to enable broadcasters time to ramp up their services. In this period, ICASA can monitor licensees on the basis of their efforts to implement the regulations. Furthermore, in the same way that the compliance levels differ between public, commercial free to air, subscription and community broadcasting service licensees, we propose that ICASA applies the same principle with respect to the fines for non-compliance and therefore differentiate them across these categories, save for community broadcasting service licensees in line with our recommendation outlined in paragraph 10 below.
- 9 It is useful to consider international best practice in policy and regulatory development. To this end, in our previous submission, we referred ICASA to an alternative regulatory approach as outlined in a report published in 2014 by the International Telecommunications Union. In terms of this report, a more flexible approach can also be effective in promoting equitable access to information and communications technologies for persons with disabilities in the fast-changing technology environment. In more recent developments, Ofcom, the communications regulator of the United Kingdom indicates it may exclude (our own emphasis) programmes and services on the basis of the technical difficulty and cost of providing accessibility services where it is satisfied that provision of the accessibility services would be impracticable. Furthermore, if at anytime a broadcasting service licensee demonstrates to Ofcom's satisfaction that the continuation

of access service obligations would threaten the viability of its service, Ofcom may *inter alia* suspend or terminate those obligations.

- 10 We respectfully recommend that ICASA considers adopting a similar approach particularly where community broadcasters are concerned. Whilst we welcome the revised approach to the targets in accordance with the different tiers of broadcasting, the regulations do not seem to have sufficiently taken into account the cost of compliance for community broadcasters who have limited financial resources and largely depend on grants and donor funding. The limited financial resources available to community broadcasters do not adequately cover basic operational costs, adding further obligations may jeopardise the viability and sustainability of this vital tier of broadcasting. We therefore submit that the obligations for community broadcasters be suspended, pending further review.
- 11 In conclusion, we wish to reiterate broadcasters' commitment to serving the needs of persons with disabilities. We respectfully urge ICASA to carefully consider the social, financial and economic consequences of the regulations and advise that detailed impact assessments precede the finalisation of the regulations. We recommend that, in order for the regulations to adequately serve their purpose, an assessment must be conducted to determine what is currently being done by broadcasting service licensees to ensure that their services are accessible to persons with disabilities. This benchmarking exercise will enable ICASA to make an informed determination of whether there are any gaps which may require intervention. We propose that ICASA adopts this approach going forward, and engages with the affected licensees throughout the finalisation of the regulations.



12 The NAB thanks ICASA for the opportunity to make its written submission and we look forward to further engagements on this issue.

Yours sincerely,



Nadia Bulbulia  
**Executive Director**