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Dear Ms Hangwani,

**Re: SABC SUBMISSION ON THE CODE FOR PERSONS WITH DISABILITIES
REGULATIONS**

Attached hereto, please find the SABC's submission on the Code for Persons with Disabilities Regulations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ngoka Judy Monyela', written over a horizontal line.

Ngoka Judy Monyela
Acting General Manager:
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THE SABC SUBMISSION ON THE CODE FOR PERSONS WITH DISABILITIES DRAFT REGULATIONS

17 JANUARY 2018

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1. INTRODUCTION

On 20 November 2017, the Independent Communications Authority of South Africa ("the Authority") published Notice 902 of 2017, Government Gazette No.41265, the Draft Regulations on Code for Persons with Disabilities Regulations for further public comment ("the Draft Regulations"). The Authority has invited all interested parties to comment on matters in the Draft Regulations. The SABC would like to thank the Authority for the opportunity to once again make written representation with regard to the Draft Regulations.

The SABC as the only public broadcaster within the Republic of South Africa is charged with a public service mandate to inform, educate and entertain all citizens. Currently, the SABC has 19 radio stations, 5 Television Channels with which it provides public broadcasting services. The SABC is also mandated to ensure that public broadcasting services reach all citizens in all official languages. Furthermore, the Broadcasting Act 4 of 1999 ("the Broadcasting Act") enjoins the SABC to be responsive to needs of all its audiences.

7.5% of the South African population is persons with disabilities and less than 2%¹ of the sector is employed². Statistics also show that disability is more prevalent among females and it increase with age and it is further recoded that persons with severe disabilities experience difficulty in accessing education and employment opportunities.³ There are very few platforms for persons with disabilities to get information specifically aimed at person with disabilities.

¹ 16th Commission for Employment Equity Annual Report (2016), page 18

² <http://www.statssa.gov.za/?p=3180> (Based on Census 2011 data)

³ *ibid*

2. OVERVIEW OF THE DRAFT REGULATIONS

In the main the SABC welcomes the intention of the Draft Regulations which seek to address unfair discrimination on services offered to persons with disabilities. The SABC remains committed to its mandate of providing services to persons with disabilities as prescribed in the current regulatory and legislative frameworks. Informed by its vision of "Broadcasting for total citizen empowerment" and its mission to be people centred and the organisational value that speaks of 'restoration of human dignity', the SABC accepts disability as a human right and development issue that leads to a recognition and acknowledgement that persons with disabilities are equal citizens before the law and should therefore enjoy all rights and responsibilities. Consequently, the SABC continually strives to cater for persons with disabilities in line with its statutory mandate.

The SABC further wishes to indicate that it is crucial for the Authority to conduct a regulatory impact assessment ("RIA") on the Draft Regulations. It is a known fact that regulations usually have numerous impacts that cannot be fully noticed without the impact assessment study and public consultations. Thus, it is necessary for the Authority to conduct RIA in order to avert instances wherein the Regulations produce unintended consequences during the implementation stage. RIA will assist the Authority with the following:

- To determine if compliance costs do not exceed the anticipated benefits of the regulations;
- A comparative analyses of different means of achieving the objective sought ; and
- Assessment of market readiness and the availability of service providers.

Having said that, the SABC appreciates the gradual introduction of audience assistance services as proposed in the Draft Regulations. Additionally, the SABC appreciate that the Authority has considered the SABC's submission with respect to the

2014 Draft Code for Persons with Disabilities. That said, the SABC looks forward to engaging the Authority on the subject matter as these Regulations are being developed.

3. THE SABC MANDATE WITH RESPECT TO SERVICES OFFERED TO PERSONS WITH DISABILITIES

The SABC in its quest to offer public broadcasting services to all South African citizens, amongst other things, it is guided by existing licence conditions, ICASA Regulations, the Broadcasting Act 4 of 1999 (as amended) and its 2004 Editorial Policies. Provisions related to services offered to persons with disabilities are as follows:

3.1 Legislative mandate

The Broadcasting Act enjoins the SABC to offer its services to persons with disabilities in the following manner:

Section 8: The objectives of the Corporation are:

- (a) : to make its services available throughout the Republic;*
- (e): to be responsive to audience needs, including the needs of the deaf and the blind and account on how to meet those needs;*

Section 10: The public service provided by the Corporation must (own emphasis):

- (a) Make services available to South Africans in all official languages;*
- (g) Strive to offer a broad range of services targeting, particularly, children, women, the youth and the disable (own emphasis);*

3.2 Editorial Policies commitments

The SABC has committed in its 2004 Editorial Policies to advance the interests of persons with disabilities; amongst other things it strives to:

- Promote access by persons with disabilities to SABC Services;
- Ensure that the representation of people with disabilities of persons with disabilities in programming is fair;
- Explore mechanisms for enhancing the delivery of services offered to persons with disabilities;
- Integrate South African Sign Language into broadcasting as a means of making programming assessable to people with hearing disabilities;
- Progressively expand the amount of programming that is signed beginning with selected news and current affairs and events of national importance;
- Make special efforts in the provision of Sign Language interpretation when programmes are recorded in front of live audiences in order to facilitate participation by the deaf community; and
- Investigate the use of innovative technologies such as audio-description and closed captioning.

3.3 SABC Performance on services offered to persons with disabilities

3.3.1 SABC Disability Committee

The SABC wishes to indicate that it views disability issues in a serious light hence it has mechanisms in place to address disability matters. In order to address employment equity matters, the SABC has established an internal Disability Committee that is responsible for the monitoring and evaluation of the implementation of disability management objectives within the SABC. This Committee has an internal focus and also seeks to champion and advance the interests of persons with disabilities in work-

related matters. The Disability Committee consists only of employees with disabilities from different divisions and provinces. This goes to show that the needs of persons with disabilities are at the forefront of the SABC agenda.

3.3.2 SABC Compliance Reports

On compliance matters, the SABC annually reports to the Authority on the extent to which it has complied with the ICASA Code on Services offered to Persons with Disabilities (2007). So these reports are prepared by all 21 SABC TV and Radio Services and they touch on the following aspects:

- Subtitles provided on the SABC television platform;
- Formats offered on websites;
- Provision of use of spoken language for economic indicators, weather details, telephone numbers;
- Commemorated and hosted days of importance to raise awareness;
- Hosted disability awareness initiatives to create internal disability awareness;
- Programmes which focus on rights of persons with disabilities;
- Representation of persons with disabilities in programmes;
- Interviews of persons with disabilities;
- Inclusion of persons with disabilities into studio audiences;
- Collaborations with organisations and associations representing persons with disabilities on awareness programmes; and
- Persons with disabilities within the employ of the SABC.

3.3.3 The SABC Disability 360 Project

In the quest to promote accessibility of public broadcasting services to persons with disabilities, the SABC launched the Disability 360 project on 30 Nov 2016. The aim of the Disability 360 project is to inspire change to Disability as a whole and persons with disabilities through enriching, credible, relevant and compelling content on-air, online and on the ground, accessible to all and through this, educate, inform and entertain all audiences accessing SABC services resulting in total citizen empowerment.

The Disability 360 Project covers disability on-air, online, on the ground through events. The Project also gives persons with disabilities in South Africa access to a “one stop shop” of information aimed at persons with disabilities through SABC Platforms, on-air, online and on the ground in all 11 official languages and across all provinces.

3.3.4 Website Accessibility Project

SABC Radio also identified a need to start an Accessibility Project for SABC Radio in 2018/19 financial year; the project will involve the creation of an SABC Accessibility standard that will need to be followed for future Radio Websites developments in order to make the websites accessible to people with disabilities. This project will assist people with disabilities and extend to all future SABC website developments. This initiative indicates the depth with which the SABC addresses needs of persons with disabilities.

4. PROVISIONS OF THE DRAFT REGULATIONS THAT REQUIRE CLARIFICATION

4.1 Definitions (Regulation 1)

The SABC opines that some definitions as contained in Regulation 1 should be reviewed for ease of implementation. Thus, the SABC suggests the following definitions

4.1.1 Subtitling: *refers to the written translation of the spoken language (source language) of a television programme into the language of the viewing audience (target language), the translated text usually appears in two lines at the bottom of the screen simultaneously with the dialogue or narration in the source language;*

Whilst it is acknowledged that the Draft Code is meant for persons with disabilities, it should also be born in mind that subtitles are also used to make available the material to a wider audience who would normally not comprehend the language used in a programme and for accessibility of persons with disabilities. Thus, subtitles should serve these two objectives.

4.1.2 “Applicable Channel” *means all audio-visual channels broadcast by a licensee except a third party channel(s) and channels [and programmes] consisting predominately of live programming content such as news, [current affairs] reality or sport*

On this definition the SABC would like to add current affairs as programming genre that is sometimes offered live rather than pre-recorded. The SABC would also like to add “programmes” as it currently has a license obligation to provide live news programmes in 10 official languages on SABC 1 and 2. There is also a need to define the term

“audio-visual” as it is neither defined in the Draft Regulations nor in the Electronic Communications Act.

4.1.2 “Applicable Channel” means all audio-visual channels broadcast by a licensee except a third party channel(s) and channels [and programmes] consisting predominately of live programming content such as news, [current affairs] reality or sport

4.1.3 “Accessibility” means the ability by persons with disabilities to [equitable] access and benefit from broadcasting and electronic communications services.

The proposed audience assistance services does not suggest equal access, instead it promotes equitable access; thus, the definition should be aligned to prescribed audience assistance services.

4.1.4 “Sign language” means a language that uses a system of manual, facial and other body movements as the means of communication.

The SABC suggests the adoption of the above-mentioned definition because it is more inclusive. Furthermore, it is noted that the Authority has included Sign language in the definitions section however, makes no further reference to it in the Draft Regulations. Sign language will be South Africa’s 12th official language soon, thus the Authority needs to elevate the provision of sign language translation to the level of other official languages in order to strengthen the usage of this language. The SABC opines that the beneficiaries of sign language should also have access to all tiers of broadcasting.

4.2 Scope of Regulations

Regulation 12 (2) clearly states that for existing terrestrial TV licensees these Regulations will be effective from the analogue switch-off date. Whilst it is appreciated that the Authority seeks to ensure that existing terrestrial TV licensees migrate to digital successfully; it is also fair to have the regulations applicable to all tiers of broadcasting and ECS licensees at the same time. Thus, the SABC suggests that the Regulations be implementable by all tiers of broadcasting at the same time, which is post the dual illumination period.

4.3 Basic standards for broadcasting service licensees

4.3.1 Regulation 4 (1)

The SABC understands Regulation 4(1) (a) to be implying that audio description is obligatory in line with the proposed quotas in Regulation 4 (6) whilst Regulation 4(1)(b) imply that the broadcaster must opt for one of the three (subtitles, audio captioning or close captioning). The SABC is of the view that the latter audience assistance services, namely close captioning and subtitles, are meant to service the deaf community therefore they cannot be used simultaneously. In light of this logic, the SABC submits that there should be one set of quotas/minimum requirements for both subtitles and close captioning because these services serve the same purpose; so broadcasters must opt for subtitles or for close captioning.

4.3.2 Application of minimum percentages of audience assistance services

The SABC proposes that the Draft Regulations need to indicate the period within which these minimum percentages of audience assistance services must be implemented. In the same vein the SABC suggests that the audience assistance services should be implemented during the performance period in line with licence obligations.

In a digital multi-channel environment it is ideal to create a regulatory framework that prescribe regulations that apply to a network rather channel based regulations. Following this line of argument, the SABC proposes that the minimum requirements for audience assistance should apply per bouquet rather than per channel.

Regulation 4(6) appears to have errors with respect to audio description minimum requirements; year 5 minimum requirements for the public broadcasting service and year 3 minimum requirements for commercial free-to-air seem to be inaccurate.

4.3. 3 General requirements for communication and information provisions to persons with disabilities

Regulation 6 (4) speaks to services offered by customer service staff of licensees. However, it confines these services to "stores" whereas the SABC does not have stores. It is therefore, important for ICASA to first define the term "licensee" and secondly clarify if this provision is applicable to broadcasters. Clarification is also sought with respect to Regulation 6 (6) (a) as it also implies that it applies to broadcasters who have stores and the SABC has no stores. In a nutshell Regulation 6 should clearly state provisions that are applicable to broadcasters for ease of implementation.

4.3.4 Complaints process for persons with disabilities

Regulation 8 states that licensees must develop complaints processes that are conducive to persons with disabilities. It is ideal for the Authority to prescribe that which it deems as appropriate for implementation of Regulation 8. To this end, the SABC encourages complainants to lodge complaints in writing so as to have record of all complaints received. However, in cases wherein a complainant is unable to write down his or her complaint, the SABC will gladly reduce that verbal complaint into writing for record-keeping purposes. In summary, the SABC receives complaints in the following formats:

- Through our websites;
- By email or fax; and
- By walk-in customers in all our regional offices.

Above all these, the SABC commits to send its contact details to organisations that represent persons with disabilities as a means to ensure that the SABC remains accessible.

4.3.5 Compliance reporting

To give effect to Regulation 9, the SABC proposes the ICASA Compliance Manual Regulations, 2011 provisions that speak to services offered by persons with disabilities (Form 7C) must be aligned to this Draft Regulations to avoid inconsistencies. If these Regulations will repeal the ICASA Code on Services offered to Persons with Disabilities, 2007, then Form 7C of the ICASA Compliance Manual Regulations must be amended accordingly.

4.3.6 Penalties

The penalties proposed in Regulation 10 are very steep and yet the Authority has not conducted RIA in order to ascertain as to whether these Regulations are realistic in terms of the set basic standards. In 2014 during the public consultation process, the SABC indicated that there were insufficient service providers for subtitling and audio description. Thus, it is unreasonable to prescribe steep penalties when the existing service providers are not sufficient to carry out the required audience assistance services required in the Draft Regulations. Thus, the SABC posits that the prescribed penalties should be alive to the blockages that exist in the sector and make room for exemption in cases where a broadcaster is unable to implement audience assistance services due to external factors.

5 Excluded/ Miscellaneous Matters

The SABC has noted the Draft Regulations seem to be taking an approach that does not address other important factors such as the following:

- The Draft Regulations are going to have a big impact on the broadcasting sector. However, the Authority has not indicated whether it has or intends to conduct a Regulatory Impact Assessment for the Regulations. Without the Assessment the Authority does not have a full perspective of the impact the Regulations are going to have on the industry. The need for an assessment is thus of importance. The Regulations need to be efficient and effective for the digital space the industry is entering into. The assessment needs to involve the people with disabilities community as well as the industry. There is a huge financial cost implication for the implementation of the Regulations. In 2014 the SABC presented to ICASA the cost for audience assistance services as per the tables below; however, these costs may have increased. Thus, the Authority needs to also consider the compliance costs attached to these proposed regulatory requirements.

COST ESTIMATION (ANNUAL) TO PRODUCE CC & AD ON ALL CONTENT							
	Minutes	Hour	Day	Year	Total Minutes/Year	Cost/Minute	Cost/Annum
	60		1	24	365	525,600	
CLOSED CAPTIONING	48		1	24	365	420,480	R 250 R 105,120,000
AUDIO DESCRIPTORS	48		1	24	365	420,480	R 600 R 252,288,000
Total Annual Cost							R 357,408,000

COST ESTIMATION OF FACILITIES COSTS FOR CC & AD		
Closed Captions	Creation workstation (each)	R 200 000
	Broadcast Channel (each)	R 2 500 000
	Content servers, IT infrastructure	R 5 000 000
Audio Facilities	Audio final mix suite with Voice Over booth (each)	R 1 500 000

- The SABC also wishes to point out there are insufficient service providers for subtitles, audio description and sign language translation to service all three tiers of broadcasting. In South Africa there are two subtitling companies namely, Vista 1 and Dubnet. For Sign Language, there are only 5 companies that offer sign language translation to both public and private sectors. Thus, it is necessary for the Authority to check readiness of the sector to offer these services, the funding required, the development of skills both internally and externally, and the technology required.
- The Draft Regulations are silent on representation of persons with disabilities in programming and that aspect is also critical as all citizens wants to see and hear about themselves on broadcasting platforms.

- Since sign language will become an official language in the near future, it is necessary to make mandatory for all three tiers of broadcasting to provide this service. Whilst it is acknowledged that the public broadcaster is expected to do more; it is equally important for persons with disabilities to also access all tiers of broadcasting given their distinct mandates.

6. RECOMMENDATIONS

In a nutshell the SABC recommends the following:

- a) The Authority should conduct RIA with a view to inform the extent to which regulations should prescribe audience assistance services quotas;
- b) Other provisions are too general for implementation to the extent that it is not clear if they are meant for broadcasting services or electronic communications services; particularly with respect to Regulation 6. The provisions meant for TV Services should be indicated as such and the same should apply to Radio Services;
- c) The SABC submits that the minimum requirements for audience assistance services should apply during performance period and per bouquet/network; and
- d) It is also recommended that since the role of USAASA is to advance the course of universal service and access of ICT services; the USAF subsidies should be channelled towards servicing the broadcasting needs of persons with disabilities.

7. CONCLUSION

In conclusion, the SABC would like to thank the Authority for the opportunity to make a submission on the Draft Regulations. Should the Authority conduct public hearings on the subject matter, the SABC would like to participate and expatiate on its submission.