



# THE SABC SUBMISSION ON THE CODE FOR PEOPLE WITH DISABILITIES - DRAFT REGULATIONS

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# **THE CODE FOR PERSONS WITH DISABILITIES DRAFT REGULATIONS**

## **1. INTRODUCTION**

On 12 June 2020, the Independent Communications Authority of South Africa (“the Authority”) published Notice 317 of 2020, Government Gazette No.43418, the Code for People with Disabilities Draft Regulations for further public comment (“Draft Regulations”). The Authority invited all interested parties to comment on matters contained in the Draft Regulations. The SABC would like to thank the Authority for the opportunity to make written representations with regard to the Draft Regulations and would like to participate in public hearings on this subject matter.

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, 8 Television Channels with which it provides public broadcasting services. The SABC is also mandated to ensure that public broadcasting services reach all citizens and 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 and to strive to offer a broad range of services targeting, particularly children, women, the youth and the disabled.

Additionally, the SABC TV and Radio Licenses enjoin the Corporation to cater for persons with disabilities on the television and radio platforms and the SABC strives to deliver on this public service mandate.

In the interest of expanding services offered to persons with disabilities, the SABC established the SABC 360 Disability Project in 2016 with a view to have a 360 approach to Disability. The implementation thereof is covered on traditional broadcasting platform, online and during events. On-air content is distributed through podcasts and uploaded on platform (radio stations) websites. The link to the platform podcast gets uploaded on the Disability 360 Facebook and Twitter pages. This project has created a “one stop shop” of disability information/content from all SABC radio stations in all official languages and non-official languages.

## **2. OVERVIEW OF THE DRAFT REGULATIONS**

In the main the SABC welcomes the intention of the Draft Regulations which seeks to promote accessibility of broadcasting service for 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 framework. Informed by its vision of being the leading, credible voice and face of the nation and the continent and its mission to provide compelling informative, educational and entertaining content via all platforms which are accessible by all South Africans, with great emphasis on adherence to the prevailing legislative and regulatory framework.

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 equal rights and responsibilities. Consequently, the SABC continually strives to cater for persons with disabilities in line with its statutory mandate.

The SABC welcomes the gradual introduction and reduced prescribed minimum requirements of accessibility services as proposed in the Draft Regulations. However, it is equally imperative for the Authority to be mindful of prevailing circumstances, such as, technology as an enabler, and the available service providers of accessibility services.

Additionally, the SABC is pleased that the definitions in the Draft Regulations have been refined as per our suggestion in the previous submission.

## **3. FUNDING FOR UNIVERSAL SERVICE AND ACCESS**

Section 8(b) of the Broadcasting Act, provides that the SABC should be funded through advertisements, subscription, sponsorship, licence fees or any other means of finance. The SABC is still predominantly reliant on the commercial revenue, as this constitutes an estimated 80% of its annual income.

The importance of reliable and consistent financing cannot be understated, as the mandate of the public broadcaster has to be met by the SABC. The SABC continues to offer its services to all citizens in all the official languages, play a developmental role in the creative industry, offer unprofitable content such as developmental and minority sports and offer content which educates, informs and entertains, thus, it is vital for government to ring-fence funds for universal service of public broadcasting.

Currently, the SABC contributes more than R9million per annum towards universal service and access to MDDA in accordance with the Universal Service and Access Fund (“USAF”) Regulations. Conversely, the SABC does not have access to this funding when it needs to expand its services to persons with disabilities. Thus, it is submitted that the SABC should be granted funding from USAF to provide accessibility services for persons with disabilities.

#### **4. PROVISIONS OF THE DRAFT REGULATIONS**

##### **4.1 DEFINITIONS**

###### **a) Applicable Channels**

In the Draft Regulations, the term “applicable channels” is defined as

*“..all television channels broadcast by a television broadcasting licensee except a third-party channel(s) consisting predominantly of live programming content such as news, reality or sports”*

The definition of applicable channels is not favourable to the SABC, in that, the exemption only extends to third party channels. The SABC owns channels that could possible carry live content, i.e. SABC Sports, SABC Parliament and to some degree SABC News. Thus, it is submitted that the definition should extend to channels which are likely to carry live programming content irrespective of who owns them.

## **b) Performance Period**

The Draft Regulations defines the term “performance period” as

*“..the period of 126 hours in one week measured between 05:00 and 23:00 each day”*

This definition is not mentioned anywhere in the Draft Regulations, therefore it is not necessary to have it in the Code; thus, it is suggested that it be removed from the Code.

## **c) The definition of closed captioning and subtitles**

The definitions in the Draft Regulations for “closed captioning” and “subtitles” are swapped; the definition for closed captioning is actually for subtitles and vice versa. Thus, it is submitted that these definitions be correct accordingly.

## **4.2 IMPROVING ACCESSIBILITY**

### **a) Draft regulation 4(1) - Provision for Breaking News**

The Authority should be wary of imposing overwhelming and undue control/interference in its application of the Regulations. The SABC is of the view that broadcasters should in terms of the provision for breaking news, be allowed to apply their own discretion. Breaking news and addresses meant for citizens will be covered in various ways by different broadcasters. To this end, only the SABC News Channel and digital platforms have capacity to do this, because they are live interactive channels.

Conversely, the SABC would like to indicate to the Authority that whilst the SABC’s 24-Hour News Channel and its network of digital platforms may be described as live interactive channels, the current analogue Channels, i.e. SABC 1, 2 and 3 are predominantly passive in nature and the required technological enablers are not yet in place in order to provide up-to-the-minute straps across these Services.

It is further submitted that the Authority should rather encourage broadcasters to ensure viewers access breaking news, and that it be widely disseminated as possible; particularly those with disabilities should not be restricted from accessing important information from video or audio services.

#### **4.2 Provision of Electronic Programme Guides (EPGs), PVRs and VOD**

It cannot be understated that technology is an enabler for the proposed accessibility services and other additional services, i.e. PVRs and VOD. About digital television, from a reception point of view DTT and DTH devices have standards which allow to receive and display closed captioning, subtitling and audio description. In fact the SABS national standards for DTT and DTH decoders, as well as digital TV's (iDTV's) specify the requirements for closed captioning, subtitles and audio descriptors. Thus, it is practical and reasonable to offer these services in the digital environment.

The SABC wishes to caution the Authority not to be overly prescriptive with additional services like PVRs and VOD as these services require funding.

EPGs are available in the current landscape and are utilised as a marketing tool and for ease of use for audiences. The SABC believes in universal access strategy that use technology to ease accessibility of its facilities with constant improvements. It should be considered by the Authority that in the multiplatform environment programming may run in many formats, including audiences accessing catalogues instead of scheduled programming. Thus, broadcasters should be allowed to offer their services within their financial and operational means.

#### **4.3 Provision of accessibility services**

The Draft Regulations 3(1) propose that accessibility services such as, subtitling, audio captioning, audio description and close captioning be offered to persons with disabilities. The SABC maintains that these targets should be consistent with the digital environment.

The SABC requests clarity concerning how the required minimum percentages will be applied when these Regulations do come into effect. The SABC interprets the requirement to be a single target applicable to all services on the DTT/DTH platform. The Authority's confirmation of the exact application of the tiered percentage increases reflected in Draft Regulation 4 (6) (a), (b) and (c) will be appreciated.

#### **4.3.1 Subtitling**

The SABC has developed its own Subtitling Standard Operating Procedure ("SOP") for the organisation and external content providers. The content providers are bound to adhere to the SOP. For content produced by the SABC, there are two companies that are utilised and are familiar with the SOP. Essentially, contracts with content providers are signed with instructions that outline the details of font, text and guidelines for translation into written word as per the prescripts of the SOP. The SABC considers the minimum requirements for subtitling to be reasonable.

#### **4.3.2 Closed Captioning**

The SABC has every intention to align with the minimum requirements. It is however important for the Authority to note that technology is a major role player in implementing close captioning, upgrades may be required before the process is in-line with industry standards. The requirements as per the Draft Regulations are realistic for as long as implementation is not required per genre. For example, closed captioning will not be suitable for early childhood development content.

#### **4.3.3 Sign Language**

Although sign language is the most widely available and accessible service, the SABC requests the Authority to establish a single industry standard. For example, credentials of sign language interpreters may include a combination of formal qualifications, registration with SATI or any other accredited body, years of



experience, understanding the Code of Ethics for Sign Language interpreters, Multi linguistic, etc.

To this end, sign language is available within several SABC News slots on its Television platform, as this has its greatest impact on this particular platform; this along with Current Affairs and Children's programming to mention a few examples. Furthermore, the SABC offers sign language service in most programming of national importance. Thus, the SABC will continue to offer more sign language in line with the Regulations.

#### **4.3.4 Audio description**

It is worth noting that most content providers/ independent production companies do not have infrastructure for audio description. Thus, it is crucial to set the minimum requirements that can match the industry infrastructure or capacity.

### **4.4 AREAS THAT REQUIRE CLARIFICATION**

#### **4.4.1 Draft Regulation 7 (6) (a)- Access to information**

The provisions herein are meant for both broadcasting services and electronic communications services. It is suggested that the provisions directed to broadcasters should be separated and expressly stated that they apply to broadcasters for ease of implementation. As the regulations stand, it is not clear as to what is applicable to broadcasters and what is applicable to electronic communications services.

#### **4.4.2 Draft Regulation 4(4) – Improving accessibility**

The Draft Regulations suggest that television channels improve accessibility of their services through incorporation of accessibility services in advertisements. The SABC is of the view that this matter should be investigated in-depth as it involves third party content. Basically, advertising content is fully generated by advertisers and so the requirement to include accessibility services will be costly to advertisers.

The Authority may be aware that the COVID-19 pandemic and related restriction has led to a decline in advertising revenue for most broadcasters. Thus, the new requirement may discourage advertisers from using broadcasting platform to promote their products and services.

It is therefore submitted that the Authority should consider this aspect during the review of the ICASA Advertising Regulations with a view to involve the advertising industry.

#### **4.5 Effective date of the Draft Regulations**

It is noted that the Authority would like the final regulation to be effective from the date of the final switch-off date of analogue signals for existing terrestrial television broadcasting services, as per draft regulation 12. Stemming from this provision, the SABC understands that the final regulations will be applicable in the digital environment.

That said, the SABC submits that in the interest of fairness, the Authority should ensure that licensees get equal period to prepare for implementation of the final regulations.

### **5. OTHER RELATED REGULATIONS**

The SABC is of the view that the Draft Regulations are linked to the ICASA Compliance Procedure Manual Regulations of 2011 (“the Compliance Manual Regulations”). As such, these Regulations should reflect how the reporting required in Form 7C of the Compliance Manual Regulations should be executed.

For example, the Final Code for Persons with Disabilities will repeal some provisions and as a result, the Authority must also make a pronouncement as to how licensees should deal with outdated regulatory requirements as provided for in the Compliance Manual Regulations. Essentially, it is submitted that the Final Code for Persons with Disabilities Regulations should be in sync with Form 7C of the Compliance Manual Regulations.

## **6. RECOMMENDATIONS**

In summary, the SABC makes the following submission:

- a) That the Draft Regulations are implementable in the digital environment. The SABC welcomes the gradual introduction of accessibility services as it gives the industry an opportunity to establish more services providers.
- b) Exemption for provision of accessibility services on third party channels should also apply to SABC Channels that offer live programming content.
- c) The Authority should ensure that the Draft Regulations do not contradict the provisions of the ICASA Compliance Procedure Manual Regulations of 2011, in so far as provisions related to services offered to persons with disabilities are concerned.
- d) Other provisions are too general for implementation to the extent that it is not clear if they are meant for broadcasting service licensees or electronic communications services. The provisions meant for TV services should be indicated as such and the same should apply to Radio Services.
- e) The SABC should be funded from the USAF for the purpose of accessibility services.

## **7. CONCLUSION**

The SABC hereby welcomes the gradual introduction of accessibility services. The implementation of this Draft Regulations is forward looking while at the same time being considerate of the impact of the Regulations. The Authority should be cognisant of the fact that the SABC is on a gradual process of building capacity to cater for persons with disabilities.